

1 April 2012

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By Email: legcon.sen@aph.gov.au

Dear Sir / Madam

Proposed amendments to the *Marriage Act 1961 (Cth)*

My submission concerns the amendments to the *Marriage Act 1961 (Cth)* (**Act**) as proposed in the private senator's bill introduced by Greens' Senator Hanson-Young.

I am strongly opposed to the proposed amendments and believe that marriage should remain as only recognising the lifelong relationship between one man and one woman.

In the interests of transparency:

- My views are formed as a Catholic Christian who believes that Jesus Christ is the way, the truth and the life (Jn 14:6), and that Jesus has spoken to us clearly in His Word on this fundamental matter and continues to do so through His church, the pillar and foundation of truth (Matt 16:18-19; Luke 10:16; 1 Tim 3:15). The Bible clearly teaches the sinfulness of homosexual *acts* (as opposed to homosexual persons - for example Rom 1:27; 1 Cor 6:9 and 1 Tim 1:9-10) and the reality of marriage as between one man and one woman (Matt 19:5-6; Eph 5:22-32).
- I am also fortunate to be writing this from the perspective of someone who has been blessed with positive marriage examples around me, particularly my own parents and grandparents. My family is by no means perfect, and like all families we have our dysfunctional aspects, but I have been fortunate to have grown up with positive role models for marriage set by my parents and grandparents. My father was (and still is) a devoted, faithful man of strong character, and my mother was also (and still is) a devoted, faithful woman of strong character.

Despite the above, the focus of my submission is not on what I regard as the primary reason why marriage should remain between one man and one woman: the truth, as taught by Jesus Christ. Sadly, we are no longer a Christian society and I realise that Christian arguments do not hold strong weight in the minds of a lot of Australian people these days. However, the Christian has no fear of rational, logical argument – both faith and reason come from God. Accordingly, before my submission (in light of the above factors) makes its way to the waste paper basket due to a perceived assumption amongst advocates of same sex marriage of being “conservative”, “traditional”, “heartless”, “out of date” or “living in a fantasy world”, I believe the vast majority of Australian citizens (whether Christian, Muslim, Jewish, Hindu, Buddhist (or any other religion I’ve overlooked), agnostic or atheist) are opposed to same sex marriage for the following rational, logical reasons:

1. Is denying same same-sex marriage discrimination?

Advocates of same sex marriage have sought to focus the debate in a very rigid, “either or” manner. That is, either you recognise same sex marriage and end discrimination against same sex couples or you maintain the current definition and let discrimination prevail.

This distinction is a fallacy because it uses the concept of discrimination in a simplistic, emotive manner to attract sympathetic support that blurs what the substance of real discrimination truly is.

We all discriminate, every day. The public policy basis for discrimination laws has always been that discrimination is only unlawful when we discriminate on the basis of what the law has recognised as a prohibited ground (and occurs in an area regulated by the law). For example I can refuse to employ someone because they haven’t got the necessary skills. That is discriminating against them on the basis of their skills, but that is not *unlawful* discrimination. On the other hand, I could not refuse to employ someone on the basis that they are of African descent – this is *unlawful* discrimination, because I am discriminating against them on the grounds of their race. This makes sense from a public policy point of view – that is, the law should prevent me from refusing to employ someone due to a prejudice I hold, but allow me the freedom to refuse to employ someone if they don’t have the necessary skills.

However, the public policy reasons behind anti-discrimination laws have always recognised that there are barriers and boundaries to anti-discrimination laws; that in some cases what might appear to be discriminatory on the surface should not be recognised as discrimination for sound public policy reasons. For example, we have the existence of affirmative action exceptions, which recognise that in some cases positive acts of discrimination should be allowed. We also have exceptions which say that you can discriminate against someone (on the usually prohibited ground of their disability) if this is necessary to ensure that the person doesn’t impose a safety risk to themselves or others, or because the person cannot perform the inherent requirements of the job in question (without reasonable adjustments being made).

In other words, the public policy reasons behind what is discriminatory and what is not are not as clear cut as same-sex marriage advocates would like to paint them. Discrimination laws have only

traditionally recognised a ground as unlawful where that ground has no underlying rational, just basis to it. The issue of whether denying marriage to same-sex couples is not a simple question of: “heterosexual couples can get married, same-sex couples can’t, the reason same-sex couples can’t get married is their sexual preference, and thus it is discrimination”. Rather, it involves a proper consideration of what marriage is trying to protect – is it precluding same-sex couples from marriage to be prejudiced? Or, like other discrimination laws, does it recognise that there are some matters that are not considered discriminatory because of an important underlying public policy reason? More fundamentally, discrimination laws currently regulate a number of areas such as education, access to goods and services, employment, activities of clubs, right to join trade unions, and administration of laws such as superannuation laws. Why not marriage or “access to marriage”? This leads to the next question.

