

13 January 2017

Att: Committee Secretary
Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill
PO BOX 6100
Parliament House
Canberra ACT 2600

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Dear Committee Secretary,

RE: Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill

Thank you for the opportunity to make a submission to the Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill.

Background

The Northern Territory Anti-Discrimination Commission (NT ADC) administers the Northern Territory *Anti-Discrimination Act*. We are a very small office charged with promoting the recognition of equality of opportunity in the Northern Territory (NT).

Brief summary

The NT ADC opposes the inclusion of exemptions broader than those currently contained in the *Marriage Act* 1961 (Cth) and the *Sex Discrimination Act* 1984 (Cth). The exemptions as set out in the Bill to amend the *Marriage Act* 1961 (Cth)(the Act) will enshrine a differential approach to marriage for two people on the basis of their sex, sexual orientation, gender identity, intersex status etc.

As marriage equality is the aim of the amendments, any additional exemptions over and above those currently set out in section 47 of the Act will enshrine discrimination in the Act

and not achieve marriage equality. The exemptions and preconditions which are included in the Act should be the same for any two people being married.

Addressing each of the Terms of Reference

(a) The nature and effect of proposed exemptions for ministers of religion, marriage celebrants and religious bodies and organisation, the extent to which those exceptions prevent encroachment upon religious freedoms, and the Commonwealth Government's justifications for the proposed exemptions;

The NT ADC submission on this term of reference will deal with three distinct issues; the extended exemption for religious ministers, marriage celebrants and the extension of religious exemptions to include facilities, goods and services.

Ministers of Religion

The proposed broad exemptions are unnecessary given existing exemptions under the *Sex Discrimination Act 1984* (Cth) Section 37(d) which provides an exemption for:

any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of the religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion.

This exemption provides adequate protection for religious ministers to ensure they can perform their roles in line with their religious beliefs. Retaining this as the exemption that applies to all people who want to get married is in compliance with the principles of non-discrimination.

The exemptions proposed in the Bill however go much further than those covered by the *Sex Discrimination Act 1984* (Cth). The Bill proposes a broader religious exemption when the marriage is not between a man and a woman. This offends principles underlying the anti-discrimination law in Australia and proposes a broader

area of permitted discrimination for marriage than applies to other services covered by discrimination laws.

Clause 5 of the Bill repeals and substitutes section 47 of the *Marriage Act 1961 (Cth)* and has three parts. The proposed section 47(1) and (2) is not opposed. Of concern is the proposed section 47(3). The proposed subsections 47(3) (b) (i) and (ii) are an expansion of the religious exemption in the current Act. The inclusion of paragraph (i) and (ii) is unnecessary and extends the religious exemptions beyond what has been in place since the Act commenced. It is also unnecessary as it is already covered in section 37 of the *Sex Discrimination Act 1984 (Cth)*.

The third and additional exemption (proposed section 47(3)(b)(iii)) is both unwarranted and an untested exemption that should not be included. It provides for a minister of religion on the basis of a “minister’s conscientious or religious belief” is very concerning as it extends beyond the exemption on the basis of ‘doctrines, tenets or belief of the religion of the ministers’ religious body or religious organisation. This far exceeds the protection for religious freedom and moves into the area of individual beliefs irrespective of whether those views are held based on religious beliefs.

It goes beyond what is currently included in anti-discrimination law in Australia as accepted scope for religious exemption. It is stepping away from the established principles of Australian anti-discrimination law.

The practical consequences, of such an exemption are very troubling. Members of the Lesbian, Gay, Bisexual, Transgender, Intersex, Queer and Questioning (LGBTIQ) community may approach a minister of religion from a religious organisation that has public statements supportive of marriage equality and are then rejected, refused services, discriminated against by an individual minister, because of their unknown beliefs, or individual conscience. It creates uncertainty, very broad and undefined discretion, which undermines the purpose of the reforms. This takes religious exemption beyond what is able to be justified or what is commonly understood to be religious exception in other Australian anti-discrimination acts etc.

Lastly the current minister of religion exemption is justified on the basis of Australia meeting its international obligations in regard to freedom of religion. It is submitted that inclusion of “personal beliefs” goes beyond what is required by international law.

Marriage Celebrants

The extension of exemptions along the same lines as religious exemptions to marriage celebrants cannot be justified. It is not part of religious freedom exemption as it is articulated in Australian anti-discrimination law or consistent with the balancing of rights in anti-discrimination law.

Further it has not been included in legislation enacted by any other country that has introduced marriage equality.

As marriage celebrants are appointed by the state to perform a civil function on behalf of the state there is no justification for state sanctioned discrimination in the way they perform this role.

Also as set out above the current Bill protects not just “religious belief” but concept of “conscientious objection”. The same argument opposing this set out above applies but with the added layer that marriage celebrants have chosen to obtain registration to work in this area, it is not faith based work.

Facilities, goods and services exemption for religious bodies and organisations

The proposed exemption exceeds exemptions that exist in similar legislation anywhere in the world.

The inclusion of such an exemption would enshrine in the Act a level of permitted discrimination that is not acceptable. It is contrary to the stated intent of the legislation which is marriage equality as it provides for marriage but on limited terms, either it is marriage equality or it is not.

Exempting facilities and goods and services from marriage of any-one not man and women, is not equality.

The scope of the exemption is also very wide both in the facilities, goods and service it covers and that unlike other religious exemption it does not just cover religious ministers, or religious order but refers to broader phrase such as “**religious body or organisation**”.

In conclusion the currently available exemptions in Federal and state anti-discrimination law should guide and be sufficient in this area, it is unnecessary to bolster or add to these, in a Bill which is aimed at achieving marriage equality.

(b) The nature and effect of the proposed amendment to the Sex Discrimination Act 1984 and the Commonwealth Government’s justification for it;

The amendment is unnecessary if the Bill does not extend the exemptions. The amendment is only necessary if the amendments proposed enshrine discrimination against LGBTIQ community as they are covered and protected by the *Sex Discrimination Act 1984* (Cth) and other anti-discrimination, equal opportunity legislation in Australia.

(c) Potential amendments to improve the effect of the bill and the likelihood of achieving the support of the Senate; and

If the Bill is to remain in its current form it would be preferable that the Bill was renamed as the Marriage Amendment (Marriage Equality) Bill rather than as it is currently named as the amendment to “two people” reflects what is required for the marriage of two people not just same sex marriage.

In conclusion it is submitted that to achieve the objects of the amendments – marriage equality - the broader exemptions as detailed in this submission should not be included in the Bill. Exemptions that currently exist under the *Sex Discrimination Act 1984* (Cth) more than adequately address current concerns regarding marriage equality and balancing religious beliefs, doctrines and tenets.

The Bill as it currently stands does not seek to balance the interest of the LGBTIQ community in regard to equality of marriage and the beliefs and values of religious institutions, but would permit inequity of marriage and enable an unacceptable level

of discrimination to continue against members of the LGBTIQ community. This is not a socially desirable outcome and is out of step with current views around discrimination. Australia is a diverse country. It is important that our diversity is celebrated and supported in a way that does not marginalise particular sectors of the community.

Yours sincerely,



Sally Sievers

Anti-Discrimination Commissioner

Northern Territory Anti-Discrimination Commission