

THERE IS NO MANDATE TO CHANGE THE *MARRIAGE ACT*

David Perrin, National President Australian Family Association, February 5, 2012.

Executive Summary

Heterosexual marriage is a fundamental human rights issue

- Marriage creates a legal union between a man and a woman, providing permanence in their relationship and establishing legal bonds between parents and their children, for the benefit of the parents, children and society.
- Marriage defines the right of heterosexual couples to marry and have children in a manner that protects the inalienable right of children to know and be raised by their biological mother and father, and to know their brother, sisters, grandparents and ancestors. The state has the duty to protect children's rights.
- Children have the right to a mother and a father. Two homosexual men can be fathers, but they cannot be a mother and a father. Two lesbian women can be mothers, but they cannot be a father and a mother.
- Children are best raised when they are born into families headed by a mum and dad who have made a mutual, life-long commitment. 73.6% children under 18 are being raised by intact, biological families (i.e. in about 2.1 million families), according to the Institute of Family Studies (2004, 2010).

The government has a vital interest in marriage, social stability, social cohesion and taxes.

- Marriage and family create concentric rings of strong, healthy, biological relationships that tie a community and society together. The legal bond of marriage between a man and a woman is fundamental to social stability and cohesion. Supported by the *Marriage Act*, the marriage bond is intended to be permanent, complementing the life-long biological bond between parents, children and extended family.
- Families produce the children who are the workers, taxpayers and families of the future. This is another reason why governments must have a strong interest in marriage between one man and one woman.

Marriage between one man and one woman is not “discrimination”. Difference is not discrimination.

- Heterosexual marriage *naturally* produces children in a way that protects children's rights; other relationships don't. Heterosexual marriage is not discrimination, it's protecting children's rights.
- Heterosexual marriage doesn't undermine the dignity of same-sex couples. It just means that marriage is different from other relationships. That's not discrimination.

Redefining marriage to be more “inclusive” is like redefining vegetarian to include meat-eaters.

- If Adam Bandt's redefinition of marriage is taken seriously – “love has no boundaries ... no limits” – then marriage would be redefined to include same sex couples, polygamy (one man and many women) and polyamory (any group of men and women).
- If heterosexual marriage discriminates against same-sex couples, then same-sex marriage discriminates against polygamists and those in polyamorous relationships, or against people who are just in friendships, or against people in business relationships.

Civil unions are not a compromise solution.

- Even the most strident supporters of same-sex marriage oppose civil unions as a compromise solution, viewing them only as a stepping stone to same-sex marriage.

Same-sex marriage is not a “conscience” issue, but a fundamental human rights issue.

- The issue of same-sex marriage is no more a “conscience issue” than voting on a proposal to allow the arbitrary and forcible removal of children from their biological parents by the state could be considered a “conscience issue.”
- Labor has betrayed its roots in passionately supporting same-sex marriage. The Coalition must now stand firm as the party of marriage and family.

The electorate expects the Coalition to honour its commitment on marriage.

- Voters expect the Coalition to honour its 2010 election promise to keep marriage between one man and one woman only. By standing firm on marriage, the Coalition will demonstrate policy integrity, in direct contrast to the government. It will also show that the Coalition is not captive of the Greens.
- For the vast majority of Australians, same-sex marriage is a low priority. Among those who feel strongly about the issue, more are opposed (18%) than in favour (14%) [Ambrose Centre polling, 2011].

PRIMARY ARGUMENTS

1. The electorate expects the Coalition to honour its commitment on marriage

At the 2009 Federal election, an important element of both the Labor and the Coalition election campaigns was to support the current definition of marriage as being between one man and one woman.

First Labor broke its promises on the carbon tax and now the Labor Party has junked Julia Gillard's promise not to change the *Marriage Act*. Labor has dumped its previous policy commitment to marriage, which saw it support an amendment to the *Marriage Act 2004* confirming the long-standing common law definition of marriage as "the union of a man and a woman to the exclusion of all others for life".

The Coalition's commitment on marriage was important to many voters at the last election. It's even more important now, because in the eyes of many traditional Labor supporters, Labor has betrayed its social origins and values.

The Coalition must now stand as the party of marriage and family.

2. Same sex marriage is a low priority for the vast majority of voters

Despite what pollsters say, most of the polling in favour of same-sex marriage remains unconvincing.

One exception is the Sexton Marketing Group poll for Sydney's Ambrose Centre for Religious Liberty done in late 2011. It found that 60 percent of respondents – including 40% of respondents who were otherwise in favour of same-sex marriage – ranked same-sex marriage as a low priority issue, and said that debating it was a distraction and a waste of resources.

Only 32 percent of respondents said they "feel strongly", more were strongly opposed to changing the Marriage act (18%) than those supporting change (14%).

