

Marriage Equality Amendment Bill 2010

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This private senator's bill, introduced by Senator Hanson-Young, seeks to remove all discriminatory references from the Marriage Act 1961 to allow all people, regardless of sex, sexuality and gender identity, the opportunity to marry.

DISCRIMINATION

Unfair discrimination is a blight on any society. It becomes an evil blight when it promotes hatred and acts of hostility toward others. I commend the intention of Senator Hanson-Young for seeking to removing such blights from our society. Her proposed Private Senator's Bill demonstrates the ability of Legislation to curb not merely behaviour, but also attitudes.

However, she has failed to make an adequate case that the existing Marriage Act is *unfairly* discriminatory. Her proposed Bill also commits a serious error of assuming that complementing genders is the only qualification for a couple to marry. I have cited the summary statement of her Private Senator's Bill above. It states that her Bill - *seeks to remove all discriminatory references from the Marriage Act 1961*. To remove "all" discriminatory references renders the notion of Marriage meaningless since '*definition*' is a *discriminatory term*. To remove all discriminatory references within the Marriage Act would require the removal of the following five qualifications-

1. **Gender** - a couple must be a man and a woman. This discriminates against two people of the same gender from marrying each other.
2. **Age** - a couple must have obtained the age of 18 years (16 years for a woman with parental consent). This discriminates against people under the age of 18 or 16 from marrying.
3. **Status** - a man or a woman seeking to marry each other must not already be married. This discriminates against a married person marrying again.

4. **Eligibility** - a man and woman seeking to marry each other can not be immediately related. (Siblings can not marry each other. A parent cannot their child.) This discriminates against “blood-related” family members from marrying.
5. **Exclusion** - marriage is between one man and one woman to the *exclusion* of all others. This discriminates against those seeking to enter into either a polygamous or polyandrous marriage.

To remove “all” forms of discrimination within the established Marriage Act would then mean removing each of these discriminations as well. The question is, are these *unfair* discriminations?

PREMISE

Another very reasonable question is whether the premise of Senator Hanson-Young’s Bill is accurate? It claims that removing all discrimination will lead to the opportunity for all people regardless of “gender identity” being able to marry. The premise commits two glaring errors. Firstly, it assumes that Marriage Act addresses couples. It does not. It addresses (two) individuals. Because the Marriage Act provides the regulations for individuals entering into marriage, Senator Hanson-Young is mistaken in thinking that it regulates or provides rights for certain couples and not others. This then makes Senator Hanson-Young’s second error immediately obvious: any individual regardless of their gender identity is treated equally under the existing Marriage Act. That is, any person, *regardless of sex (gender), sexuality or gender identity*, already has as much opportunity to marry as anybody else provided that the five criteria for marrying are met.

DEFINITIONS

The Marriage Act 1961 does not *define* Marriage as much as it *describes* marriage. Marriage is the oldest institution known to man. It is a myth that marriage is a recent social-construct invention (although the same cannot be said of the State's regulation of it). The proposed Private Senator's Bill seeks to *redefine* what Marriage is.

Marriage is something - in the same that a circle is *round*. Notice that I defined a circle by *describing* it. There are instances when something can only be defined by description. Marriage is such a thing. If a circle, seeking to be known as a square, objected to being discriminated against by those who continued to identify it as a circle, an accommodating law could be passed to redefine circles as *squares*. But it would still be a circle!

Similarly, the union of two people of the same gender is not *marriage* because the *description* (and thus, the *definition*) of marriage involves two people of complementary genders so that there can be a biological "wedding" of these two people.

Dr. J. Budziszewski, Ph.D. Yale, Professor of Government and Philosophy at the University of Texas in Austin has written-

A striking feature of marriage is that it is always bilateral: *one* man, *one* woman...This is not hard to understand either. In the first place, a man and a man (or woman and woman) are not complements, but same; when their relationship is sexualized, rather than balancing each other they drive each other to extremes. In the second place, both sexes are needed for procreation--and not just because a man cannot make another man pregnant. Both sexes are needed to raise the child, because the female is better designed for nurture and the male for protection and discipline; both are needed to teach the child, because every young one needs a model of his own sex as well as the other.¹

¹ Budziszewski, "What We Can't Not Know", 2011:37, 38

ARGUMENT

It seems that the best argument for Sameness-Marriage is that it claims to address *unfair* discrimination. I have presented a brief yet reasonable examination of this assertion and found it to be without foundation. Because Marriage is something, it can best be defined by describing it. But describing it necessitates that certain inaccurate terms be discriminated against by not employing them (otherwise the description will not be accurate). Discrimination is not by necessity *unfair*. When we dine in a restaurant, we discriminate with the menu options. When the State issues Driver's Licences it discriminates at least on the basis of age. Discrimination is not only not necessarily unfair, it is often necessary for the well-being of others (especially so in the case of being licensed to drive a car).

Considering that the Marriage Act 1961 treats all people equally, it is impossible to argue that it unfairly discriminates against anyone. To claim that it denies a person to marry another of the same gender and that this then unfairly discriminates against certain *couples* is to commit the indefensible error that the descriptive criteria within Marriage Act is about *couples* when, in fact, it is about regulating *individuals* seeking to enter into a marriage. *And all individuals are treated equally by this Marriage Act!*

There are lesser arguments offered in favour of redefining what Marriage means. These includes social arguments - same-gendered couples are not afforded the same social respect as married couples. But this is hardly justification for amending the Marriage Act. There is also the argument of inclusivism - that allowing people of the same gender to marry each other will not impinge upon anyone else's marriage. But this confuses the issue. The Marriage Act is not about "marriages" it is about Marriage. To do violence to the definition of Marriage and then claim that no harm has been done to Marriage is incredulous. But these lesser arguments are hardly justification for amending the existing Marriage Act.

Therefore, the existing Marriage Act should *not* be amended.

I am prepared to appear before the Committee to defend these arguments.

Dr. Andrew Corbett

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