

Submission To The Senate
Re: The Marriage Equality Amendment Bill 2010

The heart of this submission is that no case has been made as to the need for this legislation; that is, no compelling argument has yet been advanced justifying the presumption that any public injustice is found in the present definition of marriage and that therefore, this Bill is unnecessary.

The Bill the Senate will consider in the future speaks of 'marriage equality' which evokes the idea that the present situation is unfair because it treats different people unequally. "A and B can get married but A and A' cannot marry; therefore, the present law is unfair."

However, the fact that as a principle we *do* want to have all citizens treated equally before the law, does not automatically *define* the social relationships to be considered within its purview. Marriage is not (presently) a creature of the state, the parliament, or the courtroom (nor is it the creature, I hasten to add, of church, synagogue, temple or mosque).

Historically, it is clear that neither the state nor the church created marriage. Marriage has been and should remain independent of both these societal entities (unless we believe that making it a creation of government is a good thing).

Marriage has a particular character that it has had over thousands of years. It has not had the same expression over all that time nor has it taken the same form across different cultures. But what is unvarying is that marriage is an especial bond between a man and a woman involving life-long commitment and sexual intercourse leading often (but not always) to pregnancy, and the formation of a family.

Homosexual relationships whatever the *claims* may be that they are similar to heterosexual marriage clearly do not involve coitus nor do they involve procreation and it is inconceivable how the former could ever exhibit either of these characteristics which have always pertained to marriage.

Clearly then these two relationships are different in kind because homosexual relationships lack the essential quality of physical complementarity that can found, in principle, in all marriage which allow for coitus and procreation.

Not all marriages may be sexually active or have ever produced offspring. Yet, every marriage belongs to the set of all marriages that *does uniquely do both these things*. On the other hand, every homosexual relationship belongs to the set of all liaisons or same-sex friendships that *cannot* do either of these two things and never will be able to do these things from *within* the relationship.

Hence, to change the law and legally recognise homosexual relationships as marriages is to create a rift in the concept of marriage itself between two different types of relationships effectively rendering the concept of lawful marriage incoherent.

For it must then be asked, what *is* the assumed concept of marriage that the state has created and how long before it may decide to re-create marriage anew?

The popular argument that marriage is a civil right is invalid. A civil right does indeed exist for equal treatment under the law but that right cannot determine social reality; that is, a civil right for equal treatment cannot create the nature of marriage (or any other type of societal entity such as family, business enterprises, families, schooling, trade unions, etc.). Rather, the state merely recognises and upholds the legal dimension each of these social entities displays.

Another compelling reason why such legislation would be a legal error based on an empirical mistake is that its consequences are a free speech, educational and civil rights nightmare. On the question of schooling, is the parliament going to commit to spending untold millions of dollars to inculcate into all pupils at primary and secondary schools and colleges its newly formulated view of marriage including the idea that homosexual 'marriage' is to be accepted as 'proper' marriage. Teachers will have to be adequately trained to meet this new challenge. Materials will have to be developed so that young minds can be shaped according to the new view.

No one should be in any doubt about the fact that this whole enterprise will cost the government and taxpayers dearly. It is not simply the case that we can change maybe hundreds of laws about marriage and it not be costly both to the parliament, government services and in the community.

And what if the pupils come from families where the new view is disputed or teachers in state or non-government schools are unable to accede to the new government line? What do we do with these 'conscientious objectors'?

Furthermore, what will be the limits of legitimate protest about the change envisioned in this change of the marriage law? Will any protest be allowed at all?

Many have grave fears that a substantial section of the Australian community who are not in favour of changing the marriage law at the present time will be placed in a situation where any opposition to the changes will be construed as 'homophobic' and therefore as 'hatred' against the small, homosexual community.

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