

1 April 2012

Senate Legal and Constitutional Affairs Legislation Committee  
Per: Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

**Re: Marriage Equality Amendment Bill 2010**

Dear Committee Members,

Homosexual 'marriage' is a direct attack on marriage. To succeed it must sever the link between marriage and children, or diminish it to an irrelevance. Dr. Kerryn Phelps articulates this, saying "Similarly, there needs to be a separation of procreation from marriage" on Malcolm Turnbull's webpage, in advocating for homosexual marriage.<sup>1</sup>

The proposal to redefine marriage in the Marriage Act will redefine marriage for all Australians. It shows the claim that "it won't affect your marriage" is a lie, because the law applies to all Australians. The immediate effect will be to sever the link between marriage and children. If we say two men can marry then the natural and intrinsic orientation of marriage towards children is gone. We can say the same in the case of two women. It also renders both motherhood and fatherhood unnecessary, as if two men can marry then the role of the mother is unnecessary or obsolete, and the same holds for fatherhood with two women. Homosexual marriage makes marriage adult centred instead of child centred, where, as shown below, the latter is the characteristic that makes marriage what it is.

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<sup>1</sup> See: Malcolm Turnbull, *Same Sex Marriage Survey Results*, 13 April 2011, <http://www.malcolmturnbull.com.au/homepage-around-wentworth/same-sex-marriage-survey-results-2/> (accessed 29 March 2012)

From the 2009 Senate report into the Marriage Equality Amendment Bill 2009, the word *marriage* is inseparable from the reality of heterosexual union:

“Marriage: from ‘maritus’ and ‘maritata’—‘husband and wife’ in Latin. ‘Matrimonio’; ‘matrimonium’—‘matrimony’; ‘making of a mother’. It already has the two sexes written in the whole etymology of the language.” (p27)<sup>2</sup>

Children have a right to a mother and father, and the state recognises and protects this right through its support and recognition of marriage. A same-sex attracted man can be an excellent father and a same sex-attracted woman can be an excellent mother, but two men together or two women together cannot be both a mother and father at the same time. To assert this is to deny a child this fundamental right and cause harm by deliberate deprivation of the same.

Marriage predates the state, forming the bedrock that society is built upon. By contrast, homosexual marriage exists only as a direct creation of the state and depends on the state for its existence, underscoring its illegitimacy. The state would be complicit in the above deprivation of a child’s right to a mother and a father.

The Explanatory Memorandum to this current Bill reveals the hostility of the concept of ‘homosexual marriage’ towards marriage. Of note the same point appeared in the 2007 and 2009 version of the same Greens Bill:

**Item 6 – Part 111 of the Schedule (table item 1)**

Item 6 amends the Schedule that deals with ‘Persons whose consent is required to the marriage of a minor’. Item 1 of the schedules table, to change the discriminatory term ‘husband and wife’ to ‘two people’.<sup>3</sup>

To regard the term ‘husband and wife’ as discriminatory is rhetorical condemnation that is meant to justify its removal and is offensive. It also points towards the suppression of marriage and the replacement of it with a genderless union, which is not marriage but a parody of it. Marriage does not admit two men to enter into the ‘married state’ or the same for two women.

Gay marriage won’t exist alongside traditional marriage. Our traditional understanding of marriage will be stripped from the law and will be replaced with this new genderless definition of marriage.<sup>4</sup>

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<sup>2</sup> Source:

[http://www.aph.gov.au/binaries/senate/committee/legcon\\_ctte/marriage\\_equality/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/legcon_ctte/marriage_equality/report/report.pdf) (accessed 29 March 2012)

<sup>3</sup> **Marriage Equality Amendment Bill 2010:** Explanatory Memorandum, [http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s792\\_ems\\_01941550-0c68-4fff-b01a-f58596be77d7/upload\\_pdf/10229em.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s792_ems_01941550-0c68-4fff-b01a-f58596be77d7/upload_pdf/10229em.pdf;fileType=application%2Fpdf) (accessed 27 March 2012)

<sup>4</sup> NOM Blog, *Video: Kalley Yanta Explains How Redefining Marriage Would Affect Your Marriage*, <http://www.nomblog.com/19655/> (accessed 29 March 2012)

Princeton Professor Robert P. George made the following remarks on the legalisation of homosexual marriage in New York last year, reflecting the same:

What New York now offers its citizens is “marriage” in name only. In reality, it doesn’t give marriage to same-sex partners — the nature of marriage makes that impossible, just as it makes it impossible to offer marriage to parties of three or more persons in polyamorous sexual partnerships. Rather, it takes away the legal recognition of marriage — a comprehensive union of persons ordered to having and rearing a family (on procreation’s intrinsic link to marriage, see [here](#) and [here](#)) — and offers in its place legal recognition of a form of domestic partnership for romantic-sexual partners (in pairs for now, but that will not hold), be they same-sex or opposite-sex. Because these domestic partnerships are not actually marriages, despite the appropriation of the label; there is no intelligible basis in them for the norms of monogamy, exclusivity, and the pledge of permanence that structure and help to define marriage as historically understood in our law and culture.<sup>5</sup>

Marriage is the bedrock of society, and supports our children from birth to when they leave home, in the optimal social and familial environment. To redefine it away from its essence is to destroy it and replace it with a fraud. In essence, claims of so-called homosexual ‘marriages’ that have taken place in overseas jurisdictions are illegitimate and it would be wrong to give them recognition.

## **Marriage in History and Political Society**

The Creation accounts in Genesis place marriage at the earliest point of human origin. Whether one accepts their veracity or not, they show that marriage features at the outset of human existence for ancient peoples, and many today who regard it as being of divine origin. Genesis 1:27-28 reads:

So God created man in his own image, in the image of God he created him; male and female he created them. And God blessed them, and God said to them, "Be fruitful and multiply, and fill the earth and subdue it;"<sup>6</sup>

Later, in Genesis 2:23-24:

Then the man said, "This at last is bone of my bones and flesh of my flesh; she shall be called Woman, because she was taken out of Man." Therefore a man leaves his father and his mother and cleaves to his wife, and they become one flesh.

Christ Himself returns to this example when questioned about divorce. He reiterates the original teaching on marriage and clarifies it further.

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<sup>5</sup> National Review Online, *Sex and the Empire State*, 28 June 2011, <http://www.nationalreview.com/blogs/print/270662> (accessed 31 March 2012)

<sup>6</sup> All quotes from the Revised Standard Version.

Matthew 19:3-6 states:

And Pharisees came up to him and tested him by asking, "Is it lawful to divorce one's wife for any cause?" He answered, "Have you not read that he who made them from the beginning made them male and female, and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh'? So they are no longer two but one flesh. What therefore God has joined together, let not man put asunder."

The origins of marriage in the Bible refer to children and spousal union, both physically and in life for life.

Prior to the zenith of ancient Athenian power and the high point of her democracy, a key reformer of the Athenian Constitution, Solon, drafted a constitution for Athens in 594 B.C. that formed much of what that democracy would become at its zenith of the eve of the Peloponnesian War in the 430's.

Marriage legislation formed a key part of these laws. In Plutarch's *Solon* #20, Solon identifies the purpose of marriage as love, affection and the procreation of children. In #22 it refers to the honourable state of marriage being "for the sake of rearing a family."<sup>7</sup>

Writing during the mid Fourth Century B.C., Aristotle, in *The Politics*, identifies marriage and the family unit feature as a crucial foundation for the state and its interests. Aristotle devotes some pages of consideration to the importance of marriage to the state, because of children, "to beget and bear offspring for the state".<sup>8</sup> Aristotle carefully evaluates the importance of children to the state and its future to guide the legislator, including when the best time in the lives of men and women to marry, and then how best the children are formed and educated for the future of the state.<sup>9</sup>

Of note, the recognition and importance of marriage existed in Ancient Greek society alongside an open and accepted homosexual culture.

Prior to his discussion of Matrimony as a Sacrament, St Thomas Aquinas (d. 1274) explores the natural concept of marriage in his masterpiece, the *Summa Theologica*. In summary, St Thomas observes that marriage exists for the good of children, in terms of the transmission of human life and both education and

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<sup>7</sup> Plutarch, *The Rise and Fall of Athens*, Ian Scott-Kilvert (Introduction, Translator), Penguin Classics <http://www.amazon.co.uk/Rise-Fall-Athens-Penguin-Classics/dp/0140441026> - #, 1960, 43ff.

<sup>8</sup> Aristotle, *The Politics*, Bk VII, 16.30, in Aristotle, *The Politics and The Constitution of Athens*, Stephen Everson, ed., Cambridge University Press, 1996, 192.