2. Why have governments always traditionally regulated marriage?

Same sex marriage advocates have sought to position the debate with the following proposition: how will same sex marriage weaken natural marriage? However, I would like to ask a question which same-sex marriage advocates don’t like to address: why have governments, not just this century but also many centuries before, regulated and upheld marriage? Why haven’t governments just left it to individuals in the context of the public at large to decide what “marriage” is?

The answer is that governments have always had a vested interest in marriage and family because it is the foundation of stable communities and societies. The institution of marriage preceded the establishment of any religion – it was based on the protection of women and children to create the foundation for stable families.

In short, same-sex couples cannot benefit society by bearing the next generation. Ultimately, the population falls, and the results are devastating: no families, no citizens, no economy, no natural future.

That is, imagine a society where marriage and sexual relationships have no boundaries – stable families are simply not formed, and thus the crucial work of families, as expounded in the natural roles played by a father and mother, must be assumed by the state. Children are insufficiently educated, children and women are abused and abandoned. Worse still, no one is responsible for sick family members or the elderly, because essentially *everyone* is family, yet *none* are family. Rather, society is a collection of autonomous individuals with whom someone somewhere has had a temporary liaison or “fling”. Succession and inheritance laws mean nothing, and our society would be marred by jealousy, sexual violence and paedophilia.

Clearly, such a “model” of society doesn’t cut it. Governments (and society) need stable marriages so that the whole of society doesn’t degenerate into economic, legal and immoral chaos.

Evidence of how same-sex relationships do not provide this stability is addressed further below (see point 3).

3. Going into bat for the “underdog”

Australians have a great cultural norm of supporting the “underdog”.

It is perplexing that the proposed amendments are receiving some degree of public support, when in effect the only people who will benefit from these laws are a small minority of the population (homosexual adults) but the ones who will truly suffer are those with no voice: vulnerable children. Why do the interests of a tiny minority of vocal, homosexual adults take precedence over these innocent children who are the future of our society?

The evidence regarding the horrific, detrimental impacts on children from same-sex relationships (as opposed to the positive benefits of natural marriage) are well documented. Put simply, same-sex relationships are simply inconsistent with the type of relationship needed for raising children – same-sex relationships are typically unstable and inherently incapable of providing children the nurturing and security they need:

- **Promiscuity:** the average male homosexual has hundreds of sex partners in his lifetime, which is hardly the type of stable environment and atmosphere for raising children. One study found that 43% of white male homosexuals had sex with five hundred or more partners, with 28% having 1,000 or more sex partners¹. Another study of 2,583 older homosexuals published in the *Journal of Sex Research*, found that the “modal range for number of sexual partners ever (of homosexuals) was 101-500”. In addition, 10.2% to 15.7% had between 501 and 1000 partners. A further 10.2% to 15.7% reported having had more than 1000 lifetime sexual partners². This compares sharply with the rates in heterosexual marriages – for example, a nationally representative survey of 884 men and 1,288 women published in the *Journal of Sex Research* found that 77% of married men and 88% of married women had remained faithful to their marriage vows³.
- **Unhealthy sex practices:** studies have shown that the “exclusivity” of same sex relationships does not diminish the incidence of unhealthy sexual acts, which are commonplace among

¹ A.P.Bell and M.S. Weinberg, *Homosexualities: A Study of Diversity Among Men and Women* (New York: Simon and Schuster, 1978) pp 308, 309, quoted in Dr Timothy J Dailey, *Homosexual Parenting: Placing Children at Risk*, Family Research Council, Issue No 238, October 2001

² Paul Van de Ven et al, “A Comparative Demographic and Sexual Profile of Older Homosexually Active Men”, *Journal of Sex Research* 34 (1997) 354.

³ Michael Wiederman, “Extramarital Sex: Prevalence and Correlates in a National Survey”, *Journal of Sex Research* 34 (1997) 170

homosexuals. Most unsafe sexual acts amongst homosexuals occur in the context of steady relationships⁴.

- **Incest in Homosexual Parent Families:** one study found that a disproportionate percentage – 29% - of the adult children of homosexual parents had been specifically subjected to sexual molestation by that homosexual parent, compared to only 0.6% of adult children of heterosexual parents having reported sexual relations with their parent. The study concluded that having a homosexual parent increased the risk of incest with a parent by a factor of approximately 50⁵.

Other general adverse impacts include a higher rate of intimate partner violence within marriage, higher incidence of mental health problems among homosexuals and lesbians, higher rates of substance abuse and reduced lifespan⁶.

On top of this is the strong evidence on the importance of a child having the influence of both a father and a mother – both have different but necessary roles. One major work on the topic has addressed the matter as follows:

“If mothers are likely to devote special attention to their children’s present physical and emotional needs, fathers are likely to devote special attention to their character traits necessary for the future, especially qualities such as independence, self-reliance, and the willingness to test limits and take risks”⁷.

