

24th March 2012

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

Dear Sir/Madam

RE: SUBMISSION TO THE SENATE INQUIRY INTO THE MARRIAGE EQUALITY AMENDMENT BILL

I would like to thank the Committee for the opportunity to place submissions before the inquiry into the Marriage Equality Amendment Bill, and present below my submission to the Committee.

What is Marriage

To start I would like to (briefly) draw to the Committee's attention the history of "marriage" in western civilisation.

The Oxford Dictionary defines marriage as:

"the formal union of a man and a woman, typically as recognized by law, by which they become husband and wife" ¹

Author Edward Westermarck defined marriage as "*a more or less durable connection between male and female lasting beyond the mere act of propagation till after the birth of the offspring.*" ²

For many centuries "marriage" has meant the joining of a **man** and a **woman**. This definition was only strengthened by religious influences, especially that of the Roman Catholic Church.

Marriage as we know it today was influenced by many ancient cultures. As far as our western civilisation is concerned the greatest influences came from the ancient Roman, Hebrew and Germanic cultures³. In all of these cultures, although finer details of marriage, divorce, etc. may vary, marriage has always been between a **man** and a **woman**. It is based on this ancient definition of marriage that we, today, continue to define through the Marriage Act.

This early definition of marriage was not solely based on religious views. In fact, pre-Christian Rome and Greece both promoted marriage between a man and woman, in order to encourage the production of children.⁴ This need to ensure future generations is not possible without the union between a man and a woman, something early civilisations knew regardless of what other sexual practices they condoned. Even where homosexual practices were condoned, or even popular, such as ancient Rome, marriage was reserved for opposite-sex partners.

¹ Oxford Online Dictionary, <http://oxforddictionaries.com/definition/marriage>, Viewed 24 March 2012.

² Westermarck, E. *The History of Human Marriage* (Vol. I), Macmillian, 1922.

³ Haeberle, E. J., *The Sex Atlas*, Continuum, 1982.

http://www2.hu-berlin.de/sexology/ATLAS_EN/html/history_of_marriage_in_western.html

⁴ http://en.wikipedia.org/wiki/Marriage_in_ancient_Rome Viewed 15 March 2012.

Marriages in ancient Israel were largely defined by the Hebrew Scriptures, which also form the basis for Christian cultures using the Holy Bible as their view for marriage between a man and a woman. I will cover this religious definition in more depth shortly.

It is therefore sensible and logical to determine that the Marriage Act 1961 is simply providing formal legal recognition to something that has been defined and accepted for centuries (i.e. the union of a man and a woman to the exclusion of all others).

Religious Views

There is little surprise that many Christian churches are opposed to same-sex marriage, but how far back this goes, why they hold onto this view so strongly and what other religions may believe are things most Australians probably don't consider.

From a Christian perspective the issue of marriage is defined by the Holy Bible. To understand why this is so important we must first consider that the Bible, to a true Christian, is the word of God Himself. It records what God did and said, and what rules He laid down for humanity to follow, with the New Testament recording the life, death and resurrection of Jesus. It is therefore much more than just "religious doctrine", it is God's own instructions that can not be changed or ignored.

The Bible gives direction on marriage in a couple of places. Of significance to both Christianity and [Orthodox] Judaism is the Old Testament:

*"That is why a man leaves his father and mother and is united to his wife, and they become one flesh." (Genesis 2: 24 (NIV))*⁵

In addition, of significance to Christianity is what Jesus said, recorded in the New Testament:

*"Haven't you read," he replied, "that at the beginning the Creator 'made them male and female,' and said, 'For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh'? So they are no longer two, but one flesh." (Matthew 19:4-6 (NIV))*⁶

And,

*"But at the beginning of creation God 'made them male and female.' 'For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh.' So they are no longer two, but one flesh." (Mark 10:6-8 (NIV))*⁷

Christianity is not the only religion that views same-sex marriage as unacceptable. Several other religious communities have also identified that marriage should be between a man and a woman only, including:

⁵ NIV Study Bible, Zondervan, October 2002, p. 9.

