



Gay & Lesbian Rights Lobby

SENATE INQUIRY INTO THE MARRIAGE EQUALITY AMENDMENT BILL 2009 (CTH)

SUBMISSION OF THE GAY & LESBIAN RIGHTS LOBBY (NSW)

AUGUST 2009

About the Gay & Lesbian Rights Lobby

Established in 1988, the Gay & Lesbian Rights Lobby (GLRL) is the peak representative organisation for lesbian and gay rights in New South Wales (NSW). Our mission is to achieve legal equality and social justice for lesbians and gay men.

The GLRL has a strong history in legislative reform. In NSW, we led the process for the recognition of same-sex de facto relationships, which led to the passage of the *Property (Relationships) Amendment Act 1999* (NSW) and subsequent amendments. The GLRL was also successful in campaigning for the equalisation of the age of consent in NSW for gay men in 2003 and the first recognition of same-sex partners in federal superannuation law in 2004.

In 2006, we conducted one of the largest consultations on same-sex relationship recognition in Australia, with over 1,300 gay, lesbian, bisexual and transgender people in metropolitan, regional and rural NSW. The final report published in 2007, *All Love is Equal ...Isn't It?*, highlighted the broad community need and desire for same-sex relationship recognition and equality.

From 2001 to 2003, we conducted a comprehensive consultation with lesbian and gay parents that led to the law reform recommendations outlined in our 2003 report, *And Then ... The Bride Changed Nappies*. Several of our recommendations were enacted into law under the *Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008* (NSW).

More recently the GLRL has contributed to federal law reform by lobbying the federal government to implement the recommendations of the Human Rights and Equal Opportunity Commission (HREOC) (as it was then known) report *Same Sex Same Entitlements: Report of the National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits*.

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Executive Summary

1. Consultation

In 2006 and 2009 the NSW Gay and Lesbian Rights Lobby (GLRL) consulted the gay and lesbian community on people's attitudes towards marriage and other relationship recognition models. Results of these consultations showed that the lesbian, gay, bisexual and transsexual (LGBT) community overwhelmingly believes that same-sex couples should have access to the institution of marriage for reasons, primarily, of equality.

The GLRL published the results of the 2006 state-wide consultation in the 2007 *All Love is Equal... Isn't It? Consultation Report*. The report documented that:

- 86.3% of respondents favoured same-sex marriage;¹
- 51% of respondents said that gaining legal rights was the most important thing to them about relationship recognition;
- 46% of respondents said that "equality – same-sex couples should be able to choose whether they want to marry or not".²

In 2009, the GLRL conducted a survey which was distributed at Sydney's Gay and Lesbian Mardi Gras Fair Day. When asked "What are the most important aspects of formal relationship recognition to you?" of 669 respondents, 82% said proof of my relationship, 88% said transferability and consistency of recognition, 58% said a formal ceremony and 45% said the name of the scheme.

The GLRL believes that the 2008 federal law reforms have contributed to the increase in awareness of discrimination against same-sex couples and greater support for same-sex marriage.

2. Why civil marriage in Australia?

The GLRL believes civil marriage in Australia is important for the following reasons.

2.1 The Symbolic and social importance of civil marriage equality

- **Equality of relationship recognition: isn't all love equal?**

The right to marry is one of the rights enjoyed in a liberal democratic society. The current discrimination in the *Marriage Act* carries a social message that same-sex relationships are inferior and not deserving of the same respect and recognition as relationships between consenting heterosexual adults.

¹ *All Love is Equal... Isn't It? Consultation Report*, (2007) The Gay and Lesbian Rights Lobby (NSW), 17.

² *Ibid*, 5.

- **Same-sex couples now have many of the same rights and responsibilities of married couples – but not the right to marry**

Since the passing of the 2008 federal law reforms same-sex de facto couples enjoy the same rights and are subject to the same responsibilities (for example, in the area of social security area) as heterosexual couples at a federal level, except for the right to marry. It is unjust not to grant comparable recognition to same-sex relationships through the institution of marriage.

- **A majority of Australians now support giving same-sex couples the right to marry**

A 2009 Galaxy Poll conducted by Australian Marriage Equality found that 60% of Australians support giving same-sex couples the right to marry, up from 57% in 2007.

