



**SUPPLEMENTARY SUBMISSION**

**TO THE**

**SENATE LEGAL AND CONSTITUTIONAL  
AFFAIRS LEGISLATION COMMITTEE  
INQUIRY**

**INTO THE**

**RECOGNITION OF FOREIGN MARRIAGES  
BILL 2014**

**FROM**

**AUSTRALIAN MARRIAGE EQUALITY**

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## Executive summary

This submission attempts to outline some of the relevant research into the impact of marriage equality overseas so that the Australian marriage equality debate can be informed by empirical evidence rather than the rhetoric of fear and threat.

Research from the Netherlands and the US shows that a) marriage strengthens same-sex relationships, b) access to a social institution that is widely recognized—marriage—enhances same-sex couples interactions with their families and communities, and c) the children of same-sex couples families gain when their parents can marry.

An increasing body of research shows that marriage equality overseas has had a positive impact on the health of same-sex-attracted people.

Evidence that marriage equality may uplift rather than demean marriage can be found in those places where the formal recognition of same-sex relationships has a relatively long history.

A number of studies from jurisdictions with marriage equality have shown that the reform has a dramatic economic impact.

Opponents of marriage equality often make the case that there have been negative or “unintended” consequences. They argue that one major “unintended consequence” of allowing same-sex marriages has been impingement on religious freedom. But when closely examined, the examples they cite to back up these claims are often dubious or irrelevant.

Opponents of marriage equality have claimed marriage equality will harm families and children. Our response is that there is no evidence whatsoever children fair worse when raised by two parents of the same sex. In fact there is a “rare degree of consensus” among scholars and researchers that children raised in such families are just as well-adjusted as their peers. If marriage is good for kids, it is because it provides them with stability and security, not because it may provide them with parents who happen to be of different genders or who happen to share their genes.

The overseas experience clearly shows that marriage equality does not diminish the quality or duration of different-sex marriages.

Some opponents of marriage equality argue that it will lead society down a slippery slope to the legitimisation of any number of illegitimate, unacceptable and non-marriage-like relationships including polygamy and polyamory. We note that in none of the countries which allow same-sex marriage are polygamous or polyamorous marriages officially solemnised,

Some opponents of marriage equality pose civil unions as an alternative which solves the evidentiary problem associated with de facto relationships. However, an increasing body of overseas jurisprudence and social research indicates that civil unions do not provide the same legal equality, protection or recognition for same-sex couples as marriage, and that these couples find civil unions much less desirable than marriage.

## **The international experience: what we know**

The first country to allow same-sex couples to marry was the Netherlands in 2001. Since then almost twenty countries with a variety of different histories and cultures have gone down the same path. In each of these countries, opponents of marriage equality predicted dire outcomes. This in turn prompted research into the effects of marriage equality to determine exactly what impact it had. This body of research shows that marriage equality has had an entirely beneficial impact on same-sex couples, their families, the community and the institution of marriage. It has also shown that none of the predictions of opponents have come to pass. Countries like Australia, which have yet to achieve marriage equality, can draw on this body of research to predict what the impact of reform will be. This submission attempts to outline some of the relevant research so that the Australian marriage equality debate can be informed by empirical evidence rather than the rhetoric of fear and threat.

## **The positive impacts of marriage equality in other countries**

### **1. Marriage equality has benefitted same-sex partners, their children, families and communities**

Marriage provides partners, families and the general community with a universal language for love, commitment and relationships. It is also one of the universal legal and social institutions through which we find connection and belonging, not only with our partner, but with our families and communities.

Symbolic of this social aspect of marriage is the fact that marriage conventionally creates kinship between families as well as partners, hence terms such as “mother-in-law” and “brother-in-law”. Also, marriages are conventionally solemnised by a representative of the state, not only between the marrying partners, but in the presence, and with the explicit assent of, family members and friends.

