Parliamentary Committees

Relationships (Civil Partnerships) and Other Acts Amendment Bill 2015

Report No. 14, 55th Parliament
Legal Affairs and Community Safety Committee
November 2015

Legal Affairs and Community Safety Committee

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Abbreviations

2011 Bill	Civil Partnerships Bill 2011
2012 Bill	Civil Partnerships and Other Legislation Amendment Bill
ALA	Australians Lawyers Alliance
Attorney-General	The Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for Training and Skills
BAQ	Bar Association of Queensland
BDMR Act	Births, Deaths and Marriages Registry Act 2008
Bill	Relationships (Civil Partnerships) and Other Acts Amendment Bill 2015
department	Department of Justice and Attorney-General
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
LNP	Liberal National Party
QCAT	Queensland Civil and Administrative Tribunal
QLS	Queensland Law Society
RBDM	Registry of Births, Deaths and Marriages

Chair's foreword

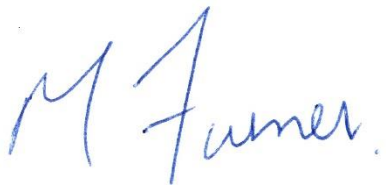
This Report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Relationships (Civil Partnerships) and Other Acts Amendment Bill 2015.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

Consideration of submissions from stakeholders and comparisons with other jurisdictions have supported its inquiry.

On behalf of the committee, I thank those individuals and organisations who lodged written submissions on this Bill. I also thank those who appeared and shared their experiences and views at our public hearing. Thanks also to the Department of Justice and Attorney-General and the Queensland Parliamentary Library, as well as committee office staff, for the advice they have provided the committee during its inquiry.

Additionally, government members of the committee express their disappointment that the committee was unable to reach agreement on this Bill, or present the evidence provided to the committee from those who gave us personal stories about how this Bill if passed would change their lives.



Mark Furner MP

Chair

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (the committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the Parliament of Queensland Act 2001 and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Police Service
- Fire and Emergency Services
- Training and Skills.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- for subordinate legislation – its lawfulness.

On 17 September 2015, the Attorney-General and Minister for Justice and Minister for Training and Skills (Attorney-General), introduced the Relationships (Civil Partnerships) and Other Acts Amendment Bill 2015 (Bill) in the House and referred it to the committee. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the committee to report to the Legislative Assembly by 17 November 2015.

1.2 Inquiry process

On 22 September 2015, the committee wrote to the Department of Justice and Attorney-General requesting it to provide an initial written briefing by 2 October 2015. The committee received a written briefing from the department on 1 October 2015.

The committee also invited written submissions on the legislative proposal to be received by 4.00pm on 19 October 2015. The committee received 29 submissions and sought and received written advice from the department in response to matters raised in submissions.

The committee then held a public hearing on the Bill on 3 November 2015, inviting witnesses to give evidence and respond to questions on the Bill.

1.3 Policy objectives of the Relationships (Civil Partnerships) and Other Acts Amendment Bill 2015

1.3.1 Objectives of the Bill

The key objectives of the Bill are to:

- Restore the provisions in the *Relationships Act 2011* (Relationships Act), formerly known as the *Civil Partnerships Act 2011*, for adult couples of any gender to hold a civil partnership ceremony prior to registering their relationship. The Bill will ensure that adult couples,

[1] *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

regardless of their gender, can have an official ceremony to acknowledge and celebrate their relationships.

- Provide recognition of electronic records and support the transition to a digitised Births, Deaths and Marriages registration service.[2]

1.3.2 Reasons for the Bill

The main purpose of the Bill is to deliver on the government's election commitment to provide couples of any gender with the option of participating in an official civil ceremony prior to having their relationships registered.[3]

1.3.3 Background

Civil Partnerships Bill 2011

On 25 October 2011, the Civil Partnerships Bill 2011 (2011 Bill) was introduced as a Private Members Bill. It was referred to the former Legal Affairs, Police, Corrective Services and Emergency Services Committee (the former committee) for consideration. The former committee received nearly 6000 submissions on the 2011 Bill, the most of any portfolio committee inquiry to date. More than 3000 of these were received after the closing date, and 1261 were 'form' submissions.

The main objective of the 2011 Bill was to provide legal recognition and registration of relationships of couples, regardless of gender, to be known as civil partnerships and to also provide an option for couples to make a declaration of their intention to enter a civil partnership before a registered notary. The Bill also provided for the recognition of interstate civil partnerships or civil unions as civil partnerships for the purposes of Queensland State legislation.

The 2011 Bill passed its second reading on 30 November 2011, with the LNP opposition voting against it and government and independent members voting according to conscience. The *Civil Partnerships Act 2011* commenced on 6 December 2011.

Civil Partnerships and Other Legislation Amendment Bill 2012

On 20 June 2012, the newly elected Newman Government introduced the Civil Partnerships and Other Legislation Amendment Bill (2012 Bill). The 2012 Bill sought to:

- remove the element of the existing Act which could be seen to 'mimic marriage' – including a state sanctioned ceremony and the dissolution process; and

- change the title of the Act and the terminology used, from 'civil partnerships' to 'registered relationships', to reflect accurately the purpose of the regime which is to provide for a legislative scheme to register relationships.[4]

The 2012 Bill was declared urgent, and was not sent to a committee for consideration. The Bill was debated and passed the next day, 21 June 2012. The title of the *Civil Partnerships Act 2011* changed to the *Relationships Act 2011* as a result.

Relationships (Civil Partnerships) and Other Acts Amendment Bill 2015 – 'the Bill'

The Bill now before the committee seeks to reinstate the two elements of the *Relationships Act 2011* removed in 2012. During her Introductory Speech on the Bill, the Attorney-General provided the following background to the Bill:

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2 *Explanatory Notes*, Relationships (Civil Partnerships) and Other Acts Amendment Bill 2015, p 1.

