



ECUMENICAL PATRIARCHATE
GREEK ORTHODOX ARCHDIOCESE OF AUSTRALIA
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Sydney, 3rd January 2017

Committee Secretary
Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill
Department of the Senate
PO Box 6100
Canberra ACT 2600

**Re: Submission to the Select Committee on the Exposure Draft
of the Marriage Amendment (Same-Sex Marriage) Bill**

Dear Mr McInally,

I write on behalf of His Eminence Archbishop Stylianos, Primate of the Greek Orthodox Church of Australia, to thank you for your invitation to make a submission to the above inquiry.

The Assembly of Canonical Orthodox Bishops of Oceania has taken this unique step to make a joint submission to the Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill which was established by the Senate on 30 November 2016 to inquire into the Commonwealth Government's exposure draft of the Marriage Amendment (Same-Sex Marriage) Bill.

The Assembly of Canonical Orthodox Bishops of Oceania under the *ex officio* chairmanship of His Eminence Archbishop Stylianos of Australia of the Greek Orthodox Church represents the Orthodox Churches and communities in Australia, including the Greek Orthodox Church, Antiochian Church, Russian Church, Serbian Church & the Romanian Churches.

We note that this submission will be confined to the terms of reference, however, we are required by the doctrines of Orthodoxy and by our responsibilities as shepherds of the faithful to advise the Select Committee of the recent decision of the 6th Episcopal Assembly of Oceania made on Thursday 8th December 2016 as to the sacred nature of marriage namely:

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- **Sacredness of Marriage:** That the Christian understanding of marriage as a sacrament of the Church between a man and a woman – to the exclusion of others – drawing the couple closer to one another, to God and His eternal Kingdom be reaffirmed. In this context, it was noted that should the Marriage Act be changed, this would have destructive consequences on the institutions of Marriage and of the Family more generally.

To this end, we make the following submissions on the relevant terms of reference as follows:

Terms of reference A: *the nature and effect of proposed exemptions for ministers of religion, marriage celebrants and religious bodies and organisations, the extent to which those exemptions prevent encroachment upon religious freedoms, and the Commonwealth Government's justification for the proposed exemptions*

- The proposed exemptions for ministers of religion, marriage celebrants and religious bodies and organisations do not go far enough and impinge on the religious freedoms, which is a fundamental common law and human right. Proposed amendments to the draft Bill have been outlined in Appendix A.

Terms of reference C: *potential amendments to improve the effect of the bill and the likelihood of achieving the support of the Senate*

- We are concerned that the Bill does not provide any protection for our faithful who are not clergy and yet whose conscientious commitment to Orthodox Christian doctrine in relation to marriage will compel them to refuse to allow their facilities to be used for, or provide goods and services for, a same-sex marriage. Proposed amendments to the draft Bill have been outlined in Appendix A.

We conclude by advising the Select Committee that the 6th Episcopal Assembly concluded its decisions by affirming the importance of reminding the faithful that religion, far from dividing peoples, ought to unite them on the fundamental issues of human rights, social justice and peaceful co-existence. The importance of cultivating respect for all people irrespective of race, gender, language and religion was emphasised.

The proposed legislation will unfortunately not assist with achieving that aim. Sadly it will, by purporting to change the unchangeable at the instance of a few, and unless all of the safeguards proposed in Appendix A are included in

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the Marriage Act 1961, force many including our faithful, to act against truth and their conscience and so create deep resentments in the Australian community.

We urge the Committee to heed our views and so minimise the risks of such resentments occurring.

Please contact me on _____ to discuss any aspect of this submission.

Conveying His Eminence's blessing to you for a most blessed and peaceful New Year in 2017, I remain

Prayerfully yours

Bishop Seraphim of Apollonias

Vicar General

Appendix A

The proposed amendments to the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill (Bill) are outlined below:

Term of Reference (a): the nature and effect of proposed exemptions for ministers of religion, marriage celebrants and religious bodies and organisations, the extent to which those exemptions prevent encroachment upon religious freedoms, and the Commonwealth Government's justification for the proposed exemptions

Proposed section 47 allows a minister of religion to refuse to solemnise a marriage despite any law, if the refusal is because the marriage is not the union of a man and a woman **and** the refusal conforms to the doctrines of the minister's religious body **or** is necessary to avoid injury to the religious susceptibilities of adherents to the religion **or** if the minister's conscientious and religious beliefs do not allow the minister to solemnise the marriage.

