



**Legal and Constitutional, Committee (SEN)**

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**Inquiry by Senate Legal and Constitutional Affairs Legislation Committee of the Marriage Equality Amendment Bill 2010.**

**Introduction**

This submission on behalf of the RainbowTas Committee calls on Tasmanian Federal Politicians to remove from the Marriage Act 1961 the impediments to the recognition of marriage between same sex couples in Australia to allow all people, regardless of their sex, sexual orientation or gender identity, the opportunity to marry.

RainbowTas Inc through the Coming Out Proud Program has been established in Tasmania with the purpose of negotiating local policy and practice to provide for strategies that will enable GLBTI people in the regions to 'come out with pride' and live in their community with dignity as fully respected and participating members.

The COPP is established in four regions Cradle Coast, Greater Launceston/East Coast, Greater Hobart as well as Kingborough/Huon. The Program is endorsed by nearly 20 Councils and Council Liaison Officers are appointed. COPP is committed to establishing a State GLBTI Council to work with the State Government GLBTI Reference Group in implementing the GLBTI Framework as well as developing local & community responses.

The basis and strength of the COPP is the formulation of a management plan by local CLC members in consultation with local GLBTI communities and local government according to their needs and issues of the local/regional communities. COPP collaborates with other GLBTI service organisations to find solutions to these issues and negotiating in special & mainstream programs & services.

The private senator's bill, introduced by Senator Hanson-Young, seeking to remove discriminatory references from the Marriage Act 1961 to allow all people, regardless of their sex, sexual orientation or gender identity, the opportunity to marry is commended and seen as fundamental to the establishment of equity for the LGBTI Community in Australia. It is seen as having international implications in the struggle for human rights and the recognition of Australia as a country that does not discriminate against a significant section of the population.

The proposed legislation amendment makes allowance for the provision of same sex marriages. This unequal and hurtful comparative values of relationship between heterosexual and same sex couples as regards marriage being the prerogative of one group and not the other is simply based on destructive presumptions. Many of these are

religious in nature based on the power of recognised churches to deny same sex couples recognition of the spiritual value of loving relationships within the community. It is also based on the presumption that 'same sex couples do not have in many instances the same parenting responsibilities that heterosexual couples have. This strict doctrinaire position about the primary and secondary values of marriage denies the importance of the separation of church and state, which is already recognised in the Marriage Act, as well as practiced in the celebration of marriage for heterosexuals.

### **Inequality Leads to Cynicism and Non Engagement**

The submission states that while marriage may not have been an aspiration for many gay and lesbian people this is the result of long-term rejection by the law in Australia. This pain-full exclusion it is contested has led to a deep-seated cynicism about the celebration of marriage by same sex couples and the value of this community recognition to acknowledge and celebrate the diversity of the expressions of marriage in Australia. It needs to be noted in countries that have a state recognition of same sex marriages that same sex couples approach marriage with less cynicism and a positive attitude to the ethics of long-term interpersonal relationships. Many same sex married couples immigrating to Australia from countries allowing same sex marriages are disturbed at the failure to recognise this inalienable right and their new state in Australia of now not being acknowledged as married by the State.

Given that the previous Rudd Government estimated to make \$66 million in the first year when it introduces legislation to remove over 100 areas of legal and financial discrimination against gay and lesbian partnerships the only just law the Government can make is to recognise them with the same value of heterosexual marriages.

What is supposed to be a long awaited removal of discrimination and injustice against same sex relationships seems to have turned into a cynical move to raise additional revenue from a section of the community that has been discriminated and vilified against for such a long time without equity in what is for many same sex couples the most important ability to solemnise and have recognised by the community their relationship. Raising revenue on the basis of 'de facto' same sex relationships is a cruel insult

While same – sex couples have avoided much of the damaging impositions of Church and State control on their relationships in the past, the continuing non-recognition of community respect for same sex partnerships through marriage has very serious spiritual, moral and psychological effects on the whole community'. Gay and lesbian couples have to achieve a much greater degree of maturity, self-confidence and self-esteem to sustain their loving relationships. The Gillard Government in pandering to the fundamentalist right groups on this issue which will allow and actually encourage ongoing discrimination and vilification of this significant and important diverse section of the Australian Community - against international trends of recognition and civil marriage celebration.

