



New South Wales
Council for
Civil Liberties



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Submission to the Senate’s Legal and Constitutional Affairs Committee, concerning the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008

The New South Wales Council for Civil Liberties (CCL) thanks the Senate Committee for the invitation to comment on this bill.

The New South Wales Council for Civil Liberties (CCL) is committed to protecting and promoting civil liberties and human rights in Australia.

CCL is a non-government organisation in special consultative status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

CCL was established in 1963, and is one of Australia’s leading human rights and civil liberties organisations. Our aim is to ensure the equal rights of everyone in Australia and to oppose any abuse or excessive power by the State against its people.

1. The bill amends some sixty-nine acts, with the general intent of removing the inequalities between same-sex couples and heterosexual couples, including both married and de facto couples. The CCL welcomes this endeavour. The differential treatment of same-sex couples and heterosexual couples which is to be found through the range of the existing acts is arbitrary, and hence unjust.
2. CCL notes that developments in technology are changing the common usage of the terms ‘mother’ and ‘father’. Artificial insemination by donor, in vitro fertilisation and surrogate motherhood are established facts. Expressions such as ‘birth mother’, ‘social mother’, ‘genetic parent’ are becoming common.¹ The law then can no longer rely on the undefined expressions ‘mother’, ‘father’ and ‘parent’ and ‘child’, but must either introduce compound terms such as ‘birth mother’, ‘partner or husband of a birth mother’ and the like, or introduce new terms. Such changes should not be delayed until the new practices are regulated.
3. Settled de facto relationships, whether between same-sex or opposite sex partners are also a fact of life. There can be good reasons why a committed couple do not marry. Wherever possible then, married, heterosexual de facto and same-sex de facto relationships should be treated in the same way.

¹ Children’s literature sometimes refers to children having two mothers or two fathers.

4. The removal of unjust differential treatment of these kinds of couples may be an obligation of Australia under article 26 of the International Covenant of Civil and Political Rights. CCL welcomes the changes proposed in the bill.

5. However, one significant anomaly remains. Same-sex couples will still not be able to marry. This restriction, this denial of equality, is arbitrary, and as such, unjust. It should be rectified.

6. Fears that the institutions of marriage and the family will be weakened by this change appear to be purely based on a priori reasoning, and a prejudice that any change in an institution will weaken it. This ignores the history of the last thousand years or so, in which both institutions have significantly changed. Wives for instance are no longer owned by their husbands, and they have financial independence. Divorced people can remarry and divorce is available on grounds other than adultery or denial of sexual favours. The obligation on a man to father children by his dead brother's wife is no longer law. Yet the institution of marriage has survived these and other changes.

7. Similarly, families have changed. A large proportion of Australian families do not consist of two parents of opposite sexes and their children. Few of them are extended families living together, or in close proximity. Where is the research evidence that the new institution is weaker than those which it has replaced? And why is the one change, of allowing same-sex couples to marry, thought to be so much more dangerous than the others?

Recommendation 1: That the Senate Committee recommend that the bill be passed.

Recommendation 2: That the Senate Committee recommend that fresh legislation be produced to allow same-sex couples to get married.

Martin Bibby
Convenor, Civil and Indigenous Rights Subcommittee.
September 15, 2008.