The Australian Family Association (AFA)

Submission to the

Inquiry into the *Marriage Equality Amendment Bill 2009*

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Senate Legal and Constitutional Committee
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To the Committee:

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From the Australian Family Association

Introduction

The *Marriage Equality Amendment Bill 2009* proposes to redefine marriage in Australia. In introducing the bill, Greens Senator Sarah Hansen-Young has suggested that the present definition of marriage is out-dated and perpetuates unfair discrimination and inequality for gay Australians. Before accepting these assertions, the Australian Family Association (AFA) urges the Committee to consider the reasons for the existence of the public institution of marriage in the first place. Through marriage, the state confers benefits and places obligations on two people who publicly promise to remain in an exclusive relationship for life. Why has the state historically encouraged commitments of this kind?

We submit that the answer to this question lies in the very nature of the male-female relationship, which is unique among human relationships for one reason alone: it is the natural setting for the progeneration of human life, and the starting point for new families. We submit that it is only within this context that the public institution of marriage – and its fundamental element of permanency – makes sense.

Defining marriage as the permanent union of a man and a woman is not arbitrary. Redefining marriage to include same-sex unions would disregard the purpose of a public institution of marriage. In doing so, it would arbitrarily establish a category of relationships – sexual relationships between any two people – which attracts the title of marriage (and the attendant privileges), but without providing any rational basis for doing so, or for excluding other types of relationship, including friendship, sibling relationships, or relationships of more than two people. In short, by redefining marriage and thereby rejecting the purpose of marriage, the

state would be turning marriage into an arbitrary institution which has no reasonable basis in contemporary society.

The public institution of marriage is fundamentally related to progeneration

Although marriage has taken various forms in history, it has always described a relationship between a man and a woman (or a man and several women, although even in polygamous marriage, the women are not married to one another, but each is married to the male). Marriage has never described a relationship between two members of the same sex. We suggest that this is because marriage is essentially related to progeneration. It is a matter of genetic fact that only the sexual union of a man and a woman can produce offspring. This aspect of the male-female union makes it unique among human relationships. Recognising this fact is not discriminatory; it is merely descriptive.

As an aside, it is worth noting that the centrality of progeneration to the purpose of marriage provides the basis for prohibiting marriage between persons in the same immediate family. Anyone suggesting that marriage is *not* fundamentally related to progeneration must accept marriage rights not just for same-sex relationships, but also for sibling relationships and parent-child relationships (where both parties are adults).

Why does the state have an interest in the progenerative relationship?

The state's interest in the progenerative relationship arises on two grounds. Firstly, the state has an obligation to protect the rights and interests of children. As discussed in greater detail below, children's rights and interests are best served when children are given the opportunity of being raised by their biological mother and father. This cannot occur within the context of same-sex relationships. By contrast, children *can* enjoy the benefits of being raised by their natural mother and father in progenerative male-female relationships (with obvious individual exceptions, including instances of parental death). By establishing a public, lifelong commitment between the members of a relationship of the progenerative *kind*, the institution of marriage helps to ensure that as many children as possible obtain the benefit of being raised by their natural mother and father. Through marriage, the state discharges its obligation to protect this fundamental children's right.

Secondly, the state actually *benefits* from the establishment of stable families in which children are raised by their natural parents. Again, as discussed in greater detail below, research shows that an intact, stable home-life with their natural parents is an excellent indicator for a child's future wellbeing, resulting in lower crime rates, and better physical and psychological health. Research also indicates a similar effect where children are the

beneficiaries of sex-differentiated parenting (i.e. where children are raised by both a male and a female). Naturally these outcomes result in a benefit to the state: reduced dysfunctionality represents a reduced cost to society. This is really just a more complicated way of saying that strong, stable families provide the optimal environment for raising children, and thereby provide the fundamental foundation for healthy communities. The institution of marriage encourages stable and permanent families in which children are raised by their natural parents. It is no surprise that the state should wish to encourage such stability, through the institution of marriage.

It is worth mentioning here that, in spite of the beneficial impact of marriage on society, we know that marriage isn't easy. That's why it makes sense for the state to encourage and protect marriage, by offering benefits to married couples and families. It's a kind of quid-pro-quo: by encouraging and supporting marriage, society gets the benefit of strong families and communities. But it is important also to note that it is the progenerative *nature* of the male-female relationship which provides the underlying rationale for marriage.

Does this mean that progeneration is a *requirement* for eligibility for marriage?
Advocates of same-sex marriage will pose the following question: if marriage is supposed to be about progeneration, why are infertile heterosexual couples able to marry? In response, it is important to clarify that we are not suggesting that eligibility for marriage *requires* progeneration. Rather, we are saying that the public institution of marriage derives from a public interest in providing special recognition and protection for that unique *type* of relationship which alone has the capacity to be fruitful, namely the male-female relationship.

The state has no business inquiring into the fertility of a particular couple. Indeed, the state has no business regulating *whether* married couples have children, or *when* they do so, or *how many* children they have. To do so would be both inappropriate and unwieldy. But this does not proscribe the state from establishing an institution which recognises the unique significance of a particular *type* of relationship. In defining marriage as between a man and a woman, the state simply recognises the significance of that *type* of relationship which is uniquely progenerative in nature: the male-female relationship.