3 Hansard transcript, 17 September 2015, p 56.

4 Hansard transcript, 20 June 2012, p 859.

> *In Queensland, under the Relationships Act 2011, couples of any gender can obtain legal recognition of their relationship through registration of the relationship with the Registrar of Births, Deaths and Marriages. … However, as we all know, for many people there is more to acknowledging a relationship than assigning it a particular legal status. It is about making a formal commitment to our significant other in front of our loved ones and celebrating the love and value we bring to each other's lives. When the Civil Partnership Act 2011 commenced, not only did it introduce the relationship registration process, but also it provided couples with the opportunity to participate in an official ceremony prior to registering their relationship as a civil partnership. However, in 2012 the former LNP government removed those civil partnership ceremony provisions from the act, renamed the act the Relationships Act and changed terminology so that relationships would no longer be recognised as civil partnerships but as registered relationships.*
>
> *This government has committed to restoring the civil partnership ceremony provisions in the Act to ensure that couples of any gender can participate in an official ceremony as part of the process of forming a civil partnership.*[5]

1.3.4 Consultation on the Bill

In relation to the proposed re-introduction of the civil ceremony, the government advises it consulted with the following parties:

- Key Queensland marriage celebrant associations
- Parents and Friends of Lesbians and Gays
- The Lesbian, Gay, Bisexual, Trans, Intersex (LGBTI) Legal Service Inc.
- The Australian Christian Lobby
- Family Voice Australia
- The Anti-Discrimination Commission Queensland
- The Queensland Council for Civil Liberties
- The Queensland Law Society (QLS); and
- The Bar Association of Queensland (BAQ).[6]

The Explanatory Notes provide the following summary of the outcome of this consultation:

> *Support for the amendments has been on the basis that the amendments support the equal rights of LGBTI people. Opposition to the amendments has been based on the view that a state's only legitimate interest in registering personal relationships is in relation to marriage because it is for the benefit of children and that civil partnership ceremonies mimic marriage. Some marriage celebrants object to the annual registration fee for civil partnership notaries, on the basis that as a civil partnership ceremony is optional and couples can also choose to hold a ceremony not involving a civil partnership notary, there may not be significant demand for the service of notaries, and marriage celebrants are already subject to*

[5] *Record of Proceedings (Hansard),* 17 September 2015, pp 56-57.

[6] *Explanatory Notes*, Relationships (Civil Partnerships) and Other Acts Amendment Bill 2015, p 4.

> *an annual fee for being a marriage celebrant. However, as it is the choice of each individual marriage celebrant whether to become a civil partnership notary, and the proposed annual registration fee will cover the costs to the [Registry of Births, Deaths and Marriages] for the on-going administration of the notary registration scheme, the Bill provides for the charging of an annual registration fee*.[7]

During her Introductory Speech, the Attorney-General made the following comments in relation to the consultation on the Bill:

> *We acknowledge there is both strong support and opposition from sections of the public in relation to this bill. We have listened to the range of perspectives through consultation on the proposed changes with marriage celebrant associations, lesbian gay bisexual trans intersex organisations, and religious and family groups. The intention of this bill is not to replicate or devalue marriage. However, the bill provides couples who are not married with an opportunity to hold an official ceremony to acknowledge and celebrate their commitment. That is because those ceremonies hold meaning for many of us, including those people in same-sex relationships. These amendments are about doing what is fair and supporting the equality and dignity of all Queenslanders.*[8]

In relation to the changes in the Bill relating to the recognition of electronic records and the transition to a digitised Births, Deaths and Marriages registration service, the government consulted with the following:

- the Hospital and Health Services
- the Australian Funeral Directors Association
- the Australian Medical Association Queensland
- the BAQ
- the QLS
- Legal Aid Queensland; and
- private hospitals.[9]

The Explanatory Notes provides that '*generally stakeholders were supportive of the proposed amendments or did not provide comment*'.[10]

1.3.5 Outcome of committee considerations

Standing Order 132(1)(a) requires the committee after examining the Bill to determine whether to recommend that the Bill be passed. In this instance the committee was not able to reach a majority decision on a motion to recommend that the Bill be passed and, therefore, in accordance with section 91C (7) of the *Parliament of Queensland Act 2001*, the question on the motion failed.

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7 *Explanatory Notes*, Relationships (Civil Partnerships) and Other Acts Amendment Bill 2015, p 4.
8 *Record of Proceedings (Hansard),* 17 September 2015, p 57.
9 *Explanatory Notes*, Relationships (Civil Partnerships) and Other Acts Amendment Bill 2015, p 4-5.
10 *Explanatory Notes,* Relationships (Civil Partnerships) and Other Acts Amendment Bill 2015, p 5.

2. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and co-liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles (FLPs) to the Bill and has found no FLP issues in relation to this Bill.

2.1 Offence provisions

The Bill includes five offence provisions:

- Clause 25, where a civil partnership notary allows a declaration of a civil partnership without the requisite notice having been given to the notary (50 penalty units or six months imprisonment)
- Clause 25, where a civil partnership notary allows a declaration of a civil partnership where she or he has reasonable grounds to believe the partnership would be void due to it not being entered into freely, where identity is mistaken, where a party has no capacity to enter into the relationship (50 penalty units or six months imprisonment)
- Clause 25, where a person enters into a civil partnership before a person who they know is not a civil partnership notary, where they have reasonable grounds to think that their partner believes the person is a civil partnership notary (50 penalty units or six months imprisonment)
- Where a notary fails to provide the written notice of the civil partnership to the registrar within 14 days (5 penalty units)
- Where a person in prison fails to advise the Chief Executive, Corrective Services they have made an application for registration of a relationship as a civil partnership; or given notice of an intention to enter into a civil partnership (20 penalty units).

2.2 Explanatory notes

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Committee comment

The committee has reviewed the offences and penalties and notes that these penalties were originally in the *Civil Partnerships Act 2011* but were omitted by the *Civil Partnerships and other Legislation Amendment Act 2012.* Under the Bill, these penalties are being reinstated on the same terms and with the same penalties as the original *Civil Partnerships Act 2011.*

Members note the submission from a civil celebrant that '*the Bill should require regulation and scrutinisation of the behavioural standards of Civil Partnership Notaries*'.[11] The Bill (s 20) provides that

[11] Saralyn Kay Earl, Civil Marriage Celebrant, Submission No. 17, p 2.

a person may be appointed as a civil partnership notary where the Registrar of Births, Deaths and Marriages is satisfied that the applicant is appropriately qualified and a suitable person (or, is already a registered marriage celebrant). The registrar must have regard to a person's criminal history, but no other criteria are specified.

