



Submission to the Commonwealth Government's exposure draft of the Marriage Amendment (Same-Sex Marriage) Bill

Addressed to:

Committee Secretary
Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill
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Contributors

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Confidentiality

This submission does not need to be kept confidential and may be made public.

Introduction

The Science Party is committed to ending all forms of material discrimination. This includes the basic tenet of treating all citizens equally under the law, which necessarily includes marriage equality.

Marriage affords a suite of legal statuses which non-married couples must gain separately through extra paperwork. Furthermore, Australian couples that are unmarried under Australian law cannot emigrate as a married couple, nor be recognised as married when living overseas. Marriage today is recognised as a commitment between couples and as such it should be available to any two consenting adults who wish to enter into it, regardless of their gender, sex or sexual orientation.

Objections to marriage equality on the basis that marriage is solely or primarily a religious institution, or simply that marriage should not be redefined, are baseless, as the definition has changed many times throughout history to arrive at today's understanding of marriage under the law. Indeed, one consistent thing about marriage is that it has been difficult to precisely define, even in the Australian context¹.

Objections to marriage equality on the basis that it would violate religious freedom can be addressed by allowing ministers of religion and celebrants who perform religious ceremonies to refuse to solemnise marriages on religious grounds.

Summary of Recommendations

With regards to the current Marriage Amendment Bill exposure draft, the Science Party recommends the following:

- Rename the bill to the Marriage Amendment (Marriage Equality) Bill; and
- Remove sections 47(3)(a), 47A(1)(a) and 47A(1)(a), which refer specifically to same-sex marriages as a valid reason to refuse service. This specificity is unnecessary in all cases as in each section the following clause allows refusal for any reason on any religious grounds; and
- Amend section 47A to extend the right to refuse service on religious grounds to only those marriage celebrants who perform religious ceremonies for independent religious organisations, thus excluding marriage celebrants who perform civil ceremonies from this privilege; and
- Clarify section 47B(1) regarding the provision of goods and services by religious organisations.

¹House of Representatives Standing Committee on Social Policy and Legal Affairs 2012. 'History of Marriage Laws in Australia', *Advisory report on the Marriage Equality Amendment Bill 2012 and Marriage Amendment Bill 2012*. Viewed 13 January 2017, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/bill%20marriage/report/final.pdf

1. Proposed exemptions for ministers of religion, marriage celebrants and religious bodies and organisations, and the extent to which those exemptions prevent encroachment upon religious freedoms

The exemptions listed in the bill adequately prevent encroachment on religious freedoms. It is proper that ministers of religion be able to refuse to solemnise a marriage in the case of conflict with their genuine religious beliefs.

We argue in section 3b of this submission that extending the right to refuse to solemnise a marriage on the basis of conflict with religious beliefs does not need to be extended to celebrants who perform civil ceremonies.

2. Proposed amendment to the Sex Discrimination Act 1984

3. Potential amendments to improve the effect of the bill and the likelihood of achieving the support of the Senate

a. The name of the bill

The Science Party recommends changing the name to the Marriage Amendment (Marriage Equality) Bill.

Removing the one-man-one-woman requirement for two persons to be married allows for not only same-sex marriages but for the marriage of people who are legally recognised as neither male nor female—a right won in the High Court of Australia ruling of *NSW Registrar of Births, Deaths and Marriages v. Norrie* (S273/2013). It would also correct the absurd situation that currently faces married Australians who wish to transition from one gender to another: to change their gender for legal purposes they must end their marriage.

The term "*Marriage Equality*" is therefore more fitting than "*Same-Sex Marriage*" for naming this bill.

b. Ministers of religion

The Science Party recommends removal of section 47(3)(a) of the bill: A minister of religion may refuse to solemnise a marriage despite any law (including this Part) if "*the refusal is because the marriage is not the union of a man and a woman.*"

Objection to the non-heterosexual nature of a marriage is specifically noted here as an allowable reason to refuse to solemnise a marriage. To single out any given potential reason for refusal seems unnecessarily specific, as section 47(3)(b) allows for refusal on the broad grounds that solemnising the marriage would conflict with the tenets of the minister's religion, or the minister's personal convictions, or even the sensibilities of followers of the same religion.

At worst, the specific mention of the same-sex nature of a marriage being grounds for refusal could be seen as divisive and perpetuating negative attitudes towards same-sex relationships.

As such, we recommend removal of section 47(3)(a), in favour of stating simply that a minister of religion may refuse to solemnise a marriage on any grounds where the refusal is genuinely in line with the tenets of that religion, as provided by the remainder of section 47(3).

It should be noted that refraining from including any specific reason for refusal in the Act would potentially benefit ministers of religion who refused to solemnise a marriage, as they could not then be forced to disclose their specific reason under the Act for their refusal.

c. Marriage celebrants

The Science Party recommends removal of section 47A(1)(a) of the bill: A marriage celebrant (not being a minister of religion) may refuse to solemnise a marriage despite any law (including this Part) if *"the refusal is because the marriage is not the union of a man and a woman."*

Like ministers of religion, celebrants do not require a specific allowable reason for refusal to be listed within the Act, when all genuine religious reasons are covered in the following section, 47A(1)(b).

d. Religious organisations' refusal to provide services

The Science Party recommends removal of section 47B(1)(a) of the Bill: A religious body or a religious organisation may, despite any law (including this Part), refuse to make a facility available, or to provide goods or services, for the purposes of the solemnisation of a marriage, or for purposes reasonably incidental to the solemnisation of a marriage *"if the refusal is because the marriage is not the union of a man and a woman."*

Similarly to the two previous points, it is unnecessary to specifically note refusal on the basis of the sex, gender or sexual orientation of the couple wishing to marry, as section 47B(1)(b) provides for any conscientious or religious objection.

4. Any consequential amendments

a. Differentiation of civil celebrants and religious celebrants who are not ministers of a recognised denomination

Under section 47A (Marriage celebrants may refuse to solemnise marriages), the Science Party recommends replacing *"marriage celebrant (not being a minister of religion)"* with *"Commonwealth-registered marriage celebrant who performs religious ceremonies for independent religious organisations"*, in both 47A(1) and 47A(2).

This amendment will clarify that the right to refuse to solemnise marriages on religious grounds extends to only those celebrants who are registered as being affiliated with a religious organisation, and not to those registered as civil celebrants.

We do not believe that marriage celebrants who are neither ministers of religion, nor officially affiliated with a religious organisation for the purpose of solemnising marriages, should have the right to refuse service on the basis of the sex and/or gender and/or sexual orientation of potential clients.

There are few exceptions in Australian law for private commercial entities to refuse service on the basis of gender, sex or sexual orientation. Where these exceptions exist, they are usually central to the operation of the entity (for example, single-gender facilities that exist for the genuine comfort of clients). In contrast, the role of a civil celebrant is to solemnise marriages in a secular service, outside the tradition of a religion, and there is therefore no religious justification for them to refuse service to a same-sex couple.

Allowing civil celebrants to refuse to solemnise a marriage on the basis that the couple did not comprise one man and one woman would violate the spirit of the bill. Removing this exemption would demonstrate the Australian government's sincere commitment to providing an equal status to all couples.

b. Religious organisations' refusal to provide services

The Science Party recommends that amendments be made to section 47B(1), to clarify that religious organisations should only be allowed to refuse service on religious grounds in the case that a venue is one used for religious services, or if the facility or business that would provide goods or services is owned by the religious organisation. We believe that no further extension of this principle is necessary to protect religious freedoms.