

# A Submission to the Senate Committee Enquiry

## Marriage Equality Amendment Bill 2010

I am writing this submission as a man who has been in a committed relationship with another man for over 31 years. I have witnessed the change in Australian legislation regarding homosexuality from prohibition to near equality. The last legislative hurdle to cross is that of marriage.

The Government of Australia now treats my partner and I as a married couple in virtually all areas. The only thing they won't do is allow us the dignity of a public affirmation of our commitment to each other, and provide us with a document which formally recognises our relationship.

Our families and friends recognise the validity of our relationship and see it as a marriage. They all recognise it as being as valid as the relationship my brother has with his wife. My partner and I see it in the same light. It is only the Australian Government that refuses to do so.

### Background

As you are aware, the Howard Government (with the support of the Labor opposition) passed an amendment to the Marriage Act in 2004 which defined marriage as "the union of a man and a woman".

The passage of this amendment was a major backward step in rights for Australia's non-heterosexual citizens. It occurred at a time when many other western countries had already moved or were rapidly advancing in the completely opposite direction towards either full marriage rights for same-sex couples or, at the very least, recognition and registration of civil unions.

Rather than working toward removal of discrimination, our Government followed the lead of the very conservative United States government and enshrined discrimination in legislation. Such actions are almost unheard of in recent times in the western world.

Implicitly, it also enshrines in legislation the view that, providing an opposite-sex relationship is registered under the Marriage Act (no matter how dysfunctional it may be), it is superior to a same-sex relationship (no matter how committed it is). This is completely nonsensical.

### What is Marriage?

I believe the debate on same-sex marriage is very much muddled by confusion between the concepts of marriage and family. ***They are not the same thing.***

Marriage is a commitment by two adults to share their lives, and in so doing, support and care for each other as they journey through life together.

- Children are an optional extra. They are created and raised both with and without marriage.
- Religion is also an optional extra – in fact, the majority of marriages in Australia are now non-religious.

Family is a much broader concept than marriage and is much more difficult to define. A marriage will generally create a family, but family can encompass much more.

## Religion in the Marriage Debate

Most of the major arguments against same-sex marriage appear to be based on religion.

However, marriage has **two** significant aspects – religious and civil. ***This debate is about the civil right to marriage and religion should not play any part.*** This is for a number of reasons:

1. Australia is a secular democracy. As such, the Government must work under the premise of separation of church and state, even though this separation is often blurred.
2. The Marriage Act is not religious legislation. ***It is primarily legislation which establishes a legal relationship between two people.*** While it provides for solemnization of marriages by ministers of religion, it also enables non-religious marriages to take place. Atheist and agnostic heterosexual people have the same rights to marry under the Act as their religious counterparts. In fact, significantly more marriages are now performed by a marriage celebrant than by a religious leader.
3. A significant proportion of the Australian population is not religious. Religion does not have the right to force its views on others where those views are based solely on their beliefs and faith.
4. Of those with religious views, many support same-sex marriages. Despite what the vocal religious leaders would have us believe, the issue is not clear-cut even among members of these organisations.

Additionally, the rights of religious people to follow their faith can easily be respected by giving religious institutions the right to determine whether or not they will perform same-sex marriage ceremonies. However, their belief system which is purely faith based gives them no right to dictate who non-believers wed. Even staunchly Catholic Spain have implicitly acknowledged this by legislating to allow same-sex marriage in 2005.

## Other Arguments Against Same-sex Marriage

Other arguments against same-sex marriage are generally spurious and illogical. Examples include:

***Recognition of same-sex marriage will debase the institution of marriage.*** This is a bizarre concept. How will my neighbour's marriage be affected if the Australian Government sees fit to recognize my relationship with my same-sex partner? The institution of marriage is debased by other factors such as the significant divorce rate and spousal abuse.

***Marriage is for procreation of the species.*** If so, why are heterosexual people who have no intention of or are incapable of reproducing allowed to marry? Also, why is procreation not mentioned in the marriage act, nor in any marriage vows I have been able to find?

***Gay people don't want marriage rights.*** Certainly many don't. However, many do. Giving the right to marry to same-sex couples does not imply compulsion, but it would give them the same right of choice enjoyed by opposite-sex couples.

***The current nature of marriage is enshrined in history and shouldn't be changed.*** Marriage is a constantly evolving institution. The wife used to be the property of the husband. This is no longer the case. Inter-racial marriages were once illegal. The thought of this today is shocking. Inter-faith marriages were once frowned upon. They are now common-place. Marriage is constantly changing

in line with society's values and beliefs. The proposal for same-sex marriage is simply another step in this evolution.

## Need for Relationship Registration

In 2009, the Australian Government passed a raft of legislation removing discrimination against same-sex couples in many areas including superannuation, taxation and welfare entitlements. For this they should be applauded. By default, the Government now recognises same-sex partnerships.