Proposed section 47A says that a religious body may, despite any law refuse to make a facility available or provide good and services in relation to the solemnisation of a marriage or matters incidental thereto if the refusal is because the marriage is not between a man and a woman **and** the refusal conforms to the doctrines of the religion **or** is necessary to avoid injury to the religious susceptibilities of adherents to the religion.

Concerns with the Proposed Amendments

These proposed sections are have merit but are inadequate for the reason we now set out.

- Religious freedom is a fundamental common law and human right.
- Section 116 of the *Constitution* (which begins with an expressed reliance on Almighty God) precludes the Commonwealth from passing any law which prohibits the free exercise of any religion.

Therefore it is not satisfactory that the proposed sections 47 and 47A are referred to and drawn as if they were exemptions from the normal law, when in fact they represent freedoms which exist and should be recognised to exist independently from any exemption in the *Marriage Act 1961 (MA)*. Suggested legislative amendments

Therefore we respectfully suggest that both proposed sections commence with a subsection similar to the current section 47 of the MA namely:

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Recognising the fundamental nature of the Freedom of Religion and the limitation of Commonwealth power in section 116 of the Constitution, nothing in this Act imposes an obligation on a minister of religion, to solemnise any marriage that is not a marriage between a man and a woman.

Further, while the Orthodox doctrine in relation to marriage is clear, it would be an inefficient use of resources if our clergy is required to prove to a court that their refusal to solemnise a same-sex marriage conforms to the doctrines of Orthodoxy. As the recent Victorian case of *Christian Youth Camps Ltd v Cobaw Community Health Services Ltd* has shown, secular courts are unskilled in handling church doctrine.

Accordingly we suggest that proposed sections 47 and 47B be amended to say:

"A minister of religion may refuse to solemnise a marriage if the union is not between a man and a woman"

and the requirements in the proposed sections 47 and 47B to show that the refusal is in conformity with doctrine etc. should be deleted.

Concerns relating to anti-discrimination laws

We are also concerned that any action of our clergy in accordance with Orthodox doctrine in relation to this issue may result in an action against them under section 17 of the Tasmanian Anti-Discrimination Act 1998 and similar legislation, as was the case with Archbishop Porteous of the Roman Catholic Church.

Possible legislative solution to this concern

We therefore suggest that a new section be included which may read as follows:

Any action of a person which is authorised by this Act cannot form the basis of a claim under any law of the Commonwealth or any State or Territory against the person as this Act is intended to be a complete code in relation to the freedoms, rights and obligations of all persons involved in the solemnisation of marriage in Australia.

Term of Reference (c): potential amendments to improve the effect of the bill and the likelihood of achieving the support of the Senate

Concerns relating to the protection of lay persons

We are concerned that the Bill does not provide any protection for our faithful who are not clergy and yet whose conscientious commitment to Orthodox Christian doctrine in relation to marriage will compel them to refuse to allow their facilities to be used for, or provide goods and services for, a same-sex marriage. If the MA is amended to allow for same-sex marriage if they so refuse, under current anti-discrimination law and subject to section 116 of the *Constitution*, they may face expensive court action.

Further, mindful of our duty as shepherds to the wider Australian community, we are mindful that there will be many who will be similarly compelled to not support same-sex marriage because of their convictions which are not based on Christian doctrine but on the doctrine of other religious traditions or by their own conscience informed by matters apart from religious doctrine.

Possible legislative solution to this concern

We therefore ask that there be a new section along the lines of the proposed section 47B as follows:

Recognising the fundamental nature of the Freedom of Religion and the limitation of Commonwealth power in section 116 of the Constitution, a person may, despite any law (including this Part), refuse to make a facility available, or to provide goods or services, for the purposes of the solemnisation or celebration of a marriage, or for purposes reasonably incidental to the solemnisation or celebration of a marriage, if:

- (a) the refusal is because the marriage is not the union of a man and a woman; and*
- (b) the refusal conforms to the doctrines, tenets or beliefs of their religion; or*
- (c) is genuinely informed by their own conscientious conviction that marriage is and is only a union of a man and a woman.*