



**Submission to the
Senate Legal and Constitutional Affairs Legislation Committee
Inquiry into the Marriage Equality Amendment Bill 2009**

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Executive Summary

The best interests of the child, which remain paramount, cannot be imperilled because of an unrelated desire to remove discriminatory provisions in administrative law or public policy.¹

Despite sometimes succumbing to human failings, marriage, between a man and a woman, remains overwhelmingly the optimal environment for children and the bedrock of a harmonious society. The unique and complementary love of the male and female genders is vital if a child is to reach his or her full potential and should not be discarded to suit the transparently political agenda of the activist component of two percent of the population.²

This is particularly so when the purpose of this agenda is clearly to obviate any public debate about the truths of the homosexual lifestyle by “normalising” it through gaining access to this most important of societal institutions. Government more than anyone, should be alive to this activist agenda and be steadfast in opposing it.

The testimony of many people who have come out of this lifestyle bears witness to the fact that it is not necessarily “gay”.³ It is a lifestyle which purposely rejects the very things that marriage holds sacred, chief among them commitment and monogamy. The damage that incorporation of predominant homosexual relationship values will cause marriage, and through it society, is a major concern.

The Marriage Equality Amendment Bill (the Bill), if passed, would redefine marriage to something never envisaged by previous generations and cultures. Marriage is central to the fabric of our society because it is the foundation of stable and secure family life. As commitment to fidelity and longevity are central ideals of marriage, it has been clearly shown to offer the best environment in which to bring up children. Children benefit most from having two biological parents of the opposite sex, who can provide the complementary love, care and role modelling of a mother and a father. The State rightly values and encourages heterosexual marriage because it provides benefits to children and society that alternative constructs cannot.

Marriage ‘equality’ should not be seen in terms of discrimination or “homophobia”. In 2008, the Federal Government passed a comprehensive range of legislation to confer equal financial and legal rights to same sex couples. ACL was largely supportive of these reforms, which addressed tangible and substantive discrimination. However, the overwhelming benefits for children and society mean positive discrimination in favour of marriage is justified.

The Marriage Equality Amendment Bill should be rejected by the Australian Parliament because:

¹ Frame, T. (2008). *Children on Demand: The Ethics of Defying Nature*. Sydney: University of New South Wales Press, pp. 21-22.

² Australian Research Centre in Sex, Health and Society (2006). *Australian Longitudinal Study of Health and Relationships*. La Trobe University, http://www.latrobe.edu.au/alshr/wave1_2005.htm

³ Keane, C. (2009). *Choices: One Person’s journey Out of Homosexuality*. Melbourne: Acorn Press.

- The great majority of the tragic cases of abuse and neglect of children in society occur in situations of relationship breakdown – now more than ever before in our history we need marriage strengthened as an ideal, not weakened by incorporating weaker concepts of commitment and monogamy;
- Homosexual relationships are far less stable than marriage – surveys show very few homosexual relationships are monogamous, one of many important values of marriage which creates an environment of trust and security for children;
- Marriage reinforces the natural order – it is unsustainable to suggest that unnatural relationships have an inalienable right to it as claimed;
- Wherever homosexual marriage has been legislated, it has been taken up by an incredibly small percentage of the homosexual population, confirming that it is not a demand of the general homosexual community, but the agenda of a very small activist component of that already small proportion of the population;
- Children are the disempowered party in the debate over homosexual marriage and where their human rights clash with the lifestyle desires of adults, the rights of the child must come first. Acquiescing to homosexual marriage effectively eliminates the necessary debate on a whole range of homosexual parenting arrangements;
- Practical discrimination against same sex couples has been addressed in Australian law at State and Commonwealth level so that this is not an issue of unjust discrimination – it is simply an activist political agenda; and,
- If marriage is redefined to include homosexual ‘marriage’, then there is no logical reason to deny ‘marriage equality’ to people who love each other in polygamist, bigamist or polyamorous relationships – this is an important line to hold.

Australian society is remarkably tolerant. Our laws have been amended to accommodate those who choose to live in alternative lifestyles. However tolerance does not mean marriage must be redefined, particularly when there is no evidence to suggest it is in society’s interests to do so.