Excluding same-sex couples from marriage excludes them from the universal language so fundamental to everyday interaction, and from the sense of belonging and connection marriage offers. Correspondingly, including them results in a large number of real social, cultural and economic benefits.

For example, two landmark studies led by MV Lee Badgett, Professor of Economics at the University of Massachusetts, describe and quantify some of these benefits in two separate jurisdictions, the Netherlands and Massachusetts. What follows is a summary of her findings.

**The positive impact on same-sex couples:**

Marriage strengthens same-sex relationships. Seventy-two percent of individuals in married Dutch couples reported feeling more responsible and committed to their spouse as a result of marriage. These effects translate into healthier, longer-lasting relationships.

**The positive impact on families:**

Access to a social institution that is widely recognized— marriage—enhances same-sex couples interactions with their families and communities. Seven out of ten of those same-sex partners surveyed reported feeling more accepted in their own community as a result of being married. Sixty-two percent of same-sex couples agreed that their families have become more accepting of their partner as a result of being married.

**The positive impact on children:**

The children of same-sex couple families gain when their parents can marry. More than one-quarter of same-sex couples indicate that they have children in their home and that they and/or their spouse serves as a parent to those children. Of these households, nearly all (93%) agreed that their children are happier and better off as a result of their marriage. Many parents reported that their children felt more secure and protected. Others noted that their children gained a sense of stability. A third common response was that marriage allowed children to see their families as being validated or legitimated by society or the government.

Professor Badgett and her researchers also found that lesbian and gay people see alternative ways of granting legal status, such as civil unions, civil partnerships, domestic partnerships or registered partnerships, as inferior social and legal statuses (see below).

Prof Badgett's conclusion is that,

*“Overall, the experiences of same-sex couples in two countries, the United States and the Netherlands, suggests that same-sex couples and their families are strengthened by a policy of marriage equality for same-sex couples.”*

Professor Badgett's research is backed up by studies which show similar findings.

These include a 2010 study from the University of Ottawa into the impact of marriage on Canadian same-sex couples<sup>1</sup>. It found

*“...the participants indicated that marriage had an overwhelmingly positive effect on their lives.”*

They also include a 2011 study of lesbian couples in Massachusetts which found the following:

*“Results support the finding in the heterosexual marriage literature that healthy marriage is associated with distinct wellbeing benefits for lesbian couples.”<sup>2</sup>*

## **2. Marriage equality has improved public health outcomes**

An increasing body of research shows that marriage equality overseas has had a positive impact on the health of same-sex-attracted people.

A landmark study led by Dr Mark Hatzenbuehler of the Harvard School of Public Health examined the relation between living in states that instituted bans on same-sex marriage during the 2004 and 2005 elections and the prevalence of psychiatric morbidity among lesbian, gay, and bisexual (LGB) populations. It compared health indicators among LGB people before and after these bans were introduced, and measured them against those of heterosexual people.<sup>3</sup>

The study showed that psychiatric disorders – defined by the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition* – increased significantly among LGB respondents living in states that banned same-sex marriage. The disorders included:

- any mood disorder (36.6% increase),
- generalized anxiety disorder (248.2% increase),
- any alcohol use disorder (41.9% increase), and
- psychiatric comorbidity (36.3% increase).

By contrast, health indicators of LGB people living in states that had *not* introduced same-sex marriage bans, and of heterosexual people, did not show sudden increases in psychiatric disorders.<sup>4</sup>

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<sup>1</sup> MacIntosh, H., et al, Same-sex marriage in Canada: The impact of legal marriage on the first cohort of gay and lesbian Canadians to wed, *Canadian Journal of Human Sexuality*, Vol 19 (3), 2010

<sup>2</sup> Ducharme, J. K., et al, “Does the ‘marriage benefit’ extend to same-sex unions: evidence from a sample of married lesbian couples in Massachusetts”, *Journal of Homosexuality*, Vol 59, Issue 4, 2012

