

Submission to the New South Wales Legislative Council Standing Committee on Social Issues Inquiry into Same Sex Marriage Law in NSW

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1. Overview

The Australian Psychological Society (APS) welcomes the opportunity to make a submission to the New South Wales Legislative Council Standing Committee on Social Issues Inquiry into Same Sex Marriage Law in NSW.

The Australian Psychological Society (APS) is the premier professional association for psychologists in Australia, representing more than 20,000 members. Psychology is a discipline that systematically addresses the many facets of human experience and functioning at individual, family and societal levels. Psychology covers many highly specialised areas, but all psychologists share foundational training in human development and the constructs of healthy functioning.

A range of professional Colleges, local Branches and Interest Groups within the APS reflect the Society's commitment to investigating the concerns of, and promoting equity for, vulnerable groups such as Indigenous Australians, sexuality and gender diverse people, minority cultures, older people, children, adolescents and families. Psychology in the Public Interest is the section of the APS dedicated to the communication and application of psychological knowledge to enhance community wellbeing and promote equitable and just treatment of all segments of society.

In 2012, the APS made submissions to the Senate Inquiry on the Marriage Equality Amendment Bill 2010 and the House of Representatives Inquiry into the Marriage Equality Amendment Bill 2012 and the Marriage Amendment Bill 2012, providing evidence and recommendations that have relevance for the current Inquiry – see <http://www.psychology.org.au/Assets/Files/APS-Submission-to-Senate-on-Marriage-Equality-Amendment-Bill-2010%20.pdf>

The APS has also compiled a comprehensive literature review providing an overview and summary of the main bodies of research about parenting by lesbian, gay, bisexual and transgender (LGBT) people, as well as relevant information about the wider family studies field within which this research is situated, and background information on the Australian context. For anyone concerned about the wellbeing of children raised by same-sex couples, this review can be viewed on our website at:

http://www.psychology.org.au/publications/statements/lgbt_families/

2. Recommendations

The APS supports full marriage equality for all people, regardless of their sex, sexual orientation or gender identity, on the grounds of human rights, and of health and wellbeing. Psychological research provides no evidence that would justify legal discrimination against same-sex partners and their families, but there is ample evidence that such discrimination contributes significantly to the risk of mental ill-health among gay, lesbian, bisexual and sex and/or gender diverse people, especially young people. The APS therefore specifically recommends that:

- *the NSW Government repeal all measures that deny same-sex couples, including those transgender and intersex individuals who are deemed to be in a same-sex relationship according to Australian law, the right to civil marriage, and enact laws to provide full marriage equality to same-sex couples*
- *the New South Wales Government extend full recognition to legally married same-sex couples, including those whose marriages were performed in foreign countries, and accord them all of the rights, benefits, and responsibilities that it accords to legally married heterosexual couples*
- *civil union laws, which by definition perpetuate discrimination against same-sex attracted couples and the wider same-sex attracted and gender diverse communities, be rejected as an alternative to full marriage equality*
- *the Australian, State and Territory governments strengthen Anti-Discrimination laws to protect all Australians from discrimination on the basis of sexual orientation or gender identity*

3. Current Context

The APS is concerned that lesbian, gay, bisexual and sex and/or gender diverse (LGBSGD) Australians continue to experience discrimination, both in family-related legislation and in social attitudes.

In August 2011, the American Psychological Association (APA) unanimously adopted a resolution calling for the legalisation of same-sex marriage, on the basis of clear evidence showing the mental health benefits of marriage, and the harm caused by social exclusion and discrimination arising from not having the choice to marry. More information on the APA resolution and the psychological research that underpins it is available on the APA website:

- APA calls for marriage equality
<http://www.apa.org/about/policy/same-sex.aspx>
- Background: Marriage equality and LGBTI mental health
<http://www.apa.org/about/gr/issues/lgbt/marriage-equality.pdf>
- Psychology's case for same-sex marriage
<http://www.apa.org/monitor/2010/10/same-sex.aspx>

In December 2011, the APS Board endorsed this APA resolution on health and wellbeing grounds. In taking this decision the APS took into account the importance of addressing the flow-on effect of marriage discrimination on same-sex attracted Australians, their loved ones, and the wider community. Psychologists are committed via their Code of Ethics to the principle that all Australians should be supported to achieve positive mental health and full social inclusion. For the full statement, see <http://www.psychology.org.au/Newsandupdates/22Dec2011/>

4. Responding to the terms of the Inquiry

The aim of this NSW Inquiry is to report on issues relating to a proposed same sex marriage law in New South Wales, and in particular any legal issues surrounding the passing of marriage laws at a State level; the response of other jurisdictions both in Australia and overseas to demands for marriage equality; any alternative models of legislation including civil unions; and changes in social attitudes (if any) to marriage in Australia.

