

Background to DCA's Submission on the Exposure Draft of the Marriage Amendment (same-sex marriage) Bill –

6 January 2017

In December 2016 a Select Committee was established by the Senate to examine the [Marriage Amendment \(Same-Sex Marriage\) Bill](#) (the Bill).

The Bill would legislate for marriage equality in Australia by changing the definition of a couple from “man and woman” to “2 people”.

This Inquiry is not considering the merits of marriage equality.

Instead, the Committee has asked for responses to a number of exemptions proposed under the Bill that would allow individuals and organisations who officiate over marriage in Australia to refuse to provide some services to LGBTIQ+ couples getting married.

DCA believes marriage equality will truly cement fairness and inclusion for the LGBTIQ+ community in the workplace and wider society. We are particularly interested in this Bill due to its creation of an exemption on the basis of ‘conscientious belief’ that could partly undermine the equity that marriage equality should bring.

Although the inquiry is limited to this Bill, DCA is concerned about the potential precedent it creates in singling out a sector of the community and creating new grounds on which LGBTIQ+ people can be discriminated against.

Exemptions

Exemptions are exceptions to anti-discrimination legislation, where in some circumstances discrimination is not unlawful. For example the Sex Discrimination Act currently provides exemptions to allow some services such as gyms to be for women only.

This Bill would introduce exemptions that allow marriage celebrants to refuse to perform a wedding for an LGBTIQ+ couple if that refusal is in line with the tenets of their religion or on the basis of ‘conscientious’ beliefs.

The Bill would also allow religious bodies and organisations to refuse to provide facilities, goods or services to LGBTIQ+ couples getting married.

Exemptions 1 and 2 of the Bill deal with religious celebrants and religious organisations.

1. *Ministers of religion could refuse to solemnise a marriage on the grounds that the marriage is not the union of a ‘man and a woman’, if that refusal is in line with the tenets of their religion. This is in line with the current exemptions in the Sex Discrimination Bill.*

2. *Religious bodies and organisations could refuse to provide facilities, goods or services to LGBTIQ+ couples for the purposes of or reasonably incidental to a marriage that is not the union of a man and woman.*

Although a minister of religion can refuse to officiate at a wedding and religious body or organisation could refuse to provide a church hall for a reception following a wedding between an LGBTIQ+ couple the Bill doesn't extend this exemption to non-religious commercial service providers such as bakers or florists.

DCA is of the view that it is beyond the remit of our organisation to comment on these aspects of the Bill.

Exemptions 3 and 4 introduce a new type of exemption on the basis of 'conscientious belief' that would only allow celebrants to refuse LGBTIQ+ couples and is not currently included in any of Australia's state or territory anti-discrimination laws.

Exemption 5 allows exemption for civil celebrants based on their personal religious beliefs.

3. *Ministers of religion would be able to refuse to marry an LGBTIQ+ couple on the basis of their own personal 'conscientious' belief against same-sex marriage, irrespective of the teachings of their church.*
4. *Civil marriage celebrants would be able to refuse to marry an LGBTIQ+ couple on the basis of their own personal 'conscientious' belief against same-sex marriage.*
5. *Civil marriage celebrants would be able to refuse to marry an LGBTIQ+ couple on the basis of religious beliefs.*

DCA believes that Exemptions 3-5 have broader implications and are therefore warrant attention. These exemptions introduce the concept of 'conscientious belief' which is not currently included in any of Australia's state or territory anti-discrimination laws. These components of the Bill would allow marriage celebrants to refuse to perform a wedding for an LGBTIQ+ couple based on 'conscientious' beliefs. The terms 'conscience' or 'conscientious' are not defined in the Bill beyond the fact that they relate to LGBTIQ+ people alone. Cultural influences or other factors such as age, health or mental capacity remain outside the grounds for 'conscientious' refusal to marry a man and a woman.

This exemption based on personal 'conscientious belief' would be available to ministers of religion as well as civil celebrants, irrespective of the official stance of their church.

The Bill also permits exceptions to civil marriage celebrants on the basis of their own religious beliefs. Granting individuals appointed to perform a service for the government the right to refuse to carry out those duties due to the tenets of their personal faith is also unprecedented, particularly in the context of an initiative which seeks to remove prejudice and discrimination and promote equality.

Your thoughts

To assist with the development of our submission to the Senate Committee reviewing the Exposure Draft of the *Marriage Amendment (Same-Sex Marriage) Bill*, DCA is asking representatives from its member organisations a few questions. Please visit and complete [our survey](#) by 5pm AEDT Wednesday 11 January.