<sup>9</sup> *Ibid.*, Bk VII, 16-17 – Bk VII, 190-207. Exception is taken, however against his advocacy of infanticide of deformed children and abortion, though he qualifies the latter "on the question of life and sensation" Bk VII, 16.20-28.

formation, and also for the mutual help of the spouses. His reference to “the Philosopher” is Aristotle:

Secondly, that is said to be natural to which nature inclines although it comes to pass through the intervention of the free-will; thus acts of virtue and the virtues themselves are called natural; and in this way matrimony is natural, because natural reason inclines thereto in two ways. First, in relation to the principal end of matrimony, namely the good of the offspring. For nature intends not only the begetting of offspring, but also its education and development until it reach the perfect state of man as man, and that is the state of virtue. Hence, according to the Philosopher (Ethic. viii, 11,12), we derive three things from our parents, namely “existence,” “nourishment,” and “education.” Now a child cannot be brought up and instructed unless it have certain and definite parents, and this would not be the case unless there were a tie between the man and a definite woman and it is in this that matrimony consists. Secondly, in relation to the secondary end of matrimony, which is the mutual services which married persons render one another in household matters. For just as natural reason dictates that men should live together, since one is not self-sufficient in all things concerning life, for which reason man is described as being naturally inclined to political society, so too among those works that are necessary for human life some are becoming to men, others to women. Wherefore nature inculcates that society of man and woman which consists in matrimony.<sup>10</sup>

In 1689, John Locke completed his *Two Treatises of Government*, a key work influencing English liberalism, and thereby formative in Australia’s modern development.<sup>11</sup> In his *Second Treatise of Government*,<sup>12</sup> Locke explores the origins of political society, noting that “the *first Society* was between Man and Wife, which gave beginning to that between Parents and Children.”<sup>13</sup>

Locke continues in #78:

*Conjugal Society* is made by a voluntary Compact between man and woman: and tho’ it consist chiefly in such a Communion and Right in one anothers Bodies, as is necessary to its chief End, Procreation; yet it drawers with it mutual Support, and Assistance, and a Communion of interest too, as necessary not only to unite their Care, and Affection, but also necessary to their common Offspring, who have Right to be nourished and maintained by them, till they are able to provide for themselves.<sup>14</sup>

Later he adds, in #83, in examining marriage and the role of the state:

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<sup>10</sup> St Thomas Aquinas, Suppl. q. 41 a. 1, *Summa Theologica*, translated by the Fathers of the English Dominican Province, Second and Revised Edition, 1920, <http://www.op.org/summa/a4/summa-suppq41a1.pdf> (accessed 27 March 2012)

<sup>11</sup> John Locke, *Two Treatises of Government*, ed. with Notes and Introduction by Peter Laslett, Student Ed., Cambridge University Press, 1988, 3.

<sup>12</sup> *Ibid.*, *An Essay Concerning the True, Original, Extent and End of Civil Government*

<sup>13</sup> *Ibid.*, #77, 319. His emphasis.

<sup>14</sup> *Ibid.*, 319.

For all the ends of *Marriage* being to be obtained under Politick Government, as well as in the state of Nature, the Civil Magistrate doth not abridge the Right, or Power of wither naturally necessary to those ends, viz. Procreation and mutual Support and Assistance whist they are together; but only decides any Controversie that may arise between Man and Wife about them.<sup>15</sup>

For Locke, then, marriage is pre-state society, and the state's authority is limited to intervening in marital difficulty. Locke echoes Aquinas in that marriage serves two goods, children and mutual support. The consistency of this twin purpose is evident down many centuries and it is located in the nature of marriage, the generation of human life and the rights and needs of children.

David Blankenhorn is president of the New York-based Institute for American Values and the author of *The Future of Marriage*. Writing in the aftermath of the Californian Supreme Court's legalisation of homosexual marriage in 2008, since overturned at the ballot box and under court challenge, he comes to the same conclusion.

Included here is the complete article, which makes so many salient points it is difficult to exclude any of them – with apologies to those that this may overtax. The more crucial points are in bold. Also, in light of the constancy of the views as presented above, note the reference of support from Bertrand Russell and anthropologist Helen Fisher, the latter writing in 1992.

## **Protecting marriage to protect children**

### **The rights and needs of kids are being lost in the debate over gay rights and Prop. 8.**

September 19, 2008 | David Blankenhorn | David Blankenhorn is president of the New York-based Institute for American Values and the author of "The Future of Marriage."

I'm a liberal Democrat. And I do not favor same-sex marriage. Do those positions sound contradictory? To me, they fit together.

Many seem to believe that marriage is simply a private love relationship between two people. They accept this view, in part, because Americans have increasingly emphasized and come to

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<sup>15</sup> Ibid., 321-322.

value the intimate, emotional side of marriage, and in part because almost all opinion leaders today, from journalists to judges, strongly embrace this position. That's certainly the idea that underpinned the California Supreme Court's legalization of same-sex marriage.

But I spent a year studying the history and anthropology of marriage, and I've come to a different conclusion.

Marriage as a human institution is constantly evolving, and many of its features vary across groups and cultures. **But there is one constant. In all societies, marriage shapes the rights and obligations of parenthood. Among us humans, the scholars report, marriage is not primarily a license to have sex. Nor is it primarily a license to receive benefits or social recognition. It is primarily a license to have children.**

**In this sense, marriage is a gift that society bestows on its next generation. Marriage (and only marriage) unites the three core dimensions of parenthood -- biological, social and legal -- into one pro-child form: the married couple. Marriage says to a child: The man and the woman whose sexual union made you will also be there to love and raise you. Marriage says to society as a whole: For every child born, there is a recognized mother and a father, accountable to the child and to each other.**

These days, because of the gay marriage debate, one can be sent to bed without supper for saying such things. But until very recently, almost no one denied this core fact about marriage. **Summing up the cross-cultural evidence, the anthropologist Helen Fisher in 1992 put it simply: "People wed primarily to reproduce." The philosopher and Nobel laureate Bertrand Russell, certainly no friend of conventional sexual morality, was only repeating the obvious a few decades earlier when he concluded that "it is through children alone that sexual relations become important to society, and worthy to be taken cognizance of by a legal institution."**

**Marriage is society's most pro-child institution.** In 2002 -- just moments before it became highly unfashionable to say so -- a team of researchers from Child Trends, a nonpartisan research center, reported that **"family structure clearly matters for children, and the family structure that helps children the**

**most is a family headed by two biological parents in a low-conflict marriage."**

**All our scholarly instruments seem to agree: For healthy development, what a child needs more than anything else is the mother and father who together made the child, who love the child and love each other.**

**For these reasons, children have the right, insofar as society can make it possible, to know and to be cared for by the two parents who brought them into this world. The foundational human rights document in the world today regarding children, the 1989 U.N. Convention on the Rights of the Child, specifically guarantees children this right.** The last time I checked, liberals like me were supposed to be in favor of internationally recognized human rights, particularly concerning children, who are typically society's most voiceless and vulnerable group. Or have I now said something I shouldn't?

**Every child being raised by gay or lesbian couples will be denied his birthright to both parents who made him.** Every single one. Moreover, losing that right will not be a consequence of something that at least most of us view as tragic, such as a marriage that didn't last, or an unexpected pregnancy where the father-to-be has no intention of sticking around. On the contrary, in the case of same-sex marriage and the children of those unions, it will be explained to everyone, including the children, that something wonderful has happened!

For me, what we are encouraged or permitted to say, or not say, to one another about what our society owes its children is crucially important in the debate over initiatives like California's Proposition 8, which would reinstate marriage's customary man-woman form. **Do you think that every child deserves his mother and father, with adoption available for those children whose natural parents cannot care for them? Do you suspect that fathers and mothers are different from one another? Do you imagine that biological ties matter to children? How many parents per child is best? Do you think that "two" is a better answer than one, three, four or whatever?** If you do, be careful. In making the case for same-sex marriage, more than a few grown-ups will be quite willing to question your integrity and goodwill. Children, of course, are rarely consulted.

The liberal philosopher Isaiah Berlin famously argued that, in many cases, the real conflict we face is not good versus bad but good versus good. Reducing homophobia is good. Protecting the



birthright of the child is good. How should we reason together as a society when these two good things conflict?

Here is my reasoning. I reject homophobia and believe in the equal dignity of gay and lesbian love. Because I also believe with all my heart in the right of the child to the mother and father who made her, I believe that we as a society should seek to maintain and to strengthen the only human institution -- marriage -- that is specifically intended to safeguard that right and make it real for our children.

Legalized same-sex marriage almost certainly benefits those same-sex couples who choose to marry, as well as the children being raised in those homes. **But changing the meaning of marriage to accommodate homosexual orientation further and perhaps definitively undermines for all of us the very thing -- the gift, the birthright -- that is marriage's most distinctive contribution to human society. That's a change that, in the final analysis, I cannot support.**<sup>16</sup>

Continuing in this vein, the recent report from 2011, *For Kids' Sake*, states "The overwhelming evidence from research is that children do best in two-parent married families."<sup>17</sup>

The concept of 'homosexual marriage' is utterly self-defeating and harmful. It may purport to be marriage, but this is impossible as; it cannot overcome the stumbling blocks of not being ordered to the generation of human life, it consequently denies the inherent right of a child to a mother and a father, and its deprivation of a child of that right, it severs marriage from children and redefines all marriages in Australian law from bring child oriented to adult centred.

