

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600

Inquiry into Marriage Equality Amendment Bill 2010

As PFLAG NSW Inc (Parents & Friends of Lesbians and Gays) we make this submission.

PFLAG is a peer support group consisting of the parents and friends of lesbians and gays. Our group started in Parramatta in 1995. We conduct monthly family meetings where parents – and often their gay children – come to talk and to listen. We have a library of books and DVDs which parents can use in helping to reach understanding and acceptance. We are all volunteers. We are not trained counsellors. We love and care for someone who is gay. We believe that being gay is not a choice; it is the way our sons and daughters are born. We want all of our children to be seen as equal in the eyes of society.

We:

- Support families and friends of gay people who are coping with adversity in society.
- Seek to raise awareness, educate and the promote understanding in the general community.

- Seek to end discrimination and gain equal rights for our GLBTI family members and the gay community at large by advocating to government on all levels.

We are in favour of marriage equality and request the Committee to look favourably on this issue. It is important to recognise that all gay people have families. This issue affects not only any gay couple, but their immediate and extended families and their friends. It is well recognized that at least 10% of the population is same-sex attracted. Therefore, taking their families and friends into account, this issue affects at least one fifth of Australia's population.

Same-Sex Marriage and Human Rights

We believe that freedom of sexual orientation and gender identity are fundamental human rights. By not allowing same-sex couples the right to marry, Australia is denying them these rights, and is failing to comply with its international human rights obligations.

Australia is a party to numerous human rights treaties, including the *International Covenant on Civil and Political Rights* (ICCPR). Article 26 of ICCPR provides that all people "are equal before the law and are entitled without any discrimination to the equal protection of the law". Article 26 also prohibits all discrimination based on "any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Although there is no specific mention of sexuality or sexual orientation in Article 26, the phrase "other status" has been interpreted to include sexual orientation.¹ As a party to ICCPR, Australia has an obligation to put in place laws that give effect to the Convention. However, Australia's existing marriage laws (the *Marriage Act, 1961* (Cth)) limit the definition of marriage to the union of a man

¹ ESCR Committee, General Comment 18, (2005), [12(b)(i)], in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI/GEN/1/Rev.8(2006), 91. See also *Toonen v Australia*, (488/1992) UN Doc. CCPR/C/50/D/488/92, [8.7].; *Young v Australia*, (941/2000) UN Doc. CCPR/C/78/D/941/2000, [10.4].

and a woman and prohibit the recognition of same-sex marriages that are conducted overseas. This clearly discriminates against people on the basis of their sexual orientation, and is therefore at odds with the Convention.

It is time for Australia to honour its human rights obligations under ICCPR by amending the *Marriage Act* so that marriage is recognized as “a union of two people, regardless of their sex, sexual orientation or gender identity, to the exclusion of all others, voluntarily entered into for life.”

Failing to Allow Same-Sex Marriage Perpetuates Discrimination and Negativity Towards Gay People

In its current form, the *Marriage Act, 1961* discriminates against people on the basis of a characteristic over which they have no control – their sexual orientation. We believe that this is fundamentally unfair and unjust.

It is well accepted that same-sex attracted people are born that way. It is not a choice! Anecdotally so many of the gay people we have come to know have struggled with their sexual orientation and have often attempted suicide and often succeeded. United States studies reveal that at least 30% of youth suicides are gay related. Most gay people tell how they feel excluded from “mainstream” society because (often from a young age) they feel “different”. They often suffer discrimination at school which results in very low self-esteem and depression. Family members of people involved in this submission suffered depression in their younger years. Another family member of people involved in this submission suicided because his family could not accept him due to societal attitudes. He wanted so much to marry his partner and settle down. The combination of all this negativity drove him to engage in substance abuse and he finally suicided. At PFLAG we have found this to be a common theme.

Marriage is a valued, respected and universally recognized institution. Excluding same-sex couples from this institution devalues them and their relationships and sends a message that it is okay to discriminate against gay people in other areas of life.