It is beyond the scope of the Australian Psychological Society to address all of these terms of reference. We limit our response to the evidence drawn from the psychological literature linking marriage to mental health benefits for couples and families, and highlighting the harm to individuals' mental

health of social exclusion. We draw on psychological research in other jurisdictions overseas that have enabled or denied marriage equality, which has shown that discrimination burdens same-sex attracted and gender diverse people with mental health costs and that marriage equality confers psychological benefits.

In particular, we address the third and fourth term of reference concerning alternative models of legislation and changes in social attitudes.

5. The benefits of being legally married for same-sex couples

The APA Resolution took as its starting place long established evidence that individuals in marriages experience lower levels of depression than do individuals in relationships who are not married (Brown, 2000). With these findings in mind, and given that same-sex couples in both Australia and most US states cannot currently legally marry, this prohibition places individuals in such couples by default at greater risk of depression and relationship instability.

The state of Massachusetts legalised marriage for same-sex couples in 2004. A study by Ramos, Goldberg, and Badgett (2009) examined the experiences of 558 same-sex attracted individuals legally married in that state. In response to how they felt as a result of their marriage:

- 72% reported that they felt more committed to their partners
- 69% stated that since being married they felt more accepted by their communities
- 62% reported that their family was more accepting of their partner.
- Of those with children, 93% agreed, or somewhat agreed, that their children were happier or better off as a result.

6. The health impacts of legislation that bans same-sex marriage

Evidence from the United States now suggests that legislation that bans same-sex marriage, and the associated expression of inaccurate, negative, demeaning and hostile viewpoints about same-sex attracted people and their families, contributes directly to an increase in psychiatric morbidity among same-sex attracted individuals living in affected areas. In a 2-wave study, Hatzenbuehler et al. (2010) were able to control for natural variation in psychiatric illness incidence rates via comparisons between states where legislation was passed versus those where no legislation was passed, and between same-sex attracted and heterosexual individuals (totalling 34,000

participants). The substantive increases in psychiatric incidences rates between time 1 and time 2 were only found amongst same-sex attracted individuals who resided in states where legislation banning same-sex marriage was passed, with findings showing:

- 36.6% increase in mood disorders
- 248.2% increase in generalised anxiety disorder
- 41.9% increase in alcohol use disorders
- a 36.3% increase in psychiatric comorbidity (i.e. more than one psychiatric disorder).

The increased occurrence of psychiatric morbidity that meets diagnostic classification, as per the Hatzenbuehler et al. (2010) study, does not represent minor or temporary changes in distress levels. Rather, they represent highly disabling health conditions that have far-reaching implications for the individual, their families and friends, and society.

Further compounding the negative impact of a lack of relationship recognition upon same-sex couples is the fact that psychological research has long shown the deleterious mental health impact of social exclusion upon same-sex attracted individuals – what Meyer (2000) terms the ‘minority stress hypothesis’. In other words, in a social context in which discrimination occurs in the lives of same-sex attracted individuals, and which for a significant number leads to negative mental health outcomes, for those individuals in couple relationships the mental health risks may be exacerbated by non-recognition of their relationships.

Yet despite these negative psychological consequences of the denial of relationship recognition to same-sex couples, research continues to find that such couples do as well as, if not on some measures better than, their heterosexual counterparts. For example, previous longitudinal research by Kurdek (2004) and more recent longitudinal research by Balsam and colleagues (2008) suggests that same-sex couples experience high levels of relationship quality and satisfaction when compared to heterosexual couples.

7. Evidence on the importance of marriage for same-sex attracted Australians

In 2004, an amendment to the Marriage Act banned same-sex marriage in Australia. A large-scale study examining the importance of relationship recognition for same-sex attracted Australians were recently conducted through the School of Psychology at the University of Queensland. The marriage-related findings are presented below.

Not So Private Lives (Dane, Masser, MacDonald, & Duck, 2010) was a national study involving 2032 same-sex attracted individuals (18-82 years of age) living in metropolitan and rural Australia. The survey focused on a number of issues relating to the lives of sexual minority people.