Conservative writer and philosopher Roger Scruton observes:

Marriage has grown around the idea of sexual difference and all that sexual difference means. To make this feature accidental rather than essential is to change marriage beyond recognition. Homosexuals want marriage because they want the social endorsement that it signifies; but by admitting same-sex marriage we deprive marriage of its social meaning, as the blessing conferred by the unborn on the living. The pressure for same-sex marriage is therefore in a certain measure self-defeating. It resembles Henry VIII's move to gain ecclesiastical endorsement for his divorce by making himself head of the Church.

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<sup>16</sup> Los Angeles Times, 19 September 2008, <http://articles.latimes.com/print/2008/sep/19/opinion/oe-blankenhorn19> (accessed 28 March 2012). My emphasis.

<sup>17</sup> Professor Patrick Parkinson AM with Antoine Kazzi, *For Kids' Sake: Repairing the Social Environment for Australian Children and Young People*, Faculty of Law, University of Sydney July 2011, 48, <http://www.acl.org.au/wp-content/uploads/2011/09/FKS-ResearchReport11.pdf> (accessed 29 March 2012)

The Church that endorsed his divorce thereby ceased to be the Church whose endorsement he was seeking.<sup>18</sup>

In response, homosexual marriage activists retort by saying, and I paraphrase, that infertile couples can marry, as can older couples, therefore the argument connecting children and marriage falls down.

In response to this:

In the latest Minnesota Marriage Minute, Kalley Yanta answers the question posted by gay marriage activists: "If marriage is really about procreation, then why do we allow infertile couples, senior citizens and others who cannot conceive enter into marriage, but not same-sex couples?"

She answers, in part: "Procreation can only occur through the complete bodily union of a man and a woman... the aspect of the sex-union that makes the couple's relationship suitable to marriage is its potential for procreation. It does not matter then if spouses do not intend to have children or even if factors such as infertility might prevent conception from occurring. Of course plenty of children have been born to couples who thought they were infertile."

She continues: "Promoting a vibrant and flourishing marriage culture is clearly in the [interest of] the common good. Marriage between men and women is a distinctive and irreplaceable way that humanity can flourish. Because of that, the strength (or weakness) of marriage as a social institution profoundly affects the well-being of everyone in society."<sup>19</sup>

Approaching this matter from the perspective of being an injustice against women, Seana Sugrue observes

The extension of marriage to infertile heterosexual couples serves not to deprecate same-sex couples, but to preserve the equal status of women in marriage. A test for fertility would be unfair to women because *all* women would spend most of their adult lives in a state of infertility. Fertile women are infertile most days of the month, and post-menopausal women are always infertile. A fertility requirement would also render women susceptible to enormous abuse by men, providing a ready excuse for men who would trade in older women for nubile brides. The status of women in marriage would be intolerably diminished through this practice.<sup>20</sup>

One of the great challenges men and women face in marriage is in coming to terms with their differences while respecting the status of the other as an equal. Acceptance of infertility is a measure promoting this end. A measure to

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<sup>18</sup> Roger Scruton, 'Sacrilege and Sacrament', in Robert P. George and Jean Bethke Elshtain eds., *The Meaning of Marriage: Family, State, Market and Morals*, Spence Publishing Company, Dallas, 2006, 26-27.

<sup>19</sup> NOM Blog, *Video: Kalley Yanta Answers the Question "What About Infertile Couples?"*, 25 March 2012 at 11:00 am, <http://www.nomblog.com/20750/> (accessed 31 March 2012)

<sup>20</sup> Seana Sugrue, 'Soft despotism and Same-Sex Marriage', in Robert P. George and Jean Bethke Elshtain eds., *The Meaning of Marriage: Family, State, Market and Morals*, Spence Publishing Company, Dallas, 2006, 181.

accommodate the reality of sex-based difference in marriage is no reason to extend marriage to same-sex couples.<sup>21</sup>

In addition, the infertile couple may overcome their infertility, and they can still be both mother and father to an adopted child, if they want. Older couples may be grandparents, but whether they are or they are not, or whether the infertile couple adopts or not, they are still male and female and their union remains oriented towards the generation of human life. They still have the potential to be parents, father and mother / grandfather and grandmother to a child. Age or infertility are secondary issues in this question, they in no way diminish what marriage is, or the nature of marriage being intrinsically heterosexual. The exception makes the rule, it does not undermine it.

That older couples that marry and infertile couples who long for a family of their own have been used in this debate to undermine marriage is reprehensible.

### **On Rights to ‘Homosexual Marriage’**

In a recent development, on 15 March 2012,

The European Court of Human Rights has ruled that the prohibition of adoption to non-married couples is not discriminatory, because it applies to both heterosexual and homosexual couples equally.

It has also ruled that homosexual “marriage” is not a right under the European Convention on Human Rights.<sup>22</sup>

Likewise, no ‘right’ to ‘homosexual marriage’ exists in the *International Covenant on Civil and Political Rights*, especially Article 23:

*Article 23.* 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.  
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.  
3. No marriage shall be entered into without the free and full consent of the intending spouses.  
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.<sup>23</sup>

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<sup>21</sup> Ibid., 182.

<sup>22</sup> Matthew Cullinan Hoffman, ‘Gay ‘marriage’ not a right, prohibiting gay adoption not ‘discrimination’: European Court’, in *LifeSiteNews.com*, 16 March 2012, [http://www.lifesitenews.com/news/gay-marriage-not-a-right-prohibiting-gay-adoption-not-discrimination-europe?utm\\_source=LifeSiteNews.com+Daily+Newsletter&utm\\_campaign=07ae7c25b4-LifeSiteNews.com+Intl+Headlines+03+16+2012&utm\\_medium=email](http://www.lifesitenews.com/news/gay-marriage-not-a-right-prohibiting-gay-adoption-not-discrimination-europe?utm_source=LifeSiteNews.com+Daily+Newsletter&utm_campaign=07ae7c25b4-LifeSiteNews.com+Intl+Headlines+03+16+2012&utm_medium=email) (accessed 30 March 2012)

<sup>23</sup> United Nations, No. 14668, *MULTILATERAL International Covenant on Civil and Political Rights*:

This was tested before the Human Rights Committee by two Lesbian pairs to claim that their rights had been violated, but the Committee found no basis to justify this:

*Consideration of the merits*

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1 of the Optional Protocol.

8.2 The authors' essential claim is that the Covenant obligates States parties to confer upon homosexual couples the capacity to marry and that by denying the authors this capacity the State party violates their rights under articles 16, 17, 23, paragraphs 1 and 2, and 26 of the Covenant. The Committee notes that article 23, paragraph 2, of the Covenant expressly addresses the issue of the right to marry.

Given the existence of a specific provision in the Covenant on the right to marriage, any claim that this right has been violated must be considered in the light of this provision. Article 23, paragraph 2, of the Covenant is the only substantive provision in the Covenant which defines a right by using the term "men and women", rather than "every human being", "everyone" and "all persons". Use of the term "men and women", rather than the general terms used elsewhere in Part III of the Covenant, has been consistently and uniformly understood as indicating that the treaty obligation of States parties stemming from article 23, paragraph 2, of the Covenant is to recognize as marriage only the union between a man and a woman wishing to marry each other.

8.3 In light of the scope of the right to marry under article 23, paragraph 2, of the Covenant, the Committee cannot find that by mere refusal to provide for marriage between homosexual couples, the State party has violated the rights of the authors under articles 16, 17, 23, paragraphs 1 and 2, or 26 of the Covenant.

**9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it do not disclose a violation of any provision of the International Covenant on Civil and Political Rights.<sup>24</sup>**

## **Popular Surveys and recent findings of the Ambrose Centre for Religious Liberty**

Much of the public polling on the question of support for homosexual marriage is said to be around 55-60%, these are usually Galaxy Polls commissioned by activist groups to promote their point.

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Adopted by the General Assembly of the United Nations on 19 December 1966, 179, <http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> (accessed 30 March 2012). My emphasis.

<sup>24</sup> Human Rights Committee, *Communication No 902/1999: New Zealand*. 30/07/2002. CCPR/C/75/D/902/1999. (*Jurisprudence*), [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/e44ccf85efc1669ac1256c37002b96c9?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/e44ccf85efc1669ac1256c37002b96c9?Opendocument) (accessed 30 March 2012) My emphasis.

In September 2011 the Ambrose Centre for Religious Liberty<sup>25</sup> published a more nuanced report on this subject and produced more insightful appraisal of current attitudes in Australia.

The first questions repeated the phrasing and terminology of the standard commissioned Galaxy Polls by those in favour of redefining marriage and reproduced the same results. The assessment of this from the report reads:

Our poll produced results similar to the widely reported Galaxy polls (2009 – 2011) on the topic of same sex marriage, when the question focused on “rights”, “discrimination”, “committed loving relationships”, and “valuing marriage”.

