



Brisbane LGBTIQ Action Group

Committee Secretary
Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill
Department of the Senate
PO Box 6100
Canberra ACT 2600

Submission: Senate Select Committee Inquiry into the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill.

Brisbane LGBTIQ Action Group is a group of Brisbane residents who are concerned by consistent research findings showing greater harm to Lesbian Gay Bisexual Transgender and Intersex (LGBTI) people, including far higher rates of mental health conditions and suicide, resulting from living with prejudice and discrimination. Our membership includes LGBTI people, family members of LGBTI people and other heterosexual citizens. We engage with government to raise awareness of, and inclusion for, LGBTI people. Our aim is for LGBTI people to be validated and recognised by society and government as full and equal citizens, which can assist in reversing the worse health and social outcomes many LGBTI people continue to experience.

This draft bill being presented is a historic event that will be welcomed by the majority of Australians and many other countries.

The draft bill proposes changing the Marriage Act from allowing marriage between a man and a woman **to allow marriage between "2 people"**. This must be praised for acknowledging that the love between any two adults is equal, and worthy of being recognised as a marriage. This definition importantly includes transgender and intersex people, who's love is just as valid and worthy as the love experienced by everyone else.

It's also very encouraging to see this draft bill **allows recognition of the thousands of same-sex couples who are already in legal overseas marriages** - some of over 15 years standing (Netherlands legalised same-sex marriage in April 2001). This important inclusion will apply to our members in same-sex marriages performed in overseas jurisdictions including Canada, England, New Zealand, Scotland and America. It's only fair that the children being raised from birth by our members and their partners in same-sex relationships (including those in overseas marriages), should have available the equal standing and protections of having married parents, just as their school friends with married heterosexual parents have.

These proposed changes to the Marriage Act are strongly endorsed.

However, there are other sections of the draft bill that worryingly do not provide equality of opportunity and a Fair Go for all Australians:

ONE:

The proposal that **civil celebrants be allowed to refuse to marry LGBTI couples** is in contrast with the Aussie tradition of a Fair Go (for all). Civil celebrants perform their duties as representatives of the government and to allow discrimination - on behalf of the state - is highly objectionable.

Some of our members know LGBTI couples living in rural Queensland. In rural areas resources, including civil celebrants, can be sparsely located. If the only civil celebrant in their small town, refused to marry an LGBTI couple, potentially this couple may have to travel hundreds of kilometres to locate another civil celebrant who will perform the duties entrusted to them by the government. To inconvenience Australians on their wedding day like this would be very harmful not only to the couple being married, but also to their family, friends, work colleagues and community. Legislating that civil celebrants must perform all duties entrusted to them in their role as a representative of the state would avoid all this unnecessary harm.

Allowing civil celebrants acting for the state to refuse to marry LGBTI couples would set a dangerous precedent. If celebrants acting for the state are allowed to exclude LGBTI couples, then in time who else may they be able to refuse to marry?

It must be noted that the vast majority of countries with marriage equality have rejected such discrimination in law - as Australia should do.

TWO:

Australia proudly values freedom of religion and this should be maintained, as the draft bill does, by allowing ministers of religion to conduct religious marriage ceremonies in accordance with the tenets and doctrines of their religion. However, this freedom **should encompass all aspects of religious marriage, rather than focusing solely on the exclusion of same-sex couples**.

THREE:

Discrimination on the basis of "conscientious belief" may extend well beyond what is contained in the rules and beliefs of a particular faith. It's unfair and unreasonable that the draft bill allows **Ministers of religion and civil celebrants to refuse to marry LGBTI couples if their refusal is based on "conscientious belief"**, which extends beyond the actual principles and tenets of their religion. This may open the door to decision making based on unreasonable preconceived prejudice rather than on defined religious doctrines or tenets.

This would also be a dangerous precedent, as "conscientious belief" is not a current criteria in our Anti-Discrimination laws. If this is allowed, then which other groups of Australians could in the future also be legally refused equal opportunity based on "conscientious belief" extending beyond actual religious doctrines?

