

# Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into Recognition of Foreign Marriages Bill 2014

Australian Psychological Society

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## **Executive Summary and Recommendations**

The Australian Psychological Society (APS) supports full marriage equality for all people, regardless of their sex, sexual orientation or gender identity, on the grounds of human rights, and of health and wellbeing. On this basis, the APS fully supports the recognition of marriages solemnised in a foreign country regardless of sex, sexual orientation or gender identity.

Psychological research provides no evidence that would justify legal discrimination against lesbian, gay and bisexual (LGB) people who have married offshore, but there is ample evidence that restriction of their marriage rights contributes significantly to the risk of mental ill-health among LGB people (especially young people) as well as their loved ones.

The APS therefore specifically recommends that:

- *the Australian Government ensures marriages that are validly entered into in a foreign country can be recognised under the laws of Australia, regardless of sex, sexual orientation or gender identity*
- *the Australian Government extend full recognition to legally married LGB people, including those whose marriages were performed in foreign countries, and accord them all of the rights, benefits, and responsibilities that it accords to legally married heterosexual couples*
- *the Australian, State and Territory Governments work to strengthen Anti-Discrimination laws to protect all Australians from discrimination on the basis of sexual orientation or gender identity.*

## **Introduction**

The Australian Psychological Society (APS) welcomes the opportunity to make a submission to the Senate Inquiry into Recognition of Foreign Marriages Bill 2014.

The Recognition of Foreign Marriages Bill 2014 amends the Marriage Act 1961 to ensure that marriages that are validly entered into in foreign countries can be recognised under the laws of Australia.

The APS is committed to the full inclusion and associated rights of people who do not identify as heterosexual, who are intersex and/or who do not identify with their natally-assigned sex (referred to in this submission as lesbian, gay, bisexual, transgender or intersex – LGB/TI). The acronym LGB/TI recognises the intersections of assigned sex, sexual identity, and gender identity.

The focus of this submission is on marriage and sexual identity. It is therefore primarily an issue for lesbian, gay and bisexual (LGB) people (which will of course include intersex or transgender people who identify as lesbian, gay or bisexual). Issues facing intersex and transgender people in Australia in regards to marriage are not explicitly covered in this Bill (though of course the Bill does pertain to all Australians). Therefore the focus in this submission will be on the perspectives of LGB people alone.

Psychologists regard people as intrinsically valuable and respect their rights, including the right to autonomy and justice. Psychologists engage in conduct that promotes equity and the protection of people's human rights, legal rights, and moral rights (APS, 2007). The APS continues to raise concerns and contribute to debates around human rights, including the rights of clients receiving psychological services, and of marginalised groups in society (such as LGB/TI-individuals and groups) (<http://www.psychology.org.au/community/public-interest/human-rights/>). Underpinning this contribution is the strong evidence linking human rights, material circumstances and psychological health.

The right to marry is no exception. The APS has been actively involved in the area of LGB/TI mental health and other related issues, and in response to proposed policies around same-sex marriage (see below in 'About the APS' for full details). For example in 2011, the [APS Board endorsed](#) an American Psychological Association (APA) resolution calling for the legalisation of same-sex marriage, while in 2013 a submission was made to the [New South Wales Legislative Council Standing Committee on Social Issues Inquiry into Same Sex Marriage Law in NSW](#).

It is beyond the scope of the APS to comment on the legal issues related to this Inquiry. We therefore limit our response to the evidence drawn from the psychological literature linking marriage equality to mental health benefits, and highlighting the harm to individuals' mental health that is known to be caused by social exclusion. We draw on psychological research in other jurisdictions overseas that have enabled or denied marriage equality, which has shown that discrimination burdens LGB people with mental health costs, and that marriage equality confers psychological benefits.

One key question to address, from a psychological perspective, is whether for people living overseas who have married their same-sex partner, there are detrimental psychosocial impacts should they come to Australia. Most of the marriage equality evidence relates to whether couples can or cannot marry, and the associated psychological implications. There is only limited

evidence relating to the psychological impact of having one's marital status and rights overturned due to relocating to a geographic region that does not recognise those rights, or to a change in the marriage laws applying to the region where one lives. Nevertheless, it is likely that already-married couples will be at risk of equivalent if not greater psychological consequences than never-married couples if their marital status is not recognised, due to the perception that they are being discriminated against, not accepted, delegitimised, and devalued in the new environment or circumstance.

The preparation of this submission has been coordinated by the APS Public Interest team with input from the APS Public Interest Advisory Group and other expert advisers.

