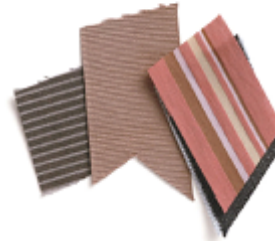


Thursday, 12 January 2017

Committee Secretary
Select Committee on the Exposure Draft of the
Marriage Amendment (Same-Sex Marriage) Bill
Department of the Senate
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Canberra ACT 2600

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DIVERSITY
COUNCIL
AUSTRALIA

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

Inquiry into the Commonwealth Government's exposure draft of the *Marriage Amendment (Same-Sex Marriage) Bill*

Dear Committee Secretary

Thank you for the opportunity to provide a submission in response to the Committee's inquiry into the Commonwealth Government's exposure draft of the *Marriage Amendment (Same-Sex Marriage) Bill*.

Diversity Council Australia (DCA) is the only independent, not-for-profit workplace diversity advisor to business in Australia. We have a wealth of experience providing advice to our members on the business benefits of diversity.

DCA supports marriage equality. Our view is that marriage equality will truly cement workplace fairness and inclusion for the LGBTIQ+ community.

We submit that the Parliament should pursue the goal of marriage equality without introducing new exemptions in the Marriage Act that would allow celebrants to discriminate against LGBTIQ+ people on the basis of 'conscientious belief'.

We also submit that civil celebrants, as agents performing a function of the government, should not be able to discriminate against LGBTIQ+ people on the basis of a religious belief.

Please feel free to contact myself or DCA's Policy and Research Manager, Cathy Brown, on 0424 578 698 should you require any further information about this matter.

Yours sincerely

Lisa Annese
Chief Executive Officer

I. ABOUT DIVERSITY COUNCIL AUSTRALIA

Who we are

Diversity Council Australia (DCA) is the only independent, not-for-profit workplace diversity advisor to business in Australia. We offer a unique knowledge bank of research, practice and expertise across diversity dimensions developed over 30 years of operation. In partnership with our members, our mission is to:

- Lead debate on diversity in the public arena;
- Develop and promote the latest diversity research, thinking and practice; and
- Deliver innovative diversity practice resources and services to enable our members to drive business improvement.

DCA's income is generated from membership fees, sponsorships and services to businesses.

Our member organisations are estimated to employ more than one million Australians, representing around 10% of the Australian workforce.

What we do

We work in partnership with members and thought leaders to generate ground breaking diversity projects. DCA identifies internationally emerging diversity and inclusion trends, and brings these first to market to Australia, introducing them in well-considered way which speaks to Australia's unique context.

Our research is tailored to Australia's unique institutional, cultural and legal context. It:

- Challenges organisations and triggers action in the Australian labour market;
- Establishes leading thinking and practice;
- Enables organisations and policy makers to respond to the latest trends;
- Creates a lasting difference to the community through fostering innovation and creativity; and
- Drives business improvement through evidence-based, practical guidance.

II. SUMMARY

As Australia's only independent, not-for-profit workplace diversity, DCA has a strong commitment to diversity, inclusion and promoting fairness and equality in Australian business.

To develop our submission on this Bill, DCA invited its member organisations to respond to a survey on proposed exemptions to the Marriage Act allowing celebrants grounds for refusing to marry LGBTIQ+ couples on the basis of '*conscientious beliefs*' and whether civil celebrants should be able to refuse to provide services on the basis of a religious belief.

184 people responded to our survey.

Respondents to our survey overwhelmingly told us that they:

- Oppose the introduction of exemptions based on the concept of '*conscientious belief*' because:
 - The terms are not defined in the legislation,
 - It would be a retrograde step away from efforts to remove all forms of discrimination,
 - There is no precedent currently included in any of Australia's state or territory anti-discrimination laws,
 - The new exemptions could cause harm to LGBTIQ+ people, and
 - They target only one category of people (LGBTIQ+ people).
- Oppose the introduction of exemptions that would allow ministers of religion to refuse to solemnise a wedding for an LGBTIQ+ couple on the basis of a '*conscientious belief*', regardless of the teachings of their church;
- Oppose the introduction of exemptions that would allow civil celebrants the right to refuse to marry LGBTIQ+ couples on the basis of '*conscientious belief*'; and
- Oppose the introduction of exemptions that would allow civil celebrants the right to refuse to marry LGBTIQ+ couples on the basis of religious beliefs.

