



4 November, 2011

Research Director  
Legal Affairs, Police, Corrective Services and Emergency Services Committee  
Parliament House  
George Street  
Brisbane, Qld 4000

**Re: The *Civil Partnerships Bill 2011***

The Australian Christian Lobby (ACL) welcomes the opportunity to make a submission to the Legal Affairs, Police, Corrective Services and Emergency Services Committee regarding the *Civil Partnerships Bill 2011*.

ACL is opposed to the Bill because it attempts to mimic marriage “in all but name”. The issue of marriage is a Commonwealth issue, not a state matter.

ACL is also concerned that this is an attempt to pressure the federal Labor Party leading into the ALP National Conference in December, where Labor’s marriage policy is up for debate. Federal Labor’s commitment is that they support the definition of marriage as it currently stands in the federal *Marriage Act 1961*, that is, between a man and a woman, voluntarily entered into for life.

**Not an issue of discrimination**

Suggestions that the *Civil Partnerships Bill* is needed to address issues of discrimination seem to be unfounded. The Commonwealth Government in 2008 amended over 100 pieces of legislation to remove any substantive discrimination against same-sex couples. This is acknowledged in the Explanatory Notes for the *Civil Partnerships Bill*, which says that those in same-sex relationships “have the same legal benefits and entitlements” as opposite-sex couples.<sup>1</sup> The *Civil Partnerships Bill* is unnecessary to eliminate unjust discrimination and would appear to be aimed at influencing the national debate on same-sex marriage, rather than remedying genuine discrimination.

If there are any remaining areas in which Queensland same-sex couples suffer discrimination, there should be a separate inquiry to establish what these might be.

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<sup>1</sup> *Civil Partnerships Bill 2011 Explanatory Notes*, p. 1,  
[http://www.legislation.qld.gov.au/Bills/53PDF/2011/CivilPartB11Exp\\_P.pdf](http://www.legislation.qld.gov.au/Bills/53PDF/2011/CivilPartB11Exp_P.pdf).

## **Marriage is a federal issue**

Australia's Constitution gives the Commonwealth Government powers to make laws regarding marriage.<sup>2</sup> While states do perform some regulation of marriage and other kinds of relationships, marriage is not a state issue. This Bill proposes a civil partnership scheme, which is in effect a copy of marriage, as a way of providing for same-sex marriage-like relationships, which the federal Government has repeatedly refused to do.

A civil partnerships scheme is unnecessary to remove discrimination and is an overreach of state power. A state government might reasonably legislate for relationship registers such as those which exist in New South Wales, Tasmania, and Victoria. In seeking to mimic marriage, the Queensland Government is out of step with other states.

## **Lack of adequate consultation**

ACL is also very concerned that there was virtually no consultation prior to the introduction of the bill. The idea of same-sex civil unions for Queensland was first floated by the Member for Mt Coot-tha on ABC's 7:30 Queensland on October 21.<sup>3</sup> Four days later a bill was in Parliament.

This situation adds to the increasing opinion that an upper house should be reintroduced in the Queensland Parliament. Proper consultation is all the more important where a unicameral legislature exists. It is disappointing that the member for Mt Coot-tha and the Queensland Government have sought to exploit Queensland's unique Parliamentary arrangements in this way.

## **Civil partnerships mimic marriage**

The *Civil Partnerships Bill* establishes a relationship scheme which is effectually a copy of marriage, mirroring the procedure and effects of marriage. The language used mirrors that used in the *Marriage Act*, including the requirement of 12 months' separation prior to "divorce", the "cooling off" period required before the registration of the partnership, and the description of the list of offences. The Bill would also amend various laws to change the definition of "spouse", with the result that civil partnerships would operate similarly to marriages in issues such as succession and surrogacy.

Civil partnerships would parallel marriages in other ways also. Declarations of civil partnerships may include a "partnership ceremony"<sup>4</sup> similar to a marriage ceremony.

The Bill would require the amendment of the *Births, Deaths and Marriages Registration Act 2003* to require partnerships to be registered with the Registry of Births, Deaths and Marriages.

## **Religious freedom concerns**

ACL is concerned at the potential threat to religious freedom that a civil partnerships scheme poses. It is not clear from the Bill whether public declarations or civil partnership ceremonies will be

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<sup>2</sup> *The Australian Constitution*, s 51(xxi).

<sup>3</sup> ABC (October 21, 2011), 'Fraser proposes Queensland recognises gay civil union', ABC, <http://www.abc.net.au/news/2011-10-21/fraser-proposes-queensland-recognise-gay-civil/3594712>

<sup>4</sup> Hon AP Fraser, *Civil Partnerships Bill: Introduction and Referral to the Health and Disabilities Committee*, <http://www.parliament.qld.gov.au/documents/tableOffice/HALnks/111025/CivilPartner.pdf>

permitted in churches or whether churches will be allowed to refuse to conduct a declaration or ceremony as a matter of conscience.

