‘Marriage Equality’: An Elaborate Pretence at Parity

Legislating sows’ ears to be silk purses: promoting ‘Silk Purse Equality’

Public submission on the Marriage Equality Amendment Bill 2010

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To premise any amendment to the Marriage Act 1961 on a claim to be able “to create the opportunity for marriage equality for people regardless of their sex, sexuality or gender identity” is an absurdity. Logical consistency and legal coherence require that marriage as an institution maintain an inherent and irrevocable regard to the sex, sexuality and gender identity of the husband and wife who are joined in marriage.

Contrived meaning v. ordinary meaning of ‘marriage equality’

The term ‘marriage equality’ as presented in this Bill is a subjective and intrinsically confused concept in which a pretence is made of being able to compare ‘marriage’ and something other than and different from ‘marriage’ and to decide that the two are ‘equal’.

It is simply not valid for any parliament to pretend to make sow’s ears into silk purses by legislating ‘silk purse equality’.

Marriage is a singular, unique institution—not subject to comparative degree.

There is just the one institution—and it does not admit:

1. Marriage between minors i.e. of non-marriageable age
2. Forced marriages
3. Multiple spouses
4. Marriage between a man and a man or between a woman and a woman.

Furthermore, the term ‘marriage equality’, as presented in this Bill, is a nonsense concept. The literal meaning of ‘marriage equality’ is that one marriage is equal to another marriage.

The contrived meaning, as advanced in this Bill, is that an interchangeable equivalence exists between marriage in its ordinary meaning (between one man and one woman) and the peculiarly delusional invention that pretends to be able to unite in ‘marriage’ two men or two women.

This falsehood leads to a second lie: that a mother's role and a father's role are equivalent and are interchangeable with mother/mother roles and father /father roles without loss to the child.

We should not be experimenting with children's lives in legislating for the deliberate creation of 'marriages' where children are intentionally denied the intimate knowledge and care of their mothers or their fathers. Informed consent is a fundamental human rights principle that precludes permission for radical experimentation where such consent is not verified as a strict pre-requisite. The experimental subjects of 'marriage equality', the children, are not in a position to provide informed consent. Their rights protected in the *UN Convention on the Rights of the Child* to know and be raised by both their parents—in as far as possible—are intentionally contravened by the introduction of this proposed legislation.[1] There are of course many children who through tragic circumstances are cheated of this right. However, this is clearly distinct from artificially reconfiguring marriage through legislation to enable and endorse novel forms of motherless or fatherless family formation which deliberately deprive a child of the intimate knowledge and care of his/her own mother or father. It is intellectually dishonest for governments to pretend that is anything other than an intolerable form of human rights violation.

Current public opinion, deceived by relentless propaganda, is no basis for changing universal human rights protections for marriage and children solemnly agreed in the Conventions to which Australia is a party. To tamper with the meaning of 'marriage' is to tamper with those protections. Such distortion of true meaning contravenes the "ordinary meaning" test required by Article 31 (1), General rule of interpretation of the Vienna Convention on the Law of Treaties (1969):

> *A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*

Our foundation international human rights instruments were not concerned with establishing radical new institutions and then pursuing this kind of institutional 'equality'—they knew it could not be justified—they understood and respected the limits of human rights law.

The drafters of the UN Human Rights Conventions were very careful to spell out the grounds for non-discrimination in the "right to marry and to found a family" articles—'sex' was excluded precisely because a difference of sex, a man and a woman is a discrimination *necessary* to the very meaning of marriage.

'husband and wife'—Not "a discriminatory term"

The *Explanatory Memorandum to the Marriage Equality Amendment Bill 2010* is wrong when it claims that 'husband and wife' is a "discriminatory term". It is a definitional term so fundamental to the meaning of 'marriage' that to attempt to replace it with 'two people' is to invite logical and legal incoherence which has the potential to effect negatively all those, especially children, who are beneficiaries of the social cohesion encouraged and protected by our marriage law.

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[1] *UN Convention on the Rights of the Child* (1989) Article 7.

Australia has ratified the *UN Women's Convention* (CEDAW) and is obliged under international human rights legal principles codified in this Convention to promote full recognition of "the social significance of maternity and the role of both parents in the family and in the upbringing of children" and to enact laws which acknowledge "that the upbringing of children requires a sharing of responsibility between men and women …" [2]

Indeed, how can the term "husband and wife" be deemed discriminatory when the official human rights language of Article 16 of the CEDAW Convention links the term "parents" definitively to "men and women" and to "husband and wife"?