Allowing same sex couples to marry gives:

- First and foremost, recognition that same-sex people are not second class citizens, but are absolutely equal to their heterosexual counterparts.
- Instant recognition of their union within society.
- The official celebration of their union.
- Automatic respect that comes with marriage.
- Recognition of next of kin.
- Same-sex attracted people the opportunity to plan a future life together.
- A secure and stable environment for any children. Please recognize that many gay couples are having children or are co-parenting children.
- A sense that their relationship is equal, valid, valuable and worthwhile.

Only Marriage Confers Full Legal Equality

Law reform in recent years has led to there being greater legal equality between same-sex and heterosexual couples. For example, same-sex relationships have been brought within the meaning of de facto relationships by the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008*.

However, there are still some areas where same-sex couples are treated differently. Unlike married couples, de-facto partners are required to produce a range of evidence to prove that their relationship exists in order to get access to certain legal entitlements. This evidence may include the length of the relationship. Living and financial arrangements and whether a sexual relationship exists. Many couples find it intrusive to have to provide this evidence. It may also be difficult to satisfy these requirements where couples have only recently met, if they have to live apart because of work or if they have just moved from another country.

We also note that there are now other ways that same-sex relationships in Australia can be legally recognised, such as relationship registration systems (in NSW, Tasmania, the ACT, Queensland and Victoria) and civil unions (in the ACT and, more recently, Queensland). These have the advantage of making it easier for a couple to “prove” their relationship. However, we believe that they offer an inferior form of legal recognition to marriage. This is because:

- They are not recognised in all States and territories. For example, the ACT, Tasmania and NSW recognise other state registered schemes, but Victoria does not. In contrast, marriage is recognized everywhere in Australia and provides the same rights and responsibilities no matter where you live in Australia.
- They are not recognised in many overseas countries. In contrast, marriage is a “portable” legal contract. A marriage in one country is recognised in most other countries.

While civil unions allow for greater ceremony and symbolic recognition of a same-sex relationship than registration schemes, we do not believe that they are a satisfactory alternative to marriage. They are not understood in the same way as marriage by families, friends and society in general. We are also concerned that having a two tier

system (marriage and civil unions) simply entrenches stereotypes about gay people being “different” and their relationships being less legitimate than heterosexual ones. PFLAG believes that the only way to prevent this is to make marriage available for both same-sex and heterosexual couples.

Our Perspective as Parents and Family Members

Many of us come from families where there are both heterosexual and same sex attracted children. Further to the personal stories above, when our gay children and their partners come to visit, they are treated exactly the same way as their married heterosexual siblings and their partners. Their union is respected and we believe it is appropriate for society to be given the opportunity to respect it as well.

As parents we believe our same-sex attracted sons and daughters have the right to marry because:

- They pay taxes and mortgages, as do their families.
- They contribute equally to society with their talents.
- They give back to society, in particular by fostering children. It is recognised – particularly by Barnardos – that same-sex attracted couples make excellent, stable parents for foster children. They are, in fact, sought after in this capacity.
- We want to see them celebrate their union in the same way as their heterosexual siblings.
- It is completely inappropriate to discriminate against them on the grounds of their sexual orientation. They have no control over this.

Marriage is Governed by Civil Law, Not Religious Law

We believe we live in a secular society. Church and State are separate entities. We fully respect the Church's right to choose non-involvement in any of these unions.

The proposed changes to the *Marriage Act* would be simply changes to the civil law. They have nothing to do with religion.

We endorse the substance of the Greens Bill of 2010 which states, inter alia:

“(..) remove all discrimination from the Marriage Act 1961 to ensure that all people, regardless of their sex, sexual orientation or gender identity have the opportunity to marry.”

Also:

“Marriage means the union of two people, regardless of their sex, sexuality or gender identity, voluntarily entered into for life.”

Marriage is an Evolving Institution

Marriage is constantly evolving, and over the years the law has changed in order to reflect this. A few examples of where appropriate changes have taken place:

- Indigenous Australians no longer have to seek permission to marry.
- Inter-racial marriages are no longer frowned upon. Nor are “mixed” marriages (different religions).

- Married women are no longer treated as “chattels” with little or no rights.