2.2 The legal reasoning for civil marriage equality

- **Certain rights recognised under international law support same-sex marriage**

Article 23 of the *International Covenant on Civil and Political Rights* provides that ‘the right of men and women of marriageable age to marry and to found a family shall be recognised’. However, other rights recognised under international law are also relevant to same-sex marriage, including the right to equality before the law. Numerous cases heard in South Africa, United States of America, Canada and other jurisdictions have determined that the right of same-sex couples to marry is supported by rights recognised under international law.

- **Australia is falling behind other comparable nations in formal relationship recognition equality**

Australia falls behind many nations including; Canada, Spain, the Netherlands, Belgium, Norway, Sweden, South Africa and a number of US states (such as Massachusetts, Iowa, Connecticut and Vermont) who have now granted same-sex couples the right to marry. The United Kingdom, New Zealand, Denmark, Switzerland, Finland and several other nations provide a civil union or registered partnership scheme. It is time for Australia to act with other progressive nations and allow for civil marriage equality.

- **Marriage is a portable status recognised around the world**

The institution of marriage allows couples to have their relationship recognised with ease when they move or travel. Denying same-sex couples portable, nationally consistent recognition constitutes a significant impediment to their ability to enjoy their legal rights in Australia.

- **Australia already recognises many types of marriages-except same-sex marriages**

Australia has long recognised a variety of marriages, including Aboriginal customary marriages and marriages from overseas. Overseas same-sex marriages are the only type of marriage between consenting adults that are not recognised in Australia.

- **Marriage is a civil institution**

Permitting same-sex marriage in law would not compel any religious institution or celebrant to perform one, but would allow same-sex couples formal recognition under secular laws which apply to all citizens.

4. Alternative models of relationship recognition

4.1 Civil unions

Some in the lesbian and gay community have expressed a preference for a civil union scheme, similar to the one in place in New Zealand. The GLRL would invite the Committee to seek expert opinion on whether such a scheme would be possible, given Australia's constitutional framework.

4.2 Relationship registries

State-based relationship registries

The GLRL does not support the establishment of state-based registries for same-sex couples as a substitute for marriage because:

- it is questionable whether a nationally consistent state-based relationship registration scheme could be established;
- relationship registries have very limited recognition outside Australia;
- registration schemes do not provide the practical or symbolic equality for lesbians and gay men that marriage does.

Federally consistent Relationship Registry Scheme

The GLRL does not support the establishment of a Commonwealth registry for same-sex couples as a substitute for marriage because:

- there is uncertainty about whether the federal government has the power under the *Australian Constitution* to establish a federal relationship registry scheme;
- relationship registries have very limited recognition outside Australia;
- a federal registry would not provide the same symbolic or practical equality that marriage would.

Recommendations

The GLRL strongly supports the provisions of the Marriage Equality Amendment Bill, and makes the following recommendations:

- **Recommendation 1.** Amend the definition of 'marriage' in s 5(1) of the *Marriage Act* to provide that marriage is a "union between two persons" and amend/remove other discriminatory language found in the *Marriage Act*, which would allow all couples the

right to marry in Australia, regardless of sexual orientation or gender identity (as provided for in the proposed Marriage Equality Amendment Bill 2009 (Cth)).

- **Recommendation 2.** Repeal section 88EA of the *Marriage Act 1961* (Cth) to allow for the recognition of overseas same-sex marriages in Australia (as provided for in the Marriage Equality Amendment Bill 2009 (Cth)).

Consultation

In 2006 and again in 2009, the GLRL consulted the gay and lesbian community on people's attitudes towards marriage and other relationship recognition models. Results of these consultations show that the LGBT community overwhelmingly believes that same-sex couples should have access to the institution of marriage for reasons, primarily, of equality.

2006 Survey

In 2006, the GLRL received funding from the Law and Justice Foundation of NSW to conduct a comprehensive consultation to ascertain how the LGBT community in NSW would like federal law to recognise our relationships.³ Two key methods were used to gather data– a written survey available in printed and online format and a series of ten face-to-face consultations across NSW at which community members were invited to express their views.⁴ The GLRL published these results in our 2007 *All Love is Equal... Isn't it? Consultation Report*.

