

Chair's foreword

The definition of marriage is an issue that is deeply held by many in Australia and accordingly, the Turnbull Government's policy position is to allow the Australian people to have their say—via a plebiscite—on whether the definition should change.

While legislation to enable the plebiscite was defeated in the Senate in 2016, this remains the Government's policy position.

As part of the preparatory works for the plebiscite, an exposure draft for discussion was released by the Attorney-General. In late 2016, the Labor, Greens and NXT parties voted to create a Senate Select Committee to examine the exposure draft, with particular reference to religious freedom protections.

Evidence before the committee confirmed that Australia is not required to make a change to the definition of marriage under jurisprudence in international law, but nor is there an impediment to it doing so. The United Nations Human Rights Committee has made it clear that so long as a nation state has legislation to recognise and protect same-sex relationships—as Australia has—then the right to freedom from discrimination and equality before the law is fulfilled because under the *International Covenant on Civil and Political Rights*, marriage is defined as being between a man and a woman (Article 23). The European Court of Human Rights has made a number of judgements in recent years supporting this approach.

The context of this inquiry, therefore, was not that a change is inevitable, but that a parliament may choose to legislate for a change to the definition of marriage, potentially enlivening the right to freedom of thought, conscience and religion in a range of areas. Evidence demonstrated that there are substantial matters of law and individual human rights to be dealt with that extend well beyond the Marriage Act itself. I note that if Australia is to remain a plural, tolerant society where different views are valued and legal, legislators must recognise that this change will require careful, simultaneous consideration of a wide range of specialist areas of law as opposed to the common perception that it involves just a few words in one act of parliament.

As Chair, I wish to record my appreciation for the collegiate manner in which members of the committee and witnesses have approached this inquiry. Participants with significantly different understandings of how the institution of marriage should be defined, have worked constructively to explore those differences and to place on the public record a report that identifies fundamental rights that must be carefully considered, respected and balanced in any future legislation that a Parliament may approve.

