

Supplementary Submission
on the
**Same-Sex Relationship (Equal Treatment in
Commonwealth Laws—General Law Reform) Bill 2008**
regarding
Same-sex ‘Marriages’ Performed Overseas
to the
Senate Legal and Constitutional Affairs Committee

Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Telephone: 02 6277 3560
Facsimile: 02 6277 5794

Email: legcon.sen@aph.gov.au

Website: www.aph.gov.au/senate/committee/legcon_ctte

by

FamilyVoice Australia
(formerly Festival of Light Australia)
4th Floor, 68 Grenfell St, Adelaide SA 5000
Telephone: 1300 365 965
Facsimile: 08 8223 5850
Email: office@fava.org.au
Website: www.fol.org.au

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Same-sex ‘marriages’ performed overseas

Clause 21 of the Same-Sex Relationship (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008 would amend the Migration Act 1958 by inserting the following new section:

5F Spouse

- (1) For the purposes of this Act, a person is the *spouse* of another person if, under subsection (2), the 2 persons are in a married relationship.
- (2) For the purposes of subsection (1), persons are in a *married relationship* if:
 - (a) they are married to each other under a marriage that is valid for the purposes of this Act; and
 - (b) they have a mutual commitment to a shared life as husband and wife to the exclusion of all others; and
 - (c) the relationship between them is genuine and continuing; and
 - (d) they:
 - (i) live together; or
 - (ii) do not live separately and apart on a permanent basis.
- (3) The regulations may make provision in relation to the determination of whether one or more of the conditions in paragraphs (2)(a), (b), (c) and (d) exist. The regulations may make different provision in relation to the determination for different purposes whether one or more of those conditions exist.

Note: Section 12 also affects the determination of whether the condition in 20 paragraph (2)(a) of this section exists.

This new section could be understood to authorise the making of a regulation that would recognise a union between a man and another man or between a woman and another woman solemnised as a “marriage” in a foreign country to be recognised as a “married relationship” for the purposes of the Migration Act 1958.

Such a regulation would be contrary to the intended purpose and plain meaning of Section 88E of the Marriage Act 1961 which provides that:

Certain unions are not marriages

A union solemnised in a foreign country between:

- (a) a man and another man; or
- (b) a woman and another woman;

must not be recognised as a marriage in Australia.

To avoid doubt, Clause 21 of the Bill should be amended by inserting as Section 5F(4):

- (4) *Subsection (3) does not authorise the making of a determination that a man and another man, or a woman and another woman, are in a marriage relationship for this purpose of this Act.*