What about alternative reproductive technologies?
It may be argued that reproductive technology now makes it possible for conception to take place other than by the natural sexual union of male and female, so that the question of progeneration is no longer relevant to marriage. Although a wide range of reproductive technologies have enabled a wider range of adults to commission the progeneration of

children, the existence of these technologies in no way diminishes the significance of the male-female sexual relationship as the only kind of natural human relationship which has the potential to produce offspring, and that the continued existence of the human race, and any human community, continues to rest almost entirely upon the natural reproductive process. Indeed, alternative means of reproduction remain *exceptions* to the genetic reality that the human species reproduces by the sexual union of a male and a female. What's more, alternative reproductive technologies account for only a tiny minority of all human reproduction, even in Australia.

While it is vital that the rights of persons who are party to such alternative means of reproduction be protected by the law – *especially* the rights of any children produced by such technologies – this does not provide sufficient reason for the state to abandon its position of providing special recognition for the uniquely progenerative male-female relationship. To disregard the significance of such a relationship is to disregard the genetic reality that the continued existence of the human species is dependent upon the sexually fruitful union of men and women.

Is marriage discriminatory for "excluding" same-sex couples?

It has been suggested that the current definition of marriage is discriminatory because it excludes same-sex couples. But definitions must be exclusive if they are to convey meaning. Since the institution of marriage is fundamentally related to the uniquely progenerative male-female relationship, it does not make sense to say that the definition of marriage is discriminatory. To do so would be akin to claiming that it is discriminatory to exclude men from the definition of motherhood. Clearly, it is not.

When we say that men and women are equal, we are not saying that men ane women are the *same*. Neither is it discriminatory to insist that men and women are different. To the contrary, recognising this distinction is a fundamental and commonplace part of daily human existence. Thus it would be absurd to assume that the equality of men and women means that men have the right to be mothers. "Motherhood" simply *describes* a relationship between a woman and her child. The femaleness of the mother is one of the essential characteristics of motherhood. Redefining the word "mother" to include men would not result in greater equality for men. Rather, it would result in confusion, and a *loss* of meaning. It would detract from the social significance of motherhood in so far as it would remove the important and commonsense demarcation of motherhood from other kinds of relationship. One cannot define motherhood without excluding men.

So it is with marriage. Marriage is simply the institution which society has historically conferred upon that particular *kind* of relationship which is both uniquely progenerative in nature and is uniquely permanent: the union of a man and a woman to the exclusion of all others for life. If, as we suggest, the institution of marriage specifically accommodates this kind of relationship, it does not make sense to confer that institution on other *kinds* of relationship. Doing so would be like conferring maternity leave on fathers.

The state is free to confer benefits on other kinds of relationship

This is not to say that the state cannot confer benefits on other kinds of relationship. However we suggest that the state should do so only on the basis of sound reason. It should not confer benefits arbitrarily. Again, by analogy: while it would be absurd to confer maternity leave on fathers, it *does* make sense to confer *paternity* leave on fathers. Maternity leave is not the same as paternity leave. The reasons for awarding one or the other may be similar, but ultimately maternity leave accommodates the needs of mothers, while paternity leave accommodates the needs of fathers. The disparity in the *kind* of leave to which the respective parents have access reflects the fact that mothers are different from fathers. Yet such differential treatment is not considered discriminatory; neither does it reflect inequality among the sexes.

Similarly, we suggest that marriage is an institution which has historically corresponded – and *continues* to correspond – to the characteristics of the male-female relationship. As discussed above, the state's interest in providing for the public recognition and registration of marriage, and for conferring certain privileges and obligations on married couples, stems from the progenerative nature of the male-female relationship. This fundamental characteristic is absent from same-sex relationships, so that it cannot provide the rationale for extending marriage to same-sex couples. It may be that the state considers it appropriate to establish some institution for purposes specific to same-sex relationships. But just as it is nonsensical to argue that fathers deserve maternity leave merely because mothers have access to it, it does not make sense to extend marriage to same-sex couples merely because heterosexual couples have access to it.

Marriage and children's rights/interests

As discussed above, we submit that marriage between a man and a woman contributes to the protection of basic children's rights. The AFA submits that children possess certain fundamental rights with regard to the circumstances of their upbringing, and that the very existence of the institution of marriage – which requires a commitment of lifelong fidelity by

the spouses – is based to some extent on providing the optimal context for the protection and promotion of these rights.

Specifically, children have the right to know and be raised by their biological parents wherever possible. This right is expressly protected by Article 7.1 of the *International Convention on the Rights of the Child*. Furthermore, research concerning the welfare of adopted children has long indicated that it is substantially beneficial for children to be raised by their biological parents.[1]

These assertions correspond with the clear social disapproval of the practice of intentionally removing children from the care of their natural parents where there is no urgent need to do, and that any such removal contravenes that child's basic rights. The plight of the indigenous Australian Stolen Generations illustrates the point emphatically. The forced removal of aboriginal children from their families is now recognised as being wrong principally for the reason that doing so deprived children of a relationship to their natural parents which was their inherent entitlement.