FOUR:

The draft bill allows **religious "bodies and organisations"** to refuse to provide facilities, goods and services relating to same-sex weddings. This is a further new proposal which does not apply to heterosexual marriages. This is puzzling because:

A) - The draft bill has no definition as to what religious "bodies and organisations" means. Potentially this could extend broadly and well beyond the reasonable refusal to marry a same-sex couple in a church (noting that some religions and clergy state they do wish to perform LGBTI church weddings). Potentially it may mean that non-religious services such as photographers, florists, bakers (wedding cake), caterers, limousine companies, stationery manufacturers and reception centres that are affiliated to a religious organisation, may be able to refuse to provide their services for LGBTI weddings. It's usually clear if a building is a faith-based church, but how would it be generally known if a religious body owned or was affiliated with a provider of non-religious services such as photographers, florists, bakers, caterers, limousine companies, stationery manufacturers and reception centres, that was not clearly branded as such?

Some of our members know LGBTI couples living in rural Queensland. What are these couples to do if their town's only reception centre is owned by or affiliated with a religious organisation that refuses to host their wedding reception? In rural areas the closest alternate reception centre may be hundreds of kilometres away. Are the LGBTI couple, plus all their wedding guests, expected to travel hundreds of kilometres to a reception centre that will host them? This couple and their guests may want the wedding to be held in the town they grew up in, the town where they met and fell in love and still live in, the town they dearly love. Please stop and think how you would feel if this had happened to you on your wedding.

B) - Federal Anti-Discrimination law already contains broad religious exemptions to ensure religious organisation are free to follow their faith doctrines. These existing federal exemptions therefore deem this exemption in the draft bill unnecessary.

The recurring theme is that these proposed exemptions are not allowed - nor would they be tolerated - for heterosexual marriages - yet they are being proposed for LGBTI marriages! This is not a level playing field, and effectively would create two distinct classes of marriage, depending on the sexuality of the people getting married. The superior class of marriage (heterosexual marriage) would have greater privileges under law, by means of potentially broader pathways to accessing marriage, than inferior LGBTI marriages would have, by means of potentially restricted pathways to accessing marriage and marriage-related services.

Some people may say having inferior legal entitlements does not matter, as LGBTI couples could still legally marry, just not via all the pathways to marriage available to heterosexual citizens. However, this is comparable to apartheid where black people had to enter a bus by the rear door while the whites entered by the front door. To say that LGBTI couples should have lesser (and therefore inferior) pathways to entering a marriage, can be compared to blacks having to enter via the rear door. Just as LGBTI people could still marry, black people would still arrive at the same destination - however both LGBTI marriages and black bus passengers would achieve this through restricted pathways of entry, which commonly would be seen as being inferior.

Our member Craig, who married his husband in New Zealand accompanied by almost forty family and friends who also traveled from Australia, summed up the situation:

"New Zealand married us with 100% identical rights as granted to our parents and siblings when they had their Australian marriages. If New Zealand can provide identical marriage rights for all, then so too should Australia. If Australia wants to continue as a progressive nation then we can't have different laws based on how you were born. If this was legislation that affected other minorities such as Aborigines or disabled people, would the government be happy putting forward a law that blatantly discriminated against them? Of course they wouldn't. Then why should the LGBTI community be satisfied with this?"

Another member, Sally, had this to say:

"It's not fair to treat same-sex attracted people differently by passing a separate and lesser law. This sends the message that gays are inferior second-class people only worthy of inferior second-class rights, and this would fuel discrimination and prejudice in society. Simply change the existing marriage law to allow any two adults to marry. To treat some people differently by applying a new inferior law is neither required nor acceptable."

Legislators and citizens must ask:

1. Why would the law allow such discrimination against only one group of citizens?
2. If the law affirms discrimination against same-sex couples, then which other group could be next to experience discrimination under civil law?
3. If these exemptions become law, could we see further future restricted, and thereby inferior, pathways of entry to marriage (or other entities) depending on the race or religion of the people marrying?
4. If your children or grandchildren were to be LGBTI, would you really want them to have lesser civil rights than you enjoy?

This would not be tolerated - and rightly so.

This discrimination in these proposed exemptions is unAustralian and must be rejected.

The easiest and fairest way to legislate for marriage between any two adults who love each other, is to amend the existing Marriage Act 1961. This can easily be achieved by simply changing the current wording "the union of a man and a woman to the exclusion of all others, voluntarily entered into for life" to become "the union of 2 people to the exclusion of all others, voluntarily entered into for life". This would create equality of opportunity and a Fair Go for all Australians.

While the introduction of a government marriage equality bill is to be congratulated, any bill must also adhere to the principles of equality of opportunity and a Fair Go for all Australians. In it's

current form, the draft bill does not achieve this. With the above exemptions removed, this will remove discrimination from the draft bill. This would be something that Australians can be proud of.

Many thanks for the opportunity to put forward our views.

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