<sup>3</sup> Hatzenbuehler, M. L., McLaughlin, K. A., Keyes, K. M., & Hasin, D. S. (2010). “The impact of institutional discrimination on psychiatric disorders in lesbian, gay, and bisexual populations: A prospective study”. *American Journal of Public Health*, 100(3), 452-459.  
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2820062>

<sup>4</sup> Hatzenbuehler, M. L., McLaughlin, K. A., Keyes, K. M., & Hasin, D. S. (2010). “The impact of institutional discrimination on psychiatric disorders in lesbian, gay, and bisexual populations: A

In 2012 Dr Hatzenbuehler followed up his initial study with a study into the impact of marriage equality on the health care use and expenditure of same-sex-attracted men<sup>5</sup>. He found that

*“policies that confer protections to same-sex couples may be effective in reducing health care use and costs among sexual minority men”.*

Other studies have arrived at a similar conclusion.<sup>6</sup>

Another study, led by Professor Gilbert Herdt of San Francisco State University, found that laws preventing same-sex couples from marrying cause the couples to devalue their relationships, feel discriminated against, and experience higher levels of stress and other mental health problems.<sup>7</sup>

The study attributes this to the negative effects of discrimination in a central social institution. It also highlighted the substantial body of research which shows that married heterosexual couples experience higher levels of physical and mental health, a benefit of marriage from which same-sex couples are excluded.

In 2013 another landmark study by Richard Wright et al corroborated the positive health impacts of marriage equality<sup>8</sup>. He found,

“Same-sex married lesbian, gay and bisexual persons were significantly less distressed than lesbian, gay and bisexual persons not in a legally-recognized relationship.”

### **3. Marriage equality has benefitted marriage**

The public debate on marriage equality often pits the benefits of equality for same-sex partners against the disadvantages for the institution of marriage.

This polarity ignores the many benefits of marriage equality for marriage.

Allowing same-sex couples to marry will admit many couples who seek to uphold

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prospective study”. *American Journal of Public Health*, 100(3), 452-459.

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2820062/>

<sup>5</sup> Hatzenbuehler, M.L., et al “Effect of same-sex marriage laws on health care use and expenditures in sexual minority men”, *American Journal of Public Health*, Feb 2012, Vol 102, No2, pp285-291

<sup>6</sup> Buffie, W.C., “Public health implications of same-sex marriage”, *American Journal of Public Health*: June 2011, Vol. 101, No. 6, pp. 986-990

<sup>7</sup> Herdt, G. & Kertzner, R. "I Do, but I Can't: The Impact of Marriage Denial on the Mental Health and Sexual Citizenship of Lesbians and Gay Men in the United States"; *Sexuality Research and Social Policy: Journal of NSRC*, Vol. 3, Issue 1, pp. 33-49.

<sup>8</sup> Wright, R.G., “Same-sex legal marriage and psychological well-being: findings from the California health interview survey”, *American Journal of Public Health*: February 2013, Vol. 103, No. 2, pp. 339-346

the core values of marriage and are enthusiastic for the institution. It will send out the message that marriage is defined by love and respect not prejudice and discrimination. Marriage equality will prompt different-sex couples to re-think and re-value wedlock as a site of love, devotion, and, not least, social inclusion. It will show that marriage is relevant and resilient enough to embrace changing social attitudes in the same way it did last century when married women were given legal equality and interracial marriages were allowed.

