



**Submission to the Australian Senate Legal and Constitutional Affairs
Committee**

Inquiry into the Marriage Equality Amendment Bill 2009

By Victorian Women Lawyers

Introduction

1. Victorian Women Lawyers is a voluntary association that promotes and protects the interests of women lawyers and engages with legal and social justice issues that affect women. We represent over 470 members and women in the legal profession more broadly.
2. VWL is strongly committed to the eradication of all forms of discrimination, including on the basis of sex, sexuality and gender identity. VWL advocate for equality and freedom from discrimination in all spheres, including the workplace, public and private life. VWL has previously advocated for the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) peoples including a submission to the Attorney General of Victoria endorsing the proposal to introduce a relationships register in Victoria in 2007.
3. VWL opposes the discrimination against LGBTI people currently contained in federal marriage laws and fully endorses the *Marriage Equality Amendment Bill 2009* for the reasons set out below.

Marriage Equality Amendment Bill 2009

4. VWL fully endorses the objects of the *Marriage Equality Amendment Bill 2009* as set out in Clause 3 which are to:
 - a) remove from the Marriage Act 1961 discrimination against people on the basis of their sex, sexuality or gender identity; and
 - b) recognise that freedom of sexuality and gender identity are fundamental human rights; and
 - c) promote acceptance and the celebration of diversity.

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Removal of Discrimination on the Grounds of Sex, Sexuality or Gender Identity

5. VWL calls for an end to all discrimination on the grounds of sex, sexuality or gender identity. VWL believes all people are entitled to equal treatment by the law and freedom from discrimination regardless of sex, sexuality or gender identity. This includes equal legal recognition of relationships and the right of two consenting adults to enter into civil marriage.
6. VWL believes that the *Marriage Equality Amendment Bill 2009* is an important step towards the removal of all discrimination against LGBTI people as it will allow marriage to occur regardless of sex, sexuality and gender identity, which is currently denied to same sex couples under the *Marriage Act 1961*, following the Federal Government's amendments of 2004.
7. The Bill is also important in that it will reverse amendments made to the *Marriage Act* in 2004 which explicitly prohibit the recognition of same-sex marriages entered into under the laws of another country.

Equal Access to Relationship Rights

8. VWL commends the Federal Government for its recent amendments to federal laws which have finally removed discrimination against same sex couples seeking access to financial and work related rights. However, LGBTI people still suffer discrimination at the hand of the Federal Government by virtue of the fact that they are unable to marry legally, or to have their legal marriage entered into in overseas jurisdictions recognised in Australia.
9. The current state of the law denies LGBTI people access to the relationship rights, entitlements, protections and responsibilities that marriage affords including the ability to immediately prove one's relationship status, rather than having to prove a relationship through a series of circumstantial criteria. This is particularly important in emergency situations, and also has much relevance in other spheres such as immigration. It is also important for same-sex partners because continued prejudice against same-sex relationships can lead to a denial of rights.

Recognition that Freedom of Sexuality and Gender Identity are Fundamental Human Rights and International Human Rights Jurisprudence

10. Freedom of sexuality and gender identity are fundamental human rights which should be promoted and protected by the Federal Government.
11. Australia is a State party to several international instruments under which it is obliged to ensure protection of the rights to non-discrimination and equality. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) definitively contain comprehensive prohibitions on discrimination, including sex and other status discrimination.
12. Article 2 (2) of ICESCR provides that State Parties 'undertake to guarantee that the

rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

13. Article 2(1) of the ICCPR obliges State parties to respect and ensure the rights in the Covenant 'without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, nation or social origin, property, birth or status.'
14. VWL submits that these key principles of non-discrimination should be foremost in the Senate's reasoning in removing discrimination from the Marriage Act.
15. Article 26 of the ICCPR extends the prohibition against discrimination in all aspects of public life, both *de facto* and *de jure*. Article 26 provides:

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.

16. The right to equality is also protected under the Convention of the Elimination of all Forms of Discrimination against Women (CEDAW), to which Australia is a party.
17. The Marriage Equality Amendment Bill 2009 would re-dress the severe inequality that is currently the reality in relation to marriage. In accordance with our international obligations, and in the spirit of equality and anti-discrimination, voluntary marriage between a willing couple should be permitted and celebrated, regardless of sex, sexual identity and/or gender identity.

Promotion of acceptance and the celebration of diversity.

18. The Federal Government has developed a comprehensive social inclusion agenda which includes a vision for Australia in which "all Australians feel valued and have the opportunity to participate fully in the life of our society". The Marriage Act as it stands is an overt legal barrier to a significant proportion of Australians fully participating in "the life of our society", including the family and friends of LGBTI people. The debate which surrounds same sex marriage is clear evidence of the enormous importance the institution of marriage holds for social groups around Australia. In addition to providing legal entitlements, marriage provides an opportunity for couples who value the institution to connect with their family, friends and wider society in a very meaningful and important way.
19. Recognition and celebration of relationships carries the ability to publicly acknowledge ongoing commitment, shared values and appreciation of the importance of family. Arguably this is more important for same sex couples who still face discrimination, hostility and a lack of understanding from wider society about their relationships.
20. Conversely, a Marriage Act that overtly discriminates against same sex couples sends a socially exclusionary message to same sex couples and their families. It makes a clear

statement about who is entitled to enjoy the social benefits of this highly valued institution. Government endorsed discrimination against LGBTI people encourages and lends legitimacy to other forms of discrimination and stigmatisation of the non-heterosexual community.

21. Not allowing LGBTI people to marry sends a message to society that same sex couples are not equal. The *Marriage Act* continues to foster discrimination against same-sex partners as long as it prohibits same-sex marriage. Same sex couples will continue to feel socially isolated and ostracized for as long as the Federal Government overtly discriminates against them.
22. Discrimination against the LGBTI community and same sex relationships is already highly problematic. Despite advances and changing social attitudes, LGBTI people face stigmatisation, ridicule, fear of persecution and violence on a daily basis in some regions or social segments of Australia. It is not only LGBTI people who experience this, but also their families and friends, including the children of same sex couples. The Government should combat these destructive attitudes by fully supporting the choices of LGBTI people including the choice to marry if they so desire.
23. Discrimination in marriage laws against other minority groups, such as mixed-race unions, has rightly been considered abhorrent and incompatible with fundamental human rights principles for some time now. Such discrimination would be considered entirely unacceptable as an official policy platform in relation to the relationships of other marginalized groups. The current position is therefore entirely contrary to the spirit of Australia's social inclusion agenda and to its aspirations of equality and a fair go.
24. Marriage is not a staid concept. It is an important social institution that has changed over time. As a legal concept, it is an important source of rights and recognition and thus legal entitlement to marriage should continue to change over time in accordance with social values and knowledge. Recent research indicates 60% of Australians in favour of same-sex marriage, including 64% of Labor voters and 50% of Coalition voters. Internationally, seven other nations allow same-sex couples to marry and more are considering allowing same sex marriage.
25. VWL supports the *Marriage Equality Amendment Bill 2009* because it is an important step towards the removal of all discrimination against LGBTI people and will allow marriage to occur regardless of sex, sexuality and gender identity. *The Marriage Equality Amendment Bill 2009* provides an opportunity for the Federal Government to eradicate discrimination, promote substantive equality, encourage social inclusion of the LGBTI community and celebrate diversity in accordance with modern values. For these reasons and the reasons set out above, VWL strongly supports the *Marriage Equality Amendment Bill 2009* and would welcome the opportunity to comment further on this issue.