⁶ *ibid* p. 1499.

⁷ *ibid* pp. 1545-1546.

Judaism (Orthodox Judaism)

" [A man] shall not lie with another man as [he would] with a woman, it is a תבועה toeba ("abomination")" ⁸

Church of Jesus Christ of Latter Day Saints

"The Mormon Church is firm on its position condemning homosexuality as sinful behavior. One of the tenets of Mormon doctrine is the Law of Chastity. It permits sexual relations only between a husband and wife who are legally married." ⁹

Islam

"It is He who created you from one soul and created from it its mate that he might dwell in security with her. And when he covers her, she carries a light burden and continues therein. And when it becomes heavy, they both invoke Allah , their Lord, 'If You should give us a good [child], we will surely be among the grateful.'" ¹⁰

Isse Musse, spiritual leader of Melbourne's Horn of Africa Muslim community, said:

"If a person is a true Muslim - and these days there are bogus Muslims, as there are bogus Christians as well - and understands Islam, then a conscience vote would lead him or her to vote against same-sex marriage." ¹¹

While the Grand Mufti of Australia, His Eminence Ibrahim Abu Mohammad, said:

"We see in this a serious incursion on the nature of families as created by God and as known by humanity. I believe that this will reduce the support for the Labor Party. Australian society prides itself in, and highly respects, its value system. What has occurred with this vote threatens the family unit and the natural order of matrimony, being a natural union between a male and a female." ¹²

Aboriginal Australia

Marriage between a man and a woman (women) was paramount in Aboriginal cultures, again in order to create children and ensure the ongoing viability of the culture.

"Families. A family group can be quite large, consisting of a man and his wives, the children from each wife, and sometimes his parents or in-laws. A man often has from two to four wives, ranging from one to more than ten. Nowadays, most men have just one wife." ¹³

⁸ Leviticus 18:22. The Jewish 'Torah' consists of the first 5 books of the Old Testament of the Bible.

⁹ <http://whatmormonsbelieve.org/homosexuality.html>, Viewed 21 March 2012.

¹⁰ Qu'ran online, 7:189, <http://quran.com>, Viewed 15 March 2012.

¹¹ Franklin, Matthew & Higgins, Ean. "Labor faces pulpit-led backlash on gay marriage", The Australian, 5th December 2011

¹² *ibid.*

¹³ Aboriginal Culture, "Social Organisation", <http://www.aboriginalculture.com.au/socialorganisation.shtml> Viewed 15th March 2012.

This view was confirmed in February 2011 during a conference in the Northern Territory:

"Connie Nungarrayi Walit says allowing gay marriage conflicts with both Christian principles and Aboriginal law.

"I feel really very strong about this you know," she says.

"Because it can't be taken away from us. It's a law that we feel comfortable with, we fit in. Without it we're nothing." 14

Bahá'í Faith

Bahá'í law limits permissible sexual relations to those between a man and a woman in marriage. 15

Our Christian Heritage

The Australian Constitution states:

"The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth." 16

This is commonly viewed as "the separation of church and state", however it cannot be denied that this nation was founded based on Christian ideals and beliefs. This is supported by the opening statement of the Australian Constitution, which reads:

"WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:" 17

The inclusion of this reference to "Almighty God", and in particular the reference to "*relying on the blessing of Almighty God*" means that this nation was built with the Christian religion in mind, with laws and customs based upon the ideals found in the Christian Bible. Should we now abandon everything that our nation's founders believed in so much that they deliberately included this reference in the opening statement of the document that would create Australia as we know it today?

The fact that the Christian ideals influenced our laws more than any other belief (or no belief) is also clearly evident by the exclusion of, for example, polygamous marriages, which are permitted under Islam. Had our laws been created with ALL religious groups in mind there would not have been such a restriction, as this is clearly discriminatory to some 340,390 Australians that follow Islam¹⁸ and

¹⁴ Henderson, Anna, "*Indigenous women say no to gay marriage*", ABC News, 4th February 2011.