The regulatory mechanism used to monitor the performance of civil partnership notaries is unclear: it is assumed that an issue would have to be brought to the attention of the registrar by some means.

Given the evidently limited support for civil partnership notaries in the performance of their functions, the committee queries whether the imposition of six months imprisonment in the case of the first three penalties listed above might be considered excessive.

Appendix A – Situation in other Australian jurisdictions regarding relationships registered under corresponding laws

Situation in other Australian jurisdictions regarding official ceremonies for same-sex relationships

The situation in other jurisdictions concerning whether official ceremonies are permitted for same-sex partners, and whether non-marital relationship registration is permitted at all, was canvassed in the Explanatory Notes and summarised below.[12]

Jurisdiction	Official ceremonies for same-sex partners permitted	Relationship registration	No relationship registration
Qld	x	✓	-
NSW	x **(but permitted in the City of Sydney)**	✓	-
Victoria	x	✓	-
ACT	✓	✓	-
Tasmania	✓	✓	-
Western Australia	x	x	✓
South Australia	x	x	✓
Northern Territory	x	x	✓

Situation in other Australian jurisdictions regarding recognition of interstate or overseas registered relationships

The table below summarises the situation in other Australian jurisdictions concerning whether same-sex relationships registered in other jurisdictions in Australia or overseas are recognised either (1) at all, (2) after being prescribed by regulation, or (3) automatically.

Jurisdiction	(1) No recognition of interstate or overseas registered relationships	(2) Recognition of interstate or overseas registered relationships via regulation	(3) Automatic Recognition of interstate or overseas registered relationships
Qld	-	✓	X
NSW	-	✓	X

[12] *Explanatory Notes*, Relationship (Civil Partnerships) and Other Acts Amendment Bill 2015, p 5.

		(Interstate only not overseas)	
Victoria	✓	X	X But Bill currently before Victorian Parliament to permit this (Second Reading stage – 7/10/15)
ACT	-	✓	X
Tasmania	-	✓	X
Western Australia	✓	X	X
South Australia	✓	X	X
Northern Territory	✓	X	X

A more detailed summary follows.

The following Australian jurisdictions have introduced or are introducing provisions which provide for the recognition of civil partnerships registered interstate and/or overseas:

- Australian Capital Territory
- New South Wales
- Tasmania
- Victoria.

Australian Capital Territory

In the ACT, section 27(1) of the *Civil Unions Act 2012* (ACT) provides that a regulation may provide that a relationship under a law of a State, external territory or foreign country is a civil union for territory law. However, section 27(2) provides that a regulation must not provide that a relationship under a corresponding law is a civil union for ACT law unless, under the corresponding law, the relationship is:

(a) Between two people

(b) Entered into consensually

(c) Must not be entered into by people who are in a prohibited relationship with each other

(d) Must not be entered into by people who may marry each other under the *Marriage Act 1961* (Cwlth) or a law of an external territory or foreign country if the marriage can be recognised under that Act.

New South Wales

The situation in NSW is very similar to the current situation under Queensland law in relation to interstate relationships. However it does not provide for the recognition of overseas registered relationships or same-sex marriages. Section 16 of the *Relationships Register Act 2010* (NSW) provides for the recognition of interstate registered relationships provided the relevant regulations refer

specifically to the class of relationship registered or the law that the relationship is registered under (see clause 4 of the Relationships Register Regulation 2015).

Tasmania

In 2010, Tasmania recognised interstate civil unions and became the first state to recognise overseas civil unions and same-sex marriages. Section 65A of the *Relationships Act 2003* (Tas) is similar to the current law in Queensland (see Section 33 of the *Relationships Act 2011* (Qld)). In other words, relationships registered under corresponding laws, being a law of another State, Territory or an overseas jurisdiction, which have been prescribed by regulation, will be taken to be registered under the relevant Tasmanian legislation. Clause 8 of the Relationships Regulations 2013 sets out the corresponding laws for the purposes of section 65A of the *Relationships Act 2003* (Tas). The laws listed relate to the ACT, NSW, Queensland, Victoria, New Zealand, the UK and 13 Canadian states.

Victoria

Currently, Victoria does not recognise interstate or overseas unions. However, there is currently a bill before the Victorian Parliament that proposes to allow the "automatic" recognition of interstate and overseas same-sex registered relationships. If this is passed, then Victoria will be the first jurisdiction in Australia to provide for this automatic recognition.

The Victorian Relationships Amendment Bill 2015 which was introduced on 6 October 2015 proposes to insert a new chapter into the *Relationships Act 2008* (Vic) to provide for the recognition of corresponding law relationships without the partners to the relationship needing to re-register their relationship in Victoria or provide any further evidence to establish that they are in a domestic relationship. Relationships registered or formalised under corresponding laws will be taken to be registered domestic relationships for the purposes of Victorian law.

To determine which laws will be recognised as corresponding laws, the bill allows for specific laws to be prescribed in regulations, as well as allowing broader recognition of relationships under laws that satisfy clear statutory conditions. This 'hybrid' approach provides a level of certainty, with regulations setting out the laws that are already known to allow for formalisation of a relationship that equates to a Victorian domestic relationship. For example, the regulations will prescribe the registration schemes in other Australian states and territories, as well as the civil partnership and same-sex marriage schemes in the United Kingdom, New Zealand and Canada. The hybrid approach also provides the flexibility to recognise other overseas laws that clearly meet the threshold criteria. This avoids the need to amend the Victorian regulations every time an overseas law is enacted to recognise same-sex relationships, including marriage, or other domestic relationships.[13]

The Relationships Amendment Bill 2015 (Vic) is currently at the Second Reading stage and is yet to be passed.

[13] The Hon Mr Martin Pakula MP (Victorian Attorney-General), Relationship Amendment Bill 2015 Second Reading Speech, 7 October 2015, p 3555.