There is no question that gay and lesbian couples are more than willing to contribute to the 'social purse' on equal terms, but not on the Federal basis of second-rate 'de facto' relationships. Without the recognition of same sex marriage in the legislation change same sex couples will continue to be cynical of a tax imposition without the equality granted to heterosexual couples. Without this equality there will be a strong tension and avoidance of the negative tax and financial implications of the new legislation leading

to social disobedience. This will create for many same sex couples especially the poorest a hostile relationship with Centrelink and the same pattern of avoidance and eventually imprisonment that happens with other marginalised groups that rely on de-facto relationship status to survive on pensions and benefits to survive.

### **Poor LGBTI Social and Well Being Indicators- Result of Inequality & Discrimination**

As a minority group the incidence of health well being and safety issues including self harm and suicide prevention is at a substantially higher level in the sexually and gender diverse community than in other sections of the Community (see appendix A *Tasmanian LGBTI Social Disadvantage research*)

There is a strong connection between discrimination/inequality and poor social/wellbeing/safety indicators for the LGBTI Community. Establishing equality in all things through equity in the Marriage Act allowing for positive confirmation and celebration of our relationships will restore our Community to wellbeing.

Establishing equity through recognition of same sex marriage will restore our community to mainstream equality through respect for our relationships and self esteem and contribute to improvements in the LGBTI health and well being indicators. It will destroy one of the last marks of stigmatization that we have to endure and contribute to community normalisation and the reduction of discrimination and victimization. If the Marriage Act is seen to respect our right to equality, as other sections of the community then there will be no excuse for conservative sections of the National Community to do other than treat us with respect.

It is important to say that while law reform has established a strong base for the protection of our community this is not realised in many local and regional communities because cultural change has not been achieved through cultural awareness strategies that acknowledge, respect and celebrate diversity including that of the LGBTI Community.(see Appendix B Vulnerability of GLBTI Community Leading to Self Harm & Suicide – A Well Being Profile). Key and central to cultural change is the last frontier of human rights in the recognition of same sex marriage for 10% of the population.

### **The GLBTI Community still experiences Discrimination & Intimidation: (See Attachment A: Positive Exclusion and Discrimination of GLBTI Community Leading to Self Harm & Suicide – A Well Being Profile)**

RainbowTas through the Coming Out Proud Program (COPP) is developing management plans at local & regional level as endorsed by over twenty Councils (local government) to eradicate discrimination and achieve cultural change in Tasmania. Key to cultural change and the reversal of stigmatization is the issue of recognising same sex marriage in the community at every level. COPP has used the process of conciliation described and implemented in the Tasmanian Anti Discrimination Act 1999 to achieve cultural change, so necessary in turning around the incidence of self harm and suicide in the GLBTI Community in Tasmania<sup>1</sup>. Young, adult and older GLBTI

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<sup>1</sup> According to a study of health compromising and suicidal behaviours among young gay and bisexual men in Tasmania conducted at the Division of Community and Rural health and issued in October 1999,

people still experience harassment, bullying hate crime and discrimination within the general community.

The issues that are emerging from the membership of the RainbowTare as follows;

- The GLBTI Community is experiencing and recording an increasing rate of Hate Crime which escalates in rural and remote areas as well as some urban districts in Tasmania while there are no defined procedures and recording protocols by the police and Courts to treat this in it's discriminatory elements against the GLBTI Community.
- Bullying and hate crime does inevitably lead to self-harm, suicide and heightened mental health issues in minority groups especially in the LGBTI Community.
- GLBTI people especially the young, elderly and infirm 'in care' or institutions e.g prisons are very vulnerable to physical and psychological abuse.
- There is discrimination in the workplace, including harassment, constructive dismissal and diminished career opportunities
- Mainstream and special programs of counselling and support of LGBTI people experiencing discrimination, harassment and hate crime are not competent when treating the special situations that GLBTI people do not find themselves in, nor are these issues and needs adequately recorded.
- There is discrimination in accessing aged care facilities, with aged care policies not adequately addressing the needs or respect of GLBTI people in Tasmania
- People who are sex and gender diverse face difficulties in obtaining official documents that record the sex or gender in which they live.
- While Anti discrimination training is being delivered in organisation according to their responsibilities under the TADA 1999 Section 104, cultural awareness training in relation to the LGBTI community as an 'attribute group' is not extensive in either the public or private sector despite the Public Service Commissioner's Direction and Guidelines No 3 Workplace Diversity.

