

Dear Senate Legal and Constitutional Affairs Committee,

This is my submission in support of the *Marriage Equality Amendment Bill 2009*. It is made on my own behalf and does not represent the views of any organisation.

I acknowledge that the Rudd Government has taken some important steps to remove discrimination against same sex couples in areas such as tax, superannuation and health care. However, until same sex couples are free to marry, then same sex attracted people will remain second class citizens.

I have little doubt that I will see same sex marriage legalised in Australia in my lifetime. The support for same sex marriage amongst the younger generation is very strong (74% for 16-24 year olds, compared to 45% for over 50 year olds). I also believe that in 100 years' time, people will look back at the times before same sex marriage was allowed and wonder how the people of that time could have been so obtuse as to not allow this right to all citizens of Australia.

For the sake of the LGBT and wider community, I hope that this legalisation comes in sooner rather than later.

Restricting Marriage to being between a man and a woman is unnecessarily discriminatory

To say that the law should never discriminate, or differentiate between groups of citizens, is oversimplifying matters. There are many areas of law in which it is necessary to discriminate. For example, few people would argue that it is unfair to tax people differently on the basis of income, or provide differing levels of access to superannuation on the basis of age. It is my belief that while it is sometimes acceptable to discriminate, that the default position should always be one without discrimination and that there must be very good reasons why a law should discriminate.

Restricting marriage to a man and a woman is blatantly discriminatory. In the *Sex Discrimination Act 1984* (Cth) and the *Age Discrimination Act 2004* (Cth), discrimination occurs when someone is treated *less favourably in circumstances that are the same or are not materially different* because of a relevant characteristic of that person.

I am a gay man who has four heterosexual siblings. With the law as it currently stands, each of them are able to publicly declare their love for their partner and for this declaration to have legal effect and bestow a number of benefits and duties on each of them. I don't have this privilege for the sole reason that my preference is for men rather than women.

This basic discrimination that is inherent in restricting marriage to being between a man and a woman is the simplest, and best, argument in favour of same sex marriage. As discussed below, there are no good reasons to justify this discrimination.

Allowing same-sex marriage would send a strong message to the community

I grew up in a country town where there was no visible gay community. The only time I heard 'discussions' about homosexuality was in the context of insults, people calling others derogatory names such as 'faggot', 'poofter', 'cocksucker' and 'fairy'.

I didn't accept my homosexuality until I was 20 years old, studying at university and living in Melbourne. In some ways, I regret this 'lost time' in which I was not ever completely comfortable with myself. But my stronger feeling is one of relief. I am glad that I was able to live and function without identifying as gay for the reason that if I had come out whilst still at high school, I have no doubt that I would have suffered bullying and exclusion at school and sport.

Homophobia is probably not as strong as it was then (10 years ago), but it still exists.

It is a positive step that the Rudd Government has made steps to reduce discrimination against same sex couples. But by the government ending discrimination against same sex couples by allowing them to marry, a strong message would be sent to the community that it is ok to be gay and it is not ok to vilify or demonise homosexual people.

Further, marriage has an important place in our society: that's why it's often referred to as an 'institution'. By excluding homosexuals from this 'institution', the government is effectively excluding homosexuals from an Australian social norm and reinforcing bigots' view that homosexuals are 'different' to the 'rest of

society'.

It is my hope that one day, a person growing up in my country town (or any country town for that matter), could come out whilst still at school and for it to be no big deal. That way, at 26 years of age, they might not be relieved that they took so long to accept their true identity.

There is no justification for the discrimination against same sex couples

As I stated above, it is my belief that there should always be very good reasons in order to make it right that a law is discriminatory. The arguments against same sex marriage are not very good reasons. They are generally based on emotion, religion and tradition, which in this case, does not justify such a blatantly discriminatory law.

