

Dear Dr Anna

Following is the submission from Hindu Council of Australia, a National Body representing the Hindu Community in this country.

While no Hindu scripture or Indian law have explicitly defined marriage as a union between one man and one woman, the law and practice has been interpreted and understood to mean marriage between a man and a woman through terms such as “bride”, “Bridegroom”, “husband” and “wife”.

The Hindu ,Buddhist , Jain and Sikh couples who have been married, their marriage in India is governed by the Hindu Marriage Act 1955.

Though no explicit definition in the Act, there is a clear hetrosexist underpinning to the notion of marriage. This is reflected in Section 5 of Hindu marriage Act which states that a marriage may be solemnised between any two Hindus if the bridegroom has completed the age of 21 years and the bride the age 18 years at the time of the marriage. Notably, the term bride and bridegroom are not explicitly defined.

Under the Hindu Marriage act, a marriage registered between a transman and any woman would be void ab initio since the use of the words bridegroom/bride in the marriage statues needed to be taken to mean persons who are born male /female and the main purpose or religious and cultural sanction to marriage has been understood to be the propagation of lineage /to have children.

In short, the Hindu marriage concept was in line with the traditional and conservative Australian views which is “a heterosexual union where the parties pledge monogamy and permanency in their relationship.”

The Hindu Council understands that the concept of same sex marriage is very complex and controversial. It also recognises that this concept involves human rights and constitutional law issues, as well as an array of religious, social, moral and political questions.

The Hindu Council of Australia, as stated above, beholds to the ancient and traditional concept of marriage. However, it is mindful of the Australian government’s effort to “produce a marriage code suitable to present day Australian needs, a code which, on the one hand, paid proper regard to the antiquity and foundations of marriage as an institution, but which, on the other resolved modern problems in a modern way”

Prof. Nihal Agar

Chair, Hindu Council of Australia