



**Tasmanian
Gay & Lesbian
Rights Group**

SUBMISSION

TO THE

**SENATE LEGAL AND
CONSTITUTIONAL AFFAIRS
COMMITTEE INQUIRY**

INTO THE

**MARRIAGE EQUALITY
AMENDMENT BILL 2009**

**FROM THE TASMANIAN GAY AND
LESBIAN RIGHTS GROUP**

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Executive summary

- The Tasmanian Gay and Lesbian Rights Group supports marriage equality in principle and the Marriage Equality Amendment Bill 2009 in particular.
- We support marriage equality because of our experience of the importance of legal equality, and our experience of the importance of the formal recognition of same-sex relationships.
- We have actively campaigned for state same-sex marriage legislation in Tasmania and note that the Tasmanian ALP is the first in the nation to support marriage equality.
- We support a three-tiered system of relationship recognition that includes marriage equality, to ensure maximum choice and flexibility when it comes to the recognition of all personal relationships.

The Tasmanian Gay and Lesbian Rights Group

From its formation in 1988, the Tasmanian Gay and Lesbian Rights Group (TGLRG) led the successful movement to reform Tasmania's former laws against same-sex relationships. The TGLRG has since played a significant role in the passage of Tasmania's landmark Anti-Discrimination and Relationships Acts. In addition, the TGLRG contributes to policy development and implementation within a number of government agencies through participation in several lesbian, gay, bisexual, transgender and intersex (LGBTI) reference groups, as well as playing an active role in national LGBTI issues.

Our work has been recognised by a number of awards including the Tasmanian Award for Humanitarian Activity (1994), the International Felipa da Souza Award (1995) and the National Human Rights Award for Community Groups (1997).

The TGLRG is in contact with LGBTI people across Tasmania, and conducts regular consultation within the LGBTI community. The outcomes of these consultations form the basis of this submission.

Our support for marriage equality

The Tasmanian Gay and Lesbian Rights Group has always supported full legal equality for same-sex partners, including in marriage.

The Group has actively supported marriage equality since 2003 when the possibility of amendments to the Marriage Act precluding the recognition of same-sex marriages was first raised.

Since that time the TGLRG has undertaken advocacy, community education and direct action in favour of marriage equality.

The TGLRG supports marriage equality because

- a) it will provide the practical benefit of providing immediate access to, and guarantees of, basic spousal rights to same-sex partners
- b) it is crucial to achieving legal and social equality for same-sex partners

- c) it will foster greater participation, interconnection and belonging of same-sex attracted people in their families and communities
- d) marriage itself will benefit from becoming more relevant to contemporary society

Our support for the above points comes from direct experience.

In 1997 Tasmania became the last Australian state to decriminalise sex between men. Our decade-long leadership of this debate made it very clear to us the importance of the law in shaping both official policy and community attitudes. The UN Human Rights Committee case about those laws, which the TGLRG closely participated in, also established for the first time Australia's treaty obligation to protect its citizens from discrimination on the grounds of sexual orientation.

Subsequent to the decriminalisation debate, Tasmania became the first state to establish a civil union scheme for the formal recognition of personal relationships, including same-sex relationships (for our purposes a civil union scheme is any scheme for the formal recognition of personal relationships which is not marriage. In the Australian context the term is sometimes used to refer to a marriage-like civil union scheme, as distinct from the less marriage-like scheme which exists in Tasmania. We believe this is a false distinction).

The TGLRG lobbied strongly for the Tasmanian scheme, and we will discuss it in detail below. The point here is that this scheme has proven its value in providing same-sex partners with all of the benefits listed above. Partners in state civil unions have are able to gain immediate access to relationship entitlements and prove their right to these entitlements if challenged. They have found they are more closely connected to their families and communities because their relationship has formal recognition. They feel validated and more "equal" in the eyes of others.

To illustrate our points about the practical and symbolic importance of formal relationship recognition we include the following short case study from a gay male couple who have registered their relationship with the Tasmanian Registry of Births, Deaths and Marriages and obtained a Deed of Relationship. Should you require any further information from the men concerned they can be contacted at lawrencepower@bigpond.com or on 03 6372 2168.

My partner Ian, of 28 years and myself has registered our relationship with the Deed of Relationship.

Ian and I moved from Melbourne in 2002 as Sea Changes. We felt the Gay law reform in Tasmania was the most progressive in Australia and was a deciding factor in moving to Tasmania to start our new life.

After moving here we became aware of the Deed of Relationship and decided to register our relationship. We registered because we felt it was great protection against discrimination and gave us equal rights in certain aspects of the State laws.

We are able to have hospital visitation rights and property rights which are important in a situation of terminal illness.

The Deed of Relationship has benefits for all couples, whether it is a same sex, caring or de-facto relationship.

We feel that as we have been recognised by the state government, that acceptance at the community level would follow.

We live in a small community on the north-east coast of Tasmania and have been accepted as part of a very caring and open community. We would encourage all people in a relationship to register, to be able receive the benefits and security of the State Deed of Relationship.