Findings pertaining to the desire to marry show that:

- **54.7% preferred marriage for their existing or future same-sex relationship over other types of legal recognition, including civil unions.**
- **the numbers preferring to marry were even greater among younger people (e.g., 63% of those under 30 yrs) and those in a same-sex relationship living with young children (74.7–80.8%).**
- **77.8% of those currently in an Australian state or municipal civil union reported that they preferred to marry.**

Participants who reported having a regular same-sex partner were asked about the extent to which they felt others valued their relationship when compared with heterosexual relationships.

- **Although the majority felt their parents and heterosexual friends viewed their same-sex relationship as being of equal value relative to heterosexual de facto relationships, only a third (33.6%) felt that their parents (and only 45.6% their heterosexual friends) equated the value of their same-sex relationship with that of heterosexual marriages.**
- This statistically significant discrepancy was even more pronounced among those who wished to marry. **Importantly, the more individuals perceived that others placed less value on their relationship relative to heterosexual relationships, the significantly lower their reported levels of psychological well-being.**

Similar findings have been reported in the United States. When same-sex couples have the opportunity to legally marry, “they run out and say, ‘I do,’” according to M.V. Lee Badgett, PhD, an economist at the University of Massachusetts, Amherst (quoted in Munsey, 2010, p.46). In contrast, civil unions and domestic partnerships are not viewed as having the same emotional weight, social approval and legal protections as marriage, Badgett said. “It’s clear that same-sex couples are voting with their feet, in terms of which status they think is more important.”

These findings lend weight to arguments that alternative models of legislation such as civil unions would still represent 'second-best' options, and hence would entrench rather than remove discrimination, reinforcing the strongly felt sense of being 'second-class citizens' that is reflected in the above statistics.

The APS therefore recommends against civil union laws, which perpetuate discrimination against same-sex attracted couples and the wider same-sex attracted and gender diverse communities.

8. Evidence on the impact of marriage equality discourses and changing attitudes on the wellbeing of same-sex attracted young Australians

There is evidence of the increasing salience in Australia over the past fifteen years of marriage equality discourses as a source of both oppression and growing hope among same-sex attracted and gender-questioning (SSAGQ) young people. This evidence comes from three large online studies of this group (*Writing Themselves In* - Hillier, Dempsey et al., 1998; Hillier, Jones et al., 2010; Hillier, Turner, & Mitchell, 2005). **Hillier et al's research documents the shift in social acceptance of same-sex marriage (and parenthood) and the impacts of this shift on young same-sex attracted people.** For example, in 1998, young people were told, and believed, that they would be childless, and marriage was rarely raised. Only one young woman mentioned wanting a child, while still accepting that she would never be able to marry. In 2004, young people were beginning to talk about having children and had many ideas about how they would manage it. Marriage was not mentioned often, though some did include thoughts of marriage in their narratives. **But of the 3134 young people who completed the 2010 survey, around twenty percent mentioned marriage and/or children. There had been no reference to marriage and children in the survey and these responses were unsolicited.** There were some examples of negative impacts of the discourse of marriage exclusion at which young people expressed anger or sadness. But many young people expressed the desire to be like everyone else and have the 'Australian dream with all the trimmings'.

This research highlights how shifts in support of the direction of equity, visibility and support for sexual difference (including for marriage equality), enhance the wellbeing of SSAGQ young people, who are increasingly seeing marriage and children as possibilities in their lives. Denying gay marriage may imply that same-sex relationships are expected to be short and meaningless, and this can influence the development of same-sex attracted

young people's relationships and identity. In contrast, according to Hillier et al. (2010), the possibility of marriage offers same-sex youth (especially those from a religious background) a model of longer-term, committed relationships, and this is associated with higher well-being.

In addition to the likely benefits of amending marriage legislation to remove discrimination on the basis of gender and sexuality for young same-sex attracted people themselves, there are obvious benefits to children and young people who have same-sex parents who are currently not able to marry. At present, these children experience their families as being stigmatized/marked out as less acceptable and valued than families in which parents are able to marry.

The APS believes that removing all legal discrimination to ensure that all people, regardless of their sex, sexual orientation or gender identity have the opportunity to marry will promote acceptance and the celebration of diversity, particularly among young people.