Evidence that marriage equality may uplift rather than demean marriage can be found in those places where the formal recognition of same-sex relationships has a relatively long history. The example of formally-recognised same-sex partners seems to have helped inspire an increasing number of young heterosexual couples to marry. For example, in recent years in Denmark, Norway and Sweden marriage rates have increased by as much as 30% and divorces are steadily decreasing in number. At the same time, these nations have led the world on the recognition of same-sex relationships. Denmark was the first nation in the world to allow same-sex unions to be formally recognised, followed closely by Norway and Sweden. In turn, Norway and Sweden have recently moved to full marriage equality. The Wall Street Journal agrees this is not a coincidence. In an October 2006 opinion article on same-sex marriage its assessment of the Scandinavian experience was simple,

*“there is no evidence that allowing same-sex couples to marry weakens the institution. If anything, the numbers indicate the opposite”.<sup>9</sup>*

#### **4. The economic benefits of marriage equality**

A number of studies from jurisdictions with marriage equality have shown that the reform has a dramatic economic impact. This accrues chiefly through the wedding spend of same-sex couples both in the jurisdiction and travelling to that jurisdiction to marry. There is also marriage equality dividend to governments from monies spent on marriage license fees, and to the community from married same-sex partners relying more on each other and less on the state at times of crisis in their lives.

Professor Badgett’s research, cited above, has shown the immense economic benefit of marriage equality. This research includes an analysis of the economic benefit for the US state of Massachusetts through spending on weddings by local and interstate couples<sup>10</sup>. On the basis of this analysis Professor Badgett has also accurately predicted the economic benefit for other US states as they move towards marriage equality.

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<sup>9</sup> Spedale, D. R., and William N. Eskridge Jr, W. N., "The Hitch", *Wall Street Journal*, October 27, 2006. Reprinted at <http://www.law.yale.edu/news/3708.htm>

<sup>10</sup> Badgett, et al, “The Business Boost from Marriage Equality: Evidence from the Health and Marriage Equality in Massachusetts Survey”, Williams Institute, May 2009. <http://www.law.ucla.edu/WilliamsInstitute/pdf/BusinessBoost.pdf>



Most recently, Professor Badgett has applied her formula for calculating the economic benefit of marriage equality to Australia through the estimated wedding spend by same-sex couples.<sup>11</sup> Based on a conservative estimate that there are 33,000 same-sex couples in Australia (Labour Force Survey), of which about 54.7% would marry if given the option (*Not So Private Lives* report), and a wedding spend one quarter of the average wedding spend, same-sex marriage would bring at least \$161 million over the first three years – mostly spent on small businesses in the wedding industry.<sup>12</sup>

In her economic analyses, Prof Badgett also notes related research which shows the additional economic benefits which accrues from greater levels of immigration to places with marriage equality by members of the creative class.

## Has marriage equality had any negative or “unintended” impacts?

### 5. Have the freedom of religious officials and institutions been violated?

Opponents of marriage equality often make the case that there have been negative or “unintended” consequences. They argue that one major “unintended consequence” of allowing same-sex marriages has been impingement on religious freedom. In particular opponents of marriage equality say that religious marriage celebrants and civil celebrants with a religious faith have been forced to marry same-sex partners against their beliefs, religious welfare agencies have been forced to acknowledge same-sex married partners against their beliefs, business owners with a religious faith have been forced to be involved in same-sex weddings, and schools have been forced to teach that same-sex marriages are acceptable against their beliefs or the beliefs of individual parents.

When closely examined, the examples cited to back up these claims are often dubious or irrelevant. For example, Australian opponents of marriage equality have followed the lead of their US counterparts in claiming marriage equality in Massachusetts violated the religious freedom of the parents of school students by leading to same-sex marriage being “taught” in the class room. However, this claim has been repudiated by Massachusetts’ public education officials and others who have pointed out that the curriculum is set by lengthy consultation processes

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<sup>11</sup> Badgett, M V L. & Smith, J. (2012) “The Economic impact of extending marriage to same-sex couples in Australia”. *The Williams Institute*. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Smith-Econ-Impact-Marriage-Feb-2012.pdf>

<sup>12</sup> Badgett, M V L. & Smith, J. (2012) “The Economic impact of extending marriage to same-sex couples in Australia”. *The Williams Institute*. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Smith-Econ-Impact-Marriage-Feb-2012.pdf>

involving parents, and not by legislators<sup>13</sup>. Similarly, opponents of marriage equality argue the Danish Government has “forced” church ministers to marry same-sex couples<sup>14</sup>. What they have not recognised is that the ministers concerned belong to the established state Lutheran religion under the direct control of government and are state employees. This is not comparable to the Australian situation. They have also failed to acknowledge that Danish Lutheran ministers can refuse to marry a same-sex couple.