The importance of marriage

Marriage is the union of a man and a woman to the exclusion of all others voluntarily entered into for life. This is a majority universal understanding that has existed for millennia across cultures and religions. Marriage existed prior to the modern State, and it is the foundation of family life which in turn is the building block of society. The State rightly has an interest in marriage because it contributes to the wellbeing of men, women and children, and the wellbeing of society itself.

The desire for monogamous heterosexual marriage remains strong in Australia. In 2006, 80% of the 1,001 young people (23–24 years) surveyed about their relationships through the Australian Temperament Project said that they expected to marry some day.⁴ These figures point to something innate that seems to be hardwired into women and men for love, commitment and a stable environment for children.

Marriage and stability

Whilst individual marriages fail, for a whole range of reasons, this does not mean the ideal of marriage itself is broken. Marriage by nature of its public commitment to a lifelong, exclusive union is fundamentally different from non-marital relationships, which evidence shows are less stable.

At the time of the 2006 Census, just under half (49.6%) of all Australians over 15 years of age were married.⁵ The median length of marriage to divorces granted in 2008 was 12.3 years.⁶ Around 28% of marriages entered into in 1985–1987 could be expected to end in divorce, whilst the probability that a marriage entered into in 2000–2002 will end in divorce is approximately 33%.⁷

Whilst the marriage figures are not ideal, by contrast only nine percent of those who began cohabiting in the early 1990s (7-11 years later), and only two percent of those who began cohabiting in the early 1980s, were still living with the same partner in 2001.⁸ This figure led the Australian Institute of Family Studies to comment that “cohabiting relationships tend to be less stable than marriages”.⁹ It seems the overwhelming majority of married couples still keep their vow of “til death parts us.”

⁴ Parker, R. & Vassallo, S. (2009). *Family Statistics and Trends: Young adults' attitudes towards marriage*. Melbourne: Australian Institute of Family Studies.

⁵ Australian Bureau of Statistics (2007). *2006 Census of Population and Housing: Census shows marriage still the norm for couples*. Canberra: ABS.

⁶ Australian Bureau of Statistics (2009). *Marriages and Divorces, Australia, 2008*. Canberra: ABS.

⁷ Australian Bureau of Statistics (2007). *Australian Social Trends 2007: Lifetime Marriage and Divorce Trends*. Canberra: ABS.

⁸ Data from Wave 1 of the Household, Income and Labour Dynamics in Australia (HILDA) Survey, funded by the Australian Government through the Department of Families, Community Services and Indigenous Affairs, as reported by R. Weston and L. Qu, (2006). 'Trends in Couple Dissolution', *Family Relationships Quarterly*, 2.

⁹ Weston, R. & Qu L. (2006). 'Trends in Couple Dissolution', *Family Relationships Quarterly*, 2. Melbourne: Australian Institute of Family Studies, p. 10.

In contrast to heterosexual marriage and even heterosexual cohabitation, homosexual relationships are demonstrably unstable. Whilst there will always be exceptions, research shows fidelity and monogamy are not common in homosexual male relationships. A survey published in March 2007 by the National Centre in HIV Social Research at the University of New South Wales revealed that 31.3% of Sydney's homosexual men had sex with both regular and casual partners in the six months prior to the survey. Just 28.8% had had sex with just one regular partner.¹⁰

An extensive US university survey of sexual practices found that 83% of heterosexuals valued monogamy whilst less than two percent of homosexual couples thought monogamy was important.¹¹ The study also found that 90% of wives and 75% of husbands claim never to have had extramarital sex.

Stability is of course vital to the wellbeing of children. A European study shows 43% of cohabiting parents have split up by a child's fifth birthday, compared to less than eight percent of married parents.¹² Notwithstanding that some heterosexual marriages fail, evidence for the benefits to children of marriage are clear. These benefits must not be put at risk by acceding to homosexual "marriage" given that homosexual relationships are demonstrably unstable, despite the exceptions always highlighted by activists.

