

Submission:

TO THE SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

There have been a wide range of legal reforms at the State and Territory Government level recently which engender social validation of same sex relationships and families, and confirm a widely held belief that human relationships and rights are inherently important in society and need to be recognised and protected by the Australian legal system.

Importantly, it is the rights of same-sex couples and our children and the protection of their rights and against unfair and unfounded discrimination that should be paramount when considering the proposed amendment Bill. The diverse society that constitutes the contemporary Australian community does not any longer tolerate prejudice towards same-sex couples. The proposed Bill reflects contemporary social values and it is relevant to note that recent Galaxy and Sydney Morning Herald polls indicate that 60% of Australians now support same-sex marriage. These poll results reflect an acceptance of the GLBTI community, and a recognition that we are entitled to have our rights protected the same as any member of society, regardless of sexuality.

The changes to the Marriage Act in August 2004 to specifically exclude same-sex couples were regressive and pointless. The changes entrenched and promoted unfair and unjust discrimination and prejudice towards same sex couples and our children by a far greater transgression than simply failing to treat us equally under the law - the changes imposed a new and express level of discrimination and social exclusion. This is inconsistent with modern social values and is fundamentally flawed because it is an attempt to deny our existence.

Same-sex couples – with and without children – exist. Every State and Territory in Australia recognises this reality. The changes to the Marriage Act mean that a same-sex headed family is recognised as a family at the State or Territory level but not at the Commonwealth level. This is inconsistent and does not reflect the reality of contemporary Australian society as it is. By keeping these discriminatory laws in place you are not merely hurting same sex couples - you are hurting their families. It is the best interests of the broader principles of fairness, equality and human rights in Australia, as well as specific rights and protections of same sex couples and our children that should remain utmost in the minds of Parliamentarians tasked with governing for all Australians.

Determining that marriage can only be between a man and a woman sends out a clear message that same-sex relationships are not fit for, or worthy of, marriage. Clearly marriage still retains an important role in our society. State validation and protection of family relationships is very important. Express exclusion from marriage, even when practical rights have been granted, continues to allow those who wish to discriminate to stigmatise same-sex relationships as second class, and penalises sexual and gender minorities. The 2004 amendment to the Marriage Act set a dangerous precedent. This was the first time in national law that lesbian, gay, bisexual and transgender citizens had been expressly singled out for discriminatory treatment.

It cannot be denied that the definition and concept of marriage has evolved dramatically over time. Marriage once meant the ownership of

women by men. At one time it was a contractual arrangement and at yet another, marriage was restricted to couples of the same race; couples of opposite races were denied the right to marry – a reality now clearly unacceptable to the general Australian public. To argue that to not allow this Bill to proceed - to right the wrong of 2004 - based on 'protection of marriage' is a misnomer.

Marriage is more than a word that belongs to one section of society. It is an important way for our society to recognise the love and commitment in relationships. It confers a wide range of legal, social and financial entitlements. The right to marry is a key marker of adulthood, citizenship and family and community membership. Yet it is a fundamental civil right that is currently only available to any heterosexual couple. Same sex couples are no less deserving of these benefits of marriage than their heterosexual peers. Indeed, after centuries of persecution and prejudice same sex couples would benefit more than most from the affirmation and protection that marriage brings.

The 2004 changes to the Marriage Act to specifically exclude same-sex relationships from marriage were unnecessary, divisive and clearly ideologically driven by a Government that sought to enshrine discrimination against lesbian, gay, bisexual and transgender citizens for the first time in national law. On the other hand, recognition of same sex couples as proposed in the amendment currently referred to the Senate would have many important outcomes for gay men and lesbians and reverse a policy decision which should have never happened in the first place.

Widening the scope of the institution of marriage will not weaken or devalue it. Rather it will renew and make the institution more relevant to a pluralistic and diverse society. Indeed, the Committee should note that research from the University of Massachusetts shows that expanding marriage to same sex couples had no impact on heterosexual marriage in Scandinavian countries and the Netherlands. The institution of marriage was not undermined, but rather marriage rates remained stable or increased. The experience of Tasmania shows that homophobia and repressive laws can be turned into social acceptance and inclusion for gay men and lesbians in the wider community.

The broad and diverse communities in Australia look to strong leadership from elected representatives to follow other progressive countries mentioned above where marriage equality has been introduced. Marriage has never been authoritatively determined by the High Court, nor is it expressly defined in the Constitution. The Federal Parliament did not have the authority to define the meanings of words used in the Constitution. This is the province of the High Court, which has the sole responsibility to authoritatively determine the meaning of the Constitution.

In every Australia State and Territory same sex couples and families headed by same sex parents are legally recognised. This is an extremely important acknowledgement of the existence of same-sex couples and our families. It is a reflection of the social reality that exists within Australia. Intervening in State and Territory laws relating to adoption is unnecessary and will entrench discrimination in law and result in the stigmatisation of same sex couples and our children.

It is up to the Government to lead the way in what is just and right. Please change this law to show that all Australians are equal and all worthy of love and acceptance. Please remove the last fundamental source of discrimination and prejudice against gay and lesbian people – the

right to marry the one they love – is removed where all citizens are equal under the law and where all children can grow and prosper, knowing that regardless of their sexuality or the sexuality of their parents they will be able to participate fully and equally in all spheres of society.

Regards,