

Submission on the Recognition of Foreign Marriages Bill 2014

Submitted on behalf of Australian Baptist Ministries

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This submission is in response to the Recognition of Foreign Marriages Bill 2014, introduced in the federal Senate on 15 May and referred to the Senate Legal and Constitutional Affairs Legislation Committee for an inquiry and report.

Who we are

Australian Baptist Ministries is the trading name of The Baptist Union of Australia. The Baptist Union of Australia is a voluntary association of State Baptist Unions and is incorporated under the Australian Capital Territory Associations Incorporation Act 1991.

Australian Baptists are a multi-cultural and multi-generational movement of people serving communities in metropolitan, regional, coastal, rural and remote Australia through a network of approximately 1,000 churches with a regular combined regular attendance of around 150,000 people. At the 2006 census over 315,000 people listed their religious affiliation as Baptist.

Australian Baptist Ministries is a federated organisation, partnering with local churches through State and Territory Baptist Union and Association entities. In many ways Australian Baptist Ministries would be seen by the community as the peak body of the Baptist movement in Australia.

While the Baptist ethos values the autonomy of the local congregation, there are many times, places and occasions where a national voice or opinion is sought from Christian denominations and other times and occasions where, in our view, a national statement on behalf of the Baptist movement in Australia can contribute significantly to national debate or deliberation.

What we do

Together with State Baptist Unions, Australian Baptist Ministries is committed to supporting and equipping local churches, training and equipping individuals for professional and lay ministry, supporting overseas missions, and assisting the disadvantaged locally and overseas.

A number of ministries operate under the auspices of Australian Baptist Ministries to provide these opportunities to serve the public in the many communities in which our congregations and agencies operate. These ministries include:

- Approximately 1,000 local Baptist congregations of varying sizes
- State Baptist Unions and Associations in all Australian States and Territories
- Baptist Care Australia and State Baptist Care organisations in each state
- Global Interaction
- Baptist World Aid Australia
- Crossover Australia
- Remote Churches Ministry
- Baptist Financial Services
- Australian Baptist Insurance Services

Australian Baptists and marriage law

Australian Baptist Ministries affirms marriage as the union of one man and one woman. We support the right of all couples to justice with respect to property and like entitlements, and acknowledge that people face difficult issues regarding sexuality. However, we believe there are compelling theological, cultural and heritage reasons for opposing law reform seeking to extend the legal definition of marriage to include same-sex couples or other alternative arrangements.

For more than 400 years Baptists have affirmed the Bible as the supreme authority in all matters of faith and conduct. The Bible teaches that the only appropriate context for sexual relations is between a woman and a man who are married to each other.

In November 2010, Australian Baptist Ministries reaffirmed marriage as the union of one man and one woman, and has commended the Australian Government for reflecting the biblical teaching on marriage in the federal Marriage Act. Marriage is not the appropriate institution for same sex couples.

The Baptist World Alliance, representing over 42 million members and 231 Baptist Unions and Conventions in more than 121 countries, shares the views of Australian Baptist Ministries on marriage. The Baptist World Alliance views homosexual lifestyle as incompatible with the teachings of Scripture and no BWA member body affirms, promotes or approves of same sex marriage.

At the Baptist World Alliance annual gathering in July 1994 in Uppsala, Sweden, the BWA General Council passed a resolution confirming that the BWA “proclaims the biblical definition of the family, a permanent, monogamous, heterosexual union, as the original divine plan for family life which must continue to serve as the foundation and ideal for an ordered and effective society.” This resolution was reaffirmed at the Baptist World Alliance annual gathering at Ede, The Netherlands, in 2009.

The 2014 Hanson-Young bill

The bill introduced on 15 May 2014 amends the Marriage Act 1961 to remove the prohibition of the recognition of same sex marriages solemnized in a foreign country, and to provide that such marriages are recognised in Australian law. We note that the bill carries a deliberately misleading title since Australian law recognises foreign marriages. The bill seeks to normalise formal _____

relationships between same sex couples and to overturn Australian marriage law by stealth through equating such relationships with marriage. The bill is therefore fundamentally inconsistent with the *Marriage Act*.