¹⁵ http://en.wikipedia.org/wiki/Religion_and_homosexuality#Bah.C3.A1.27.C3.AD_Faith, Viewed 21 Mar 2012.

¹⁶ Commonwealth of Australia Constitution Act, s. 116, p. 43.

¹⁷ Commonwealth of Australia Constitution Act, p. 7 (opening statement).

¹⁸ Australian Bureau of Statistics, "2006 Census of Population and Housing", Religious Affiliation (Full Classification List) by Sex, Cat. No. 2068.0 – 2006 Census Tables.

clearly prohibits “the free exercise of any religion”, yet it remains a part of our legislation and social morals. Laws against polygamy are very clearly based on the Judeo-Christian views of marriage, just as the prohibition on same-sex marriage is also based on these views. If we scrap one of these restrictions, should we also scrap others?

Where will it stop – polygamy next?

We must ask where these changes will stop. If we are to change laws based on long established ideals simply because they “discriminate” against some minority group, then what changes will be next? It is highly possible that the success of the marriage equality campaign to effect change could lead to future claims from other groups proclaiming “discrimination” based on our marriage laws, and because the Government had already proven that our long standing ideals no longer apply, it is highly possible that these minority groups could mount a successful court case compelling changes, such as:

- The legalisation of Polygamy; or
- The legalisation of incestuous marriages; or
- The legalisation of bestiality.

The push for polygamous marriages to be legalised has already begun following the change in ALP policy towards same-sex marriage. The following quote comes from a story in “The Australian”:

“The polyamorous community has a further cause for celebration.

They believe last weekend's vote by the ALP national conference to change the party platform to legalise same-sex marriage is a base on which they can build.

The agenda now is to seek recognition and the removal of prejudice against multiple-partner relationships, perhaps legislation to grant them civil unions and even legalised polyamorous marriage.

“My personal view is that any change that moves us towards a more loving, open and accepting society can only be a positive,” Melksham says.”¹⁹

Cardinal George Pell, (Catholic) Archbishop of Sydney, recently said:

“The percentage of Australians who declare themselves homosexual has only increased from 2 to 3 per cent in the last ten years and Australians are increasingly tolerant of this minority.”²⁰

He concludes his article with the comment:

“One or two Muslim voices are already calling for Australian law to recognize polygamy, one man with many wives. Some feminists might approve this provided a woman could have more than one husband!

¹⁹ Higgins, Ean, “Three in a marriage bed more of a good thing” , The Australian, 10th December 2011.

²⁰ Pell, George, “Same sex union”, Sunday Telegraph, 17th July 2011.

(Viewable at http://www.sydneycatholic.org/people/archbishop/stc/2011/2011717_1737.shtml)

If we reject the natural order of society and if we decide to manufacture reality through redefining marriage, why should we resist further changes such as polygamy?"

In an article published in December 2011, Andrew Bolt stated:

"And where does such forcing stop, once you start? In fact, I'm sure same-sex marriage will quickly be followed by cases in discrimination tribunals to make people accept them.

As I said, once you start, where do you stop? And I'd ask that question even more urgently when we start dismantling traditions and taboos so old that people forget why generations before found them necessary.

When you destroy the traditional idea of a marriage being between a man and a woman, in favour of a union between any two consenting adults, you invite more changes.

*Why stop at two? Why not also "respect" unions between a man and two women? After all, polygamy has what same sex marriage does not - religious backing in Islam, and historical precedents everywhere."*²¹

Mr Bolt goes on to give three examples of changes that went on to become more than they were first intended:

"In 1969, a Supreme Court ruling made abortion legal in Victoria 'to preserve the woman from a serious danger to her life or her physical or mental health'. But now that's been tweaked and interpreted to effectively allow even healthy women to abort healthy babies just weeks from birth.