More often, the examples cited are not examples at all but simply unlikely extrapolations. For example, a recent article by the vice president of the National Civic Council Patrick J Byrne, combines a UK lawsuit that is unlikely to succeed, community advocacy against anti-discrimination exemptions, and the above-cited Danish example in an unconvincing attempt to show that Australian churches will be forced to marry same-sex couples<sup>15</sup>.

We note that under Section 47 of the *Marriage Act 1961* (Cth) (“*Ministers of religion not bound to solemnise marriage*”), religious ministers already have an express exemption from any obligation to solemnize “any” marriage:

*“Nothing in this Part:*

- a) imposes an obligation on an authorised celebrant, being a minister of religion, to solemnise any marriage; or*
- b) prevents such an authorised celebrant from making it a condition of his or her solemnising a marriage that:*
  - (i) longer notice of intention to marry than that required by this Act is given; or*
  - (ii) requirements additional to those provided by this Act are observed.”*

Australian Marriage Equality supports a further, explicit exemption for religious marriage celebrants who do not wish to marry same-sex partners, consistent with section 47 above, although we believe religious marriage celebrants should be able to marry same-sex partners if they wish.

We also note that each state and territory has its own detailed and well-considered legislation regarding discrimination on the grounds of sex, sexual orientation and gender identity. Each provides greater or fewer exemptions for religious conscience and practice religion. If these are sufficient to protect religious freedoms generally, they should be sufficient to protect religious freedoms in regard to how civil celebrants, as well as faith-based welfare agencies, schools and private businesses, deal with marriage between same-sex couples. Similarly, faith-based welfare agencies and schools will have established policies on how they deal with unmarried or divorced different-sex partners. These can easily be expanded to include same-sex

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<sup>13</sup> <http://www.bostonglobe.com/opinion/editorials/2012/11/02/maine-and-elsewhere-ads-mislead-voters-about-same-sex-marriage-massachusetts-schools/Q1rm2BfFjczRYHsP4WSM7L/story.html>

<sup>14</sup> <http://www.acl.org.au/2012/06/mr-danish-vote-to-force-church-to-marry-homosexuals-shows-our-politicians-naive-to-accept-activists%E2%80%99assurances/>

<sup>15</sup> <http://www.acl.org.au/2013/10/same-sex-marriage-is-it-harmless/>

married partners. As in the US, state schools establish their curricula on the basis of input from teachers, parents and educational experts, not lawmakers.

## **6. Has marriage equality disadvantaged children?**

Opponents of marriage equality have claimed marriage equality will harm families and children. In particular, they argue that it preferable for all children to have a father and a mother they are biologically related to and that marriage equality would harm children by officially sanctioning a sub-optimal environment for raising them.

To quote from Jim Wallace, former head of the Australian Christian Lobby,

*“Children benefit most from having two biological parents of the opposite sex. They need the love and role models of the different genders that a mother and a father can provide, and they need this ideal of marriage to aspire to.”*

*“Any redefinition of marriage risks deliberately placing children in relational constraints which deny them a mother or a father.”<sup>16</sup>*

Our response is that there is no evidence whatsoever children fair worse when raised by two parents of the same sex. In fact there is a “rare degree of consensus” among scholars and researchers that children raised in such families are just as well-adjusted as their peers.<sup>17</sup>

After reviewing the extensive research on the outcomes for children of same-sex couples, the American Academy of Pediatrics concluded that:

