



Submission to the

**Senate Legal and Constitutional Affairs Committee Inquiry into the  
Marriage Equality Amendment Bill 2010**

6 March 2012

Submitted by

**Amnesty International Australia**



Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the *Universal Declaration of Human Rights* (UDHR) and other international instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights. Amnesty International is the world's largest independent human rights organisation, comprising more than 3 million supporters in more than 150 countries and has over 140,000 supporters in Australia. Amnesty International is impartial and independent of any government, political persuasion or religious belief. It does not receive funding from governments or corporations.

Amnesty International maintains that all people, regardless of their sexual orientation or gender identity, should have access to the human rights prescribed in the UDHR and other human rights instruments. The organisation has been researching and documenting abuses based on sexual orientation or gender identity for more than a decade. Amnesty International opposes discrimination in civil marriage laws on the basis of sexual orientation or gender identity.

By highlighting instances of abuse against Lesbian, Gay, Bisexual and Transgender (LGBT) individuals, Amnesty International's activists work to protect members of the LGBT community whilst striving to campaign against discrimination and for marriage equality. Amnesty International's LGBT Networks meet monthly in Sydney, Melbourne and Brisbane to raise awareness and campaign against human rights violations based on sexual orientation or gender identity. Amnesty International members from other parts of the country also actively campaign on this issue. Amnesty International's float at Sydney Mardi Gras has attracted some 200 marchers, making it one of the biggest participation rates Amnesty International has ever witnessed.

### **Marriage Equality Amendment Bill 2010**

Amnesty International endorses the *Marriage Equality Amendment Bill 2010* and supports opening civil marriage to same-sex couples.

It is a basic human right to be free from discrimination on the grounds of one's sexual orientation. Adults consensually entering into a marriage deserve equal civil recognition of their relationship, whatever their sexual orientation. Denying this not only stigmatises those relationships and fuels discrimination, but also leads to other rights violations.

For more than a decade, non-discrimination on the grounds of sexual orientation has been an internationally recognised principle which has been endorsed by UN treaty bodies and numerous inter-governmental human rights bodies. This principle applies to the full range of human rights guaranteed by international standards.

The right of adults to enter into consensual marriage is enshrined in existing international human rights standards. Article 16 of the UDHR and Article 23 of the *International Covenant on Civil and Political Rights* (ICCPR) both explicitly recognise such a right. The right to be free from arbitrary discrimination in the enjoyment of the full range of human rights is a basic principle clearly underlined in all major human rights instruments, including Article 2 of the ICCPR. Furthermore, Article 26 of the ICCPR provides for equal protection before the law.



Courts in a number of countries are increasingly recognising that sexual orientation discrimination is incompatible with national and international human rights standards, and that the prohibition of such discrimination applies to the full range of rights, including economic, social and cultural rights.

Both the UN Human Rights Committee and the UN Committee on Economic Social and Cultural rights have recognised ‘sexual orientation’ as a prohibited ground of discrimination under the two International Covenants<sup>1</sup>. Both treaty-monitoring bodies have for years called on governments to end violations based on sexual orientation, including in relation to partnership rights.

The key decision of the Human Rights Committee in *Toonen v. Australia* held that human rights law prohibits discrimination based on sexual orientation. In this decision the Human Rights Committee explicitly held that interpretation of the term ‘sex’ in Articles 2 (1) and 26 extends to sexual orientation<sup>2</sup>. Since then, the United Nations’ human rights mechanisms have condemned violations based on sexual orientation and gender identity, including killings, torture, rape, violence, disappearances, and discrimination in many areas of life. UN treaty bodies have called on states to end discrimination in law and policy.

A statement was read in the UN General Assembly in December 2008 which was endorsed by 66 countries, including Australia, and called for an end to rights abuses on sexual orientation and gender identity. This is the first time that a statement condemning rights abuses against the LGBT community has been presented in the General Assembly. The supporting countries reaffirmed “the principle of non-discrimination, which requires that human rights apply equally to every human being regardless of sexual orientation or gender identity.” They stated that they are “deeply concerned by violations of human rights and fundamental freedoms based on sexual orientation or gender identity” and that “violence, harassment, discrimination, exclusion, stigmatisation and prejudice are directed against persons in all countries in the world because of sexual orientation or gender identity.”<sup>3</sup>

Amnesty International was among the coalition of international human rights organisations that welcomed this statement and urged all the world’s nations to support the statement in affirmation of the UDHR’s basic promise that human rights apply to everyone.

In 2011 the United Nations Human Rights Council passed its first resolution ever condemning acts of violence and discrimination against LGBT individuals.<sup>4</sup> The Resolution affirmed the universality of human rights and expressed “grave concern at acts of violence and discrimination... committed against persons because of their sexual orientation and gender identity”. In response, the United Nations High Commissioner for Human Rights Navi Pillay in her Annual Report detailed how governments have overlooked violence and discrimination based on sexual orientation and gender identity and how such discrimination is “a fundamental denial of [individuals’] human rights and human dignity”.<sup>5</sup> She declared that

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<sup>1</sup> For example *Edward Young v Australia*, see <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/B2D753B2B50A38C5C1256D970044C974?opendocument>, (accessed 17 July 2009)

<sup>2</sup> *Toonen v Australia* (1994) International Human Rights Reports 97

<sup>3</sup> UN: General Assembly Statement Affirms Rights for all: 66 States Condemn Violations Based on Sexual Orientation and Gender Identity. 18 December 2008 - <http://www.hrw.org/en/news/2008/12/18/un-general-assembly-statement-affirms-rights-all> (accessed 20 July 2009)

<sup>4</sup> United Nations General Assembly. Resolution 17/19: Human rights, sexual orientation and gender identity (14 July 2011). Accessed via: <<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement>>

<sup>5</sup> United Nations General Assembly. Report of the United Nations High Commissioner for Human Rights: “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity” (17 November 2011). Accessed via: <[http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/a.hrc.19.41\\_english.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/a.hrc.19.41_english.pdf)>



countering such discrimination should be “non-controversial”, insisting that “all people are entitled to the same rights and to the equal protection of international human rights law”.<sup>6</sup>

Amnesty International has welcomed Federal Government reforms to remove discrimination against same-sex relationships from federal legislation. However, Amnesty International believes that the removal of discrimination should extend to laws relating to the legal union of couples, otherwise known as marriage. To continue to prevent same-sex couples from entering into a legally binding union on the basis of sexual orientation is discriminatory and goes against the internationally recognised principle outlined above, as well as the statements Australia has supported in the UN General Assembly.

Amnesty International believes that same-sex civil marriage is an issue in which fundamental human rights issues are at stake. Denial of equal recognition of same-sex relationships may prevent people from enjoying a range of other rights and also stigmatises those relationships in ways that can fuel discrimination in other human rights abuses against LGBT people.

Amnesty International supports all initiatives to end discrimination in civil marriage laws based on sexual orientation or gender identity.

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<sup>6</sup> “UN human rights commissioner tells General Assembly LGBT rights should be non-controversial”. 23 October 2011. Accessed via: <<http://madikazemi.blogspot.com.au/2011/10/un-human-rights-commissioner-tells.html>>