In the Australian Capital Territory just 60 couples have registered their relationship under the ACT Government's Civil Partnership legislation enacted last year. Given the significant legal and financial benefits that flow from relationship recognition, which are designed to address discrimination against homosexuals in long-term committed relationships, it is surprising that not more couples have taken advantage of this law reform.

The take-up rates for relationship recognition schemes in Tasmania and Victoria have also been low. This is similar to the experience in countries overseas, where for instance in Canada, "Despite initial predictions by some same-sex marriage advocates that gays and lesbians would flock to the altar, the 2006 census found that only 17 percent of homo couples in Canada are tying the knot – compared to about 80 percent of straight couples."¹³ This is despite, as one commentator said, "they tore the country limb from limb to get it legalized".¹⁴

These figures become even more instructive when it is considered, that as happened in Tasmania, both the Canadian and ACT figures will include an initial rush of people taking this up and the percentage will inevitably drop. The percentage take-up must also be considered in light of the already small homosexual community. This is not to suggest that even one person's individual circumstance are not important, but rather small minorities cannot expect to overturn important majority-held societal institutions.

¹⁰ National Centre in HIV Social Research (2007). *Sydney Gay Community Periodic Survey 2006*. Sydney: UNSW.

¹¹ Michael, R. et. al. (1994). *Sex in America: A Definitive Survey*. Boston: Brown, Little & Company.

¹² Kiernan, K. 'Childbearing outside marriage in western Europe', *Population Trends*, 98, pp. 11-20.

¹³ Deri, J. (2008, September 5). 'Why most Canadian gays and lesbians are choosing not to marry. Marriage: Too many risks, few incentives'. *Xtra Vancouver*.

¹⁴ MacDonald, D. 'Why are Catholics against gay marriage?'

Gender, marriage and the best interests of the child

Contrary to the assumptions of the Marriage Equality Amendment Bill, gender is a core feature of marriage. Gender is so essential to an understanding of marriage that to remove it as a condition of marriage renders it meaningless.

The biological and anatomical features of men and women laid down by nature mean they are sexually compatible. This is important because these features allow the conception of children and the formation of family between parents and children who are biologically connected. There are of course some married couples who choose not to have children, and there are circumstances where couples are unable to have children. Notwithstanding this, family formation is normative to marriage and is a function of gender complementarity.

Gender matters to children. Knowing their biological origin and being able to relate to their biological parents is vital to identity formation in a child. Australian author Professor Tom Frame writes:

*Nature dictates that a man and a woman are required for procreation and this limitation should be acknowledged and respected because . . . it discloses something of the purposes and providence of nature that a child's best interests are served by it having a mother and a father. When human beings defy the constructs of nature, it is not always possible to ensure that the consequences of such defiance can be contained or controlled.*¹⁵

It is not a denial of equality to acknowledge and respect limitations laid down in nature, particularly when defying nature militates against a child's best interests. The next step after 'marriage equality' is 'equality' of access to children and this can only be provided to homosexual couples through Assisted Reproductive Technology or stranger adoption. (The exception is a lesbian woman who has sexual relations with a man in order to fall pregnant).

Of donor conceived children, Professor Frame says:

*Many report feeling an acute sense of loss which can adversely affect their identity-formation and, by extension, their general wellbeing. Some would say they have suffered harm as a consequence of not possessing biological information that most people simply take for granted.*¹⁶

Professor Frame then says: "There are some contributions that are necessary for a child's nurture that flow from femininity and others from masculinity."¹⁷ He goes on to say:

*There is no substantial body of evidence supporting the claim that same-sex couples are just as effective as heterosexual couples with respect to a range of measures over a longer period of time . . . The best interests of the child, which remain paramount, cannot be imperilled because of an unrelated desire to remove discriminatory provisions in administrative law or public policy.*¹⁸

¹⁵ Frame, *op cit*, pp. 21-22.

¹⁶ *Ibid*, p. 55.

¹⁷ *Ibid*, p. 102.

¹⁸ *Ibid*, pp. 102-103.