GOVERNMENT MEMBERS STATEMENT OF RESERVATION

Government Members Statement of Reservation

All government committee members express serious concern regarding the unorthodox and exclusionary position reflected in this report in regards to the evidence presented to the committee. That the report excludes such evidence disenfranchises all those Queenslanders who took the time and energy in providing valuable evidence and personal narratives to the Parliament. Government members now provide that evidence in this statement of reservation.

1.1 Review of key amendments proposed by the Bill

The key changes introduced by the Bill to achieve its objectives include:

- Renaming the *Relationships Act* to the *Civil Partnerships Act,* as it was when originally enacted in 2011; and making other terminology changes including replacing references to 'registered relationship' to 'civil partnership";
- Providing for couples to enter into a civil partnership by making a declaration to each other (i.e., the civil partnership ceremony) prior to registering their relationship, noting that this does not prevent couples from making their own arrangements for a ceremony not involving a civil partnership notary to acknowledge their relationship commitment;
- Providing for registration of civil partnership notaries, including eligibility criteria and for the Registry of Births, Deaths and Marriages (RBDM), or a delegate of the RBDM, to also be a notary;
- Providing that the following decisions are reviewable by the Queensland Civil and Administrative Tribunal (QCAT):
  - the refusal to register a relationship involving a civil partnership ceremony;
  - the refusal to register a person as a civil partnership notary; or
  - the refusal to cancel a person's registration as a civil partnership notary;
- Providing that non-compliance with certain provisions relation to the civil partnership ceremony will not invalidate a civil partnership;
- Reintroducing offences to uphold the integrity of civil partnership ceremonies;
- Making consequential amendments to a range of other Acts; and
- Providing transitional provisions, for example, to provide that registered relationships prior to the commencement of the legislation are taken to be civil partnerships, and that a relationship under a corresponding law prior to commencement is taken to be registered as a civil partnership.[1]

During her Introductory Speech on the Bill, the Attorney-General provided the following background on these aspects of the Bill:

> *Firstly, the bill reinstates provisions into the Relationships Act 2011 to provide a couple with a choice of entering into a civil partnership by making a declaration of civil partnership—that is, the civil ceremony—prior to having their relationship*

[1] *Explanatory Notes*, Relationships (Civil Partnerships) and Other Acts Amendment Bill 2015, pages 1-2.

registered. Couples will also have the option of registering their relationship under the act without holding a civil ceremony.

The bill also restores the title and key terminology of the Civil Partnership Act 2011. Couples will register civil partnerships rather than registered relationships. Couples will be civil partners rather than registered partners. These terminology changes are important as they signal a recognition of a couple's commitment to each other rather than just the administrative process of registration.

The bill restores the provisions that applied under the Civil Partnerships Act 2011 that governed a civil ceremony. The bill allows two persons, after they have provided notice in the approved form of their intention to the civil partnership notary, to make a declaration in the presence of a registered civil partnership notary and at least one adult witness.[2]

The Bill achieves its objective of providing recognition of electronic records and supporting the transition to a digitised Births, Death and Marriages registration service by amending the *Births, Deaths, Marriages Registration Act 2003* (BDMR Act) to:

- establish electronic lodgement as the required means of lodgement for birth notices by hospitals and death registration applications by funeral directors, with limited exceptions thereby establishing electronic lodgement as the preferred lodgement method;
- clarify the ability of individuals and entities to apply for and receive information electronically under the BDMR Act, promoting greater accessibility to information through the use of online channels; and
- give digitised copies of source documents relating to the registration of a life event the same legal status as the original paper versions.[3]

1.2 Issues raised in submissions

The committee received 29 written submissions to its inquiry. Submissions came from parents of gay and lesbian people, individuals directly affected by the Bill, civil celebrants, advocacy organisations, and legal services. An overwhelming majority of the written submissions are supportive of the Bill (i.e., 27 in favour and 2 against). Some amendments to the Bill were suggested by submitters. The key issues raised are discussed below.

1.2.1. General support

Many general expressions of support for the Bill were made in submissions. A number of these noted that the Bill re-instates rights that were removed by the 2012 Amending Act, causing significant hurt:

- The decision to abolish civil partnership ceremonies, and the haste with which it was achieved, was an unjustified, divisive and mean-spirited act – and I commend the current Queensland Government for taking steps to undo the damage that was done three years ago.[4]
- *So what we saw was that our civil union suddenly was diluted down to a registration, like a dog registration. We never got to have the ceremony; we could not have it. You have no idea how much it hurt. We thought, 'Should we*

[2] Record of Proceedings (Hansard), 17 September 2015, p 57.

[3] Explanatory Notes, p 2.

[4] *Alastair Lawrie, Submission 18, p 2.*

> *leave the country?'—and, by the way, others have, others went to New Zealand—'Should we leave Queensland? What should we do? The government has sent us a clear message that we are not welcome here, our relationship is not valid.' I think it is important for us to pause for a moment and realise that a wrong has been done; a civil right has been reversed. I am not aware of other times in our history when that has happened, but this was one of them…. to me this is righting a wrong that was done.*[5]

FamilyVoice believes that there is no social benefit to be gained from civil unions (presumably in respect of same sex couples):

> *This provision is entirely unnecessary because the government has no interest in recognising civil unions as they provide no benefit to society. For example, other types of unions such as two close friends, two siblings, two lesbians may be loving and committed, but do not have the potential to produce children of the union.*[6]

On the other hand, submitters pointed to the contribution civil unions make to promoting social and familial stability. One mother of a gay man said:

- *I think one of the main reasons for marriage is stability—stability in a relationship between two people, hopefully, and that means stability in a family. All of my other children come home with their husbands and wives and what-not, and he should be able to come home like that, too. It makes a lovely stable family; it also helps to create a stable society when individuals and families are cohesive. No-one should feel that they are unable to bring home the person of their choice.*

- *I just think that if civil partnerships are acknowledged and allowed it makes for a happier community and happier people who are not hiding themselves from themselves, from the world and from their families.*[7]

Some submissions, expressing support for civil partnerships more generally, note the importance of equal legal recognition for gay and lesbian relationships:

> *It is the Council's view that gay and lesbian couples in loving relationships should be given the same status as heterosexual couples in such relationships. Official recognition of their status will provide a legal basis for defining their rights and responsibilities which will benefit society.*[8]

> *A couple in a registered Civil Partnership, deserves the legal recognition of their relationship by the resources that use Births, Deaths and Marriages records, and also in regards to family history, family relationships, and other matters relating to the couple's personal history.*[9]

The Bill has attracted support from some members of the religious community:

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5 Hansard transcript, 3 November 2015, p 8.
6 FamilyVoice, submission No. 16, page 3.
7 Mrs Valerie Fjellstrom, Hansard transcript, 3 November 2015, p 6.
8 Queensland Council for Civil Liberties, submission 14, p 1.
9 Saralyn Kay Earl (marriage celebrant), submission 17, p 1.