Religious grounds should not be a basis for law

Many of the arguments against same sex marriage are on religious grounds, as it is the church's teaching that marriage is between a man and a woman. As a secular country, religious beliefs should not be given any weight towards formulating public policy. This was recognised by our founding fathers, who restricted the Commonwealth from 'imposing any religious observance' in section 116 of our Constitution.

Of course, many of our laws correlate with religious beliefs. A very simple example is that our laws relating to murder and theft correlate to two of the ten commandments. But the laws against murder and theft are not good laws because certain religions believe murder and theft to be wrong, these laws are good laws because of the harm suffered by the victims of the crimes.

Religious beliefs should not be imposed on the entire population by making them the basis for public policy.

Traditions should not be maintained for the sake of tradition

Other arguments point out the long tradition of marriage being between a man and a woman, and that it is in some way risky to change this tradition.

It is true that marriage has been around in a similar form for millenia. But marriage law and expectations have evolved throughout time to be consistent with the society of the time.

'Innovations' such as no fault divorce, legalisation of interracial marriage and the recognition of a married woman's right to own property, are things that we now think of as fundamentally correct, but these have happened relatively recently as they were necessary to fit society's expectations of the institution of marriage at the time.

A recent poll found that about 60% of Australians over the age of 16 supported same sex marriage. It is high time that the government recognised that it is no longer ok to hide behind tradition, as society is in favour of same sex marriage.

Marriage can and should evolve in accordance with the needs of society

Kevin Rudd recently spoke out against gay marriage, saying that marriage is between a man and a woman. Certainly it is defined that way in the *Marriage Act 1961* (Cth) and has always been that way in Australian law. When the definition of marriage was devised, there was no recognition of rights for same sex attracted people. In fact, homosexuality was considered as a mental disorder up until 1973. Times have changed (thank goodness) and marriage should keep up.

Another argument along this path is that the institution of marriage is about procreation, and that the biological impossibility of same sex couples procreating should preclude them from getting married. Again, this is a fairly outdated argument. Many married couples, through choice or infertility, do not have children. It would be preposterous to deny marriage from opposite sex couples because they couldn't, or didn't want to, have children, just as it is preposterous to deny marriage from same sex couples.

This argument can be taken a step further and say that marriage is the best environment in which to bring up children. This argument sends a very poor message to any children that are not born into a nuclear family. But further, the fact is that many same sex couples do have children, whether it be from adoption,

surrogacy, IVF, prior relationships or other means. If this argument is to be accepted, then it is unfair to the children of these couples not to let their parents get married.

Allowing same sex couples to marry would not undermine the institution of marriage

The argument that allowing same sex couples to marry would undermine the sanctity of marriage has never made much sense to me. If I am allowed to marry my chosen partner, how does that impact on anyone else's marriage. Will my brother and his wife love each other any less? Will my sister and her husband have any less rights? Will my parents' commitment of 35 years to each other mean any less?

It is my opinion that this argument stems from the basic human desire to be part of something exclusive.

I remember reading a story about the Ferrari Enzo. Someone at Ferrari was deciding how many of these super cars to make. The marketing department said that they could probably sell 400 globally. So, Ferrari decided to make 399, as 'someone has to miss out'. This type of exclusivity is part of what makes Ferrari such a desirable and valuable brand.

Marriage is the Ferrari of relationship recognition due to the rights it conveys and the respect for which it is treated in society. Unlike Ferrari though, marriage is a legal right rather than a brand, and legal rights should not be denied from people to make them more attractive to those that can obtain them.

Conclusion - there is no reason to continue this discrimination

I wonder how many of those people who are opposed to same sex marriage actually have any close friends who are in a long term committed same sex relationship. Because if they did, they would see just how 'normal' and unremarkable these relationships are when compared to opposite sex relationships. These couples live together, are devoted to any children in their family, complain about being busy, pay tax, argue, laugh and live just like other couples. It is high time that the leaders of this country recognised this and stopped treating same sex couples like second class citizens.

Yours sincerely

Stephen Cahill