DCA does not oppose exemptions for ministers of religion to only perform ceremonies that are in line with the tenets of their church.

However, we do support marriage equality. Our view is that marriage equality will truly cement workplace fairness and inclusion for the LGBTIQ+ community.

Our submission also discusses the importance of equality and the business benefits to Australia from implementing marriage equality.

III. DCA MEMBER VIEWS ON THE EXEMPTIONS

To develop our submission, DCA invited its member organisations to respond to a short online survey. We received 184 responses to that survey.

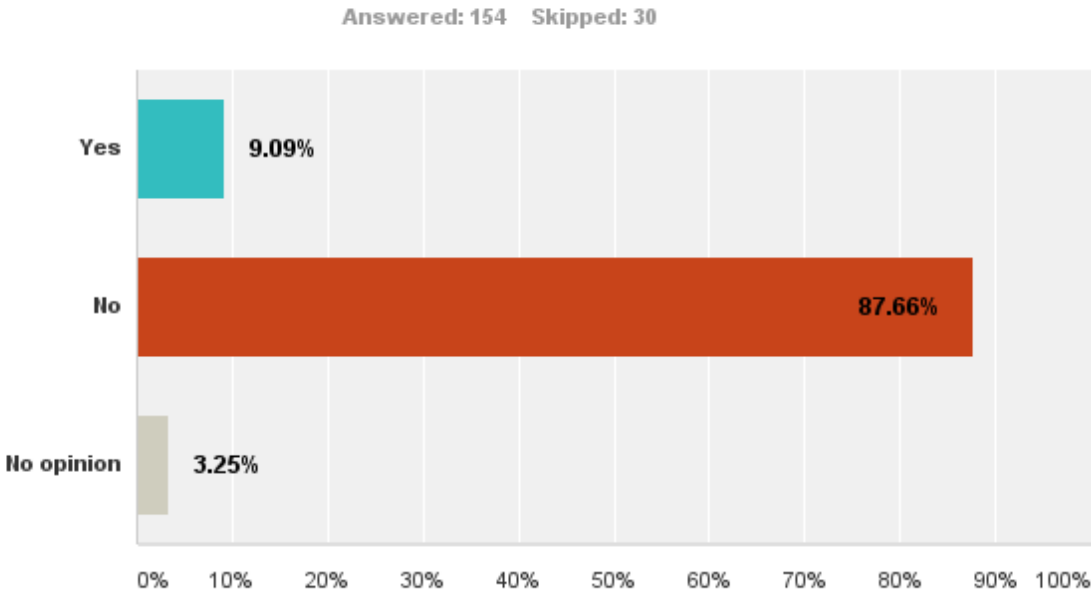
The following section summaries the responses we received.

Q1. Do you support creating a new class of exemptions based on ‘conscientious belief’ as grounds for refusing to marry LGBTIQ+ couples¹?

Section 47 (3) (b) (iii) of the Bill would provide that celebrants could refuse to solemnise a marriage *that is not the union of a man and a woman if the minister’s conscientious ... beliefs do not allow the minister to solemnise the marriage.*

Section 47A (1) (b) would provide that civil marriage celebrants may refuse to solemnise marriages ... *where the marriage celebrant’s conscientious ... beliefs do not allow the marriage celebrant to solemnise the marriage*

Respondents to our survey overwhelmingly (135 respondents, 87.66% of those who answered this question) told us that they do not support the introduction of a new class of exemptions based on ‘conscientious belief’.



¹ NOTE: Although the title of Commonwealth Government’s exposure draft of the Marriage Amendment (Same-Sex Marriage) Bill refers to ‘same-sex’ marriage, in effect the Bill would provide for marriage equality because the definition of the Bill refers to “2 people”. As such, this paper makes reference to LGBTIQ+ couples.