When asked the question “*Do you favour or not favour same-sex marriage*” of 1,281 respondents 86.3% favoured same-sex and 13.7% did not favour same-sex marriage.⁵

Participants were also asked “*What is important to you about relationship recognition, regardless of the form it takes?*”. Participants were permitted to choose more than one reason relationship recognition was important to them. Of 1,163 respondents 51% said that legal rights were ranked most important, closely followed by “equality – same-sex couples should be able to choose whether they want to marry or not” at 46%.⁶ Social acceptance was important to 23% of respondents, recognition of commitment to 21%, acceptance from family to 20%, celebration of love to 19%, parenting rights to 18% and religious significance as most important to 6%.⁷

2009 survey

In 2009, the GLRL conducted a survey which was distributed at Sydney's Gay and Lesbian Mardi Gras Fair Day (15 February 2009). The survey received 669 responses. When asked “What are the most important aspects of formal relationship recognition to you?” 82% of the respondents said ‘proof of my relationship’, 88% said ‘transferability and consistency of recognition’, 58% said ‘a formal ceremony’ and 45% said ‘the name of the scheme’.

Since the 2008 federal law reforms (which gave same-sex couples essentially rights equal to heterosexual de facto couples at the federal level) there has been increased support for same-sex marriage which is evidenced by the 2009 Galaxy Poll conducted by Australian Marriage

³ Ibid, 2.

⁴ Ibid.

⁵ Ibid, 17.

⁶ Ibid, 5.

⁷ Ibid, 5.

Equality which found that 60% of Australians support giving same-sex couples the right to marry⁸ as compared to the 2007 survey conducted by GetUp! which found that only 57% of Australians support same-sex marriage.⁹ The GLRL believes that there has been increased support of same-sex marriage because the right to marry is seen to be the missing link in removing all discrimination against same-sex couples under federal law.

Conclusions

The results of the our 2006 and 2009 community consultations show that the community believes same-sex couples should be able to enjoy the right to marry and therefore demonstrates significant community support for the amendments to the *Marriage Act* proposed in the Marriage Equality Amendment Bill 2009 (Cth).

Why civil marriage in Australia?

The Symbolic and social importance of civil marriage equality

Equality of relationship recognition: isn't all love equal?

As noted above, the GLRL 2007 report, *All Love is Equal ... Isn't It?*, documented that 86.3% of 1,281 respondents favoured same-sex marriage, with only 13.7% not favouring same-sex marriage.¹⁰ The consultation indicated that civil marriage is not only about equal rights. Many within the gay and lesbian community value the symbolic and social acceptance aspects of legal relationship recognition (see **2. Consultation** above).

The symbolic significance of marriage

Many in the lesbian and gay community consider that the denial of marriage rights constitutes a fundamental violation of equal protection before the law and has tremendous symbolic significance. The current discriminatory provisions of the *Marriage Act* convey a message that same-sex relationships are inferior and not deserving of the same respect and recognition as relationships between consenting heterosexual adults. Same-sex couples should have access to the same choices as heterosexual couples for the recognition of their relationships. *This stand against same-sex marriage by our government is invalidating, unfair and unjust. But it also gives off a message to the general population that it is 'okay' to be intolerant and to discriminate against gays and lesbians.* **H Kearney, Submission to National Human Rights Consultation**¹¹

I want full equality, whatever is available to straight people. Any and every relationship. Once that is across the board, then people can choose. **Surry Hills consultation**¹²

⁸ National Galaxy Research Survey, <http://www.australianmarriageequality.com/news/20090616.htm> conducted for Australian Marriage Equality, accessed 28 August 2009.

⁹ National Galaxy Research Survey, *New Poll Finds 71% of Australians Want Equality for Same Sex Couples* (21 June 2007) conducted for GetUp! Action for Australia.

¹⁰ *Ibid*, 12

¹¹ H Kearney, *Submission to National Human Rights Consultation*, undated.

¹² Surry Hills consultation, 13 April 2006 in Gay and Lesbian Rights Lobby, *All Love is Equal ... Isn't It? The recognition of same-sex relationships under federal law* (2007), 11.