International obligation to protect marriage and the family

Under international human rights law, the Commonwealth Government has the solemn duty to ensure that Australian marriage laws (Federal, State and Territory laws) comply with universal obligations in the *International Bill of Rights* to protect marriage and the family.

As signatory to the *International Covenant on Civil and Political Rights* (ICCPR), and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the Federal Government is obliged to ensure that the provisions "extend to all parts of federal States" (ICCPR Article 50, and ICESCR Article 28). All parts of the Federation of Australian States are formally bound to uphold these covenants in their entirety.

While the Australian Constitution does award responsibility for making laws about marriage to the Commonwealth, it does *not* allow for the gutting of the honourable age-old natural law institution of marriage in order to replace it with some experimental Mickey Mouse cartoon-style construct.

No democracy can justify amendments to marriage law that are incompatible with specific universal human rights requirements such as State provision of protection for the family—"the natural group unit of society":

> The family is the natural…group unit of society and is entitled to protection by society and the State." (ICCPR Article 23-1).
>
> The State Parties …recognize that: The widest possible protection and assistance should be accorded to the family, which is the *natural*…group unit of society, particularly for its *establishment* (ICESCR Part 1, Article 10-1).

When "same-sex marriage" advocates take exception to the stipulation of a man and a woman in the establishment of the family, they are in contravention of the Covenants. Promoting unnatural forms of family formation is not in keeping with international human rights obligations of governments to provide "the widest possible protection and assistance" for the "natural" family, particularly for its *establishment* as the natural group unit of society.

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[2] CEDAW Preamble; also Article 5b "…recognition of the common responsibility of men and women in the upbringing and development of their children".

The right "to marry and to found a family" is one right, not two and is predicated exclusively on the biological complementarity of "men and women" (not 'men and men' and not 'women and women')

Restricting this right "to marry and to found a family" to "men and women of marriageable age" was recognized at the time of negotiating the Conventions as an essential part of the entitlement of the family "the natural and fundamental group unit of society" to "protection by society and the state" (ICCPR Article 23).

Right to found a family "implies, in principle, the possibility to procreate"

In interpreting Article 23 of the ICCPR which promotes protection of the family and the right to marriage, the UN Human Rights Committee in General Comment 19 (paragraph 5) insists that the right to found a family "implies, in principle, the possibility to procreate". (A General Comment is the most authoritative of all the prescriptions that may be issued by the UN human rights monitoring bodies.) While allowing for the possibility that due to age or medical problems, the fertility of the marital act between a man and a woman may be impaired, this term, "in principle, the possibility to procreate", rules out definitively any genuine legal right of two persons of the same sex to marry.

Quite wrongly, homosexual and lesbian lobbies around the world screech "Discrimination! Discrimination! " Naïve politicians like Senator Hanson-Young, taking up the shrill, false rhetoric, are fabricating a Bill that is logically incompatible with fundamental provisions of the *Universal Declaration of Human Rights* (UDHR), which is the foundation document of modern human rights law.

Take, for example, UDHR Article 16 (3) in which all governments agreed:

> The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Procreation was always the agreed rationale behind the natural law right to marry and to found a family. University of Chicago Professor Leon Kass, one of the world's leading authorities on the natural and sociological anthropology of sexual reproduction, says that human societies virtually everywhere have structured child-rearing responsibilities and systems of identity and relationship on the bases of the deep natural facts of begetting. "The mysterious yet ubiquitous love of one's own is everywhere culturally exploited to make sure that children are not just produced but cared for and to create for everyone clear ties of meaning, belonging and obligation." It is wrong, he says, to treat such naturally rooted social practices as mere cultural constructs that we can alter with little human cost.

In view of these profound truths, it borders on the ludicrous for Senator Hanson-Young to claim now that marriage and adoption laws enacted originally to protect the family as the natural and fundamental group unit of society are to be deemed discriminatory against same-sex coupling which by its very nature has nothing to do with procreation.

The concept of "special care and assistance" for motherhood, childhood and the family (UDHR Article 25) means just that—it is *special.* It is illogical to extend what is special to absolutely everyone homogeneously. The net effect of such an artificial re-interpretation is that these special human rights obligations are gutted—they become meaningless.