DCA members raised a number of issues in relation to this proposition, including:

I have looked up Conscientious Objector under the website the free dictionary and its reference is specific to being drafted to service. I think if this addition to an exception is added to the bill, it must be upheld in the same manor when a refusal or objection is made to military service (investigation and tests to determine the legitimacy of the conscientious objection). There is a real danger here that such a refusal is not properly investigated, tracked and recorded, as would happen with military service. If this exemption is to come into play, then I would expect as a minimum an easily accessible register available to all people that specifically notes individual persons and bodies/ religious entities that refuse to marry any LGBTIQ+ people. With my own personal experience with the church I do believe that on a firm and consistent religious belief, celebrants and ministers can refuse to marry LGBTIQ+ but only if this is a decision in perpetuity and is fundamental to their being and relationship with God.

...

Celebrants and similar are facilitators to the legal institution of marriage, and should not be in a position to determine (outside of legal requirements) who can or cannot be married.

...

Conscientious belief exemption is simply a form of discrimination. To allow exemptions on this basis increases the reality that individuals/couples will be discriminated against on the basis of their sexuality. These exemptions, if included in the Bill, will cause untold emotional damage to those seeking to have their union, based on love and respect (the same as heterosexual couples), recognised under the law. Imagine a society where a celebrant or a religious minister can advertise their services in the public domain on a website or public signage etc. and blatantly state that these services are not available to those in the LGBTIQ+ community. I could not imagine anything worse for a modern day tolerant Australian society.

...

I believe that LGBTIQ+ couples should be treated with the same respect as other couples and therefore not subject to exemptions based on individuals' personal beliefs.

...

Few people would accept a proposition that a civil celebrant or minister of religion could refuse to marry an interracial couple. There is (or should be) no "inherent requirement" for marriage, other than to be a consenting adult. To provide for the exemptions proposed undermines the objective of marriage equality, and legitimises homophobia. In implementation, it is unlikely that a refusal by a civil celebrant or minister of religion to marry an LGBTIQ+ couple will become a "live issue", as an LGBTIQ+ couple will usually approach a minister or celebrant they know will celebrate, not condemn, their love to marry them.

...

In my personal opinion providing the permission to discriminate against LBTQI+ couples by legislating for it and adding a new classification 'Conscientious' beliefs steps us backwards in our progress for removing all forms of discrimination in society and is therefore unacceptable to me. We are all gods creatures.

Of those respondents who supported the introduction of conscientious objection, one person stated:

I strongly support same sex marriage. Allowing conscientious objection will remove one of the barriers to its implementation and one of the arguments against it. I also believe that nobody should be forced to marry any couple if they don't [sic] believe in the marriage for any reason.

Another stated:

To force people to do something against their will is akin to communist & like countries. Even conscription in Australia has not been accepted by the people in the past. If someone likes Holden and dislikes Ford, then they shouldn't be made to buy a Ford. If someone doesn't believe in LGBTIQ+, they shouldn't be discriminated against and forced to fulfil [sic] the wishes of LGBTIQ+ & vice versa too; if an LGBTIQ+ person doesn't want to support a non-LGBTIQ+ issue, they should not be discriminated against and forced to.

I dont believe in creating a new class of discrimination for LGBTIQ+ couples. However, I also dont believe in forcing ministers or marriage celebrants to marry a couple if they arent supportive of their union, regardless of whether the couple is LGBTIQ+ or not. It is always counter intuitive when we try and take away choice or the right of refusal.

Our view

DCA opposes introducing exemptions based on the concept of 'conscientious belief' because:

- The terms are not defined in the legislation,
- It would be a retrograde step away from efforts to remove all forms of discrimination,
- There is no precedent currently included in any of Australia's state or territory anti-discrimination laws,
- The new exemptions could cause harm to LGBTIQ+ people, and
- They target only one category of people (LGBTIQ+ people).

Q2. Do you support allowing ministers of religion the right to refuse to marry an LGBTIQ+ couple on the basis of ‘conscientious belief’ irrespective of the teachings of their church?