*Once I entered a gay relationship I quickly discovered that we cannot have what every other couple believes is their right. We cannot marry. To me this is nothing but discrimination based on sexuality. **G Malpas, Submission to National Human Rights Consultation** ¹³*

Same-sex couples have all the rights and responsibilities of married couples – but not the right to marry

The passing of the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008 (Cth)* and other amending legislation granted same-sex de facto couples and their children the same rights and responsibilities as heterosexual de facto couples in federal law, including in social security, family law, child support, taxation, superannuation and Medicare.

The glaring exception to this broad law reform was the right of same-sex couples to marry. While same-sex couples now enjoy the same rights as heterosexual couples across most federal laws, the argument for providing same-sex couples with access to civil marriage has grown stronger. Now, same-sex couples have all the same legal obligations as married heterosexual couples — such as the obligation to declare their relationship to Centrelink if receiving a social security payment. It is unjust not to grant comparable recognition to same-sex relationships through the institution of marriage.

*I am an Australian citizen, I pay my taxes and I vote. I want to be treated with the same respect and consideration as the wider community. I do not expect the government to discriminate against me because of my sexuality, and I do not want the government to dictate my level of commitment to my partner. Marriage is a civil right which should be made available to every Australian citizen! **Adam, submission to the Marriage Equality Amendment Bill 2009 (Cth) Inquiry** ¹⁴*

*Sadly, the Australian government, both past and present, continue to discriminate against us by not recognising our relationship as being of the same quality and sincerity as a marriage. Although many legal aspects of discrimination against us have been removed now, one of the most obvious discriminatory pieces of legislation still holds –that my partner and I cannot marry, despite our many years of happy partnership. **H Wang, Submission to National Human Rights Consultation** ¹⁵*

*There have been many changes in law to remove discrimination against non-heterosexual Australians. I am very grateful for that, and for the efforts of those that contributed to the changes. However, the restriction on gay marriage remains. This restriction, along with the messages it sends that gays are considered inferior to heterosexuals, causes me and other gays and lesbians a great feeling of pain, often unrecognised, because there is a hugely significant ruling about our lack of equality; namely the restriction on marriage. The symbolism of this legal sanction is immense and contributes greatly to the entrenched homophobia in our culture. **S Krinitzky, submission to the Marriage Equality Amendment Bill 2009 (Cth) Inquiry** ¹⁶*

¹³ G Malpas, *Submission to National Human Rights Consultation*, undated. See also L Watson, *Submission to National Human Rights Consultation*, undated.

¹⁴ Adam, *submission to the Marriage Equality Amendment Bill 2009 (Cth) Inquiry*, undated

¹⁵ H Wang, *Submission to National Human Rights Consultation*, undated.

¹⁶ S Krinitzky, *submission to the Marriage Equality Amendment Bill 2009 (Cth) Inquiry*, undated

A majority of Australians support giving same-sex couples the right to marry

A 2009 Galaxy Poll conducted by Australian Marriage Equality found that 60% of Australians support giving same-sex couples the right to marry¹⁷, up from 57% in 2007 survey conducted by GetUp!.¹⁸

I'm actually heterosexual but it angers me greatly that in an economically developed democracy so many of my friends and family don't have the same right to access one of our basic social institutions if they chose as I do. Such backwards, fear-inspired openly discriminatory legislation is embarrassing for Australia. It also reflects the maturity, or immaturity, of our political system. Allowing a group of citizens to be treated as second class citizens weakens all our claims to civil rights. By changing this legislation and giving lesbian and gay couples access to a basic social institution like marriage, we strengthen that institution and all our civil rights. L Kelly, submission to the Marriage Equality Amendment Bill 2009 (Cth) Inquiry¹⁹

The legal reasoning for civil marriage equality

Certain rights recognised under international law support same-sex marriage

Article 23 of the International Covenant on Civil and Political Rights provides that 'the right of men and women of marriageable age to marry and to found a family shall be recognised'. In *Joslin v New Zealand* the UN Human Rights Committee held that the right to marry under article 23 does not include same-sex marriage, noting that article 23 was intentionally gender specific.²⁰ However reasoning of the Human Rights Committee in *Joslin* appears to be in contrast to the Committee's previous comments on non-discrimination which emphasise that the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant.²¹