*“(A) considerable body of professional literature provides evidence that children with parents who are homosexual can have the same advantages and the same expectations for health, adjustment, and development as can children whose parents are heterosexual.”<sup>18</sup>*

A report commissioned by the Australian Psychological Society found that:

*“(P)arenting practices and children’s outcomes in families parented by lesbian and gay parents are likely to be at least as favourable as those in families of heterosexual parents, despite the reality that considerable legal discrimination and inequity remain significant challenges for these families.”*

Another research review published in the peer-reviewed *Journal of Developmental and Behavioral Pediatrics* concluded that:

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<sup>16</sup> Wallace, op cit

<sup>17</sup> Biblarz, T.J. & Stacey, J. (2010). "How does the gender of parents matter?", *Journal of Marriage and Family*, 72 (February 2010): 3–22.

<sup>18</sup> American Academy of Pediatrics, “Policy Statement: Co-parent or Second-Parent Adoption by Same-Sex Parents,” *Pediatrics*. 109(2002): 339-340. (Reaffirmed 1 February 2010).

*“Findings from research suggest that children with lesbian or gay parents are comparable with children with heterosexual parents on key psychosocial developmental outcomes.”<sup>19</sup>*

The above-mentioned joint statement co-signed by the American Psychological Association, the California Psychological Association, the American Psychiatric Association, and the American Association for Marriage and Family Therapy said that:

*“There is no scientific basis for concluding that gay and lesbian parents are any less fit or capable than heterosexual parents, or that their children are any less psychologically healthy and well adjusted.”*

Inevitably, studies have been deployed by opponents of marriage equality to argue that same-sex parenting do not provide a healthy environment in which to raise children. But without exception, these reports are either deeply flawed methodologically, or they never purported to make the sort of claims that anti-marriage equality activists have attributed to them.

An example is the report by Professor Patrick Parkinson of Sydney Law School – entitled *For Kids’ Sake* launched in September 2011 by the Australian Christian Lobby.<sup>20</sup> The report investigated whether certain family structures are linked to poorer outcomes for children, such as abuse, mental disorders, mistreatment and neglect. Its conclusion was that children benefit from stable, secure “continuous” home environments of the kind that can be provided by married biological parents. This conclusion has been seized upon by opponents of marriage equality to argue the reform is a “recipe for social collapse” and a “crazy [attempt] at social engineering and thought control”.<sup>21</sup>

However this interpretation is not backed up by the research Prof Parkinson cites. Parkinson’s sources are very careful to use terms like “two continuously married parents” to define their ideal, and terms like “step-parents”, “new dads” and “non-resident parents” for what they believe is less than ideal. It’s true that one of Parkinson’s researchers, US Professor Susan Brown, refers to “married biological parents”, but she is careful to define this term as excluding only “married step, cohabiting, and single-parent families”. It’s also true Parkinson cites research showing “father-absence” as a problem, but in his own words this is about “fathers (who) drop out of children’s lives when the parents are not living together”.

The point is that the research Parkinson cites looks at the effect on children of

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<sup>19</sup> Tasker, F. (2005) “Lesbian mothers, gay fathers, and their children: A review.” *Journal of Developmental and Behavioral Pediatrics*, 26(3), 224-240.

<sup>20</sup> Parkinson, P. (2011) “For Kids’ Sake: Repairing the social environment for Australian children and young people”. *The University of Sydney*.  
[http://sydney.edu.au/law/news/docs\\_pdfs\\_images/2011/Sep/FKS-ResearchReport.pdf](http://sydney.edu.au/law/news/docs_pdfs_images/2011/Sep/FKS-ResearchReport.pdf)

<sup>21</sup> Shanahan, A. “Children suffer under political correctness”, *The Australian*, 3 September 2011.  
<http://www.theaustralian.com.au/news/opinion/children-suffer-under-political-correctness/story-e6frg6zo-1226127876896>

disruption or instability in family life. That disruption can take the form of divorce, the stress on a single parent, a step-parent moving in, or an irresponsible, absent dad. What the researchers are not looking at is same-sex parenting because an increasing number of children born to same-sex partners know both partners as their parents from birth until adulthood, and experience none of the instability and disruption identified as the cause of poor child-rearing outcomes.