Second example: Euthanasia advocate Dr Philip Nitschke started his crusade by offering death to people he claimed were in terrible pain from terminal diseases.

But by 2002, as shown in the documentary Mademoiselle and the Doctor, it appears Nitschke was offering suicide even to healthy people who simply wanted to die.

Third example: Victoria, like other states, created "Koori courts", just for Aborigines, junking the ideal of one law for all. But once you make an exception for one group, why not for two?

And, indeed, last week the Somali Community of Victoria asked for their own courts, too: 'Instead of applying sharia law in Australia, it is better to have a Koranic court (like) the court Australia has for the Aborigines.' "

Another story in "The Australian" warns of future issues should these changes occur:

"...we now have empirical evidence that normalising gay marriage means normalising homosexual behaviour for public school children. Following the November 2003 court decision in Massachusetts to legalise gay marriage, school libraries were required to stock same-sex literature; primary children were given homosexual fairy stories such as "King & King"; some high school students were even given an explicit manual of homosexual

²¹ Bolt, Andrew, "Gay marriage push is a slippery slope", The Herald Sun, 5th December 2011.

advocacy entitled “The little black book: Queer in the 21st century”, which the Massachusetts Department of Health helped develop. Education had to comply with the new normal.

Beyond the confusion and corruption of school children, the cultural consequences of legalising same-sex marriage include the stifling of conscientious freedom. Again in Massachusetts, when adoption agency Catholic Charities was told it would have to place children equally with married homosexuals, it had to close. As Canadian QC and lesbian activist Barbara Findlay said, “The legal struggle for queer rights will one day be a showdown between freedom of religion versus sexual orientation”. Blankenhorn warned, “Once this proposed reform became law, even to say the words out loud in public – ‘every child needs a father and a mother’ – would probably be viewed as explicitly divisive and discriminatory, possibly even as hate speech.””²²

The story goes on to state:

“Marriage is not a fad to be cut to shape according to social whim. The father of modern anthropology, Claude Levi-Strauss, called marriage “a social institution with a biological foundation”. Marriage throughout history is society’s effort to reinforce this biological reality: male, female, offspring. All our ceremonies and laws exist to buttress nature – helping bind a man to his mate for the sake of social stability and for the sake of the child they might create.

Not all marriages do create children – but typically they do, and the institution exists for the typical case of marriage. Homosexual relations cannot create children and cannot provide a child with natural role models; such relations are important to the individuals involved, and demand neighbourly civility, but they do not meet nature’s job description for marriage.

As van Onselen notes, homosexual couples now enjoy equality with male-female couples in every way short of marriage. It must stop short of marriage, because the demands of adults must end where the birthright of a child begins. Marriage and family formation is about something much deeper than civil equality; it is about a natural reality which society did not create and which only a decadent party like the Greens, so out of touch with nature, would seek to destroy.”

This is evidence that more than just the religious community view marriage as “between a man and a woman” for some very important, and ancient, reasons.

Public Opinion

There has been much publicity regarding the “overwhelming support” of the Australian public for same-sex marriage, yet there remains some very credible opposition to these “statistics”. From the ABC “the Drum”:

*“GetUp!’s campaign certainly initially worried MPs with the volume of emails received. However at least one who went back to the originators of the emails for confirmation of their addresses, received no replies from **nearly 50 per cent of them**. Clearly they didn’t, as they had claimed, live in the electorate and other MPs have said they had to **discount hundreds of such false emails**, one 700.*

²² Van Gend, David. “A dad does matter to a child, whether gay couples like it or not”, The Australian, 29th August 2011.

Other comments on some same-sex activists' social media sites recently have exposed the use of overseas networks to vote on polls, with Greg from Tallahassee saying he was glad to help out on a recent SMH one, and other helpful individuals describing how to manipulate various polls to "vote as many times as you want to".