The United Kingdom's *Civil Partnerships Act 2004* originally disallowed civil partnership ceremonies to be conducted in "religious premises" or for a "religious service" to be used while the registrar was officiating at the signing of the civil partnership.<sup>5</sup> These qualifications ensured that civil partnerships were not mimicking marriage, which the UK Government still defines as the union of one man and one woman. Amendments made last year will remove these qualifications, so that churches may conduct civil partnership ceremonies and religious services may be used.

Many in the UK are concerned that this will pose threats to the religious freedom of those who oppose the use of religious services or premises for civil partnerships. For example, the Bishop of Winchester, Rt Revd Michael Scott-Joynt, said last year that this "will open... individual clergy, to charges of discrimination if they solemnise marriage... but refuse to host civil partnerships signings in their churches".<sup>6</sup>

In 2007, registrar Lillian Ladele was disciplined for refusing to perform same-sex civil partnership ceremonies, with Islington council accusing her of "unacceptable discrimination".<sup>7</sup>

That protections for religious freedom can be ignored so easily is of grave concern to the ACL. The ACL urges the Queensland Government to consult more widely on the effects that this bill might have on religious freedoms for churches and for individual clergy.

### **"Reality" or "truth" issue**

The Member for Mt Coot-tha, in introducing the Bill, claimed that civil partnerships provide for "what no-one can deny is the reality – that there are same-sex couples amongst us" in committed, long-term relationships, and that this is a step "towards truth".<sup>8</sup> If the Member for Mt Coot-tha is genuine in his claim that this Bill simply acknowledges the reality of human relationships, then why does it not provide for polygamous, polyamorous, incestuous, or adulterous relationships?

The reality is that while there are different forms of relationships, a number of which are practised in the wider community, only one – that between a man and a woman – is capable of producing children, and that is the relationship ideal to which the vast majority of the community aspires. Not providing for legally registered civil partnerships for same-sex couples does not discriminate against them, and in fact they are afforded all the legal protections that marriages are.

If recognising "the truth of human relationships" is a major driver for this bill, why does it not recognise polygamy and polyandry?

### **The importance of marriage as a male-female union**

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<sup>5</sup> See e.g. sections 2, 6, 93, and 137 of the *Civil Partnerships Act 2004* (UK).

<sup>6</sup> The Christian Institute (2 Nov, 2011), 'Government sets date for church civil partnerships', [http://www.christian.org.uk/news/government-sets-date-for-church-civil-partnerships/?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+christianinstitute+%28The+Christian+Institute%29](http://www.christian.org.uk/news/government-sets-date-for-church-civil-partnerships/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+christianinstitute+%28The+Christian+Institute%29)

<sup>7</sup> Afua Hirsch (2 November, 2009), 'Christian registrar to appeal over same-sex ceremonies', *The Guardian*, <http://www.guardian.co.uk/world/2009/nov/02/registrar-civil-partnerships-appeal-court>

<sup>8</sup> Hon AP Fraser, *Civil Partnerships Bill: Introduction and Referral to the Health and Disabilities Committee*, <http://www.parliament.qld.gov.au/documents/tableOffice/HALnks/111025/CivilPartner.pdf>

ACL supports the view held by the majority of Australians that marriage is a unique relationship, specially capable of creating and nurturing children, and thus underpinning the family, which is the basic building block of society. This relationship is deserving of special protection precisely because it undergirds society itself and provides the optimal environment for children.

Those who choose to live in alternative relationship arrangements should be protected under the law, and same-sex and unmarried opposite-sex couples in this country do enjoy this protection. However, respect and protection of same-sex relationships is possible without promoting them as an ideal relationship which deliberately robs a child of its mother or father.

Although civil partnerships stop short of the name “marriage”, the Bill creates a scheme in which partnerships are similar to marriage in all other ways. This mimicry of marriage is an attempted stepping stone to same-sex marriage. It is an inappropriate use of Queensland Parliament’s resources, as marriage is a federal issue. It also seems to be an attempt to influence the ALPs debate on marriage at its National Conference in December.

The Queensland Parliament should not be used in this way to influence the factional disputes in political parties.

## **Conclusion**

- Marriage is a federal issue.
- Civil partnerships are an attempt to mimic marriage.
- This is an inappropriate use of Queensland’s time and resources.
- There was inadequate time given for consultation with the community on this issue.
- This appears to be an inappropriate attempt to influence the ALP National Conference.
- Discrimination against same-sex couples was removed by the federal government in 2008. If there are remaining issues of discrimination, Parliament should conduct an inquiry into that issue.
- The Queensland Government should not be seeking to undermine in public policy a child’s right to at best begin life with its biological mother and father.

ACL urges the Queensland Parliament to reject this Bill.

Yours sincerely,



Wendy Frances

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