

6 March 2012

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

Dear Sir/Madam

I wish to provide the following comments in relation to the Marriage Equality Amendment Bill 2010 which is currently under consideration by the Committee.

Since antiquity marriage has been recognised as a union between man and woman. Even in ancient societies which were far more accepting of homosexuality than ours it was accepted that marriage was between man and woman, it was not recognised as an institution for members of the same sex.

The founders of Australia's Commonwealth Constitution were aware of and influenced by attitudes of the time as well as the common law which defined marriage as involving "... the union of one man and one woman ..." (P Hanks, 1996, *Constitutional Law in Australia*, 2nd Edn, Butterworths, Sydney, p. 436). When the Constitution was developed to provide the Commonwealth Parliament with powers with respect to marriage it was done with these factors in mind.

Therefore, any change to extend the institution of marriage beyond that which was originally envisaged, namely to include same sex couples, could be considered unconstitutional unless a referendum was first passed which agreed for the concept to be so extended. In the absence of such a referendum being passed, the indications are strong that any law which purported to extend the institution of marriage to include same sex couples could be considered unconstitutional and thus liable to challenge. To put the matter beyond any doubt the proposed law should not be passed until the matter is first put to a referendum to decide whether the Australian community as a whole supports the move and approves the Constitution being amended to reflect any extension to the institution of marriage.

For your information, I have previously provided comments akin to those above to the online survey of the House Standing Committee on Social Policy and Legal Affairs for the purposes of its inquiry into two similar bills currently before the House of Representatives.

I trust the above comments will assist you in your deliberations.

Yours faithfully
Don Willis