*Public polls have become so open to manipulation that they are virtually useless as an indicator of public opinion."*²³

Mr Wallace goes on to say:

"Firstly in 18 of the 30 electorates on which MPs reported back as required by Adam Bandt, the feeling in the electorate was reported as overwhelmingly for retaining the definition of marriage; well over 90 per cent in a good number of them, with figures like 595 to 14 (Hinkler) and 1,015 to 65 (Deakin). Only six of the 30 reported their electorates in favour of gay marriage, and only three of those produced statistical proof from their consultation and not surprisingly they were from the inner-city seats of Wentworth, Moreton and Melbourne.

Secondly, the great majority of those who support marriage are not going to bother publicly proclaiming it when they are continually subjected to vicious language and abuse whenever they raise their heads. The charges of homophobe and bigot may have neutralised public debate until now, but they will not affect people in the privacy of the polling booth.

Finally, the reality is that applying even the most generous statistics for the homosexual community as numbering 3 per cent of the population and the absolute upper end of the take-up rate for gay marriage overseas, a maximum of just over half a per cent of the Australian population would take this up.

*On the other side of the ledger at least half the population support retaining the definition of marriage anyway, but perhaps 15 per cent of them hold marriage so deeply for cultural or faith reasons that it is for them a vote-changer."*²⁴

Regardless of what any "opinion poll" is showing, and we all know that these polls can give some very different results than actual real life, surely the government cannot deny that when only 6 of 30 electorates report favour for same-sex marriage the majority of Australians are clearly **not supportive** of any changes to the Marriage Act!

Again, from "The Australian":

"MOST voters consider new laws to allow same-sex marriage a low priority and would prefer to delay any changes on the issue.

*This is the finding of a new survey and comes as the ALP faces ructions at its national conference next week and Julia Gillard's leadership risks damage over the issue."*²⁵

²³ Wallace, Jim, *Polls no indicator for same-sex marriage attitudes*, The Drum Opinion, 5 September 2011, <http://www.abc.net.au/unleashed/2870676.html>

²⁴ Wallace, *ibid*.

²⁵ Shanahan, Dennis & Livingstone, Tess. "Gay marriage a low priority for voters", The Australian, 23rd November 2011.

Celebrant Concerns

The concern of ministers of religion that they will have little choice but perform same-sex marriages, even if this goes against their religious views, has been addressed, supposedly, by the second equalisation Bill, however can we be certain that this will indeed offer ministers adequate protection? If we are willing to change a centuries old definition of marriage simply because a minority of Australia views current laws as discriminatory, how long will it be before ministers of religion are forced to perform same-sex marriages or face de-registration as a celebrant?

Even if the protection for ministers is adequate, what about civil celebrants? Should a minister have more protection against performing ceremonies that go against their faith than a civil celebrant? Will this mean that civil celebrants that hold strong personal religious beliefs against same-sex marriage will need to choose between their religion and their registration as a celebrant, or will the government offer the same protection to all celebrants, not just ministers? If so, what happens when a minority group claim that this protection is also discriminatory?

Conclusion

Despite what many non-religious people claim it is plainly obvious that Australia is a Christian-based society, following Christian-based morals and beliefs. If this were an Islamic nation there would be absolutely no debate about accepting same-sex marriages, as they hold onto their religious beliefs strongly, sometimes too strongly, but nonetheless they refuse to compromise what they deem to be important religious and moral concepts. So why is it then that Christian-based nations' such as Australia are so quick to abandon the beliefs and morals that have helped create and shape that nation?

It is also plainly clear that, once again, we are contemplating changes that affect a minority of the population of Australia. A study in 2001/2002 surveyed some 19, 307 people. Of this only 1.6% of males identified as gay, and 0.8% of women as lesbian.²⁶ If we accept this as indicative of the entire population we must ask "why we are setting laws with **LESS than 5%** of the population in mind?" In fact, it is likely we are contemplating change to satisfy a maximum of **3%** of the population, with only around **0.5%** of the population actually taking advantage of any change to the definition of marriage.²⁷ Are we, as a nation, expected to amend all laws that are based on long established customs every time 3% of the population feel the laws are discriminatory?