There is a growing realisation world-wide of the importance of the different genders to children. The US Department of Health and Human services recently said: “Mothers and fathers parent differently, and this difference is a big benefit for children.”¹⁹ David Popenoe, Professor of Sociology at Rutgers University underlines the significance of the different genders to the raising of children:

*Based on accumulated social research, there can now be little doubt that successful and well-adjusted children in modern societies are most likely to come from two-parent families consisting of a biological mother and father.*²⁰

Elsewhere, Professor Popenoe argues that it is impossible to discard gender as a parenting factor:

*We should disavow the notion that ‘mummies can make good daddies’ just as we should disavow the notion of radical feminists that ‘daddies can make good mummies’ . . . The two sexes are different to the core and each is necessary – culturally and biologically – for the optimal development of a human being.*²¹

Marriage has historically and naturally been the unique relationship that created a new family. Indeed as recently as 1948, the *UN Universal Declaration on Human Rights* gave expression to such a link in its statement that “Men and women . . . have the right to marry and to found a family”.²² It acknowledges that it is the marital union which leads to the conception and nurture of children, providing them with the different role models and parenting styles of a mother and father.

Whilst large numbers of children are now born to unmarried parents, it still remains the case that the majority of parents link marriage with founding a family. In 2006, the Australian Bureau of Statistics reported that 67% of births were to parents in a registered marriage.²³

Marriage is the proven framework for the raising of children because it gives them the optimal family formation for their development. It also provides for the continuity of family relationships across generations.

ACL does not dispute that a homosexual couple may dearly love a child in their care. However, we believe that the family environment is the most significant influence on a child's development and that it is in a child's best interest to be raised by its own mother and father, and failing that, a man and a woman. Where governments intervene by public policy to create families, they must aim at the optimal.

In many respects, the experiment of no-fault divorce, co-habitation and blended families has failed children. While no one would argue that women should remain in an abusive or violent relationship, there is a growing consensus that divorce and family breakdown have led to poor social outcomes. Coira, Zill and Bloom write that young children without two biological parents are three-times more likely to suffer behavioural problems such as attention deficit

¹⁹ Head Start Bureau of the U.S. Department of Health and Human Services (2004). *Building Blocks for Father Involvement, Building Block 1: Appreciating How Fathers Give Children a Head Start*, p. 8.

²⁰ Popenoe, D. ‘Can the nuclear family be revived?’ *Society*, 36, pp. 28-30.

²¹ Popenoe, D. (1996). *Life without father*, Cambridge, MA: Harvard University Press, p. 197.

²² United Nations (1948). *Universal Declaration of Human Rights*, Article 16,

²³ Australian Bureau of Statistics. (2007). *Births Australia 2006*. Canberra: ABS.

disorder or autism.²⁴ In the United States, male teens without a biological father are twice as likely to be incarcerated as teens from two-parent homes.²⁵

The Federal Government's 2008 White Paper on homelessness, *The Road Home*, says relationship breakdown and family violence are the two leading causes of homelessness.²⁶

Children have suffered because the model of marriage and family has been manipulated to fit the demands of adults. Legalising same sex marriage simply to meet the demands of a very small proportion of the population, further entrenches the very selfish and misguided idea that marriage is a purely adult-centred institution. Given the devastating effects that family breakdown has already had on children, the focus of policy should be on strengthening marriage, not on weakening it further.

²⁴ Coira, Zill & Bloom, (1995). Health of our nation's children, in *Vital Health Statistics*. National Center for Health Statistics, 10, p. 191.

²⁵ Harper C. & McLanahan, S. (2003). *Father absence and youth incarceration*. Center for Research on Child Wellbeing Working Paper, pp. 99-103.

²⁶ Department of Families, Housing, Community Services and Indigenous Affairs (2008). *The Road Home: A National Approach to Reducing Homelessness*. Canberra: FaHCSIA.

Redefining marriage

Implicit in calls for homosexual marriage is the assumption that the only characteristics necessary to form marriage are consent, commitment and love. But there are a range of relationship types with these characteristics that would never be equated with marriage in Australia.

Some cultures and religions accept polygamy and bigamy. If 'marriage equality' is an important social and political principle, why should it be denied to these people? Similarly, there is a growing polyamorous movement in the US which believes its lifestyle should also be normalised. If marriage between a man and a woman is redefined to include "any two people", there is no logical reason why the word "two" should not be dropped in the future. There is already pressure for such a change in countries overseas where homosexual marriage has been granted.