Essential to this culture change and reversal of active discrimination and harassment for the LGBTI Community is the 'final frontier' of law reform' of the Marriage Act. If the Australian Government fails to act on this it will remain as a Country that does not address the inequality of a considerable percentage of it's population and therefore socially backward in the recognition of essential human rights. Australians are ready to amend the Marriage Act 1961 as instanced in the private Senator's bill, introduced by Senator Hanson-Young, by seeking to remove discriminatory references from the Marriage Act 1961 'to allow all people, regardless of their sex, sexual orientation or gender identity, the opportunity to marry'. The question is now whether Parliament is in step with Australian public opinion and sentiment or simply afraid of the fundamentalist right section of the community.

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The young Tasmanian gay and bisexual men surveyed were two and a half times more likely to seriously consider suicide than their heterosexual peers,

I would refer the Inquiry for further discussion on this issue to the RainbowTas Web Site at <http://www.rainbowtas.org/coe/marriageequality/marriageequality.html>

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Appendix A *Tasmanian LGBTI Social Disadvantage research*

**~ Percentage of GLBTI people who have experienced assault based on sexual orientation**

**Research period five years or over**

- a) **46%** amongst 16-26 year old Tasmanian gay and bisexual men (Menziess Centre for Population and Rural Health, 1998, sample=120)
- b) **46%** amongst 14-18 year old same sex attracted people in three Tasmania High Schools (La Trobe University Centre for Sex, Health and Society Research, 1998, sample=300)
- c) **32%** amongst 15-25 year old southern Tasmanian lesbians (Department of Community and Health Services and Hobart Women's Health Centre, 1998, sample=30)

**Research period previous twelve months**

- d) **12.5%** amongst gay men ("Tasmanian Council on AIDS and Related Diseases, CARD's Men who have sex with men survey", 1998, sample=88)
- e) **15%** amongst Tasmanian gay men (Project MaleCall, Macquarie University Centre for HIV social research, 1996, sample =140)

*National or interstate research*

**Research period five years or over**

- f) **33%** of lesbians (NSW gay and lesbian community study, "Off our Backs", 1992, sample=40)
- g) **20%** amongst gay men and **11%** amongst lesbians (NSW Anti-violence Project, "Street Watch Report", 1997, sample=unsure)
- h) **20%** amongst gay men and **11%** amongst lesbians (Victorian gay and lesbian community survey, 1994, sample=1000)

**Research period previous twelve months**

- i) **14%** amongst gay men and **12%** amongst lesbians (NSW Police gay and lesbian community survey, "Out of the Blue", 1995, sample=297)
- j) **11%** amongst Australian gay men (Project MaleCall, Macquarie University Centre for HIV social research, 1996, sample =3039)

## **~ Percentage of GLBTI people who have experienced assault and verbal abuse based on sexual orientation**

### *Tasmanian research*

#### *Research period five years or over*

- k) **94%** amongst 16-26 year old Tasmanian gay and bisexual men (Menzies Centre for Population and Rural Health, 1998, sample=120)
- l) **91%** amongst 15-25 year old southern Tasmanian lesbians (Department of Community and Health Services and Hobart Women's Health Centre, 1998, sample=30)

## **Research period previous twelve months**

- m) **47%** amongst Tasmanian gay men (Project MaleCall, Macquarie University Centre for HIV social research, 1996, sample =140)
- n) **42%** amongst gay men ("Tasmanian Council on AIDS and Related Diseases, CARD's Men who have sex with men survey", 1998, sample=88)

### *National or interstate research*

#### *Research period five years or over*

- o) **70%** of gay men and lesbians (Victorian gay and lesbian community survey, 1994, sample=1000)
- p) **79%** of gay men and lesbians (Victorian gay and lesbian community survey, 1999, sample=1000)
- q) **83%** of gay men and lesbians (NSW Police gay and lesbian community survey, "Out of the Blue", 1995, sample=260)
- r) **91%** of lesbians (NSW gay and lesbian community study, "Off our Backs", 1992, sample=40)

## **Research period previous twelve months**

- s) **40%** amongst Australian gay men (Project MaleCall, Macquarie University Centre for HIV social research, 1996, sample =3039)

## **~ Percentage of GLBT people who have experienced discrimination based on sexual orientation**

*Research period five years or over for all studies*

### *Tasmania*

- t) **95.5%** amongst 15-25 year old southern Tasmanian lesbians (Department of Community and Health Services and Hobart Women's Health Centre, 1998, sample=30)

### *National or interstate*

- u) **87%** of gay men and lesbians (Victorian gay and lesbian community survey, 1994, sample=1000)  
v) **84%** of gay men and lesbians (Victorian gay and lesbian community survey, 1999, sample=1000)

