



THE LAW SOCIETY
OF NEW SOUTH WALES

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7 March 2012

The Hon. Nicola Roxon MP
Attorney-General
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

By Email: Nicola.Roxon.MP@aph.gov.au

Dear Attorney-General,

Marriage Act 1961: Amendments to ensure equality

I write to you on behalf of the Human Rights Committee ('Committee') of the Law Society of NSW which has the responsibility to consider and monitor Australia's obligations under international law in respect of human rights; to consider, reform proposals and draft legislation with respect to issues of human rights; and to advise the Law Society on any proposed changes.

The Committee notes that two Private Members' Bills have been introduced to allow same-sex couples to marry. The Committee notes also that the *Marriage Equality Amendment Bill* 2010 introduced by Senator Hanson-Young has been referred to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry.

The Committee's view is that when considering an amendment to the *Marriage Act* 1961 (Cth) to allow same-sex marriage, the most appropriate principle to apply is the key human rights principle of equality. This approach is one that is consistent with Australia's international human rights obligations as a signatory to the International Covenant on Civil and Political Rights (ICCPR). Article 26 of the ICCPR sets out that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In *Toonen v Australia*¹, the UN Human Rights Committee expressed its view that the reference to "sex" in Article 26 is to be taken to include sexual orientation. In *Young v Australia*, the UN Human Rights Committee found that Australia violated Article 26 by denying Mr Young "a pension on the basis of his sex or sexual orientation."² The Committee's view is that if civil marriage is recognised only between opposite-sex

¹ (488/1992) UN Doc. CCPR/C/50/D/488/92, [8.7]

² *Young v Australia*, (941/2000) UN Doc. CCPR/C/78/D/941/2000, [10.4]

couples, it is strongly arguable that this amounts to discrimination against same-sex couples on the basis of sexual orientation and therefore a violation of Article 26 of the ICCPR.

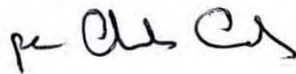
The Committee submits that the *Marriage Act 1961* should be amended to allow same-sex couples to marry in order for Australia to properly uphold its international obligations. Further, the discriminatory references to “man”, “woman”, “husband” and “wife” should be removed and replaced with non-gendered terms. The Committee submits also that same-sex marriages performed lawfully in other jurisdictions should (subject to s88D of the Marriage Act) be recognised in Australia.

The Committee echoes the point made by the Australian Human Rights Commission that recognising the right to enter into civil marriage for all Australians does not restrict any other human right. The Committee’s view is that allowing civil marriage does not interfere with the right of religious individuals or organisations to refuse to perform ceremonies inconsistent with their religious beliefs.³

Finally, the Committee notes that Australia would not be by any means the first jurisdiction to remove discrimination against same-sex couples by allowing same-sex marriage. Jurisdictions such as Canada, South Africa, Spain, Sweden, Netherlands, Iceland, Norway, several states in the United States, Argentina and Portugal allow same-sex marriage.

The Committee respectfully urges you and your party to vote to uphold Australia’s international human rights obligations by removing discrimination against same-sex couples.

Yours sincerely,



Justin Dowd
President

³ Australian Human Rights Commission, Submission to the Senate Standing Committee on Legal and Constitutional Affairs, Inquiry into the Marriage Equality Amendment Bill 2009, 10 September 2009 at p 8. Available online: http://www.hreoc.gov.au/legal/submissions/2009/20090910_marriage_equality.pdf (Accessed 20 January 2012).