Reducing marriage to a simple contract of consent and love between any two people is a revisionist approach that has neither context nor legitimacy. It is a selfish, adult-centred approach that rejects the broader cultural significance of marriage and its centrality to children and society. It discards the significance of marriage as an important social good held by a shared community as a public commitment to family and the raising of children.

Yet marriage is so much more than a passing fad or the latest lifestyle choice. It is a fundamental social institution that should be protected from redefinition at the behest of a small number of vocal activists. Marriage is too important to be subject to the whims of a small and vocal minority.

Marriage 'equality'

Given the title of the Bill, the claimed right of homosexuals to 'equality' of treatment under the law is used as a key argument of supporters of same sex marriage. Essentially homosexual couples, for the purposes of the law, are already treated exactly the same as any other couple in Australia that declares a commitment to a shared life. Homosexual couples now have identical legal rights as heterosexual de-facto couples, following a raft of same-sex law reforms passed by the Federal Parliament last year. These changes largely had the support of the Christian community, including ACL. The question of 'equality' has therefore already been answered, and homosexuals are treated fairly under Australian law in the same way heterosexual de-facto couples are.

Public opinion on same sex marriage

In her second reading speech in the parliament, the mover of this private Senator's Bill, Senator Hanson-Young, cited a recent opinion poll as clear evidence that Australia should legalise same sex marriage. She cites the Galaxy Poll of same sex marriage conducted in late May this year. The poll was commissioned by 'Australian Marriage Equality', a lobby group for same sex marriage, which was hardly likely to commission or publish a poll that was unsupportive of its cause.

The poll itself is structured in a way to elicit the desired response, and was clearly designed with this intent very much in mind. The poll's second question, about the recognition of overseas homosexual marriages in Australia, is worded in such a way as to deliberately lead people towards viewing such recognition as appropriate. The natural inclination of somebody undecided would be, "Well, if that is how it is overseas, why not here?" Unsurprisingly it elicited a positive response.

Agreeing to homosexual marriage in the crucial third question then flows naturally from the leading of the second. The questions are worded to capture the support of the undecided, of those who have not thoroughly considered the issue, and the sympathies of people inclined towards agreeing with what they're asked, so long as they feel it doesn't affect them.

The claim of Senator Hanson-Young that there is public support for legalising homosexual marriage is open to question. We must more carefully weigh the nuances of the issue and examine its likely consequences before making a reasoned judgement. We must, in particular, examine the consequences upon the people most vulnerable to any change to the institution of marriage – children have the most to lose.

Of course proponents of homosexual marriage are not interested in polling questions which go to the flow-on effects on children and society of their political agenda, or the effect on society at large as we diminish this essential relational building block of society.

Specific comment on the Bill

As outlined in Senator Hanson-Young's Bill, its objects are:

- a) *to remove from the Marriage Act 1961 discrimination against people on the basis of their sex, sexuality or gender identity; and*
- b) *to recognise that freedom of sexuality and gender identity are fundamental human rights; and*
- c) *to promote acceptance and the celebration of diversity.*

The following discussion will demonstrate how each of these ideas proves to be an insufficient basis upon which to grant the 'right' of marriage to same sex couples.

Discrimination

As discussed earlier, discrimination, or material unfair treatment, is simply not relevant in this debate after the Rudd Government's reforms, but there is also an important philosophical issue at stake here.

'Discrimination' should not be taken as a synonym for 'unfair treatment' or 'injustice', but should be understood as a valid social concept, as discrimination simply means to 'distinguish' or to 'differentiate'. Not every idea has equal value or benefit to society and it is appropriate and necessary to differentiate on occasion. This submission argues that discrimination in favour of children and the common good is necessary and not a betrayal of civil rights.

The claim of homosexuals that they have been discriminated against because they cannot be married is without merit or legitimacy. Law reform supported by the Australian community has given them equality with de-facto heterosexual couples. De-facto heterosexual couples do not try and claim 'marriage equality' and nor should homosexual couples. This is because marriage has unique characteristics which governments should, and have committed to protect.