It is true that some same-sex partners with children have unhappy relationships, split up, meet new partners, or are raising children from previous relationships. But the rate of disruption and instability in two-mum and two-dad households is no greater than it is in the general population, and could possibly be lower according to the latest research in this area.

Several commentators have noted that Prof Parkinson himself does not draw from his work the extreme conclusions others have drawn.

As Sydney journal Erik Jensen points out,

*“The problem is that nowhere in its 117 pages does the report pass judgment on gay marriage. If anything, it recommends parent and marriage counselling be extended to gay couples.”*<sup>22</sup>

As Rodney Croome, campaign director of Australian Marriage Equality, observed, many of Professor Parkinson’s arguments about the benefits of marriage can be directly applied to the children of same-sex couples.

*“The obvious extrapolation is that if marriage is good for the kids of opposite-sex couples, it will also be good for the children being raised by same-sex couples ... (And) when we look more closely at the Parkinson Report we can see it is actually a sustained case for respecting and strengthening the bonds between same-sex partners and their children by allowing these partners to marry.”*<sup>23</sup>

In summary, if marriage is good for kids, it is because it provides them with stability and security, not because it may provide them with parents who happen to be of different genders or who happen to share their genes.

## **7. Has marriage been diminished, demeaned or degraded?**

In the Australian context this is probably the most common objection to marriage equality.

In evidence cited above we saw that the formal recognition of same-sex relationships

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<sup>22</sup> Jensen, E. “Age of the Amateur with reason in retreat”, *Sydney Morning Herald*. 4 January 2012. <http://www.smh.com.au/opinion/politics/age-of-the-amateur-with-reason-in-retreat-20120103-1pid7.html>

<sup>23</sup> Croome, R. “Parkinson report an argument for same-sex marriage”, *ABC The Drum Unleashed*. 14 September 2011. <http://www.abc.net.au/unleashed/2897380.html>

may encourage different-sex marriages by effectively “rejuvenating” marriage. There is also evidence that marriage equality does not have a direct relationship with different-sex divorce rates. For example, the US state of Massachusetts has that nation’s lowest divorce rate, and was also the first to allow same-sex marriages<sup>24</sup>.

Other US states which came early to either marriage equality or civil union schemes also have relatively low divorce rates. This should not be surprising. It is very difficult to imagine a situation where a different-sex couple would feel their marriage is worth less and/or not worth continuing, because same-sex partners can marry.

The overseas experience clearly shows that marriage equality does not diminish the quality or duration of different-sex marriages.

### **8. Is there a slippery slope?**

Some opponents of marriage equality argue that it will lead society down a slippery slope to the legitimisation of any number of illegitimate, unacceptable and non-marriage-like relationships including polygamy and polyamory. They cite the international experience to show this slippery slope is real. But we believe the international experience shows exactly the opposite.

We note that in none of the countries which allow same-sex marriage are polygamous marriages officially solemnised, even though some of them, like Spain and the Netherlands, have large religious minorities that traditionally allow it. There is an even wider gulf between the two issues in countries which allow polygamy. In places like Saudi Arabia, Afghanistan and Nigeria, homosexuals are not only unable to marry, there are put to death.

This is not a coincidence. Polygamy is generally about a man controlling the lives of several women. It is an arrangement that comes from a time when women were considered less valuable than men, restricted to the house and to childrearing, and made their husband’s property<sup>i</sup>. This is reflected in the legal status of the wives in polygamous relationships. Generally they lose their rights and autonomy when they marry, are punished much more harshly for adultery, and can be the divorcee but not the divorcer.

