

FINAL

Dear (name)

MARRIAGE AMENDMENT (DEFINITION AND RELIGIOUS FREEDOMS) BILL 2017

I write on behalf of your colleagues Warren Entsch, Trevor Evans, Tim Wilson and Trent Zimmerman and myself.

Attached for your consideration is a private members bill to extend the definition of marriage to allow two people the freedom to marry, while at the same time protecting religious freedom in relation to marriage in Australia.

The Bill is the most considered and comprehensive response to the issue of same-sex-marriage to date, and is the most comprehensive accommodation of competing attitudes on the issue.

It consciously uses the Senate Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill and its consensus report as the basis for developing contemporary legislation to give effect to same-sex-marriage in Australia.

Importantly, it has used the Government's Exposure Draft legislation as the legislative starting point. This Bill further refines and improves the Exposure Draft legislation to more accurately reflect community attitudes expressed through the Senate Committee process.

The Senate Select Committee report identified a broad desire and willingness from parties (including pro-same-sex marriage groups) to protect religious freedom in respect to marriage in any future same-sex marriage legislation.

As you are already aware, Australia's marriage laws have been amended on 20 occasions since the introduction of the Marriage Act 1961.

These latest proposed amendments will insert an 'Objects Clause' which will create a legal framework to (a) allow civil celebrants to solemnise marriage, understood as the union of 2 people to the exclusion of all others, voluntarily entered into for life (b) allow ministers of religion to solemnise marriage, respecting the doctrines, tenets and beliefs of their religion, the views of their religious community or their own religious beliefs, and (c) allow equal access to marriage while protecting religious freedom in relation to marriage.

How the Bill will protect and extend religious freedoms

The Bill will allow a minister of religion to refuse to solemnise a marriage if that refusal conforms to the doctrines, tenets or beliefs of the ministers religion.

This would allow ministers of religion to refuse to solemnise a same-sex-marriage where the minister's religion only allows heterosexual couples to marry.

The Bill will create a new category of religious marriage celebrants. This new category will (a) include existing civil marriage celebrants wanting to perform marriages consistent with their religious

beliefs, and (b) include ministers of religion that perform marriages for religious denominations that are not recognised, such as independent religious organisations and smaller, emerging religious groups.

This new category of religious marriage celebrant will be able to refuse to solemnise a marriage on grounds that the religious marriage celebrant's religious beliefs do not allow them to solemnise the marriage.

This new category includes ministers of religion who do not belong to recognised denominations and existing civil celebrants who want to register as a religious marriage celebrant.

The Bill will allow bodies established for religious purpose to be able to refuse to make a facility available or provide goods and services, for the purpose of, or reasonably incidental, to the solemnisation of a marriage. Consistent with existing anti-discrimination law, the refusal must conform to the doctrines, tenets or beliefs of the religion of that body or be necessary to avoid injury to the susceptibilities of adherents to that religion.

It is worth noting that bodies established for religious purposes are already exempt from a number of anti-discrimination laws including the *Sex Discrimination Act 1984*. Inclusion of this in the Bill will reaffirm their exemption in relation to the solemnisation of marriage.

The Bill will ensure the *Sex Discrimination Act 1984* is amended to give full effect to the religious protections in the Bill.

It should be noted the Parliament has previously determined the ability of religious organisations to discriminate in the provision of goods and services (including hiring of facilities for weddings or marriage related services such as catering) where this discrimination would accord with the doctrines, tenets or beliefs of their religious order or would be necessary to avoid injury to the susceptibilities of adherents to their religion.

The amendments to the *Sex Discrimination Act 1984* that enshrined this position were passed by the former Labor Government with support from the Coalition Opposition.

How the Bill will promote the freedom to marry

The Bill will remove restrictions on who can marry by allowing two people the freedom to marry in Australia, regardless of their sex or gender. The other requirements for a legally valid marriage under the *Marriage Act 1961* remain unchanged.

It will continue to be the case that a marriage is void if one or both parties are already legally married, the parties are in a 'prohibited relationship' (siblings, a parent-child relationship), one or both parties did not provide real consent or one or both parties are not of marriageable age.

The Bill will enable same-sex marriages that have been solemnised, or will be, under the law of a foreign country, to be recognised in Australia.

The Bill will require civil marriage celebrants to perform same-sex marriages in accordance with the law.

The Bill will also establish a new category of officers to solemnise marriages of members of the Australian Defence Force overseas.

It's our strong desire to be able to introduce this private members bill to the Parliament and for members of the Parliamentary Liberal Party to be able to exercise a free vote on the bill at the earliest possible opportunity.

With kind regards

Warren Entsch MP, Trevor Evans MP

Tim Wilson MP and Trent Zimmerman MP

Senator Dean Smith

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