These results are unsurprising, given that the question asked respondents to indicate their level of support for applying secular values to a minority group.<sup>26</sup>

Crucially, these initial findings must give the remainder of the survey results solid credibility with those advocating change based on the standard Galaxy poll finding. To argue with the remainder is to bring into question the standard findings.

Further questioning about specifically changing the Marriage Act to legalise homosexual marriage reveals are more deeply divided Australian populace, “with little chance of consensus in the foreseeable future.”<sup>27</sup>

Further ahead, other questions produced some *stunning* results, at odds with the simplistic findings of the regular Galaxy Polls referred to above. Note that these results come from the same group that provided the 60% in favour of homosexual marriage result:

**It seems that it's okay to talk about allowing same sex marriage, but when it comes to doing something about it – changing the law – there is less support – why?.....**

The question asked was: “I will list some arguments for keeping the definition of marriage unchanged, that is, applying only to a man and a woman and not to a same sex couple, and ask if you agree or are neutral or disagree with each one”.

% who agree (Base = All respondents)

**Marriage between a man and a woman and them having children together is an important social institution and we should uphold marriage and its traditional meaning ..... 69%<sup>28</sup>**

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<sup>25</sup> Website: <http://www.ambrosecentre.org.au/> (accessed 29 March 2012)

<sup>26</sup> Ambrose Centre for Religious Liberty, *Public attitudes towards changing the Marriage Act to include same sex marriage – Analysis of Survey findings – September 2011*, 1-2, <http://www.ambrosecentre.org.au/images//analysis%20for%20web.pdf> (accessed 29 March 2012)

<sup>27</sup> *Ibid.*, 3.

<sup>28</sup> My emphasis – **bold** and in blue

**Marriage is not just about love and commitment between two adults. It is also the best way to help ensure that children are raised by their own mother and father .....59%**

**Where possible, as a society we should try to ensure that children are raised by their natural mother and father, and promote this ..... 73%**

Debating same sex marriage is a distraction and a waste of resources, and our politicians need to re-focus on the more important issues that really matter to mainstream Australians .....61%

**Same sex marriage would be a significant change to Australian society, and we should not rush into this without knowing the social impact, especially on children ..... 59%**

**Children will usually grow up happier if they have a home with both a mother and a father ..... 53%**

It would seem that changing the law is seen to have implications for more in society than just same sex couples. Our survey shows that a majority of the respondents are concerned about the potential impact on children and on the status of traditional families.

There is also a majority view that Australia should not implement social reforms without a full understanding of the social impact, especially on children.

These results help to explain why there is less than 50% support for changing the Marriage Act – whilst rights for same sex couples are regarded as important, protecting social institutions and the well-being of children are also regarded as important – and both aspirations are not necessarily seen as complementary.

**A significant proportion of those in favour of changing the Marriage Act also agree with these arguments**

% agree

(Base = Those who support changing the Marriage Act)

**Marriage between a man and a woman and them having children together is an important social institution and we should uphold marriage and its traditional meaning. .... 44%**

**Marriage is not just about love and commitment between two adults. It is also the best way to help ensure that children are raised by their own mother and father .....36%**

**Where possible, as a society we should try to ensure that children are raised by their natural mother and father, and promote this. .... 54%**

**Debating same sex marriage is a distraction and a waste of resources, and our politicians need to re-focus on the more important issues that really matter to mainstream Australians. ....40%**

Same sex marriage would be a significant change to Australian society, and we should not rush into this without knowing the social impact, especially on children ..... 35%

These results suggest that many people hold simultaneous but contradictory beliefs, which might explain why there is not a strong consensus one way or the other in the Australian population on this issue.

Also, of those who strongly support a change to the Marriage Act, the figure is only 14%.<sup>29</sup>

These results also demonstrate that the present reliance upon the spate of Galaxy Polls or polls posing similarly phrased questions obscures the fuller picture and does not merit complete trust.

### **Massive Government Intervention into Society**

In the UK, Prime Minister David Cameron, in launching the push for homosexual marriage is on record as saying (5 October 2011):

'We're consulting on legalising gay marriage. To anyone who has reservations, I say: Yes, it's about equality, but it's also about something else: commitment.

'Conservatives believe in the ties that bind us; that society is stronger when we make vows to each other and support each other. So I don't support gay marriage despite being a Conservative. I support gay marriage because I'm a Conservative.'<sup>30</sup>

A reader will immediately note the complete absence of any reference to children, or a child's right to a mother and a father.

One prominent and genuine Conservative voice from the UK, Norman Tebbit - former Minister in Margaret Thatcher's Government and former Chairman of the Conservative Party - chides David Cameron for this, commenting:

Within the can of worms that Mr Cameron is determined to open there are several nests of snakes. Why should a marriage be confined to just two persons? What is the barrier to the marriage of sisters, brothers or even parents and children?

Mr Cameron's justification for all this is that he believes in it "because he is a Conservative" is absurd. Conservatives do not turn over long-standing (several thousands of years across widely different cultures all over the world, in this

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<sup>29</sup> Ibid., 4-6.

<sup>30</sup> Daniel Martin, "Gay marriage is 'a step too far', says defence minister as Cameron proposes full marriage rights for same-sex couples", in *Daily Mail Online*, <http://www.dailymail.co.uk/news/article-2046445/Gay-marriage-David-Cameron-proposes-marriage-rights-sex-couples.html#ixzz1qeU7WQie> (accessed 31 March 2012)

case) with so little thought. He did not mention it when he set out his stall in the Conservative Party leadership election not long ago. Did he believe it then?<sup>31</sup>

Another major problem for a so called 'conservative case for homosexual marriage' exists in the form of this being an enormous form of government intervention into society. This is contrary to basic tenets of Conservative politics.

To illustrate this tenet we can turn again to David Cameron, who claims:

Nearly two years on from coming into office, brick by brick, edifice by edifice, we are slowly dismantling the big-state structures we inherited from the last government. We are putting people in control, giving them the choices and chances that they get in almost every other area of life.<sup>32</sup>

Or, as Ronald Regan stated in his *Inaugural Address* of 20 January 1981,

In this present crisis, government is not the solution to our problem; government is the problem. From time to time we've been tempted to believe that society has become too complex to be managed by self-rule, that government by an elite group is superior to government for, by, and of the people. Well, if no one among us is capable of governing himself, then who among us has the capacity to govern someone else? All of us together, in and out of government, must bear the burden.<sup>33</sup>

Cameron and others who claim to be conservative yet profess to support homosexual marriage work against their own principles.

This suggestion makes plain how deeply redefining marriage alters our idea of parenthood. The biological principle of determining parentage has to be suppressed, and eventually replaced with another principle. **That principle will be that the state will decide who counts as a parent.**

In short, redefining marriage from the union of a man and a woman to the union of any two persons jettisons three principles that we now take for granted. First, children are entitled to a relationship with both parents. Second, legal parenthood ordinarily tracks biological parentage. Third, the state recognizes parentage, but does not assign it.<sup>34</sup>

And

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<sup>31</sup> Norman Tebbit, 'Gay marriage won't win Cameron the next election', in *The Telegraph*, 19 March 2012, <http://blogs.telegraph.co.uk/news/normantebbit/100144912/gay-marriage-wont-win-cameron-the-next-election/> (accessed 31 March 2012)

<sup>32</sup> David Cameron, 'Brick by brick, we're tearing down the big state', in *The Telegraph*, 28 March 2012, <http://www.telegraph.co.uk/news/politics/david-cameron/9171481/Brick-by-brick-were-tearing-down-the-big-state.html> (accessed 31 March 2012)

<sup>33</sup> Ronald Regan, *Inaugural Address*, 20 January 1981, <http://www.presidency.ucsb.edu/ws/index.php?pid=43130#axzz1qedd8sXw> (accessed 31 March 2012)

<sup>34</sup> Jennifer Roback Morse, Ph.D., *The Limited Government/Libertarian Case for Man Woman Marriage*, 19 January 2012, 6, <http://www.nationformarriage.org/atf/cf/%7B39d8b5c1-f9fe-48c0-abe6-1029ba77854c%7D/LIBERTARIAN-CASE-FOR-MAN-WOMAN-MARRIAGE.PDF> (accessed 31 March 2012) My emphasis



Libertarians have every reason to respect marriage as a social institution. Marriage is an organic institution that emerges spontaneously from society. People of the opposite sex are naturally attracted to one another, couple with each other, co-create children, and raise those children. The little society of the family replenishes and sustains itself. Humanity's natural sociability expresses itself most vibrantly within the family. A minimum-government libertarian can view this self-sustaining system with unadulterated awe.<sup>35</sup>

And

**If the state commits itself to “marriage equality,” the state will have to enforce this idea upon the populace. “Marriage equality” is a completely artificial creation of the state, which cannot sustain itself.** And precisely because it is an unnatural idea that does not spring unbidden to the human mind, the state will end up intervening in every aspect of society that touches upon marriage or gender or parenthood. This is far too much power to grant to the state, far too much social engineering, far too much thought control.<sup>36</sup>

And

The essential public purpose of marriage is to attach mothers and fathers to their children and to one another... The state has a duty to provide the basic legal scaffolding that supports the natural family.<sup>37</sup>

But

The state has no right to take over marriage and redefine it out of existence, or redefine it to suit its own purposes.<sup>38</sup>

Seana Sugrue returns to Locke's idea of the pre-state Conjugal Society.