Wherever values like this prevail same-sex marriage is inconceivable. Where all husbands are legally dominant and all wives mere submissive extensions of their husband, it is absurd and profoundly threatening for there to be an official union between two husbands or two wives. Where marriage is the union of a bread winner who must always be male and a child-carer who must always be female, it is economically unsustainable for people of the same-sex to marry.

Same-sex marriage only begins to make sense in a society where there is a degree of

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<sup>24</sup> See <http://www.cdc.gov/nchs/data/nvss/Divorce%20Rates%2090%2095%20and%2099-07.pdf>

social and economic equity between men and women and legal equality between marriage partners. It only becomes possible for two men or two women to marry if men and women are already free to choose how they lead their lives regardless of their gender.

Another form of multiple marriage that opponents of marriage equality believe lies at the end of the same-sex marriage slippery slope is polyamory. It is distinguished from polygamy by being a conjugal relationship between more than two people regardless of gender.

Again, we cite the international experience where no polyamorous relationship has been recognised as a marriage anywhere same-sex marriages are permitted. There have been examples of polyamorous partners raising the issue of legal or social recognition but it is telling that there are no examples of such a relationship being solemnised as a marriage. This is for two reasons.

The first is legal. Polyamorous marriages, like polygamous marriages, raise practical legal concerns regarding issues like consent to new partners, division of property and custody of children. Given that, to our knowledge, there is no body of law anywhere in the world that provides a precedent for regulating polyamorous marriages, legal concerns raised by these marriages are even greater than those raised by polygamous marriages.

The second reason is cultural. Multiple partner relationships do not correspond to the understanding most people in western nations, including Australia, have of marriage. Same-sex marriages clearly do. This is why public support for same-sex marriage is over 60 in most western countries and up to 72% in Australia. There is no discernable support for the recognition of polyamorous relationships as marriages.

## **Are the alternatives to marriage equality adequate?**

### **9. Have civil unions been a suitable substitute for marriage equality?**

Some opponents of marriage equality pose civil unions as an alternative which solves the evidentiary problem associated with de facto relationships.

However, an increasing body of overseas jurisprudence and social research indicates that civil unions do not provide the same legal equality, protection or recognition for same-sex couples as marriage, and that these couples find civil unions much less desirable than marriage.

To this submission we have attached a pamphlet published by AME which summarises this jurisprudence and research.

The judicial decisions and social research cited in this pamphlet show that civil union schemes

- fail to meet the requirement of full legal equality
- fail to provide equal relationship benefits even when the law says they should
- create practical day-to-day problems and fail to provide the same level of recognition and respect as marriage, in both cases because they are not as widely recognised or understood
- do not have significantly more support in the general community than marriage equality
- have much less support in the LGBTI community than marriage equality

As a result of this evidence civil unions have been dubbed by overseas legal advocates “a failed experiment” that “entrench discrimination” rather than removing it.

To the evidence cited in our pamphlet we add two further studies which show that same-sex partners have a much stronger preference for marriage over civil unions.

The research of Professor Lee Badgett and others that has already been cited, addressed the issue of civil unions. Her research found that when given an option of marriage or registered partnership, Dutch same-sex (and, for that matter, different-sex) couples were much more likely to formalize their unions with marriage. Dutch couples understood the political point of registered partnerships as making a statement about the inferiority of gay people generally.

Likewise, in the United States, there is strong evidence that same-sex couples prefer marriage to civil unions, even though civil unions come with very similar legal rights and benefits. In the first year after marriage equality in Iowa, Vermont and Massachusetts, 30% of same-sex couples had married. After one year of civil unions in six different states, only 18% of same-sex couples had entered such unions.<sup>25</sup>.

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<sup>25</sup> “Marriage, registration and dissolution by same-sex couples in the U.S.”, The Williams Institute, July 2008,  
<http://www.law.ucla.edu/WilliamsInstitute/publications/Couples%20Marr%20Regis%20Diss.pdf>