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Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Senate Legal and Constitutional Affairs Committee Members,

The *Same-Sex Relationship (Equal Treatment in Commonwealth Laws-Superannuation) Bill 2008*<sup>1</sup> (hence “Bill”) attacks the traditional concept of the family, implying that it in itself is discriminatory, undermines the *Marriage Act 1961* and introduces novel redefinitions of child, spouse, amongst others, and proposes “couple relationship” in place of the “marital relationship”, thus addressing marriage in addition to the family. This Bill, though purporting to address discrimination, makes the family subject to the same and in the process attacks and subverts marriage, currently upheld in the aforementioned *Marriage Act*. This Committee and the Federal Parliament *must* reject this Bill and the related concepts in the *Evidence Amendment Bill 2008* and *Family law Amendment (De Facto Financial Matters and Other Measures) Bill 2008*. This Submission, however, will focus mainly upon the Bill.

Despite the purpose of the proposed Bill, as stated on the information page of this Senate Inquiry, “to eliminate discrimination against same-sex couples and the children of same-sex relationships in Commonwealth legislation that provide for reversionary superannuation benefits upon the death of a scheme member, and in related taxation treatment of superannuation benefits,”<sup>2</sup> the Bill both corrupts and corrodes the traditional and authentic identity of the family, critically undermines the 2004 amendment to the *Marriage Act 1961* and establishes groundwork for changing the latter sometime in the future.

The 2004 amendment to the *Marriage Act 1961* includes the addition to Subsection 5(1) as:

*marriage* means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

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<sup>1</sup> See: <http://www.austlii.edu.au/au/legis/cth/bill/srticlb2008796.txt/cgi-bin/download.cgi/download/au/legis/cth/bill/srticlb2008796.pdf> (accessed 24 July 2008)

<sup>2</sup> Senate Legal and Constitutional Affairs Committee, *Inquiry into the Same-Sex Relationship (Equal Treatment in Commonwealth Laws-Superannuation) Bill 2008*, [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/same\\_sex\\_entitlements/info.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/same_sex_entitlements/info.htm) (accessed 23 July 2008)

And

**88EA Certain unions are not marriages**

A union solemnised in a foreign country between:

(a) a man and another man; or

(b) a woman and another woman;

must not be recognised as a marriage in Australia.<sup>3</sup>

Though the intention is not to change the above, and that both major parties support this, the proposed Bill does it irreparable harm. The terminology that exists in the laws that this Bill wishes to change reflect the understanding of marriage as defined in the 2004 amendment. These existing definitions *presuppose* this understanding of marriage. To treat them as discriminatory therefore also regards marriage and family, as derived from the true concept of marriage included in the amendment, as inherently discriminatory. If this Bill passes, in the near future a movement to change the Marriage Act, to bring it into consistency with the ‘new realities’ of existing legislation and to remove “discrimination” will be the subject of another report and concerted action to change it. This Bill provides the scaffolding and the also the bridge for this ultimate shift to occur.

The HREOC report<sup>4</sup> and the provisions of this Bill tend towards asserting that the traditional definition of the family will itself be an act of discrimination. This claim may appear alarmist but there is enough material in the HREOC report and the proposed Bill to regard this as a sober fact. The Bill, however, is what is under discussion, as distinct from the HREOC report. However, the latter’s advice about altering key definitions across a range of laws via “omnibus legislation”<sup>5</sup>, as this Bill is, the thrust of the report and its recommendations are the essential platform of this Bill. The Bill, therefore, imbibes both the spirit and the letter of the report and the connection is worth further investigation.

