

AMNESTY
INTERNATIONAL
Aotearoa New Zealand



Amnesty International Aotearoa New Zealand:

Submission to the Government Administration Committee on the **Marriage
(Definition of Marriage) Amendment Bill**

25 October 2012

Amnesty International is an independent movement of over 3.2 million people in more than 150 countries who contribute their time, money and expertise to the promotion human rights and international campaigning to prevent some of the most serious violations.

Amnesty International, recognising that human rights are indivisible and interdependent, also works to promote all the human rights enshrined in the Universal Declaration of Human Rights and other international standards, through human rights education programs and campaigning for ratification of human rights treaties.

Amnesty International Aotearoa New Zealand (AIANZ) has approximately 15,000 members and supporters, including active members in some 30 local community groups, specialist groups and various action networks and within more than 100 high schools. At any one time its members are working on cases and issues in approximately 90 countries. The work of AIANZ's members is supported by paid staff and volunteers based in Auckland, and the movement's International Secretariat based in London.

Amnesty International is impartial. It is independent of any government, political persuasion or religious creed. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect

Amnesty International's policies and plans are discussed and decided at general meetings of the membership and meetings of their elected representatives held every two years (International Councils). In New Zealand their implementation is managed by the Executive Director overseen by an elected Governance Team. Between International Councils the international affairs of Amnesty International are managed by the Secretary General, who reports to an elected International Executive Committee of members from at least seven different countries.

Amnesty International is financed by its worldwide membership and the public. Strict guidelines exist to safeguard its independence of the organisation; AI does not accept government funds for its campaigning work or organisation.

Amnesty International has formal relations with the United Nations Economic and Social Council (ECOSOC), UNESCO, the Council of Europe, the Organization of American States, the Organisation of African Unity, and the Inter-Parliamentary Union.

Amnesty International was awarded the United Nations Human Rights Prize for "outstanding achievements in the field of human rights" on the 30th anniversary of the Universal Declaration of Human Rights. The movement received the Nobel Peace Prize in 1977 for its contribution to "securing the ground for freedom, for justice, and thereby also for peace in the world".

INTRODUCTION

1.1 Amnesty International works to promote and defend the observance of all human rights enshrined in the Universal Declaration of Human Rights and other international standards. Campaigning, for example through advocacy and lobbying to Members of Parliament and public officials, is an essential component of the Organisation's work. Around the world Amnesty International campaigns for the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals by highlighting violations of their rights and working to protect the dignity of these individuals.

1.2 Amnesty International Aotearoa New Zealand (**AIANZ**) welcomes the opportunity to comment on the Marriage (Definition of Marriage) Amendment Bill (**the Bill**).

1.3 AIANZ wholeheartedly supports the Bill in its purpose and aims as it would end the discrimination and inequality which is inherent in New Zealand's existing laws and bring New Zealand in line with its domestic and international human rights obligations. We further support the Bill for a number of reasons:

1.3.1 Marriage equality is a fundamental human rights issue. The right to marry is recognised in Article 16 of the Universal Declaration of Human Rights and freedom from discrimination based on sexual orientation is protected in the Bill of Rights Act 1990 and the Human Rights Act 1993.

1.3.2 New Zealand's current law is discriminatory because inequalities exist between civil unions and marriages. These include criminal law evidence, adoption rights, hospital and burial rights. The Bill seeks to rectify this by making the law equal for everyone.

1.3.3 The denial of marriage to same-sex couples stigmatises their relationships and can lead to further discrimination.

1.3.4 Only when marriage is available to all New Zealanders can we ensure that there is equality for people wishing to marry and compliance with the Universal Declaration of Human Rights, the Bill of Rights Act 1990 and the Human Rights Act 1993.

INEQUALITIES IN NEW ZEALAND'S CURRENT LAW

2.0 The current law in New Zealand allows couples of the same sex to enter into civil unions but not marriage. Although this guarantees many of the same legal rights regarding property, there are still many areas of the law in which civil union couples are discriminated against.

2.1 Civil unions do not carry all the legal rights to which married couples are entitled. This is discriminatory because non-heterosexual couples do not yet have the option of marriage available to them. For example, a civil union partner may be forced to give evidence against his or her partner in criminal cases whereas this is not the case for married couples and rights under civil unions do not include important rights such as hospital visitation and burial rights.

2.2 Heterosexual couples may convert their civil union to a marriage or vice versa, but this right is denied to same-sex couples.

2.3 Civil unions do not have the universality of marriage and are not recognised overseas.

2.4 The term 'spouse' in the Adoption Act 1955 is limited to heterosexual couples; same-sex couples are unable to jointly adopt a child. Given that a lesbian woman or gay man can apply to adopt a child as a sole applicant, and that same-sex couples can share the parenting of a child as legal guardians, it is anomalous and discriminatory under the Human Rights Act 1993 and the Bill of Rights Act 1990 that a same-sex couple cannot adopt a child jointly.

2.5 AIANZ supports the Bill as it would end the discrimination and inherent inequality which currently exists between civil unions and marriages by giving all people, regardless of their sexual orientation, the right to marry and therefore all the legal rights that marriage entails.

MARRIAGE EQUALITY IS A HUMAN RIGHTS ISSUE

3.0 The issue of marriage equality is a rights issue; Amnesty International believes that all people, regardless of their sexual orientation or gender identity, should be able to enjoy the full range of human rights without exception.

3.1 Article 16 of the Universal Declaration of Human Rights states "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution"¹

3.2 For more than a decade, this non-discrimination principle has been interpreted by UN treaty bodies and numerous inter-governmental human rights bodies as prohibiting discrimination based on gender or sexual orientation. Non-discrimination on grounds of sexual orientation has therefore become an internationally recognised principle and many countries have responded by bringing their domestic law into line with this principle.

3.3 AIANZ agrees with the policy statement of the Bill that 'marriage, as a social institution, is a fundamental human right and limiting that human right to one group in society only does not allow for equality.'² This is consistent with Article 16 of the Universal Declaration of Human Rights.

3.4 Denying equal legal recognition of same-sex relationships in the form of marriage prevents same-sex couples from accessing a range of other rights and stigmatises their relationships, which can fuel further discrimination.

CONCLUSION

4.0 In order to ensure formal legal equality, regardless of sexual orientation or gender identity
AIANZ supports the Bill for the following reasons:

4.0.1 The current civil union legislation falls short of complete recognition of the inherent dignity and equal and inalienable rights of all members of the human family.

¹ <http://www.un.org/en/documents/udhr/index.shtml>

² Explanatory note of the Marriage (Definition of Marriage) Amendment Bill
<http://www.legislation.govt.nz/bill/member/2012/0039/latest/DLM4505001.html>

- 4.0.2 The Bill will end the discrimination and inherent inequality which currently exists in New Zealand law.
- 4.0.3 Marriage is a human right, so equal access to it is a human rights issue with fundamental rights at stake.
- 4.0.4 Formal legal equality around the rights to marry and form a family under the Universal Declaration of Human Rights requires marriage equality.
- 4.0.5 Preventing same-sex couples from enjoying the same rights as heterosexual couples stigmatises their relationships and is discriminatory.
- 4.0.6 Only when marriage is available to all New Zealanders can we ensure that there is equality for all people wishing to marry and New Zealand is complying with its domestic and international human rights obligations.