Dwyer Lawyers

Principal

Terence M. Dwyer FTIA
B.A. (Hons), B.Ec. (Hons) (Sydney)
M.A., Ph.D. (Harvard), Dip. Law (Sydney)

Associate

Deborah R. Dwyer FTIA
B.A. (cum laude), M.A. (Smith)
LL.B. (ANU), LLMCL (NTU)

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

Dear Sir

MARRIAGE EQUALITY AMENDMENT BILL 2010

I refer to the above bill proposed by Senator Hanson-Young.

My personal objection is simple. It's that people should not be allowed to re-define well-understood words to push their own social agendas. Once people can twist words as they like, reason is dead, as Orwell warned.

From a legal point of view, the Bill suffers from a fatal flaw – the Commonwealth lacks legislative power under the Constitution.

The basic problem with the Bill is that:

1. the Commonwealth only has legal power over "marriage" under the Constitution; and

2. the grant of legislative power to the Commonwealth is over "marriage" *as understood in 1901* i.e. in normal English usage.

If I authorize you to go and do X if you like, you cannot say you have been given permission to go and do Y.

Unless the High Court is particularly "off" in its thinking, it would be duty bound to throw out any Federal law purporting to legalize "gay marriage".

However, some diversity in Commonwealth marriage legislation may still be possible.

The Commonwealth could repeal the *Marriage Act* and the *Family Law Act* and let people have their own personal laws and arbitrators for marriages and matrimonial disputes. Rather like Malaysia, one could have marriages and matrimonial Courts under various voluntarily chosen regimes for Muslims, Catholics, Anglicans and others. Civil marriage could be a default for those not wishing to choose a personal law.

Interestingly, the Roman Republic evolved various grades of marriage, from *confarreatio* to concubinage. Given the diversity of views on marriage today, many people would probably be happy to opt out of the jurisdiction of the Family Court.

A semantic (but hardly pedantic) point

I should perhaps note that the young Senator Hanson-Young is not correct if she suggests that this Bill will do away with discrimination in the marriage laws. Discrimination will remain.

There is age discrimination: persons aged 10, 12 or 14 cannot freely marry. There is relationship discrimination: fathers cannot marry their daughters, nor sons their mothers nor sisters their brothers. There is also species discrimination: men cannot marry goats nor women stallions.

Whatever, one's views on these various forms of discrimination, the fact that Senator Hanson-Young does not propose their removal suggests that the Bill needs to find a rationale other than a mindless denunciation of a much misunderstood word which used to mean a "recognition and understanding of the difference between one thing and another" such as discrimination between right and wrong or the ability to judge what is of high quality or to exercise good judgement or taste – all qualities some modern Parliamentarians seem to lack in abundance (which may account for the lack of public esteem for an institution which should command respect).

Yours sincerely

Terence Dwyer