9. Evidence on changes in social attitudes (if any) to marriage

A number of studies in Australia and internationally have examined societal attitudes towards homosexuality, lesbian, gay, bisexual and transgender (LGBT) people's rights and behaviour, and more recently and specifically, same-sex marriage. In a cross-national study of thirty one countries, Smith (2011) found that there has been a global trend towards greater approval of homosexual behaviour over the 20 years between 1988-2008. Epstein (2012) reviewed a selection of books and concluded that northern European attitudes seem to be more supportive of the nuclear gay family than those in English-speaking cultures, but suggested that this may change as new laws come into place. Relatedly, research by Matthews and Augoustinos (2012) showed that leadership and support for same-sex marriage from politicians and other public figures is an important contributor to changing attitudes in the general population (and that the latter is important not only to marriage equality debates but to our chances of reducing incidences of violence and their sequelae of poor mental health in LGBT people more broadly).

A recent study of the attitudes of 790 Australians by Webb and Chonody (2012) sought to identify the most influential predictors of attitudes toward same-sex marriage, with a particular focus on the influence of attitudes toward same-sex parenting on attitudes toward same-sex marriage, above and beyond that of demographic variables such as religiosity, age or gender. Although a positive shift in attitudes towards gay men and lesbian rights is evident, results indicate that participants who reported negative attitudes

toward same-sex parenting were significantly more likely to hold negative attitudes toward same-sex marriage. This study has important implications for Australian marriage policy and the lives of many same-sex couples. There is an apparent contradiction between the widely-held belief that having married parents is of benefit to children, and opposition to same-sex marriage on the basis of concerns for the wellbeing of children in same-sex parented families.

The APS therefore considers it important to draw attention to the 2008 review of research it commissioned on the wellbeing of lesbian and gay-parented families, which concluded that **the most important family factors for children's well-being are family processes and the quality of interactions and relationships, not family structures of themselves.** The research indicates that parenting practices and children's outcomes in families parented by lesbian and gay parents are likely to be at least as favourable as those in families of heterosexual parents, despite the reality that considerable legal discrimination and inequity remain significant challenges for these families. **Laws that discriminate against same-sex parented families do not stop people having children – they just make people's lives more difficult and contribute to a social climate of intolerance and inequity.**

10. Summary and conclusion

Psychological evidence points to the mental health benefits of marriage and the harm to same-sex couples and their families caused by social exclusion and discrimination arising from not having the choice to marry.

This evidence includes:

- There is no scientific basis for an assertion that lesbian, gay, bisexual, and transgender persons are less fit to marry or to become parents of healthy and well-adjusted children than heterosexual people (Kurdek, 2004; Peplau & Fingerhut, 2007).
- The denial of marriage rights to same-sex couples can adversely affect their health and well-being (Barlow, Dane, Techakesari, & Stork-Brett, 2012; Dane, Masser, MacDonald, & Duck, 2010; Hatzenbuehler, McLaughlin, Keyes, & Hasin, 2010; Herdt & Kertzner, 2006).
- Beyond the negative effect of marriage restrictions for LGBTI individuals, research indicates that the families of origin and allies of sexual minorities may suffer from some of the same serious negative physical and mental health consequences of discrimination experienced by their

loved ones (Arm, Horne, & Levitt, 2009; Horne, Rostosky, & Riggle, 2011).

- Being denied the right to marry reinforces the stigma associated with a minority sexual identity, and can particularly undermine the healthy development of a well-adjusted emotional and social attachment style among adolescents and young adults (Herdt & Boxer, 1993; Herdt & Kertzner, 2006; Leonard et al., 2012).

Psychological research thus provides no evidence that would justify legal discrimination against same-sex partners and their families, but there is ample evidence that such discrimination contributes significantly to the risk of mental ill-health among gay, lesbian, bisexual and sex and/or gender diverse people, especially young people.

Recognising marriage equality is about fairness, social inclusion, and individual and community well-being. For Australian legislation to be consistent with (rather than flouting) human rights, non-discrimination and equal opportunity principles and obligations is a modest aim.

In conclusion, we draw attention to Mildred Loving's very moving statement in support of marriage equality in the USA, with its implicit message about how attitudes towards marriage rights can and have changed over generations. Together with her husband, Richard Loving, Mildred was a plaintiff in the historic Supreme Court *Loving v. Virginia*, striking down race restrictions on the freedom to marry and advancing racial justice and marriage equality in America.

My generation was bitterly divided over something that should have been so clear and right. The majority believed that what the judge said, that it was God's plan to keep people apart, and that government should discriminate against people in love. But I have lived long enough now to see big changes. The older generation's fears and prejudices have given way, and today's young people realize that if someone loves someone they have a right to marry. http://www.freedomtomarry.org/page/-/files/pdfs/mildred_loving-statement.pdf.

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