Further, we note that a similar bill, introduced to the Australian Parliament prior to the 2013 federal election, was debated in the Senate in June 2013 and was defeated 44 votes to 28. At the time, Senator Sue Boyce, who supported the bill, called it “a backdoor way to try to increase support for same-sex marriage in Australia.”¹ The same is true of Senator Hanson-Young’s 2014 bill.

Section 88D of the Marriage Act specifically prohibits recognition of same sex marriages, and Section 88EA states that a legal union solemnized in a foreign country between two men or two women “must not be recognised as a marriage in Australia.” To repeal these provisions would be to introduce different classes of legal marriage in Australian law, and open the door to various alternative arrangements (such as polygamous and polyandrous marriages), thus denigrating and eroding the institution of marriage as currently defined in Australian law.

The conventions of marriage are deeply embedded in human history and culture. Those who oppose same sex marriage do so because they respect the wisdom of hundreds of generations of human tradition, and care about the common good of future generations. As Sydney University Law Professor Patrick Parkinson has pointed out, “The question really is whether we value marriage enough to preserve its cultural meaning and distinctiveness.”²

The 2014 Hanson-Young bill attempts to introduce same sex marriage to Australia by creating an inconsistency in Australian law for which there is no political or legal mandate. Support for this bill would represent an overstepping of legitimate state authority with respect to the institution of marriage as commonly understood by Australians. Our elected representatives should not move to recognise foreign marriages of any kind which are inconsistent with Australian marriage law.

Moreover, if the Australian Parliament were to recognise foreign same sex marriages, such action would not only contravene the *Marriage Act* and throw administrative practices and protocols into disarray, but would represent the abandonment of the only principled basis on which the Parliament could justify rejecting further demands for the redefinition of marriage.³

Further, should the bill be passed a situation would be created where there were several distinct categories of same sex couples who wish to be treated as married in Australian law. As Peter Westmore has argued,

In the event that the Hanson-Young bill passes into law, then we will have a situation where there will be two “forms” of marriage coexistent, leading advocates to claim immediately that since we recognise such contracts undertaken overseas as “marriages”, then we have no reason to continue opposing them here.

The Marriage Act would also have the internal contradiction of upholding marriage in one instance and stating the opposite at the same time.⁴

¹ Senator Sue Boyce, interviewed on *The World Today*, 20 Jun 2013, transcript available at <http://www.abc.net.au/worldtoday/content/2013/s3785861.htm>

² Patrick Parkinson, “About time we all cared more about marriage,” *The Sydney Morning Herald*, 24 Aug 2012, available at <http://www.smh.com.au/federal-politics/political-opinion/about-time-we-all-cared-more-about-marriage-20120823-24p2g.html>.

³ Bishop Anthony Fisher et al made a similar argument in a submission to an Inquiry into Same Sex Marriage Law in NSW held by the NSW Legislative Council Standing Committee on Social Issues on 1 March 2013, p. 4.

⁴ Peter Westmore, “Greens’ bid to legalise same-sex ‘marriage’ by stealth,” *News Weekly*, 7 June 2014, available at <http://www.newsweekly.com.au/article.php?id=56604>

Or, as Alastair Lawrie points out, “if the Recognition of Foreign Marriages Bill were to succeed, Australia would have a system which, far from recognising genuine ‘marriage equality’, would actually create new types of marriage inequality, only this time based on distinctions around class and nationality rather than sexual orientation.”⁵ The bill, if it became law, would inevitably lead to the creation of a sub-class of couples who lack the financial resources or nationality to be able to take advantage of marriage equality elsewhere. This should be avoided.

ABM recognises the formal separation of church and state, and affirms the responsibility of the state to pass laws for the common good. What is at stake in the current debate on marriage is the erosion of a common or traditional understanding of marriage and family arising from radically differing views of the common good. In this context, people of faith reserve the right to express their principled views and to seek to contribute to public debate and democratic process with the same freedoms and responsibilities that are extended to other persons and groups.

Australian Baptist Ministries strongly recommends that this bill be opposed by Senators, and welcomes the opportunity to discuss the matters outlined above and any other relevant matters with the Senate Committee.

⁵ Alastair Lawrie, “Why I don’t support the Recognition of Foreign Marriages Bill 2014,” available at <http://alastairlawrie.net/2014/06/26/why-i-dont-support-the-recognition-of-foreign-marriages-bill-2014/>