Historically it has been unnecessary to recognise these rights in law, given the lack of any alternative to natural conception, gestation and birth. However, as new reproductive technologies have developed, strong calls for the recognition of children's basic rights have been generated, particularly among children conceived and born by the use of such technologies.[2] Organisations such as Tangled Webs[3] set out to provide a forum for children born through artificial reproductive technologies, as well as to provide a platform through which they can advocate recognition of the rights and interests of children created through these new technologies.

In exceptional circumstances, it may happen that a child is naturally deprived of the enjoyment of one or other of these rights. A child's mother or father may die, or might abandon the child. Children may be surrendered for adoption. In some cases, children have been forcibly removed from the custody of their natural parents, either for their better protection and wellbeing, or else for some other (usually unjustified) reason.

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[1] Robin Winkler and Margaret van Keppel Relinquishing Mothers in Adoption (1984).
[2] See, for example, http://www.biotechnologynews.net/storyview.asp?StoryID=69548 and http://globecareers.workopolis.com/servlet/Content/fasttrack/20060930/COWENT30?section=Technology
[3] www.tangledwebs.org.au

In all such cases it has been recognised that, for the child, the unintentional deprivation of the benefit of an ongoing relationship with his or her natural mother and father is of itself a negative outcome.

It is impossible for both members of a same-sex couple to be the natural parents of the children they are raising. Every child raised by a same-sex couple is a child *not* being raised by one or both of his or her natural parents. Where a child is deprived of the opportunity of being raised by his or her natural parents as the direct result of a deliberate choice by the same-sex couple, then it is a choice which is manifestly unfair and unjust to the child. Since same-sex marriage would not contribute to ensuring that children know and are raised by their natural parents, the extension of marriage to same-sex couples would disregard and undermine the vital role which the institution of marriage (as it is presently defined) plays in promoting this fundamental children's right.

The value of sex-differentiated parenting

Even where children cannot be raised by their natural mother and father, significant research suggests that a child's developmental wellbeing is best promoted where that child is raised by both a mother and a father. The complementarity of motherhood and fatherhood in promoting the developmental welfare of young children has received particular attention as researchers have begun to reassert the inherent differences between men and women. Assistant professor of sociology at the University of Virginia, W. Bradford Wilcox, has highlighted the unique talents possessed by mothers and fathers in childrearing, and the important impact that the differences in maternal and paternal care have on children in their physical, social and psychological development.[4] Citing a wealth of research from the USA, Wilcox demonstrates that sex-differentiated parenting has been linked with the reduction of psychological, academic and social problems in children and young adults, as well as reducing propensity for criminal behaviour, particularly in boys.[5] Wilcox concludes:

> The best psychological, sociological, and biological research to date now suggests that – on average – men and women bring different gifts to the parenting enterprise, [and] that children benefit from having parents with distinct parenting styles…

[4] Wilcox, W B (2001) "Reconcilable Differences: What Social Sciences Show About the Complementarity of the Sexes & Parenting", *Touchstone* (18) 9.
[5] *Ibid*.

Wilcox's findings support the research of Lynn D. Wardle, Professor of Law at Brigham Young University in the USA.[6] Wardle also presents significant evidence demonstrating that a majority of studies purporting to show that the children of same-sex couples do not suffer any detriment as a result of the sexual orientation of their parents, are hampered by methodological flaws and ideological bias.[7] Such studies, Wardle argues, seek to mask identifiable impacts which same-sex parenting may have on children. Interestingly, Wardle's conclusions correspond with those presented in the *American Sociological Review* by Judith Stacey and Timothy J Biblarz, who, in spite of their open support for the advancement of same-sex parenting rights, conclude that research claiming that same-sex parenting has no discernable impact on children is permeated by ideological bias and is generally defensive in nature.[8] Both reviews conclude that current research is insufficient to draw authoritative conclusions with regard to the impact of same-sex parenting on children.

Conclusion

The institution of marriage is an ancient and long-standing one, and we submit that before tampering with such an institution according to present trends in public opinion, legislators should carefully consider why a public institution of marriage exists at all. We submit that marriage is not an exercise by which the state arbitrarily recognises and celebrates some relationships but not others. To the contrary, we submit that marriage deliberately identifies and protects a particular *type* of relationship – the uniquely progenerative male-female relationship – which carries a unique (and not inconsiderable) significance for both contemporary Australian society, and for the entire human species.

We urge the Committee to acknowledge the continued significance of this kind of relationship by preserving the present definition of marriage.

Respectfully yours,

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[6] Wardle, L D (1997) "The Potential Impact of Homosexual Parenting on Children", *Journal of Law & Family Studies* (3) 833.
[7] *Ibid*, 838.
[8] Stacey, J and Biblarz T J (2001) "(How) Does the Sexual Orientation of Parents Matter?" *American Sociological Review* (66) 2, 159-183.