> We are confident that the proposed legislation does not affect the right of churches or other religious groups to celebrate marriage according to their own understanding and religious beliefs.[10]
>
> I strongly support restoring Civil Unions. Treating everyone EQUALLY is the right thing to do. (Ron Smith, Retired Baptist Pastor, Submission No. 6, page 1)

The message sent by unequal recognition of relationships for same-sex couples is seen as a significant contributing factor to poor mental health:

> *Brisbane Lesbian Gay Bisexual Transgender Intersex and Queer Action Group (BLAG) strongly supports this bill being passed into law. Our members are grateful that despite civil unions being a different and inferior form of relationship recognition compared to marriage equality, this is the most the Queensland government can do, and if this bill becomes law, they will be afforded greater respect and recognition. This is commendable as a further step toward equal recognition and treatment of all citizens leading to further breaking down of divisions within society, and boosting the mental health of LGBTI Queenslanders.* (Brisbane LGBTIQ Action Group, Submission No. 22, page 1).

Research suggests that the rate of suicide for LGBT people is 3.5 to 14 times higher than the general population. LGBT people are also at a higher risk for a range of mental diagnoses and significantly more likely to be diagnosed with depression or anxiety. (Brisbane LGBTIQ Action Group, Submission No. 22, Attachment page 2).

The LGBTI Action Group advised the committee that:

> *This happens as a result of living with a prejudiced discrimination stigma and nonrepresentation. The horrific statistics in the document attached to our submission are not just numbers but real people.*
>
> *By restoring civil partnerships and allowing a state sanctioned ceremony, the government can acknowledge loving relationships in a truly meaningful way. This will improve the self-worth and validity of people choosing these unions, further helping to break down discrimination and thereby improving the health and wellbeing of LGBTI Queenslanders.*[11]

1.2.2. The Bill and marriage equality

Some submitters made it clear to the committee that not all people who want to formalise their relationship want to do so through marriage. The choice not to marry, but to enter into other arrangements to obtain legal recognition of a relationship is a conscious choice that couples, heterosexual and same-sex alike, make. Reflecting this, New Zealand has both marriage equality and a civil partnership regime.

According to the Very Reverend Dr Catt, '*no matter what happens in the federal sphere about marriage, there will be people who will be looking for civil partnerships for all sorts of reasons. They are actually quite separate issues, in my view.'*[12]

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10 Very Reverend Dr Peter Catt, Anglican Church Southern Queensland, submission 23, p 1.

11 Hansard transcript, 3 November 2015, p 7.

Confirming this, explaining fears that his relationship could be affected by changes to immigration rules, Mr Tinkler said:

> *So we thought we should go for marriage because maybe it would be less flimsy and a government may not overturn it. So we thought of it on that basis in the sense of the vulnerability. We feel very vulnerable. But then we thought, 'No it is not really us. It is not what we want. It does not represent us…A civil union and a marriage are two different things.*[13]

Data also makes it clear that marriage equality and civil partnerships are separate issues. As at 4 November 2015, a total of 6,856 heterosexual couples and 1,227 same sex couples had registered their relationship in Queensland.[14]

Some supporters of the Bill considered that it represents a good interim step towards the ultimate goal of marriage equality which would mean an equal choice to marry or not:

> *Although we emphasise that marriage equality at a Federal level is still the ultimate goal, we recognise that a civil partnership is important as both an interim measure and for those who do not wish to get 'married'. A public declaration of love and commitment is a crucially important aspect of any such union.*[15]

The department confirmed its position that:

> *The civil partnerships framework is separate from, and different to, marriage. The two frameworks exist in parallel. The civil partnerships framework will continue to operate following any changes to the framework for marriage.*[16]

1.2.3. Civil partnership ceremonies

In introducing the legislation which removed the ceremony aspect of civil partnerships in 2012, the then Attorney-General advised that '*the ceremony does not affect the legality of the relationship registration process and is a symbolic measure only'.* The aim of the amendments were expressly to remove elements of the Act which could be seen to mimic marriage, including the ceremony, while retaining the legal recognition that the Act offered to registered relationships.[17]

Dr Catt spoke of the importance of rituals in our society:

> *A ritual is the event that gives the feel of reality to an event. For example, at St John's Cathedral we have a burial register in which we record a person's death, but it is the funeral—the ritual—which helps people to grieve and move through the grief process. From time to time we have to deal with people who are prevented by a loved one's wishes from having a funeral to celebrate that loved one, and while the death is recorded in our register the lack of ritual leads to the mourners feeling that their grief process has been compromised. The importance of ritual cannot be underestimated. This bill, through the reintroduction of ceremonies, offers the*

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13 Hansard transcript, public hearing, 3 November 2015, p 9.

14 Department correspondence, 6 November 2015, p 2

15 LGBTI Legal Service, submission 28, p 1.

16 Department correspondence, 6 November 2015, p 16.

17 For example, in respect of property, succession, workers compensation and being entitled to make health care decisions where their partner lacks capacity – Department correspondence, p 7.

opportunity for social recognition for those to whom such a ritual will reflect the depth of their commitment.[18]

This was echoed by the LGBTI Legal Service:

While it might not be for everyone, for many the opportunity to publicly declare their love in front of family and friends is a fundamental aspect of entering into such a union. Without that, it becomes nothing more than filling out a form.[19]

Mr Stephen Page advised:

The Bill re-instates the opportunity for same sex relationships to have a public celebration of their love.