Intrinsic to the concept of marriage is raising a family. In this formal relationship, recognised by both the state and supported by various Churches,<sup>6</sup> children have the benefit of a secure upbringing, both emotional and material, from parents who have naturally conceived them. In exceptional cases, where through difficulties beyond either

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<sup>3</sup> Marriage Amendment Act 2004 No. 126, 2004, [http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/91DFFD1199DF26D8CA2574170007CE06/\\$file/1262004.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/91DFFD1199DF26D8CA2574170007CE06/$file/1262004.pdf) (accessed 23 July 2008)

<sup>4</sup> Human Rights and Equal Opportunity Commission, *Same-Sex: Same Entitlements Final Report (2007)*, [http://www.humanrights.gov.au/human\\_rights/samesex/report/index.html](http://www.humanrights.gov.au/human_rights/samesex/report/index.html) (accessed 24 July 2008)

<sup>5</sup> Same-Sex: Same Entitlements Report: Chapter 18 Summary of Findings and Recommendations, [http://www.humanrights.gov.au/human\\_rights/samesex/report/pdf/report\\_ch18.pdf](http://www.humanrights.gov.au/human_rights/samesex/report/pdf/report_ch18.pdf), 383 (accessed 24 July 2008)

<sup>6</sup> In the Judeo-Christian tradition, the origins of marriage and the family are very ancient and traceable to Genesis. See Genesis 1:27-28: "So God created man in his own image, in the image of God he created him; male and female he created them. And God blessed them, and God said to them, "Be fruitful and multiply, and fill the earth and subdue it." Also see Genesis 2:24: "Therefore a man leaves his father and his mother and cleaves to his wife, and they become one flesh." (RSV)

parent's control, they are unable to have children, adoption of children is a noble and honorable action to undertake. The HREOC report regards this view of the family as "narrow",<sup>7</sup> and separates the concept of family from marriage:

The concept of family means different things to different people. But the Human Rights Committee takes the view that the term 'family' is not confined by the concept of marriage and should be interpreted broadly to include a wide variety of living arrangements.<sup>8</sup>

To replace this, the HREOC report redefines what constitutes family:

The Human Rights Committee has set out some minimal requirements for the existence of family including 'life together, economic ties, [and] a regular and intense relationship' however it has not sought to impose any strict definitional criteria on the concept of family.<sup>9</sup>

The vague and indeterminate concept of this 'definition' is helpful to the aim of the report expressed in a negative way as follows:

The Inquiry has received submissions suggesting that same-sex couples and their children should not be recognised as families. The Inquiry rejects this view as contrary both to human rights principles and the reality of modern Australian society.<sup>10</sup>

In place of the marriage and family relationship, and the terminology utilised to reflect this, comes a range of redefined terms that the Bill adopts or modifies slightly. At this point, the redefinitions used in the Bill require analysis. Throughout the Bill the formulae for changing definitions across different legislation is consistent. Treating single examples of the proposed definitions will suffice to demonstrate the problems with the total legislation.

The Bill is blatant in attacking marriage. Throughout, it puts forward the following amendments:

Omit "*marital relationship*", substitute "*couple relationship*".

Omit "husband or wife" (wherever occurring), substitute "partner".

Omit "marital relationship", substitute "couple relationship".

These changes degenerate marriage, destroying its unique meaning and identity, especially as expressed in the 2004 amendment to the *Marriage Act 1961*.

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<sup>7</sup> Same-Sex: Same Entitlements Report: Chapter 3. Human Rights Protections for Same-Sex Couples and their Children, [http://www.humanrights.gov.au/human\\_rights/samesex/report/pdf/report\\_ch3.pdf](http://www.humanrights.gov.au/human_rights/samesex/report/pdf/report_ch3.pdf), 45 (accessed 23 July 2008)

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid. 46.

The interplay and redefining of “couple relationship”, “spouse” and the enshrining of “partner” into the legislation also act to strip marriage of its meaning and to elevate non-marital relationships to a status formally reserved for marriage. In unravelling the relationships between the terms, a “couple relationship” consists of two “partners”, whereby the Bill defines “partner” as:

*partner*: a person is the *partner* of another person if the two persons have a relationship as a couple (whether the persons are the same sex or different sexes).<sup>11</sup>

Gone is the dignity of marriage. “Spouse” now becomes interchangeable with “partner” in a “couple relationship.” The Bill does not make this explanation clear enough however. For example, in the amendment to the *Governor-General Act 1974* the Bill states:

