

13 January 2016

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Dear Dr Molt

### **Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill**

Thank you for the opportunity to provide comments on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill. The Queensland Law Society appreciates the opportunity to participate in this important process.

The timeframes available for making submissions on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill mean that it has not been possible for the Society to conduct an exhaustive review. It is therefore possible that there are issues relating to unintended drafting consequences or fundamental legislative principles which we have not identified.

QLS supports the draft Bill to the extent that it amends the definition of marriage under the *Marriage Act 1961* (Cth) from being between a 'man and woman' to 'two people'. The current exclusion of same-sex couples from the Marriage Act denies them a right that is afforded to all other Australians and contributes to discrimination.

QLS also supports the recognition in Australia of same-sex marriages validly entered into in other jurisdictions, as provided for in the draft Bill. This proposed amendment is consistent with Australia's obligations under Article 9 of the Hague Convention on the Celebration and Recognition of the Validity of Marriages.

QLS has concerns about a number of aspects of the draft Bill, as set out below.

#### ***Refusal to solemnise marriage***

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

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Section 47 of the *Marriage Act* in its current form is sufficiently broad to ensure that ministers are not bound to solemnise any marriage. As such, the proposed amendments to this section are not only unnecessary, they serve to further entrench discrimination against same-sex couples. In clarifying that ministers are not bound to solemnise 'marriage that is not a union of a man and a woman', the proposed provision unnecessarily isolates and contributes to the discrimination experienced by this group.

### ***Conscientious belief***

QLS is concerned about the introduction of the additional exemption for ministers and civil marriage celebrants in sections 47(3)(b)(iii) and 47A(1)(b) of the draft Bill on the basis of 'conscientious belief'. This would create a new basis for discrimination and is inconsistent with the development of anti-discrimination law in Australia. We note that discrimination on the basis of conscientious belief is not currently available under any other anti-discrimination law.

QLS is of the view that the references to 'conscientious belief' exemption should be removed from the draft Bill.

### ***Exemption for religious bodies and organisations***

QLS does not support 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, or for incidental purposes, if the refusal conforms to the doctrines, tenets or beliefs of the religion, or is necessary to avoid injury to the religious susceptibilities of adherents to that religion.

Commonwealth anti-discrimination law already provides broad religious exemptions. Further, the Bill does not provide sufficient clarity around the meaning of 'religious bodies and organisations'. The inclusion of this provision would introduce unnecessary complexity and uncertainty.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Natalie De Campo on 07 3842 5889 or [n.decampo@qls.com.au](mailto:n.decampo@qls.com.au).

Yours faithfully



Christine Smyth  
**President**