
Response to Question on Notice

Senate Legal and Constitutional Affairs Committee

11 May 2012



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1. On 3 May 2012, during a hearing in relation to an inquiry by the Senate Legal and Constitutional Affairs Committee (the committee), Senator Cash asked the following question:

Senator CASH: Thank you. In relation to the entitlement differences between married couples, de facto couples and same-sex couples, apart from the right to marry as such and use the term 'married', are there any rights that are currently denied to homosexual couples?

Ms Eastman: That is quite a broad question, and some of it—

Senator CASH: Well, put it in the context of what occurred in 2008 in the amendments to the legislation to ensure there was no discrimination against homosexual couples.

Ms Budavari: Perhaps I can address that question. The Law Council made submissions on those 2008 bills. There was a general provisions bill and a bill specific to superannuation. Those submissions were made in the hope that the legislators had done the audit of those pieces of legislation carefully and thoroughly. I think at that time they were assisted in the identification of those provisions by the Australian Human Rights Commission. Certainly, the Law Council supported those bills on the basis that they appeared to address every Commonwealth piece of legislation that discriminated against same-sex couples.

Senator CASH: In the interests of time, could you take on notice, if you are not able to tell us here now: are there any outstanding entitlements that you believe are given to heterosexual couples but not to homosexual couples, following what occurred in 2008?

Ms Budavari: We can certainly do that. I also wanted to make the point that some other submitters have in fact pointed to areas of life where they consider same-sex couples still face discrimination. Some of the evidence given this morning referred to migration matters, some referred to medical emergencies, and I think you are hearing this afternoon from a defence oriented organisation that also identifies some areas of discrimination within the defence forces. So we will do our best to –

2. As indicated to the committee, the Law Council considers that same sex couples continue to suffer discrimination in a number of areas, which were referred to in the evidence to the committee of Mrs Argent, Mr Croome, Mr Koonin, Mr Raj, Mr Chong and the Hon Michael Kirby AC CMG.¹
3. In particular, the Law Council draws the committee's attention to the following statements in Mr Kirby's evidence:

...once science showed that homosexual orientation, bisexual orientation or transsexual sexualism is not a choice...then it becomes impossible to say 'You should not have the full rights of citizenship' whatever they may be...you must remove all the legislative barriers...²

¹ See http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/457a861a-2648-4841-ba2b-0caf90331e3a/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2012_05_03_986.pdf;fileType=application%2Fpdf#search=%22committees/commsen/457a861a-2648-4841-ba2b-0caf90331e3a/0000%22

² Ibid at p 11

If you look at this historically, you can see that the steps that were taken- the criminal law, the antidiscrimination and the financial – were all part of a reaction to the discoveries of science. The question, essentially, for the committee is: do we leave it at matters such as money but deny fellow citizens the respect and dignity of their relationship? ³

4. The Law Council considers that the 2008 amendments to a range of Commonwealth legislation, including superannuation laws, to remove discrimination against same sex couples, while very welcome, could not address all discrimination experienced by such couples. As Mr Kirby stated, removing financial discrimination only addresses a particular aspect of discrimination. Other aspects of discrimination continue and could be addressed by allowing same sex couples to marry. If same sex couples were able to marry, they could more easily access entitlements available to opposite sex couples as a result of marriage. They could also enjoy recognition as equal citizens entitled to the dignity and respect which is fundamental to the concept of human rights.
5. In relation to continuing discrimination based on sexual orientation and gender identity, the Law Council also refers the committee to the 2011 Australian Human Rights Commission report, *Addressing sexual orientation and sex and/or gender identity discrimination*, which details a number of instances of discrimination in the Australian Public Service; in aged care facilities and in health care and the Medicare system.⁴ This report supports the need for the Commonwealth Government to amend anti-discrimination laws to prevent discrimination on the grounds of sexual orientation and gender identity. The Law Council has supported such amendment in its submissions on the current Government consultation in relation to the consolidation of anti-discrimination laws.⁵
6. The Law Council hopes that this additional information is of assistance to the committee.

³ Ibid at p 12

⁴ See http://www.hreoc.gov.au/human_rights/lgbti/lgbticonsult/report/SGI_2011.pdf at pages 9-13

⁵ See <http://www.lawcouncil.asn.au/programs/criminal-law-human-rights/human-rights/discrimination.cfm>

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its constituent bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's constituent bodies. The Law Council's constituent bodies are:

- Australian Capital Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Independent Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of approximately 56,000 lawyers across Australia.

The Law Council is governed by a board of 17 Directors – one from each of the constituent bodies and six elected Executives. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive, led by the President who serves a 12 month term. The Council's six Executive are nominated and elected by the board of Directors. Members of the 2012 Executive are:

- Ms Catherine Gale, President
- Mr Joe Catanzariti, President-Elect
- Mr Michael Colbran QC, Treasurer
- Mr Duncan McConnel, Executive Member
- Ms Leanne Topfer, Executive Member
- Mr Stuart Westgarth, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.