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Committee Secretariat
Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill
Department of the Senate

By email: samesex.marriage.sen@aph.gov.au

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Dear Committee Members

The National Association of Community Legal Centres (NACLC) welcomes the opportunity to make a submission to the Committee's Inquiry in relation to the Commonwealth Government's exposure draft of the Marriage Amendment (Same-Sex Marriage) Bill.

NACLC is the peak body for all community legal centres (CLCs) in Australia. CLCs are independent, non-profit, community-based organisations that provide free and accessible legal and related services to disadvantaged members of the community, and to people with special needs or who are for other reasons vulnerable and at risk.

CLCs provide legal assistance in a wide range of areas of law, including in relation to anti-discrimination law and generally work to protect and promote the rights of vulnerable people in the community, including members of the lesbian, gay, bisexual, trans and intersex (LGBTI) community.

This submission is supported by NACLC's National LGBTI Network.

Summary

In its current form, the *Marriage Act 1961* (Cth) legalises and entrenches unacceptable discrimination against LGBTI people. The exclusion of LGBTI people from the *Marriage Act* denies them a right that is afforded to all other Australians and contributes to higher levels of discrimination and stigma experienced by these communities, many of whom access the assistance of CLCs across Australia.

NACLC considers that marriage equality is a basic human right and the principle of equality means that civil marriage should be available in Australia, without discrimination, to all couples, regardless of sex, sexual orientation or gender identity.

As a result, NACLC supports the draft Bill to the extent that it amends the definition of marriage under the *Marriage Act* from being between a 'man and woman' to 'two people'. NACLC also supports the recognition in Australia of same-sex marriages entered into in other jurisdictions, as provided for in the draft Bill.

NACLC acknowledges and respects that religious freedom should be protected. As a result, NACLC considers that it is appropriate to allow ministers of religion to conduct religious marriage ceremonies in accordance with the doctrines, tenets or beliefs of their religion.

However, NACLC has concerns about a number of aspects of the draft Bill, including:

- permitting civil marriage celebrants from refusing to marry couples that are not a man and a woman
- the addition of an exemption on the basis of 'conscientious belief', and
- the proposed exemption for 'religious bodies and organisations' in the provision of facilities, goods or services.

Term of Reference 1: Nature and effect of proposed exemptions for ministers of religion, marriage celebrants and religious bodies and organisations

NACLC acknowledges and respects that religious freedom should be protected. NACLC considers that it is reasonable to allow ministers of religion to conduct religious marriage ceremonies in accordance with the tenets and doctrines of their religion.

NACLC considers that s 47 of the *Marriage Act* is sufficiently broad to ensure that ministers are not bound to solemnise marriage and that no further change as envisaged in the draft Bill is necessary.

Civil marriage celebrants

NACLC is concerned that the draft Bill permits a civil marriage celebrant from refusing to marry couples that are not a man and a woman. Where an individual or organisation is providing a civil service on behalf of the state (just as is the case where an individual or organisation is receiving Government funding), it is not appropriate for that individual or organisation to be exempted from anti-discrimination law. In addition, civil marriage celebrants are currently under no obligation to solemnise marriage.

NACLC submits that the exemption for civil marriage celebrants should be removed from the draft Bill.

Conscientious belief

NACLC is concerned about the introduction of the additional exemption for ministers and civil marriage celebrants in sections 47(3)(b)(iii) and 47A(1)(b) of the draft Bill on the basis of 'conscientious belief'. This addition would insert a new basis for discrimination not currently available under other anti-discrimination law and is inconsistent with the development of anti-discrimination law in Australia.

NACLC submits that the references to 'conscientious belief' exemption should be removed from the draft Bill.

Exemption for religious bodies and organisations

NACLC is also concerned about the proposed exemption for 'religious bodies and organisations' in the provision of facilities, goods or services for the purpose of solemnisation of a same-sex marriage, or for purposes reasonably incidental thereto, if the refusal conforms to the doctrines, tenets or beliefs of the religion, or is necessary to avoid injury to the religious susceptibilities of adherents to that religion.

NACLC is opposed to this exemption and in any event considers that it is unnecessary given the existing broad religious exemptions under Commonwealth anti-discrimination law.

In addition, NACLC is concerned that the Bill as drafted fails to provide a definition or clarity about the scope of the exemption, or the identity of 'religious bodies and organisations' and as a result would introduce unnecessary complexity and uncertainty.

NACLC submits that the exemption for religious bodies and organisations should be removed from the draft Bill.

Term of Reference 3: Potential amendments to improve the effect of the Bill and the likelihood of achieving the support of the Senate

Objects clause

NACLC suggests that the Committee consider the potential usefulness of inserting an Objects clause into the *Marriage Act* to outline the underlying purposes of the legislation. Such a clause would be useful in resolving any uncertainty or ambiguity arising in relation to the Act.

Term of Reference 4: Consequential amendments

NACLC considers that it is most appropriate for the Committee to identify any consequential amendments required to Commonwealth legislation and suggests that the Commonwealth Attorney-General's Department may be best placed to provide the Committee with information to assist in this regard.

Conclusion

A number of individual CLCs have and intend to make submissions to the Inquiry. NACLC draws the Committee's attention to the submission made by the Human Rights Law Centre and others.

NACLC thanks the Committee for its engagement with this important issue and would be happy to provide additional information if required.

Yours sincerely

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