Unlike among members of the Labor Party, there is no passion or priority across Australia for changing the *Marriage Act*.

3. Labor has betrayed its blue collar, religious roots

Labor is weak on the serious issues facing Australia. Hence, it's all the more remarkable that it wants to be seen as the same-sex marriage party.

For most Australians and for most families, at the heart of the same-sex marriage debate is the creation, custody and rearing of children.

In late 2009, the Australian Family Association asked a single Galaxy Poll question of 1,053 Australians: "*Ideally, wherever possible, should children be raised by their biological mother and their biological father?*"

- Overall, 86% of respondents said "yes", including 81 per cent of 18-24 year-olds.
- But the strongest support (90%) came from lower-income families, from Labor's heartland.

At the time of Labor's last national conference, Paul Kelly (*The Australian*, November 30, 2011) wrote that the Labor Party

"seems ignorant of the public unease beneath unconvincing polls showing strong support for change or even the full import of what same-sex marriage actually means.

"The impression is that Labor is obsessed by its own causes at odds with the public's priorities and preoccupations.

“In essence this campaign shifts Labor as a political party into a post-Christian identity. It is a fundamental break from Labor's social origins and values. This is how many Australians will interpret a vote for gay marriage. The party's repudiation of the cultural and religious foundations of marriage will be an epic event in its history.

“It is noteworthy that only a few people will gain directly; that is, the number of gays who will marry. While this change matters deeply to those affected, rarely in Labor's history has the party become so focused by a policy alternation that affects such small numbers.”

Kelly goes on to point out that Labor's move is deeply antagonising many churches, because the campaign for same-sex marriage spills into the campaign against religious freedom, which is already a hot issue across the churches. It's seen as part of a campaign to drive people of religious conviction from the public square.

While Labor's legislation will give the churches an initial exemption from performing same-sex marriages and the use of church properties for same-sex ceremonies, as Paul Kelly says,

“No religion will accept at face value any guarantee from the Labor Party”.

4. Marriage between one man and one woman is fundamentally a human rights issue

The state legislates marriage between one man and one woman to protect the inalienable rights of children to know and be raised by their biological mother and father, and to know their biological brothers, sisters, cousins, aunts, uncles, grandparents, ancestors and medical history.

Because of the gross violation of the rights of families and children under totalitarian regimes, in 1948 *UN Declaration of Human Rights* was adopted by all 193 nations. It said:

“Men and women ... have the right to marry and to found a family”, which is “the natural and fundamental group unit of society and is entitled to protection by society and the State”. (Article. 16).

The inalienable, biological rights of children were confirmed in the UN Convention on the Rights of the Child (12 December 1989):

“The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.” (Article 7).

Both the definition of marriage and these declarations about the right to marry and the rights of children are underpinned by the strength of family life in Australia. According to the Institute of Family Studies:

- 72% of Australian families with children under 18-years are intact, biological families, that is about 2.1 million families.¹
- 73.6% of children under 18 are being raised by their biological parents.²

5. Marriage fosters social stability and cohesion

This is achieved through marriage by the creation of binding legal ties between the marrying man and woman. This legal union of man and woman – to the exclusion of all others, for life, mimics the immutable

¹ *Families then and now: 1980-2010*, Alan Hayes, Ruth Weston, Lixia Qu and Matthew Gray, Institute of Family Studies, 2010, pg 3.

² *Diversity and Change in Australian Families, Statistical Profiles*, David de Vaus, Institute of Family Studies, July 2004. Pg 31

biological ties that exist between children and their parents, between siblings and between extended family relatives.

This most intimate of interconnected relations, spanning the generations, creates concentric rings of relationships that tie and hold our society together.

That is to say, the legal bonds of marriage operate in conjunction with the biological and relational ties of family, resulting in a socially stable network of interdependent families.

The institution of marriage is designed to bolster these outcomes, but it can only do so if it is understood as the union of a man and a woman, to the exclusion of all others.

6. The definition of marriage IS IMPORTANT

The definition of marriage is not arbitrary; the word has been intentionally applied to a relationship that is of unique significance to the continuation of the human race, to social cohesion and stability.

The Oxford English Dictionary's definition of marriage as "the union of one man and one woman" reflects this norm.

Changing the definition of a word like marriage is analogous to redefining the word "vegetarian" to include meat-eaters, carnivores, to make the vegetarians more "inclusive".

The word "vegetarian" exists purely to distinguish non-meat eaters from those who eat meat, not to discriminate against or denigrate those who eat meat.

Similarly, "marriage" is used to define the unique significance of the heterosexual union, not to discriminate or denigrate other forms of relationships.

If "marriage" – the word and the institution – can be redefined to include any two people, then it destroys the meaning of a word that describes a highly significant form or relationship to our society and civilisation.

