

**Submission**

**to the**

Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the Recognition of Foreign Marriages Bill 2014

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## 1. INTRODUCTION

On 15 May, 2014 the Senate referred the Recognition of Foreign Marriages Bill 2014 to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report.

The closing date for submissions is **31 July 2014**. The reporting date is **3 September 2014**.

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Recognition\\_of\\_Foreign\\_Marriages\\_Bill\\_2014](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Recognition_of_Foreign_Marriages_Bill_2014).

## 2. Terms of Reference

The reasons for referral or principal issues for consideration are:

“The **benefits of recognising the legal foreign marriages of same-sex couples** and the **impact of marriage equality in other countries**, with particular reference to:

- a) The social and economic benefits of recognising foreign same-sex marriages;
- b) The cultural, social and economic impact of marriage equality in foreign countries;
- c) The impact on religious communities and religious freedoms of marriage equality in foreign countries.”

## 3. Some general points:

- The title of the Bill is a misnomer. It is not about recognition of foreign marriages per se – it is only about recognition of foreign **same-sex marriages**.
- The ROFM Bill is simply part of the Marriage Equality Amendment Bill (MEAB) 2013 which Senator Hanson-Young moved in the Senate in December last year. The MEAB seeks to redefine marriage in Section 5 of the Marriage Act as the union of any two persons and Item 7 of Schedule 1 to that Bill proposes the consequential amendment to repeal Section 88EA, which prohibits recognition of foreign same-sex marriages, to avoid inconsistency with the proposed new definition in Section 5. The ROFMB is simply Item 7 of Schedule 1 (the repeal of Section 88EA) dressed up as a stand-alone Bill and given another name.
- If Senator Hanson-Young’s ROFMB was passed to recognise foreign same-sex marriages it would be inconsistent not to allow same-sex marriage in Australia.
- The federal parliament voted decisively in December, 2012 to retain marriage in Australia as the union of one man and one woman voluntarily entered into for life and not to redefine it as merely the union of any two people. Senator Hanson-Young is effectively demanding another vote on the issue.

## 4. Specific Points addressing the principal issues for consideration by the Committee:

- a) On the social and economic benefits of recognising foreign same-sex marriages; and
- b) The cultural, social and economic impact of marriage equality in foreign countries;

In a paper titled “What happens to marriage and families when the law recognises ‘Same-Sex Marriage’?” (presented to the House of Lords during the debate on same-sex marriage in the UK), based on research and data from the UK, Sweden, Norway, Denmark, the Netherlands, Spain, Canada the US, UK social researcher Dr Patricia Morgan concludes that:

As marriage is redefined to accommodate same-sex couples, this reinforces the idea that marriage is irrelevant to parenthood.

Same sex marriage leads to the casualization of heterosexual unions and separation of marriage and parenthood.

Spain saw a pronounced acceleration in the decline of marriage following the introduction of same-sex marriage (same-sex marriage was introduced at the same time as the ‘express divorce bill’).

Across all countries analysed no causal link has been established to support the idea that same-sex marriage prevents marital decline.

In the move to same-sex marriage, opposite-sex relationships have to conform to gay norms rather than vice-versa.

A publicly professed, legal, partnership does not prevent homosexual couples from breaking up more frequently than married heterosexual couples.

Experience with same-sex partnerships/marriage legislation tends to suggest that *availability* is all, and participation more or less irrelevant to sexual minorities.

Same-sex marriage may be the end-game of long-running anti-marriage, anti-family policy typified by Sweden.

Same-sex marriage may begin the process of severing marriage from family in otherwise family-friendly societies such as Spain and the Netherlands.

Same-sex marriage triggers dismemberment of family structures in family-friendly societies.” (see

<http://www.publications.parliament.uk/pa/cm201213/cmpublic/marriage/memo/m94.htm>).

These findings debunk the proposition that legalising same-sex marriage will strengthen or restore marriage in a society. What Patricia Morgan found was that it made marriage even more irrelevant in those cultures where it has little meaning with high rates of cohabitation being considered normal and that in countries with a traditionally strong marriage culture it seems to “trigger the dismemberment of family structure.” That it reinforces the idea that marriage is irrelevant to parenthood. There is no evidence that legalising same-sex marriage prevents marital decline.

This is bad news for societies due to the huge economic cost of divorce/separation. It is bad news for children who are being left motherless or fatherless by marital decline or same sex marriage which deliberately deprives them of either a mother or a father. Margaret Somerville, Samuel Gale Professor of Law and Professor of Medicine (Founding Director, Centre for Medicine, Ethics and Law) at McGill University in Canada has published the most persuasive analysis of children’s rights. The impact on of “same-sex marriage” she says:

“ .... raises one or more of three important issues: children’s right to know the identity of their biological parents; children’s right to both a mother and a father, preferably their own biological parents; and children’s right to come into being with genetic origins that have not been tampered with.” (see

[http://www.law2.byu.edu/page/categories/marriage\\_family/past\\_conferences/may2010/drafts/](http://www.law2.byu.edu/page/categories/marriage_family/past_conferences/may2010/drafts/)

[CHILDREN%20RIGHTS.pdf](#).) These fundamental rights of children are directly denied by “same-sex marriage.”

The evidence is that there are no cultural, social or economic benefits of same-sex marriage either in countries where it has been legalised and therefore why recognise foreign same-sex marriages or legalise ‘same-sex marriage’ in Australia?