In fact, could we not declare that any changes to the definition of marriage would be discriminatory towards the many religious people in Australia that hold marriage to be between a man and a woman because of their religious beliefs? If so, is the percentage of the population that have a strong religious faith more or less than the 3% that are homosexual?

According to the 2006 Census:

- 12,685,834 Australians are Christian;
- 340,390 Australians are Muslim;
- 88,826 Australians are Jewish;

²⁶ *Sex in Australia: The Australian study of health and relationships*, Australian Research Centre in Sex, Health and Society. (Published as the Australian and New Zealand Journal of Public Health vol 27 no 2.)

²⁷ Wallace, *loc.cit.*

- 418,757 Australians are Buddhists.
- 5,347 Australians follow Australian Aboriginal Traditional Religions.

If we believed that all of these were against same-sex marriages we would have some 13,539,154 Australians opposed to change, or approximately **68%** of the population (19,855,288 in 2006)²⁸. However, let us be conservative; let us assume only one-quarter of these hold *strong* religious beliefs. That still leaves us with some 17% versus the 3% of estimated homosexuals, or 0.5% that would actually marry under changed laws. Even if we assumed only **one-tenth** held strong religious ideals we are still left with over twice (or more) as many Australians being discriminated against by changes to marriage than those currently feeling discrimination.

In fact, the total number of Australians directly affected by denying same-sex marriage would be LESS than 3%! In a poll conducted by the group "Same Same", it was determined that:

*"In the general population, less than 2% describe themselves as gay or lesbian."*²⁹

Surely nobody could expect us to believe that of the 68% of Australians that indicated a religious faith in the 2006 Census there are less than 10% that hold strong religious beliefs and convictions? According to a 2009 article in "The Age", across all faiths, **27%** of Australians believe that their "Holy Book" is literally true.³⁰ This would seem to indicate that the "one-quarter" estimate above is actually less than the real number of Australians that would believe the definition of marriage as presented in their "Holy Book" is the divine word of "God".

So, based on the above facts and figures, we are faced with the following conclusions:

- 1) **At least 17%**, and as many as 20% or more, of the population hold strong religious beliefs that clearly teach marriage is between a man and a woman, as indicated in their 'holy book' which, to them, is the divine word of "God" ;
- 2) **LESS than 2%** of the population are homosexual and therefore *may* feel current marriage laws are "discriminatory".

Final Request to the Committee

Whilst I, like many other Australians, support moves to reduce discrimination in our society, including discrimination based on sexual orientation, this does not include changes to a tradition that is as old as civilisation itself. With the above in mind I would urge the Committee to recommend one of the following solutions to this issue:

- a) Whilst continuing support for same-sex couples entering civil unions, including recognition of same-sex "de-facto" relationships, reject any Bill that would change the definition of marriage, maintaining the long standing ideals upon which our nation was built; **OR**

²⁸ Australian Bureau of Statistics, *loc.cit.*

²⁹ Taylor, Christian, *Gay Census Results Announced*, Same Same, Viewed 24 March 2012, <http://www.samesame.com.au/news/local/4376/Gay-Census-Results-Announced.htm>

³⁰ Marr, David, *Faith: What Australians believe*, The Age, 19 December 2009, Viewed 24 March 2012, <http://www.theage.com.au/national/faith-what-australians-believe-in-20091218-15gy.html>

- b) If the Committee is unwilling to recommend “no changes to the definition of marriage”, recommend that the decision on changes to the Marriage Act 1961 be put to the Australian people via a referendum, and not decided by the Parliament. This would allow all Australians to vote as they feel appropriate, in privacy and confidentiality, and would therefore ensure a decision is made in accordance with the majority view of the entire population.

Thank you for your time, and I pray that the Committee chooses to retain this nation’s morals and ideals as they have existed for over 200 years, and even earlier if we consider Indigenous laws and beliefs.

Yours Sincerely

Martin Howells