Love is love. Those in same sex relationships are denied the ability to marry in Australia. Their relationships are to all intents and purposes invisible. Nevertheless, same sex couples wish their relationship to be recognised. The ability to merely fill out a form without any public celebration of their love is short changing these couples in having that love celebrated with their friends and family, and, if they are religious, with God.

The key to the 2012 amendments was to deny that public celebration of love. This short changed all the couples involved and as a result impoverished our society by not recognising, in an appropriate way, those relationships. The State should not be preventing those who wish to have the public celebration of their love by a means other than marriage from enjoying and cherishing that public celebration. Two autonomous adults should be able to make that choice without interference from the State.[20]

Though civil partnerships are not a replacement for marriage, it is the view of the [Australians Lawyers Alliance] that the availability of these legally recognised partnerships is a step towards achieving true equality for LGBTIQ couples.[21]

[The Bill] is a step in the right direction for equality while the federal government navigates through the current delays in enacting a change to the federal Marriage Act.[22]

Taking the view that civil unions do not impact on marriage, the Very Rev Dr Catt advised that:

We believe that the act and legitimacy of religious marriage is not denied or denigrated by enabling same sex couples — or opposite-sex couples who have different (or no) spiritual beliefs — to publicly commit to each other in a way that is legally and socially recognised.[23]

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18 Hansard transcript, 3 November 2015, p 1.
19 Hansard transcript, 3 November 2015, p 2.
20 Stephen Page, Harrington Lawyers, submission 4, p 2.
21 Australian Lawyers Alliance, submission 26, p 5.
22 Michael Burge and Richard Moon, submission 19, p 1.
23 Anglican Church of Southern Queensland Social Responsibilities Committee, submission 23, p 1.

1.2.4. Recognition of unions solemnised overseas and inter-state

A number of submissions urged the committee to recommend that same-sex marriages solemnised overseas, and civil unions entered into overseas or interstate, should 'automatically' be recognised as Queensland civil partnerships.[24]

Mr Phil Browne in his submission stated:

> *I support the passing of the Relationships (Civil Partnerships) and Other Acts Amendment Bill 2015 – however, I am concerned the bill does not allow for couples with overseas same-sex marriages or civil unions, to be automatically recognised as civil unions under Queensland law. I request please that this provision be included in the bill. It would be very demoralising for my friends, as well as other Queenslanders with overseas same-sex marriages or civil unions, to have to manually register their union with the births, deaths and marriages office. It would mean so much more if this recognition under Queensland law as a Queensland civil union were granted automatically*.[25]

The Brisbane LGBTIQ Action Group, which Mr Browne also represents, made a similar point in its submission:

> *This bill will not allow for automatic recognition of Queensland civil unions under laws of other Australian states. This means that when Queensland couples with Queensland civil unions cross state borders to go on interstate holidays, they could still be regarded as legal strangers. For example, if one partner had a life threatening medical emergency interstate, their partner may be not recognised as legal next of kin and could be denied hospital visitation and consenting to emergency medical procedures for their loved one.*[26]

Section 33 of the *Relationships Act 2011 (Qld)* provides that *'[a] regulation may provide that a relationship under a corresponding law is taken to be registered as a registered relationship under this Act'*. The term 'corresponding law' is defined to mean '*a law or another State or country prescribed under a regulation to be a corresponding law for this Act'*.

Accordingly, the current law in Queensland provides for the recognition of registered relationships in other Australian jurisdictions or overseas if the law in another State or country is prescribed by Regulation.

In terms of the situation for the recognition of registered relationships in other Australian jurisdictions, section 4 of the Relationships Regulation 2012 provides for reciprocal rights for relationships registered in NSW, Victoria, Tasmania, and Australian Capital Territory, being the three States and one Territory which allows for the registration of same sex relationships.

In terms of the situation for the recognition of registered relationships overseas, while section 33 of the *Relationships Act 2011 (Qld)* provides for the registration for partnerships registered overseas where the relevant country is prescribed under the relevant regulation, it is noted that currently no

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[24] For example, see Jennifer Cram, Submission No. 9, page 2 and Brisbane LGBTIQ Action Group, Submission No. 22, page 3.

[25] Phil Browne, Submission no. 28, page 1.

[26] Brisbane LGBTIQ Action Group, Submission No. 22, page 1.

overseas jurisdiction is listed in the Relationships Regulation 2012. Accordingly, there is currently no recognition of any relationships registered in overseas jurisdiction.

If two persons do wish for their overseas registration of their relationship to be recognised in Queensland, they must apply for the registration of their relationship under section 7 of the *Relationships Act 2011 (Qld)* – and undertake the whole civil partnership process as if it were a new one.

The impact of the lack of automatic recognition for marriages or partnership ceremonies performed overseas was described at the public hearing by Ms Kathleen Kirkwood:

> *Matt and Victor were married in Auckland, New Zealand, in March this year, and it was an incredibly wonderful day. The sadness was that it was an incredibly small ceremony and very clinical, because it was basically in an office building like this in the centre of Auckland and family and friends could not be there on that day. The minute he stepped foot back home his marriage was not recognised, and that is incredibly sad for them because the reason they married was that they wanted the stability that they feel that brings. They have seen John, my husband, and I happy for a long time and they wanted that too. That was no different to his older sister.*[27]

The LGBTI Action Group showed the committee a wedding invitation for a Queensland couple who are travelling to New Zealand, which has marriage equality legislation alongside a civil partnership regime, to marry shortly.