Given the pre-political nature of conjugal society, the state regulates it (marriage) rightly by recognizing it as a natural fact with its own norms and purposes. The state ought not treat conjugal society as its own creation. Where there is evidence that parents are failing in their duties to each other or to their children, the state may intervene. Absent from this, however, the state ought to leave conjugal society, rooted in the union of one man and one woman, alone.<sup>39</sup>

This pre-political conjugal society, “the existence of which is independent of the state, is precisely what advocates of same-sex marriage seek to change.”<sup>40</sup>

Same-sex marriage is necessarily a political institution, whereas marriage is pre-political. Marriage has an existence independent of state power; same sex

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<sup>35</sup> Ibid., 8

<sup>36</sup> Ibid., 11. My emphasis

<sup>37</sup> Ibid., 12

<sup>38</sup> Ibid., 13

<sup>39</sup> Seana Sugrue, ‘Soft despotism and Same-Sex Marriage’, op. cit., 180-181

<sup>40</sup> Ibid., 181.

marriage does not. The reality of children, and the duty of care imposed upon mothers and fathers to rear their offspring, would exist absent a political order.<sup>41</sup>

And

Same-sex couples can only marry insofar as the state decrees that they can. In claiming for homosexuals the right to marry, the state also claims for itself the ability to declare what constitutes marriage. It endows itself with the prerogative of defining its terms. It transforms marriage from a pre-political obligation into its own creation. At the same time, it replaces marriage as an obligation within conjugal society to marriage as a choice and a means of self-gratification. In this way, it changes the character of marriage not just for same-sex couples, but for everyone. By allowing same-sex marriage, the state decrees that, henceforth, marriage is what the state says it is. Marriage then loses its status as a fundamental institution of civil society, and becomes a right, granted by the state, for the desiring self.<sup>42</sup>

Here we have a major example of extreme statism, where a crucial pre-state institution that limits the power of the state is suppressed and replaced by an institution that depends on the state for its existence. The role of the state intrudes into an area where hitherto it has been absent. A key plank of limiting government is removed and the reach of state power takes an enormous step forward.

In consequence,

Being entirely a creation of the state, it (homosexual marriage) is an institution that needs to be coddled, and which demands a culture in which it is protected. It is desperately in need of state intervention to support it. For these reasons, once marriage becomes a statist institution for the sake of consenting adults, the state will be increasingly called upon to create the social conditions to protect these unions. The need of same-sex unions to be culturally coddled also increases the likelihood that the state will use public education for this end. In this way, same-sex marriage affects not just those who participate in it; it affects everyone, and especially our children.<sup>43</sup>

The evidence of intended state protection of these proposals in Australia are already present. The political rhetoric that displays the intent to legislate already exists.

During the 2011 Queensland ALP State Conference, which passed a motion in favour of homosexual marriage, Andrew Dettmer, Queensland Branch President went on record as likening abhorrence to racism opposition to homosexual marriage:

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<sup>41</sup> Ibid., 188.

<sup>42</sup> Ibid., 189.

<sup>43</sup> Ibid., 190.

Queensland branch president Andrew Dettmer said the move, if passed at national level, would end the last vestige of discrimination against non-heterosexual couples.

"The point I think we are all agreed about in our party is that discrimination against people on the basis of their gender or their sexual orientation is just as abominable and just as unsupportable as discrimination on the basis of race," Mr Dettmer said.<sup>44</sup>

Therefore any legal provisions penalising racial discrimination will extend to opponents of homosexual marriage should it ever become law in this country.

Similarly, Greens Senator Sarah Hanson-Young is on record as saying "The idea of marriage only being between a man and a woman is not just outdated, but extremely, extremely defamatory."<sup>45</sup>

Those who publicly support marriage would be guilty of defamation.

Further to this threat will be the mandate to teach homosexual marriage in schools. Overseas examples are instructive.

In Canada, which has suppressed marriage and replaced it with homosexual marriage, one gay activist boasts in response to an objector to the "Out in Schools" program

"There is a moral and ethical question in all of this," retired teacher Ben Seebaran said on Simpson's radio show. "Society has evolved in such a way that those who do not subscribe to the view that gay marriages or differences in sexual orientations are quite acceptable, are made to feel less of a human being."

This is a moral question, I agree. Just as the black civil rights movement changed the rules of what is and isn't acceptable for racism, the gay rights movement is shifting norms in Canada. And with that comes a message to those who won't evolve: your outdated morals are no longer acceptable, and we will teach your kids the new norms.<sup>46</sup>

In Massachusetts, which has homosexual marriage, state schools are obliged to teach material promoting this and no opt-out option exists for parents. This occurred after a father was arrested in the course of objecting to material supporting homosexual marriage being taught to his son.

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<sup>44</sup> AAP, 'Qld Labor backs same-sex marriage', in *Herald Sun*, 19 June 2011 4:09PM, <http://www.heraldsun.com.au/news/more-news/qld-labor-backs-same-sex-marriage/story-fn7x8me2-1226078001582> (accessed 31 March 2012)

<sup>45</sup> Matthew Franklin and Christian Kerr, 'Abbott prevents conscience vote on same-sex marriage', in *The Australian*, 11 October 2011 12:00AM, <http://www.theaustralian.com.au/national-affairs/abbott-prevents-conscience-vote-on-same-sex-marriage/story-fn59niix-1226163375225> (accessed 1 April 2012)

<sup>46</sup> Robin Perelle, 'Left behind: NAKED EYE - It must be hard knowing you're on the losing side', in *XTra!* Thursday, 20 October 2011, [http://www.xtra.ca/public/Vancouver/Left\\_behind-10922.aspx](http://www.xtra.ca/public/Vancouver/Left_behind-10922.aspx) (accessed 1 April 2012)

David Parker was arrested Wednesday by Lexington Police, allegedly for “trespassing” at his son’s elementary school, while attending a scheduled meeting with the principal and the city’s Director of Education over his objections to homosexual curriculum materials and discussions in his son’s kindergarten class.

According to an “Article 8 Alliance” press release, at the meeting, Parker requested that the school inform him of when homosexual discussions would take place, so he could exclude his son from the activity. He said he would not leave until his request was granted. The Principal and the city’s Director of Education both refused his request. They then telephoned the Superintendent of Schools who also refused. Police were called, who told Parker that unless he left the school, he would be arrested.

Parker was arraigned in Concord District Court on Thursday on one count of trespassing; his attorney entered a plea of not guilty. Parker was freed after paying \$1,000 in bail and agreeing not to enter school property. He is due back in court for a trial June 1.

The matter was challenged in the Federal Court, but the court found in favour of the school.<sup>47</sup>

When this lower court decision was challenged in the Federal Appeals Panel, the ruling by Judge Sandra L. Lynch was “that the 2003 Goodridge decision held ‘that the state constitution mandates the recognition of same-sex marriage’ and therefore, she implies, the schools must recognize it also.”<sup>48</sup> The Supreme Court would not hear the case and therefore this ruling stands.<sup>49</sup>

Not only is there no ‘Conservative Case for Homosexual Marriage’ but there are alarming reasons and implications to steadfastly oppose it, as provided above.

## **Framework to promote Homosexual Marriage in Australian Schools Already Rolling Out**

In Australia, the education framework for teaching “the new norms” is already being rolled out across different states. In NSW, the Proud Schools Program, begun by the outgoing State Labor government is enthusiastically continued by

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<sup>47</sup> UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS, DAVID PARKER, ET AL., Plaintiffs, v. WILLIAM HURLEY, ET AL., Defendants, C.A. No. 06-10751-MLW, MEMORANDUM AND ORDER, WOLF, D.J. 23 February 2007, [http://www.massresistance.org/docs/parker\\_lawsuit/motion\\_to\\_dismiss\\_2007/order\\_motion\\_to\\_dismiss\\_022307.pdf](http://www.massresistance.org/docs/parker_lawsuit/motion_to_dismiss_2007/order_motion_to_dismiss_022307.pdf) (accessed 1 April 2012)

<sup>48</sup> MassResistance, *Federal court denies appeal in David Parker Civil Rights case on homosexual programs in elementary school*, 31 January 2008, [http://www.massresistance.org/docs/parker\\_lawsuit/appeal\\_loss\\_013108/](http://www.massresistance.org/docs/parker_lawsuit/appeal_loss_013108/) (accessed 1 April 2012)

<sup>49</sup> Kathleen Gilbert, ‘Mandatory Homosexual Indoctrination in Grade School Survives after Supreme Court Turns Down Case’, in *LifeSiteNews.com*, 8 October 2008, <http://www.lifesitenews.com/news/mandatory-homosexual-indoctrination-in-grade-school-survives-after-supreme-> (accessed 1 April 2012)

the new Coalition government.<sup>50</sup> Of note, the press release that launched the program in NSW stated, after declaring the intent to roll out the program across the state, “It’s envisaged that the final Proud Schools program would be made available to non-government schools in NSW.”<sup>51</sup> This Program incorporates what the Safe Schools Coalition Victoria inaugurated.<sup>52</sup> Anti-bullying is laudable, but as seen from its origins in the United States in an ‘anti-homophobia’ context, it means to convey more than an anti-bullying message, especially when it explicitly seeks to benefit only a single particular community in society, as evidenced in the above press release.

