

## Submission to the Standing Committee for Social Policy and Legal Affairs On proposals to change the legal definition of marriage

From the

### Life, Marriage & Family Office Catholic Archdiocese of Melbourne

*“Knowing that marriage and the family constitute one of the most precious of human values, the Church wishes to speak and offer her help... to every person who wonders about the destiny of marriage and the family”<sup>1</sup>*

*Blessed John Paul II*

Seeking as these Bills do, to fundamentally redefine the nature of marriage – a sacred bond which we are bound to uphold and protect, the Catholic Archdiocese of Melbourne cannot support either of the proposed Bills. This position flows from;

- our respect for the equal yet complementary difference of man and woman,
- our support for the irreplaceable value of both a mother and father in the healthy development of children,
- a recognition that showing respect for people with same-sex attraction does not require changing the definition of marriage and,
- a deep concern that these proposals fail to protect freedom of conscience and religious belief.

### Why does the Catholic Church oppose these changes?

#### Recognising the reality of man and woman is not discriminatory

1. The Catholic Church teaches that people who experience same-sex attraction “must be accepted with respect, compassion and sensitivity” and that “every sign of unjust discrimination in their regard should be avoided”,<sup>2</sup> yet she also believes that if we “cut loose marriage from its grounding in our biological life... we deny our humanity.”<sup>3</sup>
2. We all recognise that men and women are not the same. That we regard separate change rooms for women and men at sporting venues as not just reasonable but necessary to preserve our mutual dignity and respect, highlights this. We know that men and women are of equal value but different. Even people who feel a sexual attraction for people of the same sex recognise this distinction. If they did not, recognising a “same” sex attraction distinct from an “opposite” attraction would be impossible.
3. Similarly, we rightly distinguish between different kinds of relationships. Love exists in many different forms, and while all love is good, not all loving relationships are the same. Love exists between parents and their children, siblings and grandparents. It is right to respect all of these different kinds of love and value the way in which they enrich our lives. They are, however, not all the same. The love of a man and woman in marriage is unique. It is important that we continue to recognise and respect this distinctive bond.
4. Society also places a variety of restrictions on marriage such as those based on age and current marital status, both of which are protected attributes under the various state and federal anti-discrimination instruments. We agree these limitations are just and reasonable.

5. From this we see that it is both just and even necessary both to distinguish between types of love and to place restrictions on who can lawfully enter a marriage.
6. Civilised societies throughout history – Christian and non-Christian alike - have recognised the unique bond between a man and a woman. The traditional understanding of marriage respects the natural relationship in which children are conceived and nurtured. Same-sex relationships are not essential to the future of society in the same way. To continue to recognise the distinctive relationship between a man and woman as it currently exists in the Marriage Act 1961 is consistent and reasonable.

### Protecting the rights of children

1. While affection between a married couple is important, those feelings alone do not provide a sufficient reason for governments to be involved. Regulating matters of the heart is not the business of the state. Rather, it is precisely because of the natural link between the intimate relationship of man and woman with bearing and nurturing children – the future citizens on whom society depends - that legislators should continue to recognise and protect our current definition of marriage.
2. Decades of social research bears witnesses to the fact that children are best served when raised in the home of their biological parents. While this may not always be possible, it is no reason to discard the ideal which has served societies for thousands of years.<sup>4</sup>
3. Attempting to call “equal” a form of relationship which by definition must deprive a child of his or her relationship with one or both of their natural parents, denies children their rights.<sup>5</sup>

## What are the legal implications of changing the definition of marriage?

### Legal Considerations

1. While the proposed legislation seeks to protect ministers of religion by means of exemptions or other protections, these provisions fail to offer any protection in the broad range of activities that people of faith are involved in such as schools, charities, social welfare organisations, health services, aged care homes and adoption services. There is no attempt to provide legal protection to the many people who believe that marriage can only exist between a man and a woman.
2. Those advocating changes to our definition of marriage are attempting to create a right that does not exist in either domestic or international law. Article 16 of the International Convention on Civil and Political Rights explicitly defines marriage as being between a man and a woman and international case law has affirmed that the right to marry does not and was never intended to include two people of the same sex.<sup>6</sup>
3. In a recent ruling (25 March 2012), the European Court of Human Rights concluded that access to marriage by couples of the same sex is “not a human right” and that states could not be forced to recognise such a right.<sup>7</sup> No obligation exists because no such right exists.
4. In advancing a rationale for the bills, the Explanatory Memorandums, attempt to create a right which does not exist, suggesting that the legislation will provide that “freedom of sexual orientation and gender identity are recognised as *fundamental human rights*”. Attempts to redefine marriage are not a legitimate claim at the recognition of rights, but rather an awkward and obtuse attempt at changing public perceptions about homosexuality. Regardless of one’s views on homosexuality, redefining marriage is an indirect, divisive and destructive means of seeking that end. Traditional marriage is our shared human heritage. The Australian Parliament

cannot allow it to be recklessly used to make a political statement about homosexual relationships.

5. Accepting, as the proposed Bills implicitly do, that marriage has no connection to sexual complementarity or child bearing, but should instead be based solely on feelings of affection or sexual orientation, necessarily calls into question any prohibition on polyamorous relationships. To accept the proposed definition of marriage removes any rationale for maintaining that people who claim a different orientation (such as bisexual) should be restricted from expressing their “right to sexual identity” and being married to both a man and a woman.
6. Removing "man" and "woman" from the legal definition of marriage erodes respect for the distinctive role of both fathers and mothers. It confuses our notion of who possesses the rights and obligations surrounding the raising of children. This will place further confusion and consequently an extra burden on family law courts which already struggle to meet the increasing demands placed upon them.
7. Marriage is a natural institution. It is prior to and more fundamental than the state. While governments can and should recognise and support marriage, they have no power to change what marriage is. Attempting to do so is to go beyond its legitimate bounds. Enacting laws that disregards the natural reality of our humanity undermines the credibility of the legal and political system itself.

---

<sup>1</sup> Blessed John Paul II FC#1

<sup>2</sup> Catechism of the Catholic Church #2357

<sup>3</sup> Pastoral letter on the True Meaning of Marriage from the Catholic Bishops of Victoria (2012)

<sup>4</sup> M Gallagher & J Baker *In Margins: Maryland Law Journal on Race, Religion, Gender and Class* 2004 p 165 (as cited by Fr John Harvey in *Homosexuality and the Catholic Church* (Ascension Press 2007)

<sup>5</sup> Children growing up in the care of a same-sex couple have the right be treated with love and respect as must the couple themselves. Respect for individuals, however, does not mean that the objective differences between the relationship of a same-sex couples and the marriage of a man and woman can be disregarded.

<sup>6</sup> A full transcript of the ECHR ruling is available at <http://www.echr.coe.int/ECHR/Homepage En/>

<sup>7</sup> A full transcript of the ECHR ruling is available at <http://www.echr.coe.int/ECHR/Homepage En/>