> *On their return, they realise their marriage will be invalidated but they would like the state of Queensland to recognise that as a civil union automatically.*

In this regard, the LGBTI Legal Service encouraged the committee and Queensland Parliament to consider including an additional change along the lines of the proposal currently before the Victorian Parliament which would see the automatic recognition in Queensland of same-sex relationships registered both interstate and overseas.[28] Under that proposal, the definition of which relationships from other jurisdictions are recognised in Queensland would be provided by giving a list of criteria for which a 'corresponding law' will be recognised as corresponding.[29] The LGBTI service advises that the criteria could include:

> *…that the relationship must be entered into by adults consensually who are not related and not otherwise in a relationship. That gives the act flexibility to respond to the ever-changing situations we find ourselves in.*[30]

An illustration of the limited flexibility in the current approach of specifying in regulation which acts are corresponding acts is provided by the LGBTI Legal Service, which points out that the current regulation is out of date, and that the references to the now repealed *Civil Partnerships Act 2008* (ACT) should be replaced with the *Civil Unions Act 2012* (ACT).[31]

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27 Hansard transcript, 3 November 2015, p 6.
28 LGBTI Legal Service, Submission No. 25, p 2.
29 See Relationships Amendment Bill 2015 (Victoria), discussed in more detail in Appendix C.
30 Hansard transcript, 3 November 2015, p 2.
31 LGBTI Legal Service, Submission No. 25, p 2.

1.2.5. Terminology: civil partnerships or registered relationships

A key proposal in the Bill is to reinstate the use of the term 'civil partnership', which was replaced in 2012 by the term 'registered relationship'. The object of the 2012 amendment was '*to reflect accurately the purpose of the regime which is to provide for a legislative scheme to register relationships*'.[32]

Introducing the Bill, the Attorney-General noted:

> *Couples will be civil partners rather than registered partners. These terminology changes are important as they signal a recognition of a couple's commitment to each other rather than just the administrative process of registration.*[33]

This was considered important by most of those who made submissions to the committee's inquiry. For example:

> *A civil partnership signifies a couple's binding commitment to one another, rather than being a registered relationship – ie., in the eyes of some, just for the sake of administration and convenience. The Bill would restore the term 'civil partnership' throughout the wording of the Act, including, in its title. The terminology – registered relationships is too ambiguous and demeaning of a couple's relationship*.[34]

And:

> *In my view, the term "civil partnership" is a much more accurate description of the relationship which exists within couples who wish to have their partnership formally recognised under state law, whereas, to me, 'registered relationship' is a more sterile term which merely describes the process of recognition rather than the relationship itself.*[35]

Representing the Anglican Church of Southern Queensland's social responsibilities Committee, the Very Rev Dr Catt discussed the importance of language:

> *Language is humanity's most powerful tool and weapon, hence the saying 'the pen is mightier than the sword'. The change in language that was introduced by the 2012 bill, altering partnership to relationship, caused a lot of hurt. It was seen as conveying a diminution of the value of the bond that people wanted to celebrate. Relationship is a more generic term than partnership. Our relationships cover a wide range of interactions. We have relationships with those with whom we work and those with whom we play sport. There are few relationships to which we ascribe the term 'partnership'. Partnership is reserved for relationships that are particular and special. By reintroducing the term 'partnership', this bill captures the depth of feeling and commitment that people want to have recognised.*[36]

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32 Hansard transcript, 20 June 2012, p 859.
33 Hansard transcript, 17 September 2015, p 2009.
34 Saralyn Kay Earl, Civil Celebrant, submission 17, p2.
35 Alastair Lawrie, Submission 18, p 1.
36 Hansard transcript, 3 November 2015, p 2.

1.2.6. Dissolution of civil partnerships

Of the 6,856 heterosexual and 1,227 same sex couples who have registered their relationships in Queensland, 206 heterosexual couples and 62 same sex couples have terminated their registered relationships.[37]

An issue arising at the public hearing in respect of this inquiry was the process by which civil partnerships can be dissolved. The Bill would carry over the process prescribed in the Relationships Act 2011, as amended in 2012:

> *An odd provision of the Relationships Act—and it is continued under this bill—is that a registered relationship is similarly [to its registration] ended by form filling. Under section 18 the registrar of births, deaths and marriages is required to decide without any statutory criteria, other than possibly considering conflicting statutory declarations of the parties, as to whether or not a registered relationship has ended. This function should not be left to bureaucracy but put in the hands of courts, as it was in the Civil Partnerships Act, where, if there is a conflict about whether or not a relationship has ended and when, it could be properly decided in an accountable way by the third arm of government to which appeals and proper processes are open to an aggrieved party.*[38]

Prior to the 2012 amendment, the Act had required an application to be made to the District Court to terminate a civil partnership. The intent of the 2012 amendment was to '*remove other provisions that mimic marriage…[and here] the provisions could be seen to equate to the legal procedure to dissolve a marriage*'.[39]

Mr Page (a family lawyer) pointed out that the types of scenarios where there is disagreement about the ending of a relationship relate to questions of whether the parties were in a relationship at all:

> *I can tell you that quite frequently there is litigation between couples as to whether or not they are in a relationship. Having a registered relationship or a civil partnership—and certainly I prefer a civil partnership because of the ceremonial aspect of it—is essential because if the couple have done that then there is no dispute that they are in a de facto relationship and they might save, in the process—I do not know—$100,000 and $30,000 of Commonwealth taxpayers' money. I know that is the Commonwealth's, it is not the state's, but nevertheless it is a saving to society. It is money that, instead of funding people like myself, could be put towards their children.*[40]

Mr Page indicated that the government had suggested QCAT was an option for reviewing decisions made by the registrar, but considered it should be decided '*…in a court, make sure if there needs to be evidence given there can be evidence given and a determination is made under law as to whether or not the relationship has ended*'.[41]

The department has advised the committee that it understands that Victoria, Tasmania and the Australian Capital Territory similarly provide for termination applications to be dealt with by their equivalent of the RBDM with tribunal review. However, in these jurisdictions a court is also able to deal with a termination application.

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37 Department Correspondence, 6 November 2015, p 2.
38 Hansard transcript, 3 November 2015, p 3.
39 Hansard transcript, 20 June 2012, p 859.
40 Hansard transcript, 3 November 2015, p 4.
41 Hansard transcript, 3 November 2015, p 4.

