

Monday, 23 January 2017

Amendments needed to same-sex marriage Exposure Draft to ensure it is free from discrimination

The legal profession has recommended a series of changes to the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill during a Parliamentary inquiry hearing in Melbourne today.

President of the Law Council of Australia, Fiona McLeod SC, said the Exposure Draft was an opportunity for Parliament to consider and balance the protection of freedom of religion while removing discrimination for same-sex, intersex, transgender and non-gender conforming couples.

“The Law Council has long supported allowing same-sex couples the opportunity to marry in this country,” Ms McLeod said.

“The exclusion of same-sex couples from the Marriage Act denies them a right afforded to all other Australians and is inconsistent with the right to be free from discrimination.”

Ms McLeod said the legal sector supports the protection of freedom of religion and considers it reasonable to allow ministers of religion to conduct religious marriage ceremonies in accordance with the tenets and doctrines of their religion.

“These protections already exist and are appropriate. But extending this exemption to civil celebrants discriminates against same-sex couples without any proper basis. The marriage ceremonies that civil celebrants perform are secular, not religious. They do not merit the same protection of freedom of religion and have no other proper basis for exemption.”

Ms McLeod also expressed the legal profession’s objection to 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.

“This proposed exemption would erode fundamental principles of non-discrimination and represent a disproportionate extension of existing exemptions to discrimination laws for ‘religious bodies’ in defined and limited circumstances,” Ms McLeod said.

“Further, an organisation not established for religious purposes, but connected with a religious body, which provides commercial services incidental to the solemnisation of marriage – such as, photographers and caterers – should not be able to rely on the exemptions to unlawfully discriminate against couples on the grounds of sexual orientation or gender identity.

“There is an important distinction between freedom of religion and the freedom to express one’s religious beliefs. The freedom to express one’s religious beliefs must be carefully balanced where it intrudes upon other rights, such as the fundamental right to be free from discrimination on the grounds of sexual orientation or gender identity.

“Under international case law, protections against discrimination have taken priority over freedom of religious expression in the provision of secular and commercial services. We believe that this draft provision, as with the draft exemption for civil celebrants, has no proper basis in human rights law and should be removed.”

These issues, as well as other issues with the Exposure Draft, are outlined in the Law Council’s submission to the inquiry, [available here](#).

Patrick Pantano: Public Affairs

P 02 6246 3715

E Patrick.Pantano@lawcouncil.asn.au

Anil Lambert: Media

P 0416 426 722

E anil@hortonadvisory.com.au