A number of overseas jurisdictions have distinguished *Joslin*, and have found that same-sex couples do have the right to marry as a matter of fundamental human rights, and that this right is supported by other rights recognised under international law, such as the right to equality, the right to equal protection of the law without discrimination and the right to privacy.²²

For example, in *Fourie*, the Constitutional Court of South Africa distinguished *Joslin* to find that denying same-sex couples the right to marry breaches human rights protected by the South African Constitution. Justice Sachs noted that it would be 'strange' to use international human rights law to 'take away a guaranteed right ... openly, expressly and consciously adopted' by the Constitution. Justice Sachs rejected that a reference to 'men and women' is 'prescriptive of a normative structure for all time'. Sachs placed the human right to marry and found a family in its historical context as a right that was aimed at forbidding child marriages and removing racist

¹⁷ National Galaxy Research Survey, <http://www.australianmarriageequality.com/news/20090616.htm> conducted for Australian Marriage Equality, accessed 28 August 2009.

¹⁸ National Galaxy Research Survey, *New Poll Finds 71% of Australians Want Equality for Same Sex Couples* (21 June 2007) conducted for GetUp! Action for Australia.

¹⁹ L Kelly, *submission to the Marriage Equality Amendment Bill 2009 (Cth) Inquiry*, undated

²⁰ *Joslin et al v New Zealand* (2002) UN Doc A/57/40, 214, [8.2]

²¹ Human Rights Committee, *General Comment 18* (1989), [10].

²² See, eg, *Goodridge v Massachusetts Department of Public Health* (2003) 798 NE2d 941; *Minister of Home Affairs v Fourie* (2005) CCT 60/04; CCT 10/05, 1 December 2005; *Barbeau v British Columbia* (2003) CA029048, 7 August 2003; *Halpern v Canada* [2003] OJ No 2268; *In re Marriage Cases*, 43 Cal.4th 757 (2008) (15May 2008, Supreme Court of California).

impediments to marriage. Sachs also argued that because 'family' is not defined in international law, it did not need to be always restricted to heterosexual families.²³

In *Barbeau v British Columbia*, the British Columbia Court of Appeal held that recognition of the right for same-sex couples to get married 'is the only road to true equality' for same-sex couples.²⁴ Further, the Massachusetts Supreme Court in *Goodridge v Massachusetts Department of Public Health* found that barring access to the protections, benefits and obligations of civil marriage means that 'a person who enters into an intimate, exclusive union with another of the same-sex is arbitrarily deprived of membership of one of our community's most rewarding and cherished institutions'. The Court found that this exclusion is incompatible with constitutional principles of respect for individual autonomy and equality under the law.²⁵

In *Halpern v Canada*, the Ontario Court of Appeal found that the prohibition of same-sex marriage discriminated against same-sex couples and therefore breached the right to equality and the right to equal protection and benefit of the law without discrimination, in the *Canadian Charter of Rights and Freedoms*. The case also considered the intersection of same-sex marriage and freedom of religion. In the Court of Appeal's view, marriage is a legal institution, as well as a religious and social institution. The Court concluded that same-sex marriage did not in any way deal or interfere with the religious institution of marriage or result in 'a corresponding deprivation to opposite-sex couples.'²⁶

I believe that a democracy means that everybody is treated equally under the law and I therefore support same-sex marriage....For me, same-sex marriage is a human rights issue. I believe being treated differently causes psychological damage - to treat one section of the community differently from the rest of the community sends a clear message that same-sex couples are inferior.

K Wilkinson, Submission to the Marriage Equality Amendment Bill 2009 (Cth) Inquiry²⁷

Australia is falling behind other comparable nations in formal relationship recognition

Many nations including; Canada, Spain, the Netherlands, Belgium, Norway, Sweden, South Africa and a number of US states (such as Massachusetts, Iowa, Connecticut and Vermont) now grant same-sex couples the right to marry. The United Kingdom, Denmark, Switzerland, Finland and several other nations provide a civil union or registered partnership scheme.

Australia falls behind our closest neighbour New Zealand which provides for formal relationship recognition through civil unions with the passing of the *Civil Unions Act 2004* (NZ). It is time for Australia to act with other progressive nations and allow for civil marriage equality.