The US origins of this program are worth further examination. Kevin Jennings of the Gay, Lesbian & Straight Education Network developed the program in 1993. Since then he has risen to the role of Assistant Deputy Secretary of Education at the U.S Department of Education, Office of Safe & Drug Free Schools, which he held from 2009-2011. His influence is notable, to say the least.

Jennings admitted his manipulative approach in a 1995 speech to fellow GLBT activists, explaining that he and the Governor’s Commission “framed the issue” as one of “student safety”. That way, no one could object to the homosexual and transgender indoctrination the activists planned to push in the schools. Whoever opposed their efforts could be accused of heartless disregard for students! Jennings said in that speech:

If the Radical Right can succeed in portraying us as preying on children, we will lose. Their language – “promoting homosexuality” – is laced with subtle and not-so-subtle innuendo that we are —after their kids. We must learn from the abortion struggle, where the clever claiming of the term —pro-life allowed those who opposed abortion on demand to frame the issue to their advantage, to make sure that we do not allow ourselves to be painted into a corner before the debate even begins.

In Massachusetts the effective reframing of this issue was the key to the success of the Governor’s Commission on Gay and Lesbian Youth. We immediately seized upon the opponent’s calling card – safety -- and explained how homophobia represents a threat to students’ safety by creating a climate where violence, name-calling, health problems, and suicide are common. *Titling our report —Making Schools Safe for Gay and Lesbian Youth, we automatically threw our opponents onto the defensive and stole their best line of attack. This framing short-circuited their arguments and left them back-pedaling from day one.*

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<sup>50</sup> Brendan Bolger, Coalition reaffirms Proud Schools, *Gay News Network*, 12 September 2011, <http://gaynewsnetwork.com.au/news/national/1213-coalition-reaffirms-proud-schools.html> (accessed 1 April 2012)

<sup>51</sup> The Hon Verity Firth, *Press Release: \$250,000 TO HELP TACKLE HOMOPHOBIA IN SCHOOLS*, 21 January 2011, [https://www.det.nsw.edu.au/detresources/mr210111-homophobia\\_vDHHZAfyK.pdf](https://www.det.nsw.edu.au/detresources/mr210111-homophobia_vDHHZAfyK.pdf) (accessed 1 April 2012)

<sup>52</sup> FYA – Foundation for Young Australians, *Safe Schools Coalition Victoria welcomes NSW ‘Proud Schools’ Program*, no date, <http://www.fya.org.au/safe-schools-coalition-victoria-welcomes-nsw-%E2%80%98proud-schools%E2%80%99-program/> (accessed 1 April 2012)

Finding the effective frame for your community is the key to victory. It must be linked to universal values that everyone in the community has in common. *In Massachusetts, no one could speak up against our frame and say, —Why, yes, I do think students should kill themselves: this allowed us to set the terms for debate.*

In Massachusetts, we made creating an environment where youth could speak out our number one priority. We know that, confronted with real-life stories of youth who had suffered from homophobia, our opponents would have to attack people who had already been victimized once, which put them in a bully position from which it would be hard to emerge looking good. More importantly, we made sure these youth met with elected officials so that, the next time these officials had to vote on something, there would be a specific face and story attached to the issue. (Emphasis added.)<sup>53</sup>

Therefore, anti-bullying programs are a conduit for something else and the framework can expand to include varying curricula, such as 'homosexual marriage', which will be taught in schools to young children should this legislation pass Parliament.

## **Other Impacts**

### **Religious Freedoms**

The intent of the Bills to legalise homosexual marriage in Australia in the House of Representatives, namely the *Marriage Equality Amendment Bill 2012* and the *Marriage Amendment Bill 2012*, seek to placate religious groups by excluding them from having to conduct "homosexual marriage" ceremonies. In other words, it is a device to remove them from the debate.

In one sense, it is a compliment to the effectiveness of their efforts to oppose this measure, but it only acts as a fig leaf. If an exemption can be legislated for, then by implication it can be removed, otherwise including it makes little sense. It is tantamount to legislating what religious groups may or may not include in their religious ceremonies, and therefore may appear to have the potential to violate S 116 of the Australian Constitution that states "The Commonwealth shall not make any law... for imposing any religious observance, or for prohibiting the free exercise of any religion". In this amendment it does not impose a religious observance but implies that it can, hence it is dangerous to begin with.

More is at stake however. A change in the marriage laws will set the State, or Commonwealth, against all religious groups that oppose them. The secular sphere, as seen above, will treat opposition to the new laws as akin to racism

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<sup>53</sup> Amy Contrada, 'Kevin Jennings – Author of 1993 Education Report to the Massachusetts Governor's Commission on Gay and Lesbian Youth: Template for Homosexual and Transgender Activism in Schools across the U.S.', *MassResistance Special Report*, May 2011, 2, [http://www.massresistance.org/docs/issues/kevin\\_jennings/1993\\_report/Jennings1993Report\\_Analysis.pdf](http://www.massresistance.org/docs/issues/kevin_jennings/1993_report/Jennings1993Report_Analysis.pdf) (accessed 1 April 2012)

and as defamatory. What one is taught in religious schools, or independent schools, will face a legally hostile environment outside of these. The religious organisations, not just schools, but charities or other enterprises, can be easily marginalised and pressured to change or withdraw from the field they operate in – for example, health, education and charitable organisations. Church property, as distinct from the actual church may not be included in this exemption.

For example, in New Jersey a

Christian group has lost a case against a lesbian couple who brought the group to court for refusing to rent out their oceanfront grounds to the pair for a civil union ceremony.

The New Jersey Division on Civil Rights on Monday ruled that the Methodist Ocean Grove Camp Meeting Association had violated the public accommodation provisions of state anti-discrimination laws.<sup>54</sup>

Similarly in Australia, a complaint against the Christian Brethren was upheld by the Victorian Administrative Appeals Tribunal, and was brought forward by Cobaw Community Health Services on behalf of their Way Out project. The Way Out project is a homosexual action group whom the Christian Brethren declined their request to use their Philip Island Adventure Resort, owned by the Christian Brethren.<sup>55</sup>

The precedents are already being established.

If there are exemptions legal or court pressure will seek to force change. The religious school education systems will be made to teach “the new norms” and it is possible that there would be pressure on all educational organisations in receipt of government funding to make this contingent upon teaching the stated curricula.

## **The Marriage Industry**

No exemptions will exist for suppliers in the wedding industry. To protect the new homosexual marriage regime such business will require compulsion, and if any refuse will face legal action and unwelcome publicity. The legal and social pressure to conform will be substantial. Many may leave as a result.

Businesses in these areas will be directly affected:

- Wedding location providers

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<sup>54</sup> Kathleen Gilbert, ‘New Jersey Rules against Christian Group that Declined to Host Lesbian Civil Union Ceremony’, in *LifeSiteNews.com*, 6 January 2009, <http://www.lifesitenews.com/news/new-jersey-rules-against-christian-group-that-declined-to-host-lesbian-civi> (accessed 1 April 2012)

<sup>55</sup> For details see Peter Barclay, ‘Homosexuality Trumps Christianity’, in *Quadrant*, June 2011, 24-31.

- Reception locations
- Caterers
- Celebrants
- Photographers
- Florists
- Clothing hire/sales
- Resort owners/ B&Bs, etc.
- Wedding planners
- Stationery providers
- Musicians
- Hotel bookings
- Gift Register issuers
- Transportation
- Decoration suppliers

## **Mental Health**

There is a claim that by not legislating for homosexual marriage a legislative body causes higher levels of mental distress among same-sex couples and 'their' children.<sup>56</sup>

This is a grievous claim if true, but is based on a false claim to marriage. We do not downplay suffering, but suggest that other factors may be playing a part. We submit an alternate viewpoint from Maggie Gallagher, one who has been directly accused of contributing to this. She is one of the principal members of the National Organization for Marriage (NOM) in the USA. My apologies again for the length, but the matter is of such seriousness that it warrants fuller treatment.

### **Does Gay Marriage Prevent Gay Teen Suicide?**

By Maggie Gallagher

20 October 2010

Do I have blood on my hands?

Major gay rights groups are saying so. Each of us who opposes gay marriage, they say, is responsible for the terrible and tragic suicides of gay teens that recently hit the news.

