

August 2009

Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Senate

By email - Legcon.sen@aph.gov.au

Dear Committee Secretary

Re: Inquiry into the Marriage Equality Amendment Bill 2009

Thank you for the opportunity to provide a submission the *Inquiry in the Marriage Equality Amendment Bill 2009*.

The Office of the Anti Discrimination Commissioner and the *Anti Discrimination Act 1998*

By way of background, the Office of the Anti-Discrimination Commissioner (OADC) administers the Tasmanian *Anti-Discrimination Act 1998* (the ADA). The ADA prohibits discrimination inciting hatred and other specified conduct and provides for the investigation and conciliation of, and inquiry into, complaints in relation to discrimination and prohibited conduct. My other roles and functions as Commissioner include consulting and inquiring into discrimination; disseminating, preparing and publishing guidelines; and undertaking research and educational programs to promote attitudes, acts and practices against discrimination and prohibited conduct.

The ADA in section 16 prohibits discrimination on a number of grounds including those which relate to the sexual orientation of a person.

More specifically the ADA prohibits direct and indirect discrimination of a person or group of persons on the basis of

- (c) sexual orientation;
- (d) lawful sexual activity and
- (fa) relationship status

The ADA prohibits discrimination in a number of areas of public life. These areas are listed in section 22:

- (a) Employment (paid or unpaid work);

- (b) Education and training;
- (c) Provision of facilities, goods and services;
- (d) Accommodation;
- (e) Membership and activities of clubs;
- (f) Administration of any law of the State or any State program (in relation to specified attributes, including relationship status but not sexual orientation of lawful sexual activity); and
- (g) Awards, enterprise agreements or industrial agreements (in relation to specified attributes, including relationship status but not sexual orientation of lawful sexual activity).

The scope of s 22 is broad in that it applies to any activity by or against a person (complainant or a respondent) engaging in any activity in connection with the areas listed above.

The ADA also at section 19 prohibits inciting hatred on the basis of sexual orientation or the lawful sexual activity of a person or any member of the group of persons.

The Bill

I have the advantage of reading the Bill and wish to strongly support the objects in the *Marriage Equality Amendment Act 2009* and subsequent changes to be made to the *Marriage Act 1961*.

The OADC supports the amendment of subsection 5(1), 45(2), 46(1) and 72(2) of the *Marriage Act* which inter alia omits references to man and woman and replaces them with references to two people.

The OADC also endorses and strongly supports the view of Senator Sarah Hanson Young as set out in the General Outline of the *Marriage Equality Amendment Bill 2009*.

Marriage Equality

The OADC recognises the diversity of view in regard to Marriage Equality in Australia, however the view of the OADC in keeping with its ethos of eliminating discrimination in our community is that barriers to same sex marriage should be abolished. This abolishment will demonstrate Australia's belief and adherence to Articles 1,7 and 16 as set out in the Universal Declaration of Human Rights.

In recent years there have been some substantial changes to the way in which homosexuals and same sex relationships have been viewed in Australia.

In Tasmania for instance the *Relationships Act* was enacted in 2004. This Act enabled same sex couples to register their relationships. The registration of the relationship in turn gave new rights and responsibilities to same sex couples in areas including superannuation and leave entitlements.

At a national level the Commonwealth has amended over 100 pieces of legislation to remove discrimination against same sex couples.

The OADC also notes that there has been renewed debate in Tasmania in relation to Marriage Equality. This debate has led to discussion at the National level and a national petition seeking support for Marriage equality.

A recent poll suggested that up to 60% of Australians supported gay marriage. The Australian Bureau of Statistics announced in May 2009 that it would count same sex couples who declared themselves married in the national census¹.

It is also relevant to note that in this day and age the notion of the “traditional family” is very different to the mum and dad and children. The number of couples having children is decreasing, the number of couples divorcing is rising, single parent, blended families and same sex couples with children are no longer rare or not talked about.²

The foregoing points together with the overriding principle of eliminating discrimination in Australia should in this Office’s view be the impetus for the change to the *Marriage Act*. The suggestion that Australians continue to believe that marriage is about a union between a man and a woman to the exclusion of all others is, it appears, not the majority view.³ The states and to some extent the Commonwealth have accepted that people in same sex relationships exist. The OADC is strongly of the view that same sex couples should not be discriminated against and ought to be afforded the same rights and benefits as those in heterosexual relationships.

If the Committee has any queries or requires further information, please contact Ms Catherine Edwards, Complaints Manager.

Yours sincerely,

Sarah Bolt
Anti-Discrimination Commissioner

¹ Labor’s conference rejects gay marriage” The Australian 1.8.09

² Australian Institute of Family Studies – Family Facts and Figures

³ 60% of Australian’s support gay marriage – The Age 16.6.09