Certainly the generic non-discrimination clause of human rights jurisprudence was never intended to override the legitimate protective restrictions and distinctions both expressed and implicit, for example, in Article 16 of the Universal Declaration, namely, that men and women, (not men and men, nor women and women), in exercising the right to marry and to found a family, will do so in conformity with Article 16's definition of the family as "the natural group unit of society", that they will be "of full age" (not considered age discrimination), and that they will enter into marriage "only with free and full consent".

It is clear that the right to marry and to found a family was intended to be recognized:

(a) as a single right (not two separate rights which would have been written as "the right to marry *and the right* to found a family"); and
(b) as a singular right, in that this right was singled out as a special case, a right with a more limited, tightly focused list of distinctions to be considered discriminatory.

It is immensely significant that Article 16 concerning the right to marry and to found a family deliberately omits: "sex or other status". The non-discrimination clause extends only to "race, nationality or religion".

Protecting marriage—a "special protection" that "shall not be considered discriminatory"

International human rights instruments have long recognized the concept of a "special protection" that "shall not be considered discriminatory" (e.g. *Convention on the Elimination of All Discrimination Against Women* (CEDAW) Article 4). The significant legal distinction that acquits any Covenant law from the charge of being discriminatory is that it "*aims to protect*"—the child, the mother, the natural family...

In fact, there is no unqualified right to found a family in any of the UN human rights instruments. The *International Covenant on Civil and Political Rights* (ICCPR) Article 23(2), for example, declares "*The right of men and women of marriageable age to marry and to found a family shall be recognized*." Again it is a single right and that right is qualified by an age requirement.

"…that the upbringing of children requires a sharing of responsibility between men and women …" CEDAW

In the same vein, adoption laws and other laws that aim to protect as far as possible a child's right to know and be cared for by his or her parents shall not be considered discriminatory.[3] And so, it would be wrong to label as discriminatory, laws that promote full recognition of "the social significance of maternity and the role of both

[3] *Convention on the Rights of the Child* (1989) Article 7.

parents in the family and in the upbringing of children" and laws that acknowledge "that the upbringing of children requires a sharing of responsibility between men and women …" (CEDAW Preamble & Article 5)

Indeed, the human rights directive here is unmistakable: that governments must *not* promote the deliberate creation of situations where the responsibilities of procreation and raising a child are not shared between a man and a woman and full recognition is not given to the role of both parents (i.e. not just the maternal parent and her lesbian partner, or the paternal parent and his homosexual partner) in the upbringing of children. The language of international human rights instruments link definitively the term "parents" to "men and women" and to "husband and wife" (e.g. CEDAW Article 16).

Despite claims to the contrary in the *Explanatory Memorandum to the Marriage Equality Amendment Bill 2010*, the concept of "sexual orientation rights" does not appear in any of the six core UN international human rights treaties. A bit like the Emperor's clothes—"sexual orientation rights" is a clever marketing concept with more spin than substance. Innumerable attempts over the past decade have been made by international homosexual and lesbian lobbies to introduce the notion of sexual orientation into the non-discrimination clauses in the UN human rights instruments. But none have succeeded.

Dishonest grab for marriage rights—element of rorting

Socially prudent UN delegations continue to argue successfully that all people (irrespective of homosexual or lesbian proclivities) are entitled to all the basic human rights. But these rights, it is agreed, are theirs not by virtue of their "sexual orientation" but rather by virtue of the fact that they are human beings. They have equal rights to protection from violence, from vilification, from unjust imprisonment. They have equal rights to all the usual social goods like basic education and basic health care. But they may or may not be entitled to other social goods referred to as qualified human rights. For example, they need to be of a certain age to qualify for the aged pensions. They need to be genuinely unemployed to qualify for unemployment benefits.

Where the problem arises is that these men and women under their strident "same sex marriage" banner are now making a grab for a set of special human rights that exist to protect motherhood and childhood and the integrity of the natural family. It is a dishonest grab—a greediness for benefits from which the nature of their lifestyles exclude them. It has the same element of rorting as amending birth certificates to collect an aged pension, or pretending to have a bad back in order to claim a disability pension.

Claims based on a deliberate falsification are being made to entitlements belonging to husbands and wives who, having in principle, the possibility to procreate, exercise their right to marry and to found a family.

It is rational thought and rigorous logic, not homophobia, that forces us to recognize that 'same-sex marriage' must remain a hollow concept, an elaborate pretence at parity belied by nature itself.

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