On the flip side there are the personal, social and economic costs of divorce and marriage breakdown. There is a need to seriously review all the evidence of the personal and social costs and to investigate and quantify the economic costs. The economic cost of divorce has not been reviewed since a House of Representatives report in 1998. In January 2014 a DSS Research paper could only refer to that 1998 report to comment on the economic cost of divorce:

“The costs of marriage breakdown, however, extend beyond those incurred by the individuals and families involved. In 1994–95, divorce was estimated to cost the Australian community \$3 billion in direct costs per year (House of Representatives Standing Committee on Legal and Constitutional Affairs 1998).<sup>1</sup> Further, given that this estimate is now more than 10 years old, it is likely that this amount has increased. In addition there are indirect costs, which include (but are not limited to) hidden costs to the healthcare system because people of separated or divorced marital status typically have worse physical and mental health than those who are either currently married or have never married (de Vaus 2002; Lillard & Waite 1995). Absenteeism and low work productivity have also been linked to relationship problems (House of Representatives Standing Committee on Legal and Constitutional Affairs 1998).” (see <http://www.dss.gov.au/about-the-department/publications-articles/research-publications/social-policy-research-paper-series/number-35-marriage-breakdown-in-australia-social-correlates-gender-and-initiator-status?HTML>)

- C) The impact on religious communities and religious freedoms of marriage equality in foreign countries.”

Around the world where same-sex marriage has been legalised the impact on religious freedom has been serious and immediate.

In **Canada** several provinces refused to allow civil marriage commissioners to refuse to preside over same-sex weddings, and demanded their resignations.<sup>2</sup> Religious organizations, such as the Knights of Columbus, were fined for refusing to rent their facilities for post-wedding celebrations.

Many who have voiced their dissent to same-sex marriage have been subjected to investigations by human rights commissions and (in some cases) proceedings before human rights tribunals. Some have been ordered to pay fines, make apologies, and undertake never to speak publicly on such matters again.<sup>4</sup> Targets have included individuals writing letters to the editors of local newspapers,<sup>5</sup> and ministers of small congregations of Christians.<sup>6</sup> A Catholic bishop faced two complaints—both eventually withdrawn—prompted by comments he made in a pastoral letter about marriage.<sup>7</sup>

Professional governing bodies (such as bar associations, teachers’ colleges, and the like) that have statutory power to discipline members for conduct unbecoming of the profession, can also put pressure on members not to voice their dissent as that would be an act of illegal discrimination and a matter for professional censure.<sup>9</sup>

In schools parents' rights are undermined by curriculum reforms (eg in British Columbia) which prevent parents from exercising their long-held veto power over contentious educational practices.<sup>12</sup>

The above on Canada is from: <http://www.thepublicdiscourse.com/2012/11/6758/>.

In the USA:

- After **Massachusetts** redefined marriage to include same-sex relationships, Catholic Charities of Boston was forced to discontinue its adoption services rather than act against its principles by placing children with same-sex couples. It has also provided the legal grounds to teach about homosexual and gender issues in schools and kindergartens. Two couples sought to remove their children from classes in which these issues were to be taught and the Court held that the schools were not obliged to inform them when such classes would be taught and that the parents had no right to withdraw their children from those classes.
- Doctors in California were successfully sued for declining to perform an artificial insemination on a woman in a same-sex relationship.
- Owners of a bed and breakfast in Illinois were sued for violating the state antidiscrimination law after declining to rent their facility for a same-sex civil-union ceremony and reception.
- A Georgia counsellor was fired after she referred someone in a same-sex relationship to another counsellor.
- In **New Mexico** the Supreme Court ruled that the First Amendment does not protect a photographer's right to decline to take pictures of a same-sex commitment ceremony — even though doing so would violate the photographer's deeply held religious beliefs. The Court ruled against Elaine Huguenin, owner of Elane Photography, concluding that neither protections of free speech nor of free exercise of religion apply.

In the UK:

- On 10<sup>th</sup> February 2012, the Court of Appeal upheld a Judge's ruling that a Christian couple, Peter and Hazelmary Bull, had discriminated against Martin Hall and Steven Preddy on grounds of sexual orientation when they refused them a double-bedded room at their hotel near Penzance.
- In 2009 a marriage Registrar, Lillian Ladele, was disciplined for refusing to conduct same-sex civil partnership ceremonies.

In **Denmark** same sex marriage was legalised in 2012 with the established Lutheran Church being obliged to find a minister to perform same sex marriage ceremonies.

Legalising same sex marriage affects the rights of everyone.

## 5. Conclusion:

There is no evidence of any cultural, social or economic benefits of 'same-sex marriage'; where it has been legalised. On the other hand, it appears to have made marriage even more irrelevant in those societies where marriage has lost meaning due to high rates of co-

habitation and, in traditionally strong marriage cultures, to trigger the dismemberment of family structure ie to separate marriage from family formation/ childbearing.

Further, where 'same-sex marriage' has been legalised there has been an immediate restriction on the rights and freedoms of others who have a sincere and deeply-held view opposed to 'same-sex marriage' and fines and punishments imposed on those who have exercised their right to freedom to express those views by declining to be involved in 'same-sex marriage' ceremonies. Legalising 'same-sex marriage' affects every-one, not just the couple and their circle of families, friends and colleagues.

There is no evidence there would be any benefit to Australia to recognise foreign 'same-sex marriages'.

**6. Recommendations:**

(a) That the Committee recommend that the Recognition of Foreign Marriages Bill 2014 not be passed.

(b) That the Committee recommend that a government inquiry be set up to:

(1) review all available data on the current state of marriage in Australia to establish a clear picture of;

- the current marriage rate;
- the current rate of co-habitation;
- the current divorce rate;
- the economic cost of divorce and marriage breakdown;
- the consequences of divorce and marriage breakdown to children;
- the impact on children of co-habitation; and

(2) consider government measures to:

- promote and support marriage as the basis for family formation/childbearing;  
and
- provide help and support to couples to reduce the incidence of unnecessary divorce and marriage breakdown.