Further, if Adam Bandt's redefinition of marriage is taken seriously – "love has no boundaries ... no limits" – then marriage would be redefined to include same sex couples, polygamy (one man and many women) and polyamory (any group of men and women). After all if hetero-sexual marriage is deemed to discriminate against same sex couples, then same-sex marriage can be deemed to discriminate against polygamists and polyamorists.

Polygamy and polyamory have already been endorsed by some radical academics and commentators in Australia, and recognition of the right to have multiple spouses is already being sought through courts in Canada and the USA.

If we start down the road of redefining marriage, we can soon end up with polygamy and polyamory.

Will the state then insist that these relationships be taught as normal sexual lifestyles in schools? Will the state or the courts then insist that churches perform polygamist and polyamorist marriages?

SECONDARY ARGUMENTS

Labor’s whole argument about “marriage equality” is a false polemic.

Marriage between one man and one woman no more discriminates against same-sex couples than describing someone as a vegetarian discriminates against meat eaters.

Defining marriage as “the union of a man and a woman” isn’t about denying any individual his or her inherent dignity or basic human rights. Rather, marriage is about the government treating different kinds of relationships differently.

Paradoxically, even those who want gay marriage in Australia implicitly agree that the government should treat different kinds of relationships differently.

However, this is where their argument for same-sex marriage flounders.

After all, if heterosexual marriage discriminates against same-sex couples, then in turn, same-sex marriage discriminates against polygamists and those in polyamorous relationships, or against people who are just friends, or against people in business relationships. Polygamy and polyamory have already been endorsed by some radical academics and commentators in Australia, and recognition of the right to have multiple spouses is already being sought through courts in Canada and the USA.

So why does the state treat the heterosexual union of a man and a woman differently to others? Because, from a social policy perspective, the heterosexual union is a unique kind of relationship. It produces children. No other relationship has the same natural consequences.

It is thus the nature of the heterosexual *relationship*, and not the *individuals* in the relationship, which is the reason for marriage legislation focusing on heterosexual couples. This does not mean that the government believes opposite-sex-attracted persons are somehow better or have more rights than same-sex attracted persons. It simply means that opposite-sex and same-sex relationships are different in a significant way.

The fact that some heterosexual people don’t enter a lifelong, exclusive heterosexual union, does not change the biological fact that the heterosexual union carries a unique significance for humanity.

Same-sex marriage will push the issue deep into the school curriculum

Massachusetts: In 2004 the US state of Massachusetts recognised same-sex marriage as a result of the Supreme Judicial Court of Massachusetts ruling in *Goodridge v. Department of Public Health*.

Subsequently In April 2005, David Parker, a parent in Lexington, was arrested and taken to jail after he peacefully but unyieldingly insisted on being able to opt-out his 6-year-old son from lessons on homosexuality and transgenderism in Kindergarten – and school officials had adamantly refused. Parker was also told by school officials (and state officials) that the current parental notification law does not apply to those issues.

In the subsequent court case in 2007, the US District Court rejected Parker’s claim. The courts found that parents don’t have the right to restrict what a public school may teach their children, even if the teachings contradict the parents’ religious beliefs.

The judge referred us to The Massachusetts Comprehensive Health Curriculum, which includes a standard that by fifth grade, students should be able to define sexual orientation, such as heterosexual, gay and lesbian. It makes no recommendations about teaching different types of marriages to kindergartners.

California. In California where same-sex marriage laws were overturned by a State referendum, the Education Code section 51933 dictates that any school district that provides comprehensive sexual health education must teach “respect for marriage and committed relationships”; that the instruction “shall be appropriate for use with pupils of all... sexual orientations”; and that the instruction “may not reflect or promote bias against any person on the basis of any category protected by Section 220” (which includes sexual orientation).

Australia. The push for similar a GLBTI curriculum is underway in Australia.

The Australian Education Union Policy on Gay, Lesbian, Bisexual, Transgender and Intersex People 10-page document was adopted at the 2006 Annual Federal Conference. It states:

“All curriculum should be written in non-heterosexist language. Sexuality should be included in all curriculum relating to health and personal development. Homosexuality, bisexuality, transgenderism and intersex need to be normalised and all states need to develop material which will help to combat homophobia, biphobia and transphobia. Material must be developed for students who are GLBTI and also Aboriginal and Torres Strait Islanders or from a non-English speaking background.”

The Australian Education Union also make's clear its hostility to those schools that would not teach such a curriculum. Under its policy section entitled “Religious Institutions and Community Groups”, its policy document says:

“While some groups and their members are to be commended for their positive common sense and humanist approach to GLBTI issues others are to be condemned for their discriminative attitudes and approaches. The AEU calls on all such groups to take a positive humanist approach to GLBTI issues.”