### **Marriage Equality and Mental Health**

Psychological evidence points to the harm to LGB people caused by social exclusion and discrimination arising from not having the choice to marry. This evidence includes:

- The denial of marriage rights to same-sex couples can adversely affect their health and wellbeing (Barlow, Dane, Techakesari, & Stork-Brett, 2012; Dane, Masser, MacDonald, & Duck, 2010; Hatzenbuehler, McLaughlin, Keyes, & Hasin, 2010; Herdt & Kertzner, 2006).
- Beyond the negative effect of marriage restrictions for LGB individuals, research indicates that the families of origin and friends, networks and supporters of LGB people and communities may suffer from some of the same serious negative physical and mental health consequences of discrimination experienced by their loved ones (Arm, Horne, & Levitt, 2009; Horne, Rostosky, & Riggie, 2011).
- Being denied the right to marry reinforces the stigma associated with a minority sexual identity, and can particularly undermine the healthy development of a well-adjusted emotional and social attachment style among adolescents and young adults (Herdt & Boxer, 1993; Herdt & Kertzner, 2006; Leonard et al., 2012).

Research has found that not having one's marital status recognised could result in individuals perceiving that their relationship is less valuable, and hence could detrimentally impact on their wellbeing. An Australian study, for example, involving 2032 same-sex attracted people found that the more individuals perceive that others place less value on their relationship relative to heterosexual relationships and marriages, the significantly lower their reported levels of psychological well-being (Dane et al., 2010).

The most significant evidence specific to this inquiry comes from a study conducted in the US. The study found that lesbian, gay and bisexual individuals living in states that passed a marriage amendment (limiting marriage to that between a man and a woman) experienced greater minority stress and psychological distress than lesbian, gay and bisexual participants in other states (Rostosky, Riggle, Horne, & Miller, 2009). By highlighting the mental health impact of removing a previously held or assumed right to marry, this study contributes to evidence of the detrimental mental health impact of marriage legislation that discriminates against LGB individuals.

In many countries, there is continued discrimination in existing marriage laws against same-sex couples who wish to marry, and this is a source of stress and anxiety. Evidence from the United States suggests that legislation that bans same-sex marriage, and does not prohibit associated expressions of inaccurate, negative, demeaning and hostile viewpoints about same-sex attracted people and their families, contributes directly to an increase in psychiatric morbidity among same-sex attracted individuals living in those areas (Hatzenbuehler et al., 2010). Furthermore, sexual minorities living in high-prejudice communities have been found to have shorter life expectancies of approximately 12 years (Hatzenbuehler et al., 2014). The same study also identified that there was an 18-year difference in average age of completed suicide between sexual minorities in the high-prejudice areas. These results highlight the importance of examining structural forms of stigma and prejudice, such as discriminatory legislation, as social determinants of health and longevity among minority populations.

For those countries and states that have legalised same-sex marriages and achieved marriage equality (e.g. UK, US State of Massachusetts), there is some evidence to indicate positive consequences. In Massachusetts, for example, a survey conducted 5 years after the legalisation of same-sex marriage found that marriage comes with a number of positive short-term and potentially long-term benefits to the couples, their children, and society (Ramos, Goldberg, & Badgett, 2009). Specifically, of 558 same-sex couples who were legally married, nearly three quarters felt more committed to their partners and more accepted by their communities (Ramos et al., 2009).

The effects of marriage legislation extend beyond the mental health and wellbeing of people from the LGB community, but also impact on their families and the broader community. In addition to the likely benefits to same-sex attracted people themselves of amending marriage legislation to remove discrimination on the basis of sexuality, there are obvious benefits to children and young people with same-sex parents who are currently not able to marry or have their marital status recognised. At present, these children experience their families as being stigmatised and marked out as less

acceptable and valued than families in which parents are able to marry or are recognised as married (Short, 2007; Short & Riggs, 2007; Snow, 2004).

With these findings in mind, not recognising international marriages may place couples who were legally married in another country at risk of depression, social exclusion and relationship instability should their marital status be overturned or not recognised. Further, lack of recognition of international same-sex marriages could deter couples from coming to Australia, for fear of being discriminated against and their relationship being perceived as less valuable than those of people in heterosexual marriages.

### ***The American Psychological Association Resolution***

In August 2011, the American Psychological Association (APA) unanimously adopted a resolution calling for the legalisation of same-sex marriage, on the basis of clear evidence showing the mental health benefits of marriage, and the harm caused by social exclusion and discrimination arising from not having the choice to marry. More information on the APA resolution and the psychological research that underpins it is available on the APA website:

- APA calls for marriage equality  
<http://www.apa.org/about/policy/same-sex.aspx>
- Background: Marriage equality and LGBTI mental health  
<http://www.apa.org/about/gr/issues/lgbt/marriage-equality.pdf>
- Psychology's case for same-sex marriage  
<http://www.apa.org/monitor/2010/10/same-sex.aspx>

In December 2011, the APS Board endorsed this APA resolution on health and wellbeing grounds. In taking this decision the APS took into account the importance of addressing the flow-on effect of marriage discrimination on same-sex attracted Australians, their loved ones, and the wider community. Psychologists are committed via their Code of Ethics to the principle that all Australians should be supported to achieve positive mental health and full social inclusion. For the full statement, see  
<http://www.psychology.org.au/Newsandupdates/22Dec2011/>

### ***Same-sex attracted preference for marriage equality***

In addition to the evidence indicating the psychological benefits of marriage equality, there is also evidence that suggests a preference amongst LGB Australians for the opportunity to marry. In a survey of 2032 same-sex attracted individuals, the majority of participants (1028; 54.7 %) selected marriage as their personal choice for relationship recognition (Dane et al., 2010). And irrespective of their personal choice, 78% of participants reported that they felt marriage should be made available for same-sex couples in Australia.