Section 47 (3) of the Bill would provide that:

(3) A minister of religion may refuse to solemnise a marriage despite any law (including this Part) if:

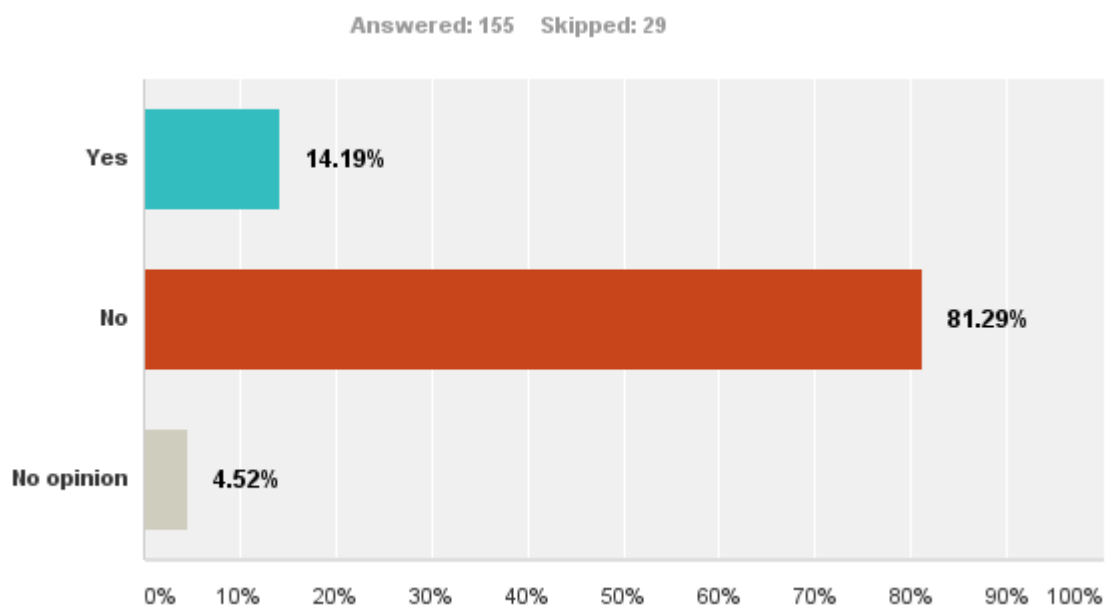
(a) the refusal is because the marriage is not the union of a man and a woman; and

(b) any of the following applies:

...

(iii) the minister’s conscientious or religious beliefs do not allow the minister to solemnise the marriage.

Again, the vast majority of respondents (126 respondents, 81.29% of those who answered this question) told us that they did not agree with this proposal.



Our view

DCA opposes introducing exemptions that would allow ministers of religion to refuse to solemnise a wedding for an LGBTIQ+ couple on the basis of a ‘conscientious belief’, regardless of the teachings of their church.

Q3. Do you support allowing civil celebrants the right to refuse to marry LGBTIQ+ couples on the basis of 'conscientious belief'?

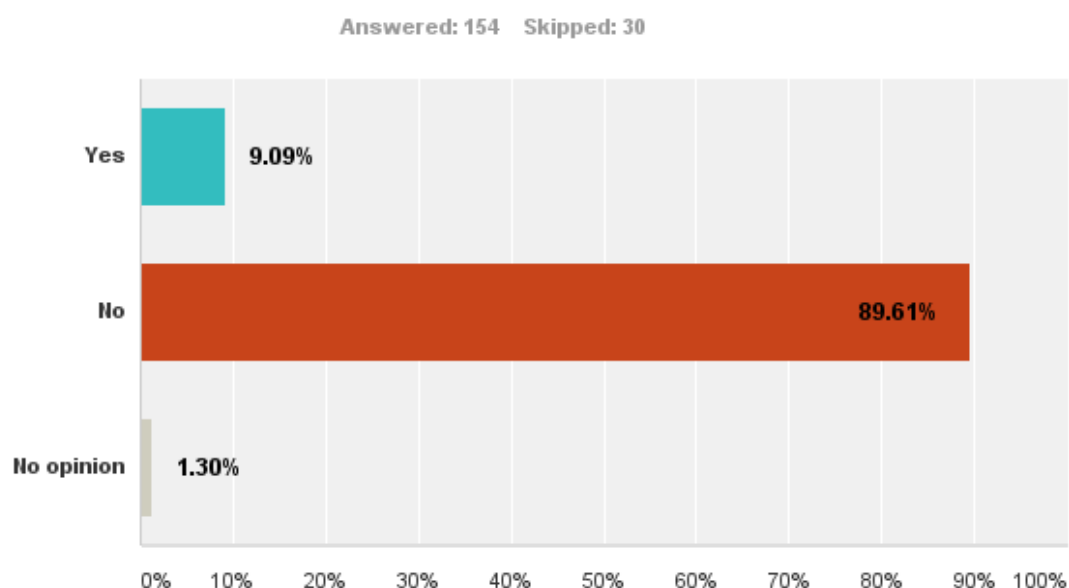
Section 47A (1) provides that:

(1) A marriage celebrant (not being a minister of religion) may refuse to solemnise a marriage despite any law (including this Part) if:

(a) the refusal is because the marriage is not the union of a man and a woman; and

*(b) the marriage celebrant's conscientious or **religious beliefs** do not allow the marriage celebrant to solemnise the marriage.*

Almost 90 per cent (89.61%, 126 respondents) of respondents to this question disagreed with this proposition.



Respondents told us that they disagreed with this proposition because:

Celebrants and similar are facilitators to the legal institution of marriage, and should not be in a position to determine (outside of legal requirements) who can or cannot be married.

...

I believe that LGBTIQ+ couples should be treated with the same respect as other couples and therefore not subject to exemptions based on individuals' personal beliefs.

...

Marriage existed before Christianity, I do not think the ground that 'Marriage is a union under god' is an argument against same sex marriage, parts of the old testament were written before Christ was born, ancient Greeks (sic) and Romans were

married and women didn't even use to have a say. However, a minister of religion has the right to refuse to marry someone if it is against their own belief system as they believe their power is given to them by god, not the law. As a Civil union is non-secular then there is no grounds for a civil celebrant to refuse as long as (sic) there are no legal issues.

Of the respondents who agreed, views included:

I believe there should be legislation that makes the disclosure of conscientious beliefs mandatory as part of advertising/marketing/websites/questionnaires/company processes to minimise LGBTI+ couples from engaging in civil celebrants or church organisations if they do not offer services to the LGBTI community. This would minimise LGBTI discomfort in rejection.

Our view

DCA opposes introducing exemptions that would allow civil celebrants the right to refuse to marry LGBTIQ+ couples on the basis of 'conscientious belief'.

Q4. Do you support allowing civil celebrants the right to refuse to marry LGBTIQ+ couples on the basis of a genuinely held religious belief?

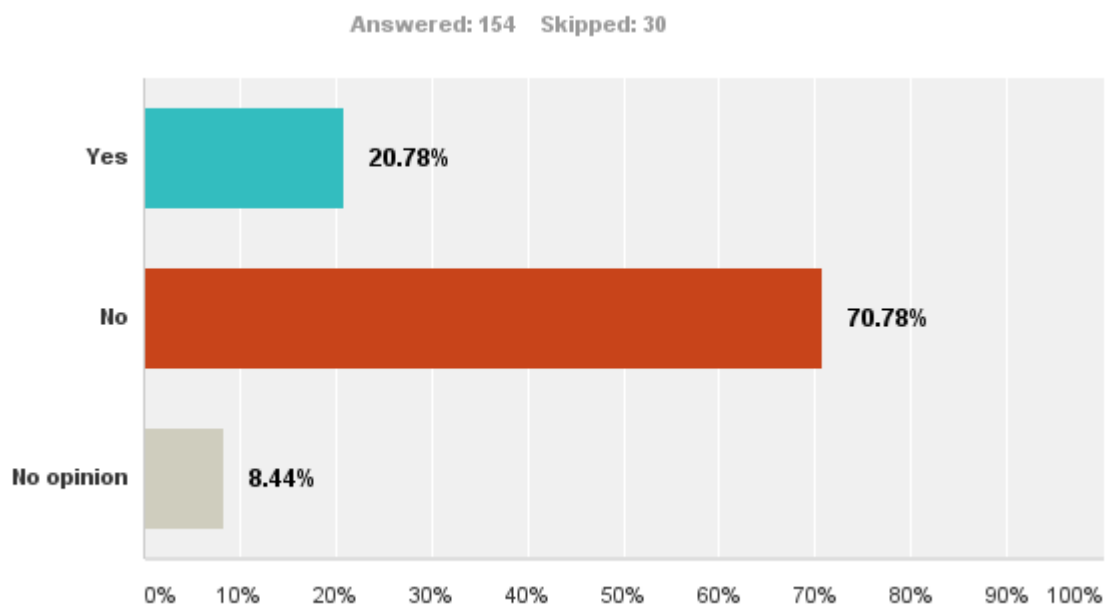
Section 47A (1) provides that:

(1) A marriage celebrant (not being a minister of religion) may refuse to solemnise a marriage despite any law (including this Part) if:

(a) the refusal is because the marriage is not the union of a man and a woman; and

*(b) the marriage celebrant's conscientious or **religious beliefs** do not allow the marriage celebrant to solemnise the marriage.*

More than 70 per cent (109 respondents) of respondents disagreed that civil celebrants, as agents performing a function of Government, should be able to refuse to perform a ceremony because of religious views.