What they have not provided is a mechanism for individuals to clearly show that their relationship exists.

Surely, it is in the interests of all parties concerned to provide a mechanism for such relationships to be registered to avoid the necessity to go through constant, onerous processes to prove the fact, and to lessen the cost to society of undertaking such processes?

## Why is Same-Sex Marriage Required?

We currently have two classes of marriage in Australia, being legally registered marriage and de-facto marriage. It is my firm view that society in general sees de-facto marriages as second class and not as valid or important as legally registered marriages. However, ***opposite-sex couples have a choice*** as to which form of marriage they enter. Same-sex couples have no such choice, and as such are forced in to the second-class de-facto status.

The Government has three basic options regarding the Marriage Act as it applies to same-sex relationships:

1. ***Do nothing, and leave discrimination enshrined in legislation.*** What sort of message does this send to society? To quote George Orwell, "all animals are equal, but some are more equal than others." Even though we stand for a society where everyone is equal, the current legislations tells us that it is still OK to discriminate against certain groups.
2. ***Put in place a relationship registration system.*** This could perhaps be a civil union type system in line with that in Britain (but which the British government is now deeming unacceptable). While a step forward, this:
  - a. Creates a third level of relationship which, while being superior to de-facto (as it is at least government registered) will still be seen by society as second class.
  - b. Continues to say to society that it is OK to discriminate in some ways against homosexual people.
  - c. Asserts that same-sex relationships are simply not as good as opposite-sex relationships. This is insulting to the immense number of committed, long-term same-sex relationships which exist in our society.
3. ***Remove all sex-based discrimination from the Marriage Act.*** This would give same-sex couples the same right to marry as opposite-sex couples, and give their relationship the same level of official recognition. This is the only valid option in a society which values equality before the law for all of its citizens.

## **Rights of Children**

Our society has changed very much in recent years. For a multitude of reasons, we now have more and more children being raised by two parents of the same sex. Continuing to deny same-sex couples the right to marry will have absolutely no effect on this trend.

One of the most significant aspects of the Marriage Act is that it creates a legal relationship between two people which provides significant protection for the welfare of their children. The areas of protection are too vast to be detailed in this submission.

Don't children being raised by same-sex parents deserve the same protection?

## **Benefit to Our Society**

The British Prime Minister Mr David Cameron recently argued that he believes "*in the ties that bind us; that society is stronger when we make vows to each other and support each other.*" This is the reason he supports same-sex marriage – he and his supporters from all sides of the British Parliament believe that enabling same-sex marriage actually benefits society by strengthening the basic framework on which it is based. I couldn't agree more.

It should also be noted that the Conservative British government does not consider civil unions to be adequate, and is currently moving towards full equality for same-sex couples under their marriage laws.

## **Simple Economic Benefits for the Nation**

I have commented earlier in this submission on the need for relationship registration to facilitate convenient and simple compliance with legislative requirements.

Relationship registration can be achieved in two ways:

1. Set up a new bureaucracy or systems to handle the process, with significant cost to the community.
2. Use the existing marriage registration systems.

Surely the best option is to keep things simple and use the existing systems and structures!

## **Support of the People of Australia**

Human rights must never be determined based on populist views. Following this path will generally lead to oppression of minorities.

In this case, however, the removal of discrimination and the granting of the right to same-sex marriage does have popular support:

- A Galaxy Poll conducted in February 2012 found 62% of Australians support same-sex marriage. This result is consistent with a Nielsen poll conducted in late 2010 and many other recent surveys.
- Research also conducted by Galaxy in late 2011 found that 53% of Australians who identify as Christian support same-sex marriage.

The results of these polls are remarkably consistent. They show clearly that the majority of Australians support same-sex marriage, and that the support is growing.

I can also recount numerous stories from my own experience. Most people simply don't understand what all the fuss is about. They can't see any logic in the vehement campaigning against same-sex marriage. Many are simply amazed that same-sex couples still do not have the right to marry. None have expressed concern at the prospect of same-sex marriages becoming a reality.

## **Summary**

The simple facts of the matter are this:

- If we truly value equality in our society, all legislative discrimination must be removed. The ban on same-sex marriage is probably the last government proscribed discrimination against same-sex couples.
- Anything other than full marriage rights for same-sex couples will continue to leave legislated discrimination in place.
- The sky will not fall if same-sex couples are given the right to marry (or at least it hasn't in the many countries that have seen fit to do so). Apart from offending the sensibilities of those opposing same-sex marriage, the effects of allowing same-sex couples to marry can only be beneficial to those directly involved and to society at large.

If the Parliament wants to do the right thing for its homosexual citizens, and lead our society by example, it will pass this legislation.

**Jeffrey D Hughes**