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<sup>56</sup> See Elizabeth Short, Damien W. Riggs, Amaryll Perlesz, Rhonda Brown, Graeme Kane. *Lesbian, Gay, Bisexual and Transgender (LGBT) Parented Families*, The Australian Psychological Society Ltd, August 2007, <http://www.psychology.org.au/Assets/Files/LGBT-Families-Lit-Review.pdf> (accessed 1 April 2012) and Ann P. Haas PhD, et al., Suicide and Suicide Risk in Lesbian, Gay, Bisexual, and Transgender Populations: Review and Recommendations, *Journal of Homosexuality*, Volume 58, Issue 1, 2010, <http://www.tandfonline.com/doi/full/10.1080/00918369.2011.534038> (accessed 1 April 2012)



San Francisco just filed a brief in the federal Proposition 8 case saying 7 million Californians who voted to protect marriage as the union of one man and one woman are responsible for high rates of suicide among gay people.

Evan Wolfson, one of the leading architects of the gay marriage movement, calls me out personally in a column: "National Organization for Marriage Chairman Maggie Gallagher is among those who, with reckless disregard, attacks LGBT youth."

Former Bill Clinton adviser Richard Socarides told the AP that these suicides demonstrate why gays should be allowed to marry: "When you speak out for full equality now, as opposed to partial equality, or incremental equality, you send a message to everybody, including the bullies, that everyone is equal."

Apparently, either we all agree that gay marriage is good or gay children will die.

It's a horrific charge to levy in response to some pretty horrifying stories. Will gay marriage really reduce or prevent gay teen suicide? I felt a moral obligation to find out.

Massachusetts has been tracking gay high school students for a decade using the Center for Disease Control and Prevention's Youth Risk Behavior Survey.

LGBT teens are roughly four times as likely as other students to have attempted suicide in the last year.

They are also about twice as likely to report being in a physical fight at school, three times more likely to say they were injured by a weapon, and almost four times as likely as other (sic) teens to say they missed school because they felt physically unsafe.

These kinds of negative outcomes are consistent with the idea that anti-gay bullying is mainly responsible for the higher suicide rate among gay teens. But as I kept reading, I kept finding the pieces of the puzzle that don't seem to fit the "it's homophobia pulling the trigger" narrative:

Gay students are also more than twice as likely to report having had sexual intercourse before age 13 -- that is, to be sexually abused as children. They are three times as likely to report being the victims of dating violence, and nearly four times as likely to report forced sexual contact. A majority of LGBT teens in Massachusetts reported using illegal drugs in the past month. (Perhaps most oddly, gay teens are also three times as likely as nongay teens to report either becoming pregnant or getting someone else pregnant.)

Forced sex, childhood sexual abuse, dating violence, early unwed pregnancy, substance abuse -- could these be a more important factor in the increased suicide risk of LGBT teens than anything people like me ever said?

The deeper you look, the more you see kids who are generally unprotected in deeply tragic ways that make it hard to believe -- if you are really focusing on these kids' well-being -- that gay marriage is the answer.

And that's exactly what the Youth Risk Behavior data also show: In 2001, gay teens in Massachusetts (sic) were almost four times more likely to have attempted suicide (31 percent vs. 8 percent). In 2007 -- after four years of

legalized gay marriage in that state -- gay teens were still about four times more likely to attempt suicide than nongay teens (29 percent vs. 6 percent).

Whether you are looking at their faces or looking at the statistics, one thing is clear: These kids need help, real help. They should not become a mere rhetorical strategy, a plaything in our adult battles.

Each of these teens is a child of God. And each one deserves better from all of us that becoming a "teachable moment" in someone else's culture war.

Maggie Gallagher<sup>57</sup>

### **A Precedent for Other Unions - Polyamory – or the ‘Slippery Slope’ Argument**

The Australian Marriage Equality (AME) webpage seeks to dispel the arguments that homosexual marriage would lead to polygamy, or other extreme forms of relationships with pets, and so forth, “This is why in **none of the countries** which allow same-sex marriage are polygamous marriages officially solemnised.”<sup>58</sup>

This is not the point, on two levels. First, once the rationale for marriage being oriented towards the generation of human life with the child having, and having the right to be, being raised by his or her mother and father is gone and replaced by more general principles of equality, love and commitment, then who is to put limits on these? **The advocates of homosexual marriage may say that this is not so or that the justification for other kinds of unions is not their intent, but they have no control over the consequences of what they are now advocating.** It is not for them to draw new lines in the sand upon achieving their own goals – they will have effected an enormous social revolution, and with the principles they use why cannot this be taken further? The comment above is more a reference to timing. One could easily add the word “yet” to the end of the sentence.

Adam Bandt, himself, when introducing his 2012 Marriage Equality Bill repeated what he said in 24 November 2010 concerning his successful Motion that MPs consult their constituents on this subject:

Love knows no boundaries.

Love knows no limits.

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<sup>57</sup> Maggie Gallagher, Does Gay Marriage Prevent Gay Teen Suicide?, in *Townhall.Com*, [http://townhall.com/columnists/maggiegallagher/2010/10/20/does\\_gay\\_marriage\\_prevent\\_gay\\_teen\\_suicide/page/full/](http://townhall.com/columnists/maggiegallagher/2010/10/20/does_gay_marriage_prevent_gay_teen_suicide/page/full/) (accessed 1 April 2012)

<sup>58</sup> Australian Marriage Equality, *Answering the opponents of marriage equality: ‘There will be a slippery slope to other kinds of “marriages”*, <http://www.australianmarriageequality.com/wp/answering-the-critics/> (accessed 1 April 2012). Their emphasis

And love knows when it has found its partner.

There have been many attempts through history to limit love. All have failed.<sup>59</sup>

He has just given the advocates of other unions their argument.

Second, what is being pushed on the coat tails of the homosexual marriage movement is not so much polygamy, as is claimed above, but polyamory - “many loves” - and the advocates for this see the consistency of their goals with the paths being laid by those advocating for homosexual marriage. The slippery slope is real and it is already under discussion.

Linda Kirkman of La Trobe University writes

I hope it won't be long before people in poly relationships don't feel the need to protect themselves with pseudonyms. A same sex couple having a baby would no longer feel the need to hide their identity in this way. I look forward to a society where any loving family, irrespective of how many people it includes or what sex they are, feels safe to be open about who they are.

In that respect, poly is the new gay.<sup>60</sup>

Additionally, the polyamory movement has attached itself to the gay community, quite openly, in participating in both the (Gay and Lesbian) Mardi Gras in 2011 and 2012. The push is there but it will require more strength to achieve its aims and it intends to use the political gains of the advocates of homosexual marriage to this end. It is a further example of the consequences of removing the parameters of marriage to attain homosexual marriage – the proponents cannot control how this would develop should they achieve their objectives. There is a saying that is very apt here: “Before you take down a fence, ask why it was put there in the first place.” It may be polyamory now; but it could be polygamy tomorrow, or anything else.

The following article, by Ean Higgins in *The Australian* last year surveys where the polyamory movement is in Australia at present.

### **Three in marriage bed more of a good thing**

by: Ean Higgins From: The Australian December 10, 2011 12:00AM

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<sup>59</sup> Adam Bandt, *Adam introduces Marriage Equality Bill*, 13 February 2012, <http://adam-bandt.greensmps.org.au/content/speeches/adam-introduces-marriage-equality-bill> (accessed 1 April 2012)

<sup>60</sup> Linda Kirkman, *Poly is the new gay*, 2010 <http://www.latrobe.edu.au/news/articles/2010/opinion/poly-is-the-new-gay> (accessed 1 April 2012)



Victor de Bruijn with brides Mirjam and Bianca at The Netherlands' first trio wedding. Picture: Albert Seghers Source: Supplied

FOR weeks, Sydneysiders and Melburnians who believe menages-a-trois and other polyamorous relationships can be just as committed, loving and valid as marriage between a man and a woman, slaved away together to earn their place in the sun.

They drew up plans, sawed wood, hammered nails.

Finally, in early March, it was ready: the first float celebrating polyamory to join the colourful flotilla in the Sydney Gay and Lesbian Mardi Gras.

For psychologist Nina Melksham, it marked the moment when the poly community, like gays and lesbians a generation ago, had come out of the closet to stand up and be counted.

"The polyamory community has always been supportive of the values of equality and acceptance," Melksham told Inquirer this week.

"Participating in the Mardi Gras was a natural way for us to affirm these values."

Boosted by this success, Melksham and her polyamorous friends are planning an even bigger show for next year's festival.

The polyamorous community has a further cause for celebration.

They believe last weekend's vote by the ALP national conference to change the party platform to legalise same-sex marriage is a base on which they can build.

The agenda now is to seek recognition and the removal of prejudice against multiple-partner relationships, perhaps legislation to grant them civil unions and even legalised polyamorous marriage.

"My personal view is that any change that moves us towards a more loving, open and accepting society can only be a positive," Melksham says.