It is worth noting that a number of respondents mentioned in their comments that they supported the notion that ministers of religion should not have to perform ceremonies for LGBTIQ+ couples where performing such ceremonies would go against the tenets of their faith.

DCA notes that this is in line with the current exemptions in the Marriage Act and as such did not survey our members on this question.

Our respondents told us:

While I do accept some religions having the option it can open up a lot of problems. Civil Celebrants should not have the right to refuse.

...

Q3 [sic] is problematic as religion is not defined. The whole thing smacks of more special exemptions for religions of a specific nature on a specific subject. I would only support a religions exemption upon a religion signing a declaration that they would not seek relief for any act of discrimination against them by those who believe differently to them.

...

Qualification of genuinely held religious belief should be defined, so that this cannot be relied upon as a right to refuse to marry LGBTIQ couples in the absence of any other refusal.

Those who agreed with this proposition stated that:

Personally I don't have an issue with marriage equality, however I do accept that there are ministers of religion and/or civil celebrants that cannot from a religious perspective cannot marry same sex people.

...

In relation to Q5. Only if the celebrant has declared the religion they hold i.e. advertising as the 'religion' celebrant. Everyone should be treated equally and with respect. Religions with marriage between a man & woman - should be outside of this.

Our view

DCA opposes introducing exemptions that would allow civil celebrants the right to refuse to marry LGBTIQ+ couples on the basis of religious beliefs.

Q5. DCA did not seek responses on two of the proposed exemptions as we believe they are outside the scope of our work

Section 47 (3) (b) (i) & (ii) Refusing to solemnise a marriage that is not the union of a man 1 and a woman

This section would allow Ministers of religion to refuse to solemnise a marriage on the grounds that the marriage is not the union of a 'man and a woman', if:

- (i) the refusal conforms to the doctrines, tenets or beliefs of the religion of the minister's religious body or religious organisation;
- (ii) the refusal is necessary to avoid injury to the religious susceptibilities of adherents of that religion.

In Australia, religious celebrants (e.g. priests, rabbis, pastors, imams) already have the right to refuse to marry any couple whose relationship they believe breaches the tenets of their faith.

Therefore, this exemption would be in line with the current exemptions in the *Sex Discrimination Bill* and DCA does not believe it is in our jurisdiction to comment.

Section 47B Religious bodies and organisations may refuse to make facilities available or provide goods or services.

DCA does not believe it is in our jurisdiction to comment on this proposal.

IV. THE IMPORTANCE OF EQUALITY

Australia has some of the most comprehensive protections for LGBTIQ+ people in the world.

Since 1 August 2013, as a result of amendments to the *Sex Discrimination Act 1984* (Cth), it has been unlawful under federal law to discriminate against a person on the grounds of their:

- sexual orientation
- gender identity or
- intersex status.

These laws recognised the importance of promoting the principles of fairness and equality for all people.

Despite these protections, DCA's research has found significant concerns about continued discrimination among Australian LGBTIQ+ employees, which emphasise the importance of risk management.

In our *Working for the Future* research, we found 16% of gay men and lesbians said they had been discriminated against at work on the basis of their sexual orientation. They were also more likely than straight employees to strongly disagree or disagree that, in their job, people treated each other with respect (26% vs 17%), and were less likely to indicate people are chosen for jobs on the basis of their competency (50% vs 70%).

DCA's view on marriage equality

DCA supports marriage equality. Our view is that marriage equality will truly cement workplace fairness and inclusion for the LGBTIQ+ community. Indeed, many of our member organisations have already voiced their support for marriage equality.

DCA also supports achieving marriage equality through a free vote in the Parliament of Australia.