Senator Hanson-Young's Marriage Bill is itself discriminatory as it fails to provide for those Australians who would like their polygamous or polyamorous relationships recognised as marriages under the law. Furthermore, the *Marriage Act* continues to discriminate against minors who wish to marry and against Australians who wish to marry their close relatives. The Senator perpetuates the myth that she is opposed to discrimination, but presents a Bill that fails to provide 'marriage equality' to many other Australians. Her target of homosexual behaviour is itself selectively discriminatory and entirely agenda-driven.

What is demonstrated by Hanson-Young's Bill is an acknowledgement that there must be some boundaries to what society considers marriage to be, if it is to retain its meaning and benefit to children and society.

Freedom of sexuality, and celebration of diversity

Senator Hanson-Young says her proposed amendments to the Marriage Act will recognise freedom of sexuality as a fundamental human right. It is not at all apparent where such a 'right' originates, as it is nowhere established in foundational international human rights instruments. The right to 'freedom of sexuality' is essentially an invention of the activists seeking to have their alternative behaviour legitimised by the State.

Senator Hanson-Young's Bill does not define this human right of sexual freedom. Men and women attracted to children might also feel that they too have the fundamental human right to sexual freedom. As well as being seriously flawed in law, recognising freedom of sexuality as a fundamental human right is a potentially dangerous objective of this Bill.

The very notion of freedom of sexuality is contradictory to the condition of marriage. Marriage is about mutual self-restraint in giving the gift of sexuality to one's life partner. Sexual freedom is deliberately curtailed in marriage out of respect and love for one's spouse.

Likewise, the object of a Parliamentary Bill about marriage cannot be 'the celebration of diversity'. Sexual integrity is the basis of marriage, not sexual freedom or diversity. Freedom of sexuality and celebration of sexual diversity may be the values of certain homosexual cultural events, but they are not the objectives upon which a loving, committed and trusting marriage can be built.

Essentially the Bill's objectives ask the parliament to recognise a set of values, sexual ethics, behaviour and relationships that are contrary to the nature of marriage. Should the parliament accept the Bill and these contradictory values, there can be no other consequence than the diminution of marriage as the bedrock institution of society for the security of couples and the nurturing of children. Indeed, unregulated and diverse sexuality destroys trust between parents and children and for this reason can have no place in marriage.

Conclusion

Marriage between a man and a woman is a bedrock social institution that confers positive benefits upon couples and children, and upon the societies in which they live. The marriage model that reinforces natural bonds has proven to be the best framework for family because it is the most secure and stable relationship in which to raise healthy and happy children. It gives children the complementary love, care and role modelling of a biological mother and father – something homosexual relationships no matter how loving and well-meaning cannot. An understanding of marriage as the union of a man and a woman has remained unchanged and uncontroversial across cultures and religions for millennia.

The Marriage Equality Amendment Bill represents a radical departure from the accepted social, cultural, historical and biological framework of marriage as the lifelong union of a man and a woman. It seeks to endorse in law a set of values that are contrary to the core features of marriage. The Bill, by its very wording, promotes freedom of sexuality and the celebration of diversity, whereas marriage is about sexual integrity, fidelity, stability and longevity. The Bill should be rejected because it weakens the unique status and value of marriage, and seeks to remove from its definition the central elements of sexual complementarity and the natural potential for conceiving children.

Given the disastrous effects that family breakdown has had on recent generations, particularly children, governments should be doing more to protect and promote marriage rather than redefining and weakening it. Marriage must remain about the welfare of children and placing their rights above those of adults. In doing this, the *Marriage Act* must necessarily continue to positively discriminate in favour of children and society by retaining the current definition of marriage.

Recommendations

ACL recommends:

1. That the Committee recommends to the parliament that the Bill be rejected;
2. That the Parliament reaffirms the importance to children and society of marriage as it is defined in the *Marriage Act*, and,
3. That the Federal Government conduct an on-going public awareness campaign about the importance of mothers and fathers to children and the importance of marriage in ameliorating social exclusion, poverty and homelessness.

**ACL National Office
September 2009**