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Legal and Constitutional Affairs Legislation Committee
Australian Parliament House
PO Box 6100 Parliament House
Canberra ACT 2600

Dear Chair

Civil Liberties Australia (CLA) thanks the Legal and Constitutional Affairs Legislation Committee for the opportunity to contribute to the Committee's Inquiry into the *Recognition of Foreign Marriages Bill 2014*.

CLA is a non-government organisation dedicated to the promotion of human and civil rights in Australia. It is funded by its members and donations, and does not receive funding from other sources. CLA monitors police and security forces, and the actions and inaction of politicians. It reviews proposed legislation to make it better, and keeps watch on government departments and agencies.

The subject matter of this inquiry touches upon a number of rights and freedoms, including the right to equality before the law (non-discrimination), freedoms of religion, speech and association and the right to privacy and protection of family. Attention must also be paid to the rights of the child and people with disabilities, which may also be affected by any recommendations of the committee.

The bill

The bill seeks to recognise same-sex marriages solemnised in a foreign country. It also seeks to recognise that, as much as a minority may wish otherwise, the genie is out of the bottle and Australia must recognise that same-sex marriages exist.

At least 16 other nations now allow same-sex marriages to take place. In particular, New Zealand, the United Kingdom and a number of US States, allow non-residents to visit and have a same-sex marriage. Increasing numbers of Australians are likely to make the trip across the ditch to marry their same-sex partner. Unfortunately, when they return home their marriage will not be recognised.

The *Marriage Act* already recognises opposite-sex marriages solemnised in a foreign country. It is hard to sustain any rational argument why opposite-sex marriages can be recognised while same-sex marriages cannot. It is excluding a portion of society for no real reason or any gain for anyone.

Leaving aside issues of equal love, there are a number of more prosaic reasons why recognition of foreign same-sex marriages is an important, rather than cosmetic, matter.

For example:

- Marriage usually gives rise to obligations in regards to children and custody rights. If a foreign same-sex marriage is not recognised in Australia would that negatively impact the rights of a parent or children in relation to the application of the *Hague Convention on the Civil Aspects of International Child Abduction*, or *Hague Abduction Convention* should one parent abscond with their child to Australia?
- For an Australian couple returning home (or new immigrants), is proof of a foreign same-sex marriage – even if it is not recognised as a marriage in Australia – conclusive evidence of the existence of a *de facto* relationship for all other Australian government purposes, e.g. Centrelink, Medicare, HELP-loans or superannuation payments after the death of one partner? What if the marriage was entered into shortly after the commencement of the relationship? While heterosexual couples, giddy with love, can rush into a marriage, with all the attaching rights and benefits, by the time of their one-month anniversary, a *de facto* couple must usually prove a long-term relationship. To impose additional administrative and evidential burdens on one segment of the community based on sexual orientation is plain discrimination.
- Likewise, is evidence of a foreign same-sex marriage, even if it is not recognised as a marriage in Australia, conclusive evidence for the application of laws relating to guardianship and wills? If not, then the current law imposes additional costs on same-sex couples (e.g. lawyer fees to prepare powers of attorney), uncertainty and stress solely on the basis of their sexual orientation. This is also discrimination.
- The provision of false information in a Commonwealth application or form is an offence under Part 7.4 of the Commonwealth Criminal Code. Would a same-sex couple, who married overseas, be liable for prosecution if they submit tick “Married” on a form, or the 2016 Census? Or will they be guilty if they say they are “De facto” – which is not a true reflection of their marital status?

It is not enough for the Australian Parliament to try to ignore the growing acceptance of same-sex marriages internationally. It is time to address the real consequences that flow from the Australian Parliament’s intransigence on this issue.

Does the bill go far enough?

No. Obviously the *Marriage Act* should be amended to allow same-sex marriage for all Australians as a matter of urgency. This could be easily achieved by repealing s 88EA of the Act and amending the definition in section 5 of the act as follows:

"marriage" means the union of a man and a woman the exclusion of all others, the union of two people, voluntarily entered into for life.

Despite this, the present bill is important in any event. Foreign same-sex marriages are already taking place anyway and the legal reality and consequences of these ought to be recognised. This bill is important in its own right: is not just a stop-gap in the meantime.

Civil liberties

The personal rights of an individual not entering into a foreign same-sex marriage are not affected by this bill. Members of the community who have not had a same-sex marriage suffer no prejudice under the bill. Persons with religious beliefs inconsistent with the aims of the bill may simply choose not to travel overseas and marry someone of the same sex.

The bill does not seek to change marriage as except between two adults. Rather, with the exception that the sex of the two individuals no longer matters, no other requirement of a 'marriage' is being amended (see s 23 of the *Marriage Act 1961*).

We appreciate the good intentions behind this inquiry. Ensuring equality of relationships before the law is a central role of government.

Thank you for considering our submission.

Yours sincerely

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