



SECOND SUPPLEMENTARY SUBMISSION

TO THE

**SENATE LEGAL AND CONSTITUTIONAL
AFFAIRS LEGISLATION COMMITTEE
INQUIRY**

INTO THE

**RECOGNITION OF FOREIGN MARRIAGES
BILL 2014**

FROM

AUSTRALIAN MARRIAGE EQUALITY

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Executive summary

The practical benefits of recognising foreign same-sex marriages include immediate and guaranteed access to relationship entitlements, as well as access to divorce in all cases. It also removes the need for British/Australian partners in an Australian state civil union to choose between a UK marriage and Australian spousal entitlements.

The failure to recognise foreign same-sex marriages seems absurd given the federal government allows such marriages to occur in Australia's UK consulates. It is also inconsistent with the recognition of such marriages by various Australian corporations and by the UN in Australia.

Research by Crosby/Textor shows that only a small minority of Australians are concerned about the so-called "unintended consequences" of marriage equality. Groups like the Australian Christian Lobby have failed to show any direct link between marriage equality and the "unintended consequences" it fears will come from marriage equality including violation of religious freedom and the legal recognition of multiple-partner relationships.

Practical benefits of recognising overseas same-sex marriages

In Australian Marriage Equality's first submission to the Senate Legal and Constitutional Affairs Committee inquiry into the Foreign Marriages Recognition Bill 2014 we listed a range of reasons for the recognition of foreign same-sex marriages. Unfortunately, we omitted several very practical reasons which we would like to cite here.

1. Certification of relationships

The first practical reason for recognising foreign same-sex marriages is the advantage of being able to certify the existence of a relationship through a marriage certificate. In Australia, same-sex partners can access a range of spousal entitlements as de facto partners. But this requires fulfilling a range of criteria including cohabitation for a certain period. Only once these criteria are fulfilled can the relationship be presumed to exist. Even then, it can be challenged and may need to be proven. This can present great difficulties, particularly in emergency situations.

A marriage certificate circumvents these difficulties by providing immediate and guaranteed access to spousal rights, recognition and responsibilities. A civil union certificate can do the same. But as discussed in our first submission, civil unions are less well understood, including by people in authority. Rights accorded civil union partners are still too often challenged even if the law guarantees these rights.

2. Divorce

Some foreign jurisdictions require partners married under their laws to be residents before they can divorce. This was the case in Canada for nine years until it was remedied last year¹. For same-sex partners married overseas but resident in Australia, this can present a serious problem. They are unable to divorce under the laws of the jurisdiction that married them but are also unable to divorce in Australia because their marriage is not recognised here. The problem would be solved by recognising foreign same-sex marriages as marriages for the purpose of Australian law.

3. Need to dissolve state unions

Same-sex partners who have entered an Australian state civil union (a term we take to include civil unions, civil partnerships and registered relationship) must dissolve that legal union before marrying under UK law². This is because Australian state unions are automatically recognised as UK civil partnerships for the purposes of UK law, and UK law says partners cannot be in both a civil partnership and a marriage. Australian same-sex partners in this situation must effectively choose between the dignity, respect and affirmation that comes with marriage and the practical legal benefits that come with being in an Australian state civil union. This is the kind of insidious choice no couple should be forced to make. If UK same-sex marriages were recognised as marriages under Australian law the problem would be solved.

Inconsistencies arising from the current law

In our first submission AME cited several inconsistencies that arise because of the failure of Australian law to recognise foreign same-sex marriages. We add two more:

4. The federal government allows consular marriages

Earlier this year the federal government decided to allow same-sex couples to marry in British consulates in Australia³. This contrasts with the previous government that refused to allow same-sex marriages in Portuguese consulates in 2010⁴. It seems absurd to us that the federal government would allow same-sex couples to marry in UK consulates in Australia but then not recognise these marriages once the couples stepped outside the consulate in which they have married.