The department advises it is not aware of any issues or complaints about the current termination process, and its view is that '*allowing the RBDM to deal with termination applications with QCAT review is more appropriate for an administrative based registration scheme'.*[42]

1.2.7. Civil partnership notaries

The Society of Notaries of Queensland Inc (the Society) raised in its submission, made on behalf of its 140 plus members, a concern relating to the term 'civil partnerships notaries' which is proposed to be re-introduced in the Bill. The Society argues that this term will cause confusion:

> *To refer to these registrants as civil partnership notaries will without doubt raise confusion in the minds of the public as to what a notary is and what services a notary can perform and [the Society of Notaries of Queensland] foresees considerable effort being expended in explaining the difference to members of the public.*[43]

Notaries or notaries public carry out notarial functions essential to the transaction of international business. They also certify the correctness of documentation used to secure overseas employment. Notaries are recognised by the Commonwealth Department of Foreign Affairs and Trade and co-operate with that department in producing documentation on which overseas governments and companies can rely.[44]

The Society discusses the role of a notary in its submission:

> *We are widely known and accepted by the public in providing these services and are known by those who use our services as Notaries or Notaries Public. The office of Notary Public is ancient and honourable and has existed in Queensland for over one hundred years. Notaries Public in Queensland are required to be qualified legal practitioners having at least 10 year experience. Notaries exist in nearly every country in the world and their duties relate to commercial and business matters rather than relationship issues.*[45]

The Society '*earnestly requests that another name be found for the persons who will be called upon to exercise services which may lead to the registration of civil partnerships under the Bill*'.[46]

In this regard, the Society of Notaries of Queensland recommends that in the event that the Bill is passed, that the references to 'civil partnerships notaries' be replaced with the term 'civil partnership celebrants' to avoid confusion with notaries (or such other name deemed appropriate, such as officers or monitors).

Mr Stephen Page agreed that there was potential for confusion:

> *I think in the general public's eye, when they want to get married they go to a minister of religion or a celebrant. But to have this relationship with a notary, yes, I think it certainly has the potential to be confused with a notary public…… Typically*

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42 Department correspondence, 6 November 2015, p 2
43 The Society of Notaries of Queensland Inc, Submission 5, p 2.
44 The Society of Notaries of Queensland Inc, Submission No. 5, page 2.
45 The Society of Notaries of Queensland Inc, Submission No. 5, page 2.
46 The Society of Notaries of Queensland Inc, Submission No. 5, page 2.

notaries are lawyers or solicitors like myself, so you think, 'I might have to go to one of those.'[47]

The term 'civil partnership notaries' was originally introduced in the *Civil Partnerships Act 2011*. It does not appear that, at that time, any submission was made to the former committee about the term 'civil partnership notaries' potentially being confused with the terms 'notaries' or 'notaries public'.[48]

When the *Civil Partnerships and Other Legislation Amendment Act 2012* was passed, all the provisions regarding civil partnership notaries were deleted from the legislation which subsequently became known as the *Relationships Act 2011.*

The department advises it considers the term 'civil partnership notary' to be appropriate, and that that their role is unlikely to be confused with the role of notaries public. The term '*indicates that these notaries have a role that is specific to civil partnerships and these notaries will have to be registered under the Civil Partnerships Act 2011.*[49]

1.2.8. Number of witnesses

Clause 14 of the Bill inserts proposes new section 11 which provides that a civil partnership can be declared before a civil partnership notary and at least one other adult witness. Civil marriage celebrant, Ms Earl, recommended in her submission that there should be at least two adult witnesses rather than one.[50]

The department considers that requiring one witness is appropriate:

It ensures a balance between adequately reflecting the ceremony's official status for those couples who choose to have a ceremony under the amendments; and not making the requirements too onerous for couples.[51]

Mark Furner MP

Member for Ferny Grove

Chair

Jim Madden MP

Member for Ipswich West

Mark Ryan MP

Member for Morayfield

[47] Hansard transcript, 3 November 2015, p 5.

[48] Legal Affairs, Police, Corrective Services and Emergency Services Committee, *Civil Partnerships Bill 2011, Report No. 7*, November 2011, page 11.

[49] Department correspondence, p 10.

[50] Saralyn Kay Earl, Civil Celebrant, Submission 17, p 2.

[51] Department correspondence, p 10.

Attachment 1 – List of Submissions

Sub #	Submitter
001	Edward Ken Moala
002	Simon Tinkler
003	Robin Bristow
004	Stephen Page
005	Society of Notaries of Queensland Inc.
006	Rod Smith
007	Shane Thompson
008	Jill Hammond
009	Jennifer Cram
010	Annette Corkhill
011	Valerie Fjellstrom
012	Olivia Darling
013	Kathleen Kirkwood
014	Queensland Council for Civil Liberties
015	Peter Christinson
016	FamilyVoice Australia
017	Saralyn Kay Earl, Celebrant
018	Alastair Lawrie
019	Michael Burge and Richard Moon
020	Barbara Dufty-Wilkinson
021	Anti-Discrimination Commission Queensland
022	Brisbane Lesbian Gay Bisexual Transgender Intersex and Queer Action Group
023	Anglican Church Southern Queensland
024	NSW Gay and Lesbian Rights Lobby
025	Lesbian Gay Bisexual Trans Intersex Legal Service Inc

026 Australian Lawyers Alliance

027 Australian Christian Lobby

028 Phil Browne

029 Heather Magee

Attachment 2 – List of Witnesses

In order of appearance before the Committee:

- Mr Stephen Page, Harrington Family Lawyers [Sub No 4]
- Mr Emile McPhee, LGBTI Legal Service Inc. [Sub No 25]
- Mr Kevin Cocks, Queensland Anti-Discrimination Commissioner [Sub No 21]
- The Very Reverend Dr Peter Catt, Dean, St John's Cathedral, Chair, Anglican Social Responsibilities Committee, Anglican Church Southern Queensland [Sub No 23]
- Mr Simon Tinkler [Sub No 2]
- Mr Phil Browne, LGBTIQ Action Group [Sub No 22]
- Ms Kathleen Kirkwood [Sub No 13]
- Ms Valerie Fjellstrom [Sub No 11]
- Mr Ashley Dewell, Family Voice [Sub No 16]
- Ms Wendy Francis, Australian Christian Lobby [Sub No 27]