Why same-sex marriage is not a “conscience” issue, but a fundamental human rights issue

Marriage is a fundamental human rights issue, defining the right of heterosexual couples to marry have children in a manner protects the right of children to know and be raised by their biological mother and father.

If the Coalition were to make marriage a “conscience” issue, the Coalition would be saying that they are incapable of defending the most basic rights of children, and their biological parents.

In this respect, the trauma experienced by donor conceived persons – as exposed in a 2011 Senate inquiry – shows how the state has abandoned children's rights and interests in the areas of donor conception, surrogacy and family law.

The Federal government has already apologised to several groups of Australians who have been denied the right to know and be raised by their biological parents.

A so-called “conscience” vote on same-sex marriage would be major change in policy, and a breach of faith with the electorate.

In the wake of Labor's abandoning it's platform on marriage, its vital for the Colation make a stand in defence of the basic rights of children to know and be cared for by his or her own biological parents.

Are “civil unions” a compromise, or a stalking horse?

Even supporters of same-sex marriage oppose civil unions. They argue that legislating for civil unions would create a two-tiered system – opposite-sex and same-sex relationships would be deemed “separate but equal.” According to same-sex marriage advocates, this isn't good enough.

As same-sex marriage advocacy group *Australians for Marriage Equality* states on its website:

A number of courts around the world have ruled that schemes separate from marriage cannot be equal to marriage. Most recently, the California Supreme Court ruled on 15 May 2008 that giving the unions of same-sex couples a name that was separate and distinct from marriage reduced gays to “second-class citizens”.

Where supporters of same-sex marriage *do* support civil unions, it is only as part of an incremental strategy to eventually redefine marriage. This is borne out by evidence from leading same-sex marriage activists in other jurisdictions. For example, writing in the *New York Review of Books* in 2009, reviewer David Cole had this to say about the decision by two US state supreme courts to redefine marriage:

The fact that the legislature had already extended virtually all the benefits and rights of marriage to same-sex couples under the rubric of civil unions or domestic partnerships was crucial to the legal victories.

Indeed, Cole lays out the incremental strategy in explicit terms:

In [the book entitled] Gay Marriage, [the authors] ... advocate a strategy focused on civil unions, although on more pragmatic grounds. Citing an article by Professor Kees Waaldjik, who helped develop the strategy behind the Netherlands' recognition of same-sex marriage, [the authors] argue that the best way forward is incremental.

On this view, states (or nations) are likely to recognize same-sex marriage only after a step-by-step process in which they first eliminate laws criminalizing homosexual sodomy, then amend anti-discrimination laws to cover sexual orientation, then extend some government employment-related benefits to same-sex partners of civil servants, and then enact a domestic partnership or civil union law.

The point is that civil unions have not been, and will never be a compromise destination. They are nothing more than a strategic stepping-stone to the total redefinition of marriage.

Should the government be involved in private relationships at all?

There is a libertarian view that the government should not be involved in regulating private, intimate relationships at all, and that marriage laws should be abolished. There are many relationships where the government should not be involved.

However the heterosexual union is an exception, because it naturally produces children, who need the protection, love and nurturing of a mum and dad.

The state bears some responsibility for safeguarding the wellbeing and welfare of children. It is also in the state's interests to try to ensure that children are raised in optimal circumstances: the future economic and social benefits of doing so are compelling, and the costs of failing to do so inevitably become a heavy burden on the taxpayer and increases the welfare budget.

For these reasons, the state has an exceptional interest in regulating the only relationship which naturally (and inevitably) produces children: the heterosexual union.

Despite the state's strong interest in regulating heterosexual relationships, there are obviously limits beyond which the state should not interfere in private, intimate relationships. The institution of marriage strikes a delicate balance, allowing a degree of regulation, but without intervening excessively.

Thus, although marriage is onerous, requiring of the spouses a commitment of lifelong, exclusive fidelity, marriage is not compulsory; rather it must be entered into voluntarily. Through the public institution of marriage, the state *encourages* the spouses to *voluntarily* bind themselves in a lifelong, exclusive relationship. This has proven the most effective and reasonable means of pre-emptively protecting the rights and interests of any children which such a union might reasonably be expected to produce.

It is often argued that if the state's interest in regulating heterosexual unions is fundamentally connected to the procreative nature of such unions, why does the state allow infertile heterosexual couples to marry?

Here again, our marriage laws strike an appropriate balance between state regulation and the right to privacy. Marriage is primarily directed at protecting the child's basic rights, but it would be impractical, invasive and unreasonable for the state to test the fertility of every marrying couple as a pre-requisite to marriage. Rather, marriage laws are tailored to the general nature of the heterosexual relationship, which *is* fertile, rather than the exceptional cases of infertility. The same is not true for homosexual relationships, which are infertile by nature.