With an increasing number of nations providing for marriage equality, the non-recognition of same-sex marriages in Australia creates practical difficulties for Australian business, both administratively and in relation to their efforts to attract international talent.

Principles of equality require that any formal relationship recognition available under law to opposite sex couples should also be available to same sex couples, including civil marriage.

This key human rights principle in the International Covenant on Civil and Political Rights, (ICCPR) states that all people '*are equal before the law and are entitled without any discrimination to the equal protection of the law*'. State Parties are required to ensure all individuals can enjoy the rights set out in the ICCPR without discrimination, and discrimination is forbidden in any law and in any field regulated by public authorities.

While the ICCPR does not specifically mention '*sexual orientation*', the phrase '*other status*' has been interpreted to include 'sexual orientation' and the United Nations Human Rights Committee has emphasised the obligation on all parties to the ICCPR to provide 'effective protection' against discrimination based on sexual orientation.

Businesses who support marriage equality do so because they recognise the rights of their LGBTIQ+ employees to live and work free of prejudice and discrimination, with all the essential freedoms enjoyed by other members of our organisations and the broader community.

Smart employers understand there is much to be gained in terms of reputation, recruitment, retention, productivity and market share from ensuring workplaces are welcoming and inclusive of all employees and customers, irrespective of sexual orientation, gender identity or intersex status. Marriage equality would significantly enhance these efforts.

V. BUSINESS BENEFITS OF MARRIAGE EQUALITY

Direct revenue

In 2012, researchers from the Williams Institute, UCLA School of Law², estimated that allowing same-sex couples to marry in Australia would bring an economic impact of somewhere between \$161 million in wedding spending by same-sex couples over three years, or up to \$742 million if spending by couples and guests travelling to Australia to attend weddings is taken into account.

This figure was updated in 2015 by ANZ³, who found that “*Marriage equality in Australia would bring economic benefits to the tune of at least \$500 million in the form of additional expenditure related to weddings alone*”.

ANZ argued that this economic impact would occur in five ways:

1. Expenditure on weddings. This could benefit a range of industries including retail trade, hospitality, arts and recreation, professional services (pre-nuptial agreements and divorce).
2. Increased service exports due to offshore visitors marrying and honeymooning in Australia.
3. The diversion of Australian same sex couples back home that would otherwise have married overseas. This may further boost the industries listed above.
4. Increased state government revenue from same-sex marriage license fees and from conducting on-site ceremonies in state run registries of births, deaths and marriages.
5. There may also be a small boost to consumer confidence, given the change to marriage equality is a policy supported by the majority of Australians.

Indirect economic impacts

There is much to be gained in terms of reputation, recruitment, retention, productivity and market share from ensuring that workplaces are welcoming and inclusive of employees and customers, irrespective of sexual orientation, gender identity or intersex status.

Internationally, a range of evidence backs up the business case for LGBTIQ+ inclusion.

A major review of the literature from UCLA's William's Institute⁴ found clear evidence that LGBT-supportive policies are linked to positive business-related outcomes as well as greater

² Badgett, L.M.V. & Smith, J. 2012, *The Economic Impact of Extending Marriage to Same-Sex Couples in Australia*, The Williams Institute, February 2012. Available online: <http://www.australianmarriageequality.org/wp-content/uploads/2012/05/Badgett-economy.pdf>

³ Murphy C. & Kaura M. 2015, 'Five ways to count the marriage equality boom', *ANZ Bluenotes*, ANZ, Published 5 October 2015. Available online: <https://bluenotes.anz.com/posts/2015/10/five-ways-to-count-the-marriage-equality-boom/>

⁴ Badgett, L.M.V., Durso, E., Kastanis, A., Mallory, C., 2013, *The Business Impact of LGBT-Supportive Workplace Policies*, The Williams Institute, February 2012. Available online:

job commitment, improved workplace relationships, increased job satisfaction, and improved health outcomes among LGBT employees.

Recognised benefits include in the areas of:

Recruitment and reputation

Being recognised as an LGBTIQ+ inclusive employer sends a clear message about a company's commitment to leading edge D&I practice, and can give business a jump on their competitors. This is particularly important to the new workforce (millennials and beyond) who are increasingly discerning about potential employers and their diversity track record.

