



Submission to the Senate Legal and Constitutional Committee Inquiry into the Marriage Equality Amendment Bill 2009

28 August 2009

The National LGBT Health Alliance welcomes the Senate Legal and Constitutional Committee's investigation into the Marriage Equality Amendment Bill 2009 and we thank you for the opportunity to provide comment.

We support the Marriage Equality Amendment Bill 2009. We whole heartedly endorse its aim to remove all discrimination from the Marriage Act 1961 on the basis of sexuality and gender identity and to permit marriage regardless of sex, sexuality and gender identity. We call on the Committee to endorse the Bill and give same-sex and opposite-sex couples equal rights to marry should they so wish.

The National LGBT Health Alliance is a coalition of organisations across Australia that provide programs, services and research to improve the health and wellbeing of lesbian, gay, bisexual, trans and other sexuality, sex and gender diverse people (LGBT).

The National LGBT Health Alliance advocates on issues relating to LGBT health and wellbeing at the national level, seeks commitment from all sides of politics to support and develop LGBT health, and builds capacity among LGBT health organisations across the country.

The National LGBT Health Alliance is a public company, governed by a Board of Directors, with representation from each state and territory. Key areas of work include the link between health and human rights, relationship recognition, ageing, alcohol, tobacco and other drugs, mental health, LGBT research, sexual health (including HIV and STIs), violence, and the health and wellbeing of people living with HIV.

We acknowledge and support the work being done by groups such as Australian Marriage Equality, the Australian Coalition for Equality and Equal Love to provide information about same-sex marriage, and endorse their submissions to this Inquiry.

Lesbian, gay and bisexual people make up a significant proportion of the Australian population. They come from all parts of Australia and all sectors of society. It is impossible to know the exact number of same-sex attracted people in the community. In those few instances where data is collected, underreporting can be assumed due to the difficulty of getting people to disclose in a society which is generally homophobic and discriminatory. One large survey which did collect sexual orientation data was the 2002 National Survey of Australian Secondary Students, HIV/AIDS and Sexual Health: 7% of 16 and 18 year olds reported that they were attracted to those of the same sex as themselves (Smith et al.2003).

While we have little Australian in relation to population numbers, ample evidence exists that shows that LGBT Australians experience significant discrimination in almost all areas of their lives and that this impacts negatively on their health and wellbeing.¹

As noted in the 2007 Human Rights and Equal Opportunity Commission report Same Sex Same Entitlements, whatever the precise numbers of same-sex attracted people, it is quite

¹ See, for example, Pitts et al. 2006; Human Rights and Equal Opportunity Commission 2007a and b; Barrett 2008; Attorney General's Department of NSW 2003; Hillier et al. 2005; McNair and Thomacos 2005; McNair et al. 2004.

clear that discrimination against same-sex couples and their children affects many people in the Australian community.²

While the 2008 same-sex relationships law reform went a long way to removing institutionalized discrimination against same-sex couples and promoting the social inclusion of same-sex attracted people, its failure to encompass the equal right to marriage and to recognise as valid same-sex marriages entered into in another country has been disappointing.

We are particularly disappointed in the substantive argument for this exclusion: The belief that the common understanding in the community limits marriage to 'the union of a man and a woman, to the exclusion of all others, voluntarily entered into for life'. Not only are same-sex attracted people a part of the community - a part that does not share this understanding -, but we suggest that the argument is flawed on at least two counts. Firstly, it is not backed by robust evidence and ignores the evolving concepts of relationships in modern, secular societies such as Australia, and secondly, to legislatively cement discrimination because part or even most of the community has a prejudiced attitude is questionable to say the least.

As noted by the Law Council of Australia, the exclusion of same-sex couples from the legal definition of 'marriage' is key to their experience of discrimination and in contravention of Australia's obligations under Article 26 of the International Covenant on Civil and Political Rights – Freedom from Discrimination.³

The right to equality in relationships recognised by the Government represents more than a private choice or even equal access to legal benefits, important as they are. Marriage is also a social institution. Research indicates that marriage affords social recognition and thereby improves health, socioeconomic achievement, civic participation and involvement with extended family members.⁴ Further, the denial of the right to marry conveys the message that same-sex relationships are less worthy than those of opposite-sex couples, and reinforces heterosexist assumptions and discrimination.⁵ Extending the right to marry to same-sex couples will reduce prejudice against lesbian, gay and bisexual people and their children in Australia, and contribute to the improved wellbeing of a significant part of the population.

Denying some parts of the population the right to choose to have their relationship recognised as marriage represents a failure to protect and promote the civil rights of a significant part of the population and has a detrimental impact on the health and wellbeing of same-sex attracted Australians, whether they would like to marry or not. Your endorsement of the Marriage Equality Amendment Bill 2009 will represent a further step towards true equality for all Australians.

We would be happy to provide you with more information if required and look forward to your report.

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² Human Rights and Equal Opportunity Commission 2007b.

³ Law Council of Australia 2008. The Law council also notes that it may be arguable that the continued prevention of same-sex marriage constitutes an arbitrary interference with the family unit, which is protected by article 17 of the International Covenant on Civil and Political Rights.

⁴ See, for example, Waite and Gallagher 2000.

⁵ See, for example, Bilbarz and Stacey 2005.

Foundation Members of the National LGBT Health Alliance:

- Gay and Lesbian Health Victoria (GLHV)
- Queensland Association for Healthy Communities (QAHC)
- Victorian AIDS Council/Gay Men's Health Centre (VAC/GMHC)
- Western Australian AIDS Council (WAAC)
- AIDS Council of New South Wales (ACON)
- South Australian AIDS Council (ACSA)
- AIDS Action Council of the ACT (AACACT)
- Northern Territory AIDS and Hepatitis Council (NTAHC)
- Tasmanian Council on AIDS, Hepatitis & Related Conditions (TasCAHRD)
- Australian Federation of AIDS Organisations (AFAO)

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