Another major work addresses the matter this way:

“Through their play, as well as in their other child-rearing activities, fathers tend to stress competition, challenge, initiative, risk taking and independence. Mothers in their care-taking roles, in contrast, stress emotional security and personal safety”.⁸

See also generally the work of the Office on Child Abuse and Neglect from the US Children’s Bureau⁹.

⁴ G.J. Hart et al, “Risk Behaviour, Anti-HIV and Anti-Hepatitis B Core Prevalence in Clinic and Non-clinic Samples of Gay Men in England, 1991-92” AIDS (July 1993): 863-869, cited in “Homosexual Marriage: The Next Demand”, Position Analysis paper by Colorado for Family Values, May 1994.

⁵ P.Cameron and K.Cameron, “Homosexual Parents”, Adolescence 31 (1996): 772

⁶ For a comprehensive review of the relevant studies see Dailey, above n1.

⁷ David Blakenhorn, *Fatherless America* (New York: Basic Books, 1995), p 219.

⁸ David Popenoe, *Life Without Father* (Cambridge: Harvard University Press, 1996), p 144, 146.

⁹ www.childwelfare.gov/pubs/usermanuals/fatherhood/chaptertwo.cfm

In light of such evidence, on what twisted basis do we dare subject our children to growing up in same-sex “marriages”?

Some studies have purported to show that children raised in same-sex relationships are no worse off than those raised in traditional families (including one study from the American Psychological Association). However, as Dr Timothy Bailey has explained, much of that research fails to meet acceptable standards for psychological research – it is compromised by methodological flaws and driven by political agendas instead of an objective search for truth. These problems include inadequate sample size, lack of random sampling, lack of anonymity of the research participants and self-presentation bias¹⁰.

The other argument often raised by advocates of same-sex marriage is that natural marriage has its share of failures and is hardly bullet proof. Yes, natural marriage does not always work out, and there is separation and divorce, and in some instances other unsavoury aspects (although at much lower rates than same-sex relationships – see above). However the key point is that it is one thing for natural marriage to fail – it is another thing for the state to directly undermine natural marriage by deliberately allowing (and encouraging) same sex “marriage” and the adverse consequences that result.

4. Violating a personal right?

The most perplexing argument put forward by advocates of same-sex marriage is that it is violating a “personal right”. Since when have laws been about protecting “personal rights”?

Laws are in place to protect the *common good*, not personal preferences.

I may have a strong personal preference to acquire a Subaru WRX and speed at 200km per hour in suburban streets. It doesn’t mean that this preference should be recognised. Rather, traffic laws rightly protect the broader common good of having safe roads for all citizens to enjoy, so I need to restrain my behaviour.

So why is there suddenly an alleged personal right to same-sex marriage? The UN has never recognised it. Fittingly though, in line with point 3 above, they have recognised certain rights pertaining to children, including that a child needs to grow up in the “care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother”¹¹.

¹⁰ See Dailey, above n1.

¹¹ Declaration on the Rights of the Child (20 November 1959), Principle 6.

Further, very recently, some 2 weeks ago to be precise, the European Court of Human Rights ruled that same-sex marriage is not a human right¹².

So on what basis do advocates for same-sex marriage claim this is a “human right”?

The simple fact is that it is not a “right”. It is a personal preference that they are now looking to get legislative backing for. Laws don’t exist for personal preferences though; they exist for the common good. As the earlier points above have set out, same-sex “marriage” is most certainly not for the common good.

5. Where to next?

If the definition of marriage is extended to beyond the natural and rational meaning of one man and one women, where to next? Two men and one woman? A group of 5 men?

Same-sex marriage advocates will “roll their eyes” at such an argument on the basis that it is “alarmist”.

However, historically, on any other issue, where as a society have we shown the ability to put the brakes on before things go too far?

Consider abortion. When *Roe v Wade* was decided, it was argued as only in case of first trimester pregnancies. Over a period of under 40 years we now have a situation of both partial birth abortion and babies who survive abortions being allowed to die being supported by the President of the United States. Now, just recently, some ethicists are arguing for “after-birth” abortion, whereby babies are allowed to be killed by their parents after birth¹³.

Also, consider the introduction of no-fault divorce. Proponents said this would have minimal impact on children. Decades later, numerous studies have highlighted the horrific impact that divorce has upon children.

¹² <http://www.dailymail.co.uk/news/article-2117920/Gay-marriage-human-right-European-ruling-torpedoes-Coalition-stance.html>

¹³ <http://www.telegraph.co.uk/health/healthnews/9113394/Killing-babies-no-different-from-abortion-experts-say.html>

Conclusion

The proposed changes to the definition of marriage are politically motivated by a minority of the Australian population that are in the fortuitous position of being able to press their position due to the existence of a minority government. If the Labour Party had retained the seat of Melbourne it wouldn't even make it past the lower house.

Same-sex marriage will not improve the wellbeing or welfare of those desiring it. It will only undermine the most fundamental institution that our stable society is based upon.

Thank you for your time in considering my submission.

Daniel (Dan) Miller