By passing the proposed Bill the Australian Government would bring this country back into line with comparable jurisdictions. The passing of the Bill would also protect the rights in Australia of same-sex couples who have entered into legally recognised relationships in other countries.

When countries as diverse as Spain and South Africa recognise this fundamental human right but Australia doesn't, it is shameful. J Kolotas, Submission to the Human Rights Consultation²⁸

²³ *Minister of Home Affairs v Fourie* (2005) CCT 60/04; CCT 10/05, 1 December 2005.

²⁴ *Barbeau v British Columbia* (2003) CA029017; CA029048, 7 August 2003.

²⁵ *Goodridge v Massachusetts Department of Public Health* (2003) 798 NE2d 941.

²⁶ *Halpern v Canada* [2003] OJ No 2268

²⁷ K Wilkinson, *submission to the Marriage Equality Amendment Bill 2009 (Cth) Inquiry*, undated

Marriage is a portable status recognised around the world

The institution of marriage allows couples to have their relationship recognised with ease when they move or travel. Denying the access of same-sex couples to marriage in Australia, therefore, significantly limits their legal protections when travelling overseas.

Within Australia, the marriage certificate is an important piece of evidence to prove the existence of a committed relationship. It is very important that same-sex couples have access to a nationally consistent model of relationship recognition because denying same-sex couples this access constitutes a significant impediment to their ability to enjoy their legal rights in Australia and overseas.

Australia recognises many types of marriages – except same-sex marriages

Australia has long recognised a variety of marriages.²⁹ Overseas same-sex marriages are the only type of foreign marriage between consenting adults that are specifically banned from recognition in Australia. It seems extraordinary, then, that overseas same-sex marriages are singled out for such distinctive treatment.

Marriage is a civil institution

The requirements and process for getting married in Australia have been long determined by secular laws which govern everyone – civil marriage is not only a religious institution and couples can choose to marry without a religious ceremony or celebrant. Permitting same-sex marriage in law would not compel any religious institution or celebrant to perform one, but would allow same-sex couples formal recognition under secular laws which apply to all citizens.

*Many people believe that marriage should be between a man and a woman as taught in the bible. I agree that if you believe the teachings of the church and that is their stance then that is something they can dictate within religious ceremonies. However, the decision to allow marriage outside the church was made a long time ago. Heterosexual couples can chose as consenting adults to have their commitment to one another formalised in civil marriages. **L Warren, Submission to National Human Rights Consultation**³⁰*

*I'm not asking for access to religious ceremonies, but asking for the basic legal right to have an authorised, recognised, legal marriage. **S McGuinnes, Submission to National Human Rights Consultation**³¹*

²⁸ J Kolotas, *Submission to the Human Rights Consultation*, undated.

²⁹ Examples include Aboriginal customary marriages and polygamous marriages (which are not permitted in Australia) but are recognised for the purposes of family law and divorce (*Family Law Act 1975*, s 6).

³⁰ L Warren, *Submission to National Human Rights Consultation*, undated. See also M Onody *Submission to National Human Rights Consultation*, undated.

³¹ S McGuinnes, *Submission to National Human Rights Consultation*, undated. See also G Enders, *Submission to National Human Rights Consultation*, undated; C Pontt, *Submission to National Human Rights Consultation*, undated; P Browne, *Submission to National Human Rights Consultation*, undated; A Onody, *Submission to National Human Rights Consultation*, undated; C Walshe, *Submission to National Human Rights Consultation*, undated.

Alternative models of relationship recognition

Civil Unions

Some in the lesbian and gay community would prefer a civil union scheme, similar to the one in place in New Zealand. The GLRL would invite the Committee to seek expert opinion on whether such a scheme would be possible, given Australia's constitutional framework.

Relationship Registries

Some opposed to amending the *Marriage Act* to allow same-sex couples to marry have suggested establishing same-sex relationship registries, either a state-based or a federal model, as an alternative form of relationship recognition for same-sex couples. The GLRL does not support the establishment of these registries as a substitute for marriage because, unlike the amendments put forward in the Marriage Equality Amendment Bill 2009 (Cth), relationship registries do not achieve any substantive or formal equality for same-sex couples.