As Rodney Croome⁵ wrote in 2015:

With more and more countries achieving marriage equality, Australia is becoming an ever less attractive place for skilled workers to migrate to. Imagine you're a skilled migrant in a British same-sex marriage looking to relocate. All else being equal, would you move to Canada, New Zealand or the U.S. where your marriage will be recognised, or Australia where it will be dishonoured by having no legal status? Obviously, if you have decided to marry and make vows of lifelong commitment you will favour those countries that respect your decision and honour your vows.

Discrimination in marriage may also impact recruitment more broadly. For members of the "creative class", marriage equality has come to be seen as a sign of a progressive and creative society.

Even potential investors, when faced with two countries with similar economic fundamentals, will look to issues like marriage equality to distinguish which country embraces change, looks outward and values personal freedom. As more western countries achieve marriage equality and Australia becomes increasingly isolated, our international reputation will suffer. Inevitably this will have an adverse impact on our economy.

Workplace productivity, retention and engagement

There is a growing body of evidence to support the benefits of workplaces that are inclusive of LGBTIQ+ staff and support them in being out in the workplace.

- Stonewall UK's pioneering research on the productivity of lesbian and gay staff in the workplace, [Peak Performance](#) found that gay staff who can be out at work in a safe

<http://williamsinstitute.law.ucla.edu/research/workplace/business-impact-of-lgbt-policies-may-2013/#sthash.EZX96fus.dpuf>

⁵ Croome, R. 2015, 'Why does marriage equality matter to corporate Australia?', *Diverse Voices*, DCA website, 10 March 2015, available online <https://www.dca.org.au/blogs/view/29/Why+does+marriage+equality+matter+to+corporate+Australia%3F>

environment are more productive than their gay colleagues who have to hide their sexual orientation at work and/or work in less inclusive environments.

- A [research study](#) conducted by the University of California's (Berkeley) Haas School of Business has found multiple negative results of concealing yourself at work.
- Another [study](#) for the US based Deloitte University Leadership Center for Inclusion has also examined the consequences of 'covering' for groups of workers, including those who identify as LGBTIQ+, and steps organisations can take to more effectively utilise the diversity of their people.

As one participant in the study stated, "*The energy I put into trying to behave different[ly] than who I am, drained my energy. Once I decided to bring my whole self to work, it was liberating and I became a lot more productive and successful.*"

VI. CONCLUSION & RECOMMENDATIONS

Australia has some of the most comprehensive protections for LGBTIQ+ people in the world. These laws recognised the importance of promoting the principles of fairness and equality for all people.

DCA believes that creating new exemptions to allow celebrants to discriminate against LGBTIQ+ couples (and only LGBTIQ+ couples) flies in the face of this commitment to fairness and equality and would be a retrograde step.

We sought the views of our members through a survey on proposed exemptions to the Marriage Act allowing celebrants grounds for refusing to marry LGBTIQ+ couples on the basis of '*conscientious beliefs*' and whether civil celebrants should be able to refuse to provide services on the basis of a religious belief.

Respondents to our survey overwhelmingly told us that they:

- Oppose the introduction of exemptions based on the concept of '*conscientious belief*' because:
 - The terms are not defined in the legislation,
 - It would be a retrograde step away from efforts to remove all forms of discrimination,
 - There is no precedent currently included in any of Australia's state or territory anti-discrimination laws,
 - The new exemptions could cause harm to LGBTIQ+ people, and
 - They target only one category of people (LGBTIQ+ people);
- Oppose the introduction of exemptions that would allow ministers of religion to refuse to solemnise a wedding for an LGBTIQ+ couple on the basis of a '*conscientious belief*', regardless of the teachings of their church;
- Oppose the introduction of exemptions that would allow civil celebrants the right to refuse to marry LGBTIQ+ couples on the basis of '*conscientious belief*'; and
- Respondents also opposed the introduction of exemptions that would allow civil celebrants the right to refuse to marry LGBTIQ+ couples on the basis of religious beliefs.

DCA does not oppose exemptions for ministers of religion to only perform ceremonies that are in line with the tenets of their church.

However, we do support marriage equality. Our view is that marriage equality will truly cement workplace fairness and inclusion for the LGBTIQ+ community.

We submit that the Parliament should pursue the goal of marriage equality without introducing new exemptions that would allow discrimination against LGBTIQ+ people.