In the same survey, 22 participants (1.8%) with a regular same-sex partner, living together or apart, reported their current legal status of same-sex relationship as an 'overseas marriage'; and of those, 90.9% reported marriage as their preferred form of legal recognition (Dane et al., 2010). Although a majority preference for marriage was found regardless of the legal status of a participant's same-sex relationship, preferences for marriage were higher among those currently in a relationship formalised through a state or municipal registry, an overseas recognised civil union/partnership, and an overseas recognised marriage.

While marriage equality may have psychological benefits for individuals and society more broadly, it has been suggested that focusing too much on gaining equal access to the marital institution may serve to disguise questions about the intrinsic value of marriage itself, and that diverse forms of intimacy should be equally celebrated in their own right (Richardson-Self, 2014). However for the purposes of this Inquiry, the argument still stands that, to the extent that marriage is perceived in Australian society to be conducive to wellbeing, social cohesion and family stability, depriving same-sex couples of those perceived benefits is discriminatory, particularly when those couples' marriages have already been legally recognised elsewhere.

## **Conclusion**

A great deal of research over many years has concluded that people who are married experience lower levels of depression than do individuals in relationships who are not married (Brown, 2000). Furthermore, there is evidence to indicate the value of marriage in providing stability to children (Parkinson, 2011). If we accept such evidence of the benefits of marriage in supporting mental health and family stability, depriving some families of those benefits clearly amounts to discrimination.

Given the psychological evidence illustrating the psychosocial and health benefits of marriage in our society, and the associated adverse effects of denial of marriage rights, the APS fully supports marriage equality. This includes the recognition of foreign marriages between same-sex partners. In the same way that international heterosexual couples' marriages are recognised in Australia, the APS supports the recognition of same-sex marriages conducted overseas.

Psychological research provides no evidence that would justify legal discrimination against same-sex partners and their families, but there is ample evidence that such discrimination contributes significantly to the risk

of mental ill-health among gay, lesbian, bisexual and sex and/or gender diverse people, especially young people.

### **About the APS**

The Australian Psychological Society (APS) is the national professional organisation for psychologists, with over 21,000 members across Australia. Psychologists are experts in human behaviour and bring experience in understanding crucial components necessary to support people to optimise their function in the community.

A key goal of the APS is to actively contribute psychological knowledge for the promotion and enhancement of community wellbeing. A range of Interest Groups within the APS reflect the Society's commitment to investigating the concerns of, and promoting equity for, vulnerable groups such as Indigenous Australians, sexuality and gender diverse people, minority cultures, older people, children, adolescents and families. Public Interest is the section of the APS dedicated to the communication and application of psychological knowledge to enhance community wellbeing and promote equitable and just treatment of all segments of society.

### ***APS activities relating to marriage equality and LGBTI people***

The following webpage documents the APS position on issues affecting the human rights, mental health and wellbeing of LGBTI people:

<http://www.psychology.org.au/Content.aspx?ID=5638>. This page outlines all the relevant work (position papers, articles, submissions, ethical guidelines, media releases etc.) undertaken by the APS in the area, particularly with regard to marriage equality and same-sex parenting. The APS has written the following submissions on marriage equality:

- [New South Wales Legislative Council Standing Committee on Social Issues Inquiry into Same Sex Marriage Law in NSW](#) (March 2013)
- [Senate Inquiry: Marriage Equality Amendment Bill 2010](#) (April 2012)

The APS has also compiled a comprehensive literature review providing an overview and summary of the main bodies of research about parenting by lesbian, gay, bisexual and transgender (LGBT) people, as well as relevant information about the wider family studies field within which this research is situated, and background information on the Australian context. For anyone concerned about the wellbeing of children raised by same-sex couples, this review can be viewed on our website at:

[http://www.psychology.org.au/publications/statements/lgbt\\_families/](http://www.psychology.org.au/publications/statements/lgbt_families/).



The APS Gay and Lesbian Issues in Psychology Interest Group (GLIP) provides further information regarding lesbian and gay psychology in Australia at <http://www.groups.psychology.org.au/glip/>. GLIP is involved in advocacy work, in producing and supporting research in the field of lesbian and gay psychology, and in supporting practitioners in providing services to members of LGBTI communities.

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