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Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra Act 2600

**Re: Response to the Recognition of Foreign Marriages Bill 2014**

I am writing on behalf of YFS Legal the legal service associated with Youth Family Services Ltd (“YFS”). We are located in Logan, Queensland and are a community legal centre providing legal advice and services to the wider community of Logan.

The purpose of YFS is to deliver services designed to promote independence and citizenship of our clients, in doing so, YFS champions their rights and encourages clients to take up social, cultural and economic opportunities. YFS’s vision is to build up independence and participation of clients involved in our programs<sup>1</sup>.

A man and woman’s union of marriage solemnised into in a foreign jurisdiction pursuant to the Marriage Act 1961 section 88E is valid in Australia so as long as both parties were of marriageable age when they entered into the union<sup>2</sup>.

<sup>1</sup> Youth Family Service Ltd. Website <<http://www.yfs.org.au/index.php>>

<sup>2</sup> Section 5 of the Marriage Act 1961.

However, a marriage between a man and a man or a woman and a woman solemnised in a foreign jurisdiction where same sex marriage is legal, is not recognised as a legal marriage under Australian Law pursuant to the Marriage Act 1961<sup>3</sup>.

It is the opinion of the writer that the law as it stands is contrary with Australia's obligations and responsibilities under the International Covenant on Civil and Political Rights ("ICCPR"), which Australia signed on 18 December 1972 and ratified it in 13 August 1980<sup>4</sup>.

Article 26 of the International Covenant on Civil and Political Rights ("ICCPR")<sup>5</sup> provides that;

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Marriage Act prohibiting the recognition of same sex marriages as a valid marriage in Australia is on the face of it discrimination. Homosexual couples are treated differently than heterosexual couples. As soon as a married heterosexual couple enters the Australian borders their marriage is recognised in Australia as a valid marriage<sup>6</sup>. The same does not apply to homosexual couples. They could be married for a number of years; however, their marriage is not seen as valid under Australian law in the same way as a heterosexual couples marriage is.

In order for a married same sex couple to have similar rights as to a married heterosexual couple their relationship needs to either qualify as a de facto relationship, where certain criteria needs to be met or they need to register their relationship if they are able to in the state that they live. So although a same sex couple may be legally married, they need to in

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<sup>3</sup> Section 5 of the Marriage Act 1961, a union of marriage is only between and man and woman.

<sup>4</sup> United Nations, Treaty Collection "International Covenant on Civil and Political Rights, New York 16 December 1996 <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)>

<sup>5</sup> United Nations Human Rights "International Covenant on Civil and Political Rights" <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>

<sup>6</sup> Provided that their union meets the requirements of section 88E of the Marriage Act 1961.

Australia do extra steps to have their relationship recognised, which a same sex couple would not need to do. Which on the face of it is discrimination.

Therefore the Marriage Act it is submitted, as it stands is discriminatory it does not provide that everyone under the law are equal citizens with equal rights. It does not promote independence of citizens or participation in day to day life in Australia.

In conclusion if the Recognition of Foreign Marriages Bill 2014 was assented into law, it would eliminate some of the discrimination that homosexual couples face in Australia, allowing them to exercise their rights as a heterosexual couples are allowed.

Yours Sincerely,

Kylie Denman  
Principal Solicitor  
YFS Legal