Polls within Australia indicate that approximately 62% of the population are now in favour of same-sex marriage. We see no reason why the law should not now change to reflect the way that most Australians now see marriage – as an inclusive institution, rather than an institution that excludes people simply because of their sexual orientation.

Other Advantages of Same-Sex Marriage

PFLAG NSW Inc. receives many marketing details from the wedding industry, offering services to same-sex couples. We are also aware of a number of celebrants happily offering their services for such ceremonies.

We believe that with more people wanting to get married, it is evidence of the fact that marriage is held in high esteem. We are at a loss to understand how some married people seem to think that gay marriage will diminish their own marriage. We would have thought quite to the contrary.

A recent study by Professor M V Lee Badgett, Research Director of the Williams Institute UCLA School of Law has shown that the financial advantage to the Australian economy of allowing same-sex couples to marry would be \$161 million in over three years! Apart from any other considerations, what a particularly good reason to go ahead!

International Trend Towards Legislation of Same-Sex Marriages

We draw your attention to the many Christian/Catholic countries around the world that have implemented same-sex marriage, such as Argentina, Spain, Portugal and Mexico

with no negative impacts. Commonwealth countries such as Canada and South Africa have also introduced same-sex marriage, as have several states in the United States.

Conclusion

Being married provides our same-sex attracted children all the same opportunities as our heterosexual children to make choices, mistakes and actions.

In conclusion, marriage equality will take away the feeling from our same-sex attracted sons and daughters that they are perceived to be second class citizens with second class relationships. They will receive the same rights, privileges, responsibilities and choices as their siblings and society generally – that being to have their relationships recognised and equally celebrated.

Yours sincerely,

Judith Annette Brown, Ray Brown and Narelle Phipps
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Attachment

Stories from Parents

Pam and Arthur:

“We have 2 children, 1 straight daughter, 1 gay son. Our son showed exceptional talent at school during infants and primary. He first experienced homophobia in year 5 with kids calling him derogatory names. He was spared in year 6 because he was school captain. In year 7 it started in earnest, verbal attacks, upending his schoolbag and running off with his possessions and physical attacks on walking to and from school. In year 8 he was hit on the head with a chair.

A change of high schools brought no relief. He was attacked on the bus and police were called to our home twice. He left school at the end of year 10. School work suffering anyhow.

Homophobic messages were written on our letter box.

Son left home to live in the city before 18, where he found alcohol and drugs eased the pain of abuse.

Returned home in 2003 when he had a total breakdown, wanting to suicide. Totally unable to leave the house for a year.

Went to TAFE and did a Graphic Design course, won every prize at end of course but trying to work lasts about three months when he will then have another melt down and has to leave.

He is being treated by a GP, a social worker and a psychiatrist.

We believe his life experiences from late primary school onwards have resulted in him being totally unable to sustain any meaningful relationships, although he would dearly love to meet someone special and settle down.”

From Rosa:

“My husband and I migrated from Argentina many years ago. We chose to come to Australia because we believed life here would offer us and our children wonderful opportunities which would not have been available to them in Argentina. We love

Australia and have totally embraced life here with our family. We have 2 heterosexual, married children who have families. We have a lesbian daughter in a long term relationship. She and her partner have 2 little boys. They would love to be married. We would love to see them married. We believe they should have this right, just as our heterosexual children have, to raise their family in a socially and legally recognised stable and secure environment. It is ironic that they would have been able to get married in Argentina!”

From Ruth & Ron:

“My husband and I have 2 sons. Both our children have the same parents, were brought up in the same loving family environment, attended the same Sunday School, infants, primary and Christian high school. Our sons were both encouraged to participate in neighbourhood and school sporting teams and activities. They are now grown men, employed in very responsible careers in finance and investment, and biomedical science. One son can legally marry the person he loves and wants a life relationship with. However, unfortunately, our other son is prohibited from legally marrying the person he loves and wants a lifetime relationship with because he was born homosexual. Under Australian law he is prohibited from this choice.

To have the legal choice to marry the person you love is a basic human right and is recognised as such in many other Commonwealth countries. Australian marriage laws were changed to take this human right from our gay son and many other Australians.

Australian marriage laws are cruel and discriminatory.”