

COMMUNITY LEGAL CENTRES TASMANIA

Animal Welfare Community Legal Centre • Environmental Defenders Office • Hobart
Community Legal Service • Launceston Community Legal Centre • North West Community
Legal Centre • Tenants' Union • Women's Legal Service • Worker Assist

28 October 2013

The Honourable Jim Wilkinson
President of the Legislative Council
Parliament House
Hobart TAS 7000

Dear Mr Wilkinson,
Re: Marriage Equality

This week the Legislative Council will be asked to vote on whether the *Same-Sex Marriage Bill 2012* is revisited. In our opinion, there have been a number of developments that warrant bringing the Bill back for debate.

Since the Bill was voted down in September 2012 a number of countries have legalised same-sex marriage including New Zealand, England, Wales, Uruguay and France as well as six states in the United States of America.¹ These jurisdictions join with 12 other countries around the world that already recognise same-sex marriage.²

As well, a significant legal opinion written by Bret Walker SC in conjunction with barristers Perry Herzfeld and Chris Young concludes that the Tasmanian *Same-Sex Marriage Bill 2012* is constitutionally valid.

Finally, a major research paper released by the Tasmanian Law Reform Institute concludes that the likelihood of a High Court challenge to Tasmania's proposed *Same-Sex Marriage Act 2013* should not be a barrier to legislative change. There are numerous examples of jurisdictions passing laws in the full knowledge that legal challenges may arise. Examples include the Commonwealth Government's recent decision to take on the tobacco industry through the passing of plain-packaging laws and the decision thirty years ago to try and halt construction of a large hydro-electric dam in Tasmania's south-west through recognition that it was not in compliance with Australia's international obligations.³

¹ The states are Maryland (6th November 2012), Washington State (6th December 2012), Maine (29th December 2012), Rhode Island (2nd May 2013), Delaware (1st July 2013), Minnesota (1st August 2013) and New Jersey (21st October 2013).

² These countries include the Netherlands, Belgium, Spain, Canada, South Africa, Norway, Sweden, Portugal, Iceland, Argentina and Denmark.

³ *JT International SA v Commonwealth of Australia* [2012] HCA 43; *Commonwealth v Tasmania* (1983) 158 CLR 1.

Whilst the Australian Capital Territory has recently passed its own Same-Sex Marriage Act,⁴ Tasmanian same-sex couples wanting to marry will be forced to fly to Canberra meaning that they will have to marry away from their family and friends. As well, the vows of love and lifelong commitment solemnised in Canberra will not be recognised in Tasmania when they return home. Tasmania should not wait until the Federal challenge to the ACT Same-Sex Marriage Act is resolved. This is because the ACT is in a weaker constitutional position than Tasmania, and because its Act is much less robust than Tasmania's Bill according to the advice of Bret Walker SC.

It is our strong opinion that the Legislative Council should revisit this issue. As we have previously advised:⁵

As it stands, it is simply not known what the High Court would find if required to consider the validity of a Tasmanian Same-Sex Marriage Act. It is also uncertain if there would be a High Court challenge and who could take it. However, what is not in dispute is that as a member of the Legislative Council you have the opportunity to stamp out legally-entrenched discrimination against same-sex couples and to be a part of an historic moment in which Tasmania removed once and for all the shackles of its past to reveal a future based not on discrimination and prejudice, but on love.

Given the opinion prepared by Bret Walker SC, the conclusions of the Tasmanian Law Reform Institute and the growing number of countries that have legalised same-sex marriage we urge you to support the revisitation of the *Same-Sex Marriage Bill 2012*.

Please do not hesitate to contact us if you have any queries or would like to discuss our submission further.

Yours Faithfully,

Benedict Bartl
Policy Officer
Community Legal Centres Tasmania

⁴ *Marriage Equality (Same-Sex) Act 2013* (ACT).

⁵ Letter to Legislative Council members dated 19th September 2012.