### *Discrimination in employment (all interstate)*

- w) **59%** of gay men and lesbians in employment (Sydney University gay and lesbian community study in NSW, Vic and ACT, 2000, sample=1000)  
x) **45%** of gay men and lesbians in employment (Victorian gay and lesbian community survey, 1994, sample=1000)  
y) **40%** of gay men and lesbians in employment (Victorian gay and lesbian community survey, 1999, sample=1000)

## **~ Other relevant statistics**

### *Discrimination and harassment in schools*

According to a study of attitudes to homosexuality amongst 300 students at Hobart's Elizabeth College released in September 1999,

- **8%** of students admitted to being homosexual or bisexual
- **32%** of males and **20%** of females admitted feeling uncomfortable around a homosexual person
- **16%** of students admitted to physically or verbally abusing someone on the basis of their sexuality.

### *The effects on young gay and bisexual people*

According to a study of health compromising and suicidal behaviours among young gay and bisexual men in Tasmania conducted at the Division of Community and Rural health and issued in October 1999,

- the young Tasmanian gay and bisexual men surveyed were two and a half times more likely to seriously consider suicide than their heterosexual peers,

- **62%** of the young Tasmanian gay and bisexual men surveyed had experienced physical assault, and **94%** had suffered verbal abuse because of their sexual orientation,

- the young Tasmanian gay and bisexual men were more likely to experience conflict with parents and peers, lose friends because of coming out, abuse alcohol and have unsafe sex.

## Appendix 2 Vulnerability of GLBTI Community Leading to Self Harm & Suicide – A Well Being Profile

In 2005, here in Australia, a major study found that:

- 80 per cent of respondent gay, lesbian, bisexual, transgender and intersex (GLBTI) people had experienced public insult
- 70 per cent had experienced verbal abuse
- 20 per cent had experienced explicit threats
- 13 per cent had experienced physical assault

(McNair, R., Thomacos, N., *Not Yet Equal: Report of the VGLRL Same Sex Relationships Survey*. 2005. Victorian Gay and Lesbian Rights Lobby.)

Research in Australia also shows the results of this harassment:

- 55 per cent of gay men and lesbians had contemplated self-harm as a direct result of bullying
- 40 per cent had attempted self-harm or suicide on at least one occasion
- 30 per cent had done so more than once.

(Rivers, I., *The Bullying of Sexual Minorities At School: Its Nature and Long Term Correlates*. Educational and Child Psychology. 2001 Vol 18. p39)

- 64 per cent of non-operative transgender people had contemplated suicide on at least one occasion in their lives
- 37 per cent had made at least one attempt

(Singer et al 1997, Xavier 2000, Kenagy & Bostwick 2001, Nemoto et al 2001, Clements-Nolle et al 2001, Risser & Shelton 2002. Cited from [www.nctequality.org](http://www.nctequality.org))

- same sex attracted young people (SSAYP) are three times more likely to attempt suicide than heterosexual youth

(Howard, J. et al, *Same Sex Attracted Youth in Mental Health Promotion and Young People: Concepts and Practice*. 2002. Eds Rowling, L, Martin, G., Walker, L. McGraw Hill, Australia)

- rural SSAYP are six times more likely to attempt suicide than the population as a whole

(Quinn, K., *Rural Youth and Same Sex Attracted Youth: Issues, Interventions and Implications for Rural Counsellors*. Rural and Remote Health. 2003 Vol 3.)

- 30 per cent of all homeless young people identify as gay or lesbian

(*As long as I have my doona: A report on lesbian and gay youth homelessness* [1995]. 2010 Gay and Lesbian Youth Service and the Australian Centre for Lesbian and Gay Research.)

and yet

- 67 per cent of Australian doctors surveyed knew of instances where GLBTI patients had either been refused care or received substandard care as a result of their sexual orientation or gender identity

(Thomacos, N., *Enhancing and Promoting the Health and Wellbeing of all Gay Men and Lesbians in Victoria*. Lecture: University of Melbourne, Sept 2006)

### **MENTAL HEALTH STUDY**

A study - conducted by the Australian Research Centre in Sex, Health and Society found that up to 31 per cent of gay people suffered anxiety disorders and depression compared with between 4 and 14 per cent of heterosexuals. Seventeen per cent of young gay women had tried to harm or kill themselves in the previous six months, compared with 2 per cent of straight women.