

Committee Secretary
Senate Legal and Constitutional Committee
Parliament House Canberra ACT 2600
10 March 2012

RE: Marriage Equality Amendment Bill 2010

Dear Committee Members,

I write to voice my strong support for the Amendments to the Marriage Act that are presently being considered by this committee.

Having being brought up in a strict Catholic family and an active member of the Catholic Church during my formative years, I feel that I am best suited to addressing some of the church's views that are being used to justify opposition to same-sex marriage in the community. I wish to make it clear that this is not an attack on the Catholic Church, its beliefs or its followers, but an examination of Catholic beliefs and doctrine on marriage in relation to the current Marriage Act and the proposed amendments to it.

To understand, the Catholic Church's opposition to same-sex marriage, in depth, requires an examination of its code of Canon Law in regards to marriage. This church code provides the framework for the regulation of marriages conducted under the auspices of the church. It defines who is qualified to participate in Catholic marriage, it describes the nature of Catholic marriages and expresses the church's view on the extent to which Catholic marriage is subject to civil laws.

In many of the public discussions I have recently witnessed on this topic, opponents of the proposed amendments have often emphasized their view that marriage in Australia is for the purposes of procreation. Many Catholic contributors to these discussions have stated, that because same-sex couples cannot procreate by themselves they are not qualified for marriage. I believe this to be inaccurate and misleading. The Marriage Act in its current form does not require candidates for marriage to be capable of procreation. An examination of Catholic Canon Law reveals that the Catholic Church does not require candidates for its marriages to be able to procreate either.

Canon 1084.3 Without prejudice to the provisions of canon 1098, sterility neither forbids nor invalidates a marriage.

It is this canon that qualifies people unable to procreate, such as post-menopausal women and sterile males, to marry within the Catholic Church. Canon Law does, however, disqualify people from marriage in the Catholic Church if they are unable to consummate their marriage in accordance with the following canon,

*Canon 1061 §1. A valid marriage between the baptized is called *ratum tantum* if it*

has not been consummated; it is called ratum et consummatum if the spouses have performed between themselves in a human fashion a conjugal act which is suitable in itself for the procreation of offspring, to which marriage is ordered by its nature and by which the spouses become one flesh.

According to this canon, a Catholic marriage is consummated after the married couple have had sexual intercourse in a manner *suitable for procreation*. Sexual intercourse suitable for procreation is described as penetrative vaginal sex with an ejaculation of sperm in the canon's explanatory notes. As a same-sex couple cannot have sexual intercourse in the manner prescribed by Canon Law, the church does not believe it is possible for them to consummate a marriage. It is for this reason that the Catholic Church is unable to accept same-sex couples as suitably qualified for marriage and not their inability to procreate.

The emphasis that the church places on the sexual act of consummation as a fundamental requirement to Catholic marriage is further illustrated by the following canon,

Canon 1084.1 Antecedent and perpetual impotence to have sexual intercourse, whether on the part of the man or on that of the woman, whether absolute or relative, by its very nature invalidates marriage.

The inability to perform the sexual intercourse necessary to consummate a marriage also disqualifies the impotent from Catholic marriage. For example, an impotent male quadriplegic, having fulfilled all the other qualifications required by Canon Law for Catholic marriage, will be refused permission to marry in the Catholic Church. A Catholic marriage is considered invalid if it is unable to be consummated. The inability to perform the sexual intercourse necessary for consummation is considered so integral to the nature of Catholic marriage, that it is considered grounds for an annulment. This is particularly significant for Catholics, as divorce, or the dissolution of a fully consummated Catholic marriage, is not possible.

The Catholic Church considers its form of marriage a sacrament, ordained by God and, ultimately, not subject to civil laws. Catholic marriages are fundamentally religious in nature and the church claims its religious authority surpasses the authority of the civil laws of the state in religious matters. The following canon expresses this view.

Canon. 22 Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise.

Conversely, the church does not claim that its authority expressed in Canon Law applies beyond the Latin Church. (I don't believe the naming of the church used here is of particular significance)

Canon. 1 The canons of this Code regard only the Latin Church.

In light of these canons, it is difficult to see how the proposed amendments to the Marriage Act can affect the fundamental nature or understanding of Catholic marriage as claimed by representatives of the church's hierarchy. There have been many statements to that effect made by Catholic bishops during the discussions surrounding these amendments and, as yet, I have not heard any cogent argument as to exactly how this will occur.

The Catholic Church's understanding of marriage is religious in nature and the Marriage Act, in its current form, accommodates a variety of different religious views on marriage. The act also accommodates the wishes of more than 60% of couples in Australia, who choose to have a civil marriage not subject to any religious views on marriage. The proposed amendments will not alter the demarcation between religious and civil marriages already established by the current act. The Catholic Church will be free to maintain its exclusion of same-sex couples from its form of marriage as it does now.

I support the Catholic Church's right to determine who may participate in its form of marriage. It is a matter for the church to decide. I do not, however, accept that the church, or any other religious body, has the right to determine who may participate in civil marriages.

I believe that same-sex attracted people should have the same rights as all other Australians have and that includes the right to consent to marry a person of their own choosing. It is a matter of equality for all, not just for some.

Yours faithfully

Damian Mateljan