5. Recognition by other bodies in Australia

A range of companies and organisations recognise the foreign same-sex marriages of their Australian employees. These include Telstra, Optus, QANTAS, Virgin, and the

¹ <http://www.pridesource.com/article.html?article=62401>

² <http://www.smh.com.au/federal-politics/political-news/differing-samesex-marriage-laws-create-headaches-for-couples-20140706-zsxvy.html>

³ <http://www.theage.com.au/national/samesex-couples-can-marry-in-uk-consulates-from-june-20140328-350ew.html>

⁴ *ibid*

Commonwealth and Westpac banks. This year the United Nations announced it also recognises the same-sex marriages of its employees, including employees working in Australia⁵. We believe the government should follow the lead of these bodies by also recognising the existing marriages of Australian citizens.

The “unintended consequences” of marriage equality

A number of submissions to the Inquiry cite the unintended consequences of marriage equality. We dealt with this issue at some length in our first submission. Below, we include a discussion of further issues raised in the recent Inquiry hearing.

6. Crosby/Textor research

In July Corsby/Textor research company released research into marriage equality commissioned by AME. The research of 1000 respondents showed that 72% of Australians believe same-sex couples should be able to marry, and that the reform has majority support across all major demographics. In the recent hearing in to the Foreign Marriage Recognition Bill 2014, AME cited the Crosby/Textor research to show that there is a very low level of concern about the so-called “unintended consequences” of marriage equality. We have included an overview of the research, plus that part of the research related to the “unintended consequences of marriage equality, as attachments. The latter shows shows that,

- a) less than 30% of Australians believe children need both a father and mother and legalising same-sex marriage could break this down
- b) less than 25% believe same-sex marriage undermines an institution that is already under threat
- c) only 22% believe same-sex marriages could devalue traditional marriages
- d) only 16% believe same-sex marriage will threaten religious freedoms, and
- e) only 17% allowing same-sex marriages is a slippery slope to polygamy

Clearly, a majority of Australians do not believe that marriage equality will have the “unintended consequences” often predicted by opponents of reform, including loss of religious freedom and polygamy.

7. Further discussion

Groups opposed to marriage equality cite a number of examples they believe illustrate the “unintended consequences” of marriage equality. We have examined these examples and believe they do not sustain the argument they are employed to make.

For example, in its submission to the Inquiry the Australian Christian Lobby (ACL)

⁵http://www.thenewcivilrightsmovement.com/the_united_nations_will_now_recognize_same_sex_marriages

cites six examples where it believes religious freedoms have been violated. However, four of these six examples are from jurisdictions without marriage equality. Far from being the result of marriage equality, the “violations” in question are actually arise from the anti-discrimination laws in the jurisdictions in question. This is reinforced by the examples given of religious freedom “violations” from Australia. Again, these all involve anti-discrimination law, not marriage equality. The ACL’s concerns should properly be aired in an Inquiry about the scope of Australian anti-discrimination law. They really have no place in a discussion about the recognition of foreign same-sex marriages.

The same goes for the legal recognition of multiple-partner relationships. Marriage equality prevails in almost twenty countries and numerous sub-national jurisdictions with a combined population of hundreds of millions of people. Yet, the ACL is unable to cite a single example of the legal recognition of a polyamorous relationship. In regard to polygamous relationships, it is only able to cite one example of legally recognition in a jurisdiction with marriage equality. This is from the Netherlands where one man and two women entered a so-called “cohabitation agreement”. Such legal agreements are peculiar to Dutch law and long predate marriage equality. Furthermore, the relationship was a heterosexual one. If this example illustrates any kind of slippery slope, it is a slope that leads from heterosexual marriage to polygamy.

We believe groups like the ACL have failed to establish any direct link between marriage equality and “unintended consequences” such as violation of religious freedom and the recognition of polygamous relationships. The “unintended consequences” of marriage equality are either the consequences of other, unrelated laws and policies, or they are not consequences at all, just unfounded fears.