**2 Subsection 2A(2)**

Insert:

*spouse* has a meaning affected by section 2C.<sup>12</sup>

Section 2C then states:

**8 Section 2C**

Omit “marital relationship” (wherever occurring), substitute “couple relationship”.<sup>13</sup>

Also, in the amendments to the *Small Superannuation Accounts Act 1995*, an additional clue appears:

**Section 4 (definition of spouse)**

Omit “as the husband or wife of the person”, substitute “in a relationship as a couple (whether the persons are the same sex or different sexes)”.<sup>14</sup>

To ascertain the meaning of this further, the HREOC report was helpful; though not officially part of the Bill:

A new definition of ‘spouse’ could read:

‘spouse’ of a person includes a person who is in a de facto relationship.

But ‘de facto relationship’ must also be defined in the legislation to include a same-sex relationship.<sup>15</sup>

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<sup>11</sup> *Same-Sex Relationship (Equal Treatment in Commonwealth Laws-Superannuation) Bill 2008*, op. cit., 3.

<sup>12</sup> *Ibid.*, 31

<sup>13</sup> *Ibid.*, 32.

<sup>14</sup> *Ibid.*, 27

The claim that these amendments in no way prejudices, or affects, the true meaning of marriage as expressed in the Marriage Act is misguided and naive.

The last major definition shift is of the child. Important changes appear throughout the Bill, but the nature of all of them is best summarised in the amendment to the *Retirement Savings Accounts Act 1997*:

## **2 Subsection 20(3)**

Repeal the subsection, substitute:

(3) Any *child*, in relation to a person, includes:

(a) a step-child, an ex-nuptial child or an adopted child of the person; and

(b) if, at any time, the person was in a relationship as a couple with another person (whether the persons are the same sex or different sexes)—a child who is the product of the person’s relationship with that other person.

(3A) A child cannot be the product of a relationship between two persons (whether the persons are the same sex or different sexes) for the purposes of this Act unless the child is the biological child of at least one of the persons or is born to a woman in the relationship.<sup>16</sup>

A child, in (3)(b) is now a “product” – an utterly dehumanising term – of a relationship with another person, of whatever combination, the nature of the combination now irrelevant! This definition is nothing less than a corruption and degradation of parenthood. Children are never the “product” of a relationship, detached from the biological origins of their mother and father. This Bill is an exercise in social engineering, beyond any claims for reflecting a reality. The definition of a child here is false, must be recognised as such and completely rejected. Children are not “product of a relationship between two persons (whether the persons are the same sex or different sexes)” but are born, naturally, from male and female parents. No man-made law can change this reality, but must conform to the same reality and uphold it, as currently occurs in the *Marriage Act 1961*.

The proposed changes to the laws in the Bill violates the nature of marriage that presupposes the original wording of these laws, and which finds explicit expression in the

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<sup>15</sup> Same-Sex: Same Entitlements Report: Chapter 4: Recognising Relationships of Same-Sex Couples, [http://www.humanrights.gov.au/human\\_rights/samesex/report/pdf/report\\_ch4.pdf](http://www.humanrights.gov.au/human_rights/samesex/report/pdf/report_ch4.pdf), 78 (accessed 24 July 2008)

<sup>16</sup> *Same-Sex Relationship (Equal Treatment in Commonwealth Laws-Superannuation) Bill 2008*, op. cit., 26.

2004 *Marriage Act 1961* amendment. Passing this Bill will create pressure on the Federal Parliament, at some later stage, to also change the Marriage Act and thereby provide an utterly false and corrupt definition of what marriage is. Rather than eliminating discrimination, this Bill serves to incriminate the traditional family structure and its proponents, regarding it and them as discriminating against forms of homosexual relationships, which can never share in what is rightfully due to marriage and parenting, according to nature.

Please, reject this Bill and please recommend the same in the Committee's report.

Thank you for your time in considering this submission.

Yours sincerely,

Gerard Calilhanna