

**SUBMISSION TO THE SENATE COMMITTEE INQUIRY  
Marriage Equality Amendment Bill 2010**

I urge the Committee to reject the proposed Marriage Equality Amendment Bill 2010, for the reasons set out hereunder.

**1 Marriage is a positive benefit to society**

The institution of natural marriage as defined in the current Marriage Act is a positive benefit to society for the following reasons:

- It expresses the natural complementarity of men and women in a full and unique way
- It alone has the natural capacity and responsibility for the generation of children
- It gives children the security of growing up in the care of their biological parents
- It provides a natural training-ground for the next generation of citizens

**2 Government has no right to amend definition**

The State has no right to change the definition of marriage. Marriage exists in society not as a result of the State having legislated that it should exist, but by virtue of its pre-existence in the nature of humanity. The reason for the legal definition was not that marriage needed it in order to be explained, in the manner of a new tax or administrative process, but in order to protect an institution because of its particular value to society. This institution did not need to be defined in order to explain what it was, but to guard it from harm.

Members will be aware that the existing Act was passed in order to make uniform the provisions for marriage across all states and territories, and to provide for the legitimizing of children born out of wedlock by subsequent marriage of the parents (to discourage “shotgun” marriages). It is interesting to note that a definition was originally not included in the draft Bill.<sup>1</sup>

The proposal to legislate in favour of “same-sex marriage” is based on a misunderstanding of the nature of marriage as envisaged in the original Act.

The proposed Bill would seek to amend the definition of marriage contained in the original Marriage Act 1961 to read as a ‘union’ between two persons. In removing the restrictive words “of a man and a woman”, the bill is thereby seeking to change the definition of marriage as understood in the original act. The type of union envisaged in the original Act, that between a man and woman, is something that absolutely cannot exist between two people of the same gender. The original Act was designed to protect and improve the conditions for longevity of traditional marriage between a man and a woman. It was not, as noted above, in any way intended as a instrument for defining what marriage should be.

In all societies in recorded history, the family based around husband and wife and their offspring has been held in special esteem as a fundamental cell of social structure. This arises from the unique character of the union of man and woman in marriage. This union, in and of itself, is directed to the generation new life in children, to the enrichment of their own union and to the benefit of society. This fact alone gives this unique union a sacred character and places an obligation on government to protect, nurture and foster the institution of marriage.

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<sup>1</sup> Hansard, The Senate, Second Reading Speech, Marriage Bill 1961, page 1

### **3 No issue of discrimination**

The issue of discrimination on the grounds of sexual orientation is not relevant here. A same-sex couple, no matter how they might wish to solemnize or describe their relationship or living arrangements, simply cannot make it into a marriage. By changing the meaning of the word “union” (in the Marriage Act 1961), and extending it to same-sex couples, marriage as defined in the Act would become a nonsense.

### **4 No benefit to society**

There would be no benefit to society if the proposal to allow same-sex “marriage” were to be accepted. There can be no social benefit in rendering the term “marriage” meaningless.

There is also no economic benefit to society. If same-sex couples are seeking some greater degree of economic equity in comparison with married couples, some form of statutory registration should be made available to them. In this way they could enjoy the benefits of a quasi next-of-kin status, inheritance rights etc. They do not need to be “married” for this purpose.

### **5 Traditional marriage needs legal protection**

The proposal fails to recognise the particular burden placed upon married couples, particularly in relation to the raising of children. The generation, nurture and raising of children is exclusive to the man-woman union and, whilst being a sacred trust and an inestimable privilege, also carries with it grave responsibilities and, at times, heavy burdens.

For example, it is assumed that parents should accept the following possibilities:

- The physical restrictions and risks associated with child-birth
- Financial sacrifices involved in providing for children
- The responsibility to care for children (including physically or intellectually disabled children)
- Responsibility to care for aged grandparents

### **6 The false argument about children**

Same-sex couples sometimes raise the argument that they also can have children and should have the right to do so as a “married” couple. This argument is a complete furphy. Two men together or two women together do not have the capability to generate offspring out of the very love that they express to one another, which is the particular privilege and distinguishing characteristic of marriage. Children for such couples can only be “procured” from outside their relationship by adoption, artificial insemination or surrogacy.

Whilst it is certainly preferable for a host of reasons for adopted children to be received by a married couple, there is probably no compelling reason why two men or two women together should not have the right to adopt if they meet the relevant criteria. However, they would not need to be “married” for this to happen. Hence this is no argument for tampering with the accepted definition of marriage.

### **7 Legislative farce and political disaster**

Over-legislation can create a “snowball” effect, and this would be a classic example. If the pre-existing reality of natural marriage is replaced with the legal construct of a “union of persons”, there will be a need for further consequential legislative amendments touching on every aspect of what had hitherto been accepted features and entitlement of the traditional family unit. This will need to extend right down to the definition of children. I refer to a recent article by Douglas Farrow in *Touchstone* magazine<sup>2</sup> in which he writes in relation to the Canadian same-sex marriage legislation in 2005 (my emphases added):

[In its consequential amendments section], Bill C-38 struck out the language of “natural parent,” “blood relationship,” etc., from all Canadian laws. Wherever

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<sup>2</sup> Farrow, D. “Why fight same-sex marriage?”, in *Touchstone* Vol 25/1 Jan/Feb 2012  
(<http://www.touchstonemag.com/archives/article.php?id=25-01-024-f>)

they were found, these expressions were replaced with “legal parent,” “legal relationship,” and so forth.

That was strictly necessary. “Marriage” was now a legal fiction, a tool of the state, not a natural and pre-political institution recognized and in certain respects (age, consanguinity, consent, exclusivity) regulated by the state. And the state’s goal, as directed by its courts, was to assure absolute equality for same-sex couples. The problem? Same-sex couples could be parents, but not parents of common children. Granting them adoption rights could not fully address the difference. Where natural equality was impossible, however, formal or legal equality was required. To achieve it, “heterosexual marriages” had to be conformed in law to “homosexual marriages.” The latter produced non-reproductive units, constituted not by nature but by law; the former had therefore to be put on the same footing, and were.

Farrow quotes another commentator who sums up the legislative debacle and political disaster as follows:

[The aim of such legislation] is to de-naturalize the family by rendering familial relationships, in their entirety, expressions of law. But relationships of that sort—bled as they are of the stuff of social tradition and experience—are no longer family relationships at all. They are rather policy relationships, defined and imposed by the state.<sup>3</sup>

There is no reason to believe that the situation in this country will be any different from that in Canada. A similar snowballing of legislative and administrative amendments will follow what appears to be a simple change to a single law. In the end the institution of marriage and family will be nothing more than a legal and administrative construct. I am convinced that if the Australian public were faced with this prospect, in all its implications, they would reject it outright.

**In short, amending the time-honoured definition of natural marriage will lead to legislative farce, social injustice, and citizenship “by numbers” instead of birthright.**

**Again, I appeal to the committee to reject the proposed Bill.**

Bernard Hennessy

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<sup>3</sup> F. C. De Coste in “Courting Leviathan” (Alberta Law Review, 2005),