Melksham runs a counselling practice in Lilyfield in Sydney's inner west catering to polyamorous clients. She describes her own domestic arrangements as "a bit complicated at the moment": she lives with her former husband, who she describes as her "best friend", and is in a "vee" relationship with two boyfriends who live separately.

"I had the experience of being deeply in love with more than one person at a time. I had the choice to either deny the reality of the situation or grow and become a more accepting and tolerant person."

The polyamorous community in Australia is a broad church, with the slogan of its very active website being "ethical non-monogamy".

It is increasingly prominent, with organised groups in most capital cities that hold regular discussion sessions and social nights.

Polyamorists generally distinguish themselves from the monogamous gay community, and from those seeking kinky casual sex. Some also see themselves as different from heterosexual polygamists where the "hinge" member has sexual relations with the two of the opposite sex, but the two of the same sex do not have sex with each other.

Rather they may form, in polyamorist lingo, a "polyfidelist triad" in which there is an equilateral triangle of sexual activity.

Such was the argument of 46-year-old Victor de Bruijn and his 31-year-old wife of eight years, Bianca, when they were formally united in 2005 in a small Dutch town with Mirjam Geven, a recently divorced 35-year-old whom they'd met several years earlier.

Although Dutch law bans polygamy, because there was no actual marriage in the technical sense, just a common law civil contract, the trio's union was allowed.

Two court cases, one in Canada last month and one in Australia earlier in the year, show that while British-based law remains resolute against multiple partner marriage, it accepts that a common law threesome is not illegal or even necessarily family-unfriendly.

In the Canadian case, British Columbia Chief Justice Robert Bauman upheld Canada's anti-polygamy law, but left polyamorous families free from sanction if they do not commit an overt act of multiple marriage.

The Australian case involved a man whose wife had left him for another man and a woman, and taken the children. When the trio set up house together, mingled their respective offspring, and shared the same bedroom, the jilted husband applied to the court seeking an urgent order that the children be removed from the "immoral" household.

But magistrate Philip Burchardt rejected the application, saying the threesome seemed to be "thoroughly decent and honest people" and "I do not regard the relationship . . . as being damaging to the children."

One of Melksham's boyfriends, Stuart Dixon, believes polyamorous civil unions or marriage are set to come on to the national agenda following the ALP conference vote.

"I personally feel it would be appropriate to have some sort of legal recognition of multiple partners," Dixon said.

For those who fought the battle last week at the ALP national conference in support of the change of the party platform, the emergence of "poly pride" is a dangerous development.

Inquirer this week contacted some of the most vocal supporters within the ALP caucus for legalising gay marriage: Finance Minister Penny Wong, Schools Minister Peter Garrett, Social Inclusion Minister Tanya Plibersek, Transport Minister Anthony Albanese, left convener Doug Cameron and Stephen Jones, who plans to introduce a same-sex marriage bill.

Inquirer asked them: "Do you, given your deep commitment to the topic, believe that at the next ALP national conference the platform should be further amended to legalise marriage among polyfidelist triads?"

Not one would speak to Inquirer on the topic, and most did not reply.

After some pressure, Attorney-General Robert McClelland responded, going out of his way to make clear that while gay marriage might be on the agenda, legalised menages-a-trois were not. "Irrespective of whether the definition of marriage is extended to include same-sex couples, there has been and is no suggestion that the definition should extend to polygamous relationships," a spokesman said.

Even the whisper of recognising polyamorous unions presents two threats for supporters of gay marriage: one from the Right, the other from the Left.

Niko Antalffy, a sociologist at Sydney's Macquarie University who has studied polyamory and has been "actively polyamorous for about seven years", says: "Of course they are scared.

"Having multiple partners sounds radical and they know that it won't fly with the mainstream community," Antalffy says.

"If you want to promote gay marriage you want to distance yourself with the slippery slope argument as much as possible, so no one will think that marrying your goat is next."

The polyamorous marriage concept has indeed given conservatives such as NSW upper house MP Fred Nile more ammunition following the ALP national conference vote. "I warned people this would be the next stage," Nile tells Inquirer.

"You'd get threesomes, foursomes, fivesomes, wanting the same rights. Some people even say they want to marry their pet animal."

The polyamorist threat from the Left to the gay marriage campaign is more subtle. It raises the question whether those who support gay marriage on the basis of equal rights are hypocritical in not being prepared to even discuss the possibility of committed polyamorists being eligible.

The polyamorist community includes a large component of tertiary-educated professionals and academics because, they say, they are able to assimilate the intellectual sophistication of the polyamory thesis.

"We now know that sexual monogamy is neither natural nor common and has never been," Antalfy says.

"The institution of marriage and cultural assumptions of monogamy arrived with agriculture and property ownership. In the last four to five decades everything has changed, though: religion has lost its grip on life, we are rich in material goods as well as opportunities, we have greater choices in lifestyles, there's more equality and equality of opportunity, women can make do without having to be married to a man who keeps her.

"And this brings out human desire, which is multifarious to say the least. Polyamory is the sweet result of modernity."

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#### A MANY SPLENDURED THING: THE POLY GLOSSARY

Compersion: The antidote to jealousy: taking joy in the knowledge that a partner is having sexual relations with someone else.

Friend-with-benefits: A relationship where friendship comes first, with occasional sexual contact and no partner-level commitment.

F..k-buddy: A relationship focused primarily on the sex.

New Relationship Energy (NRE): The excitement and energy-boost experienced in the first glow of a new relationship.

Open relationship: A general term meaning consensual non-monogamy.

Polyandry: A woman having more than one husband.

Polyfidelity: A polyamorous relationship of committed and long standing where members agree to be sexually exclusive to one another.

Polygamy: One partner of one sex having more than one spouse of the opposite sex.

Polygyny: A man having more than one wife.

Primary: The commitment relationship which may involve living together, marriage, mutual finances, and co-parenting.

Quad: A relationship between four people, each of whom is intimately connected to all the others.

Secondary: A relationship which may involve sporadic sex, but of a lower order in terms of priority, time and commitment.

Triad: A sexual equilateral triangle in which each member is romantically connected to the others.

Vee: Where one person in a threesome, known as the "hinge", is sexually involved with two others, but those two are not sexually engaged with each other.<sup>61</sup>

## Civil Unions

We also oppose civil unions, or any kind of formal registers, as these are always an encroachment upon the territory of marriage and are always considered a stepping stone to changing a nation's marriage laws to legislate for homosexual marriage.

In a 2006 NSW Parliamentary Report authors Karina Anthony and Talina Drabsch quote a paragraph from the work of Jenni Millbank, 2005, titled *Same-sex Families*, and is worth quoting in full:

No country anywhere in the world has passed laws going from absolutely no form of same-sex relationship recognition directly to same-sex marriage. Rather, over a period of many years, a series of changes have built incrementally on one another. Generally progress has gone along the following sequence: decriminalisation of gay sex, implementation of anti-discrimination protections, some limited recognition of relationships either through de facto relationship recognition or limited registration systems, and then through one or more stages a move to broader relationship recognition, then (usually) some parenting recognition, then a status similar to marriage but called something else such as 'civil union' or 'registered partnership', and then, some years later, marriage.<sup>62</sup>

## Conclusion

The push for homosexual marriage is an attack on marriage, a denial of the rights of a child to a mother and a father, a massive imposition of government power across society that suppresses a pre-state institution and imposes a purely state created institution, is not based upon any inherent 'right', a threat to religious freedom and individual freedoms across society, not as broadly supported as some think, a precedent for proponents other kinds of relationships to demand similar legislative recognition and against the interests of the Commonwealth.

We also oppose civil unions, or any kind of formal registers.

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<sup>61</sup> Ean Higgins, 'Three in marriage bed more of a good thing', in *The Australian*, 10 December 2011, <http://www.theaustralian.com.au/news/features/three-in-marriage-bed-more-of-a-good-thing/story-e6frg6z6-1226218569577> (accessed 1 April 2012)

<sup>62</sup> Karina Anthony and Talina Drabsch, *Legal Recognition of Same-Sex Relationships: Briefing Paper No 9/06*, NSW Parliamentary Library Research Service, June 2006, 41, [http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/0/77a5243097257121ca257188001d17d6/\\$FILE/SameSexFinal&Index.pdf](http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/0/77a5243097257121ca257188001d17d6/$FILE/SameSexFinal&Index.pdf) (accessed 1 April 2012)



We call upon the Committee to reject the Marriage Equality Amendment Bill 2010 and any similar Bills.

Thank you for the opportunity to make a submission.

Yours Faithfully,

Gerard Calilhanna  
Coordinator National Marriage Coalition  
<http://www.marriage.org.au/>

About the National Marriage Coalition, from our website:

The National Marriage Coalition is a coalition of like minded organisations who believe that marriage is the bedrock institution of our society. Marriage means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life. Marriage is important because families are important. Families are important because they are the building blocks of our society. when the family collapses, so does the society. Therefore marriage should be encouraged, strengthened and supported by government, society and individuals in every possible way.