Sincerely,
Peter Power

In summary, our support for marriage equality derives directly from our long-term, first-hand experience of lobbying for legal equality, establishing Australia's obligation to remove legal discrimination, and establishing the nation's first scheme for formally recognising same-sex relationships.

On this basis, we fully support the Marriage Equality Amendment Bill 2009.

Same-sex marriage in Tasmania

Because of our strong support for marriage equality the TGLRG has been a champion of state same-sex marriage legislation. Constitutional experts such as Professor George Williams have pointed out that the marriage power in the federal constitution is a concurrent power. This means that power to legislate for any form of marriage not legislated for by the Commonwealth falls to the states. As a consequence, the definition of marriage in federal law in 2004 as the union of a man and a woman gave the states a clear mandate to legislate for marriages between two men or two women.

With the active support of the TGLRG, Bills for same-sex marriage were introduced into the Tasmanian Parliament in 2005 and again in 2008 by the Tasmanian Greens. Tasmania was the first state in which this occurred and remains the only state where there has been significant debate on this matter. We have attached copies of these Bills (attachments 1,2 & 3), relevant advice from Professor George Williams and Associate Professor in Law at the University of Melbourne, Kristen Walker (attachments 4 & 5), and a summary of this advice (attachment 6).

Tasmania is also the only state where marriage equality has received substantial support within the Australian Labor Party. The ALP State Conference has twice endorsed motions in favour of marriage equality, first in 2005 then again in 2009.

Our view on other forms of relationship recognition

As noted above, Tasmanian was the first state to establish a civil union scheme for personal relationships, including same-sex relationships. This scheme, called a relationship register, was not only ground-breaking in Australia, it also leads globally, insofar as it recognises and entitles all personal relationships, including non-conjugal companionate and familial relationships.

The TGLRG was and remains a strong supporter of this scheme because it is more firmly based on the principles of equality and freedom of choice than any other civil union scheme in the world: for example, it gives all personal relationships virtually equal entitlements, it allows ordinary Tasmanians to decide who whom they enter a recognised relationship with minimal conditions for recognition being set by the state, and it also allows partners to decide how they enter these relationships, e.g. with or without a ceremony.

We are disappointed, however, that officials and community members in other parts of the nation have chosen to misconstrue and diminish our scheme. In attachment 7 we dispel many of the myths about our scheme. For the purposes of this submission the most important point is that our scheme was never established as a substitute for equality in marriage for same-sex couples. It was established as an alternate for couples who can't or don't wish to marry but who still require formal recognition of their relationship. It is not a step towards, away from or instead of marriage equality, it is an accompaniment. This point is important because various institutions including the Federal Government and the Australian Christian Lobby have posited our scheme as an adequate substitute for full equality when it is not and was never intended to be.

Our vision for relationship law reform in Australia is for a three-tiered system in which rights and protections are identical for both same-sex and heterosexual couples and in which there is

recognition of other personal relationships. Similar models already exist in Belgium, the Netherlands and the Canadian provinces of Nova Scotia, Quebec and Ontario.

In practice this model would entail –

- *the presumptive recognition of the widest range of personal relationships in all state and national laws which create and bestow relationship rights:* This would include unmarried different-sex couples, unmarried same-sex couples and partners in all other emotionally non-conjugal relationships. We recommend a definition of such relationships that draws on the relationship definitions in the Tasmanian Relationships Act 2003;
- *state civil union schemes open to all the relationships mentioned above:* These would be, in effect, modelled on the Tasmanian relationship register, and, like this register, would provide the benefits of formal certification to all couples who choose not to, or who cannot, marry. As discussed above, these benefits include the capacity to prove one's relationship status if challenged (this can be particularly important in medical emergencies or when claiming government entitlements), immediate access to all state and federal relationship rights without the need to fulfil presumptive, interdependency criteria, and official validation and affirmation from government and society.
- *the right to marry for different and same-sex couples:* as discussed above, this is essential to ensure legal equity for same-sex relationships. It is also important for removing the stigma still wrongly associated with same-sex relationships. The right to marry the partner of one's choice is a key marker of adulthood, citizenship and full humanity.

The underlying principle of this vision is that it provides the maximum number of interpersonal unions with the maximum choice in how they access, guarantee and affirm spousal rights and their relationship status. By not discriminating on the grounds of sexual orientation or partner gender it also conforms to Australia's obligations under the Universal Declaration of Human Rights.

It should be clear from our vision that we do not prefer marriage as a model of formal relationship recognition over the registration of relationships through state civil union schemes. Nor do we prefer registration to marriage. We reject the idea that marriage equality and civil unions are interchangeable or substitutes one for the other.

Given our vision, we would be very sceptical about a proposal for a national civil union scheme in the absence of marriage equality, because such a scheme may wrongly be seen as an adequate substitute for the recognition of same-sex marriage in pre-existing federal marriage law. The reverse problem, i.e. the recognition of same-sex marriage without parallel schemes for the recognition of other relationships, is not of such great concern, given that Australia's states are already adopting such schemes.

In short, we firmly believe that state civil union schemes and marriage equality must exist side-by-side to ensure all interpersonal relationships are enfranchised and protected in the ways which best suit these diverse relationships.