State-based Relationship Registries

Earlier this year the ALP released its draft national policy platform which maintained that same-sex registers were a state responsibility and espoused its support for them.³² To date, Victoria, Tasmania and ACT have established relationship registries.

Relationship registries may give same-sex couples the opportunity to better exercise the rights they currently have under state and federal law by providing evidence of their relationship. In addition, they may serve as an alternative for people who do not wish to marry. *They are not, however, an equal substitute for marriage.*

The GLRL does not oppose the establishment of state-based relationship registries schemes despite the problems they may have. However relationship registries should not be a *substitute* for marriage.

Firstly, it is hard to imagine how a nationally consistent state based relationship scheme would be established to ensure that recognition of same-sex couples is uniform across the country. The relationship registries in existence now do not operate under the same model and despite the NSW Government's promise to work with the Commonwealth to establish nationally consistent registries,³³ nearly halfway into its first term the federal Government is yet to convince any additional states to implement the Labor Party's state-based register policy.

Secondly, registered partners are not recognised outside Australia, with the exception of the United Kingdom which recognises couples registered under the Tasmanian scheme. Marriage on the other hand is recognised internationally. Transferability and consistency of recognition was considered the most important aspect of formal relationship recognition by 88% of our 2009 survey respondents (see **2. Consultation** above). Marriage is portable; relationship registries aren't.

³² *Consultation Draft National Platform (2009)* ALP National Policy Committee, 92.

³³ *Consultation Draft National Platform (2009)* ALP National Policy Committee, 92.

Federally consistent Relationship Registry Scheme

A federally consistent relationship register would be more desirable to ensure that recognition of same-sex couples is uniform across the country. However the Government has made it clear that relationship registries are the state's responsibility.³⁴ The constitutional validity of a federal relationship registry scheme is a fundamental issue. The GLRL would invite the Committee to seek expert opinion on the constitutional validity of a federal relationship registry scheme.

It is also unclear as to whether a federally consistent relationship registry would be recognised outside Australia. The GLRL supports marriage rather than a federally consistent relationship registry because marriage is a relationship recognition model which is recognised outside Australia.

Finally, much of what was said of the state-based registries can be said of a federal registry. Requiring same-sex couples to accept a federally consistent relationship register as a substitute for marriage is discriminatory. Same-sex couples should have the right to marry and to celebrate their love and their relationships in front of friends, family and under the law, in the same manner as their heterosexual counterparts.

A relationship registry scheme (either at a state or federal level) does not allow same-sex couples to have access to the same relationship recognition systems as opposite-sex couples. To deny same-sex couples the right to marry and to insist that only be able to 'register' their relationship, is to treat same-sex couples a different class of citizens based on who they love.

"Marriage is prohibited by amendments introduced into the Marriage Act.... The relationships of same-sex couples can only be registered - rather like a dog or busker's licence. I hope that fellow citizens of good will who think upon this will not be surprised if many homosexual people in long-term loving relationships say politely to this differentiation: "Thank you; but no thank you"."
The Hon Justice Michael Kirby AC CMC³⁵

The GLRL supports the Marriage Equality Amendment Bill because the amendments to the *Marriage Act* which the Bill proposes will achieve equality for same-sex couples. The GLRL makes the following recommendations.

Recommendation 1: Amend the definition of 'marriage' in s 5(1) of the *Marriage Act* to provide that marriage is a "union between two persons" and amend/remove other discriminatory language found in the *Marriage Act*, which would allow all couples the right to marry in Australia, regardless of sexual orientation or gender identity (as provided for in the proposed Marriage Equality Amendment Bill 2009 (Cth)).

Recommendation 2: Repeal section 88EA of the *Marriage Act 1961* (Cth) to allow for the recognition of overseas same-sex marriages in Australia (as provided for in the Marriage Equality Amendment Bill 2009 (Cth)).

³⁴ *Consultation Draft National Platform* (2009) ALP National Policy Committee, 92.

³⁵ M Kirby, *The Uncomfortable Demand for Civic Equality* as part of the Inaugural John Marsden Lecture Series (2008) Sydney, 35.