

# **Marriage Equality Amendment Bill 2010**

## **A Response**

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### **Overview**

This is a submission in response to the Marriage Equality Amendment Bill 2010. In this submission I want to address the following key areas, and demonstrate that they provide reasonable and substantive grounds for not passing the bill:

1. Marriage and the Australian culture
2. Marriage and language
3. Marriage and its purpose
4. Marriage and philosophical perspectives
5. Marriage and religion

### **Introduction**

Let me declare my own bias, background and perspectives at the outset. I want clearly to acknowledge the community values of my own history and tradition, and that I have been married for more than 40 years. I hold firmly to a worldview grounded in both western democratic ideals as well as a Judeo-Christian framework, both of which are grounded in rigorous thought. This framework has a rich history of seeking a common good and a stable society with strong values and an underpinning rationale of social cohesion.

#### **1. Marriage and Australian Culture**

In Australia the family remains the basic unit of society - a foundational social unit in which communication, caring and sharing occurs and the context in which most children are raised. As such, families play a central role in shaping the health and wellbeing of all immediate family members, they provide stability and meaning for its members, which in turn provides stability for society more generally.

According to the Australian Institute of Family Studies; “about one in five lone parents living with dependent children in 1986 was never married, compared with around one in three in 2006. The increase in the proportion of lone parents who have never married does not mean that these parents became lone parents when their children were born. Many of today's lone parents have separated from a de facto relationship.” At the same time, one parent families are considered to be at higher risk of economic disadvantage compared with several other family types.

It is clear that marriage is far and away seen as the appropriate social relationship bond between a man and a woman, and the context in which to have and nurture children. This true not just for folk who express a Christian religious faith; it is no less true for those who express a Muslim faith or a Hindu faith or a secular faith. Even the term *de facto* or common law marriage is marriage. Marriage in its diversity is a global human phenomenon. Marriage provides social stability, financial security (hence educational opportunities, less welfare dependence and other social benefits) that undergird a robust democracy.

Exceptions exist - and always have. Society changes, and always has. Different sexual preferences have always existed; from Sodom and Gomorrah through the myth of Lesbos, through to the Greek *polis* to the later Roman times. This is not new news. What has remained a constant in each era is the primacy of the family and the rite of marriage as the foundation of the family structure. What has equally remained a constant is the understanding of marriage to be the union between a man and a woman.

## 2. Marriage and Language

The Marriage Equality Amendment Bill 2010 seeks “to remove from the *Marriage Act 1961* discrimination against people on the basis of their sex, sexual orientation or gender identity.” The capacity to observe difference, to differentiate or distinguish, has, it seems, become a dirty word. In this case the words are framed in terms of “discrimination against people.” Being “against people” is deemed to be discriminatory. However, it still remains the case that women are discriminated by their capacity to bear children - that is not a discrimination against men.

We discriminate “against” thirteen and fourteen year old children being given the right to have an automobile license, even though many are competent drivers. We discriminate “against” children being sent off to war as soldiers, even though many are capable of using a rifle effectively and efficiently. Discrimination needn’t be a social evil. They are and ought to be an appropriate social discernment.

The Marriage Equality Amendment Bill 2010 seeks “to recognise that freedom of sexual orientation and gender identity are fundamental human rights.” Without entering a discussion about sexual orientation and identity, and how they are acquired, it seems quite possible to make that recognition without any reference to marriage. Why need it be tied to marriage?

According to the Marriage Act 1961, marriage is defined: “**marriage**” means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.” It is clear that *marriage* itself is the issue - not sexual orientation. It is clear that a marriage is the relationship that ensues between a man and a woman; it does not occur between a man and a man, nor a woman and a woman. That there may be sexual liaison or contact or relationship between the latter options is not disputed - but it was not understood to be marriage.

Redefining marriage to mean “the union of two people, regardless of their sex, sexual orientation, or gender identity” is in fact a reverse discrimination. It discriminates *against* the majority. Such a redefinition eviscerates “marriage” of its cultural and

linguistic meaning; its history and social context; and it relativises what has long been normative - the union of opposites.

Section 88EA says: **Certain unions are not marriages:** A union solemnised in a foreign country between:

- (a) a man and another man; or
- (b) a woman and another woman;

must not be recognised as a marriage in Australia.

It is clear from the Act that “certain unions” *are* in fact recognised - and that they were already recognised in 1961. It recognises sexual preference. It recognises specifically homosexual unions, and defines them as such. It differentiates (or discriminates) appropriately. It simply and rightly says that such unions are not to be recognised as a marriage. It is important to ensure that the words we use and the way we use them reflect precisely what we mean, and the Marriage Act 1961 does that well, whereas the Marriage Equality Amendment Bill 2010 confuses “marriage” with sexual orientation.

### 3. Marriage and its Purpose

There are competing social views about the purpose of marriage.

One view is that marriage is primarily an emotional good created *by* the couple *for* the couple. This view can certainly be grounded in emotional, romantic notions, and sustained by the pragmatic and existentially shaped individualism of western society. It is an essentially private and intimate relationship created by people for their own reasons to enhance their own personal well-being. It sounds right, and affirms individual freedoms and rights.

There is an alternate view. Marriage is a normative social institution designed to protect children; it is the way of family-making that will not sever the sexual alliance and the parenting alliance, and becomes the focus of many of the governments’ laws and policies, from tax through education. The family as the basic social unit is shaped and supported by social policies that enhance social flourishing for all members of society by establishing a lawful, normalising framework for men, women and children.

The two views have competed since the mid 1950’s, and as social change has kept pace with technology there has been an accompanying process of redefinition. In part this is due to the rise of post-modernity and the end of modernity. Whatever the deeper reasons, there have been attendant consequences with their concomitant costs. Such consequences include:

- An increase in the rate of divorce
- An increase in the rate of single parent families
- Legislative changes around Family Law, taxation and other family benefit schemes
- Educational implications for children from single parent families

The cost of social re-definition has been enormous. The Centre for Marriage and Families at the Institute for American Values list twenty six social and relational reasons why marriage matters, and the conclusion of their Australian counterpart is: “Here is our fundamental conclusion: Marriage is an important social good, associated with an impressively broad array of positive outcomes for children and adults alike.”

Studies, like statistics, can be refuted with other studies. The argument for a greater social good; the argument for an institutional view of marriage; and the argument for a socially stabilising view of marriage; each has been vigorously debated and disputed by those who hold a more individualistic view. What on earth, they will argue, does the government have to do with my relationships and sexual preferences?

But when it comes to doctors who help bring their children into the world, schools and universities that educate their children, roads and transport that enable their children to travel - in short - all that flows out of marriage and takes shape as society; then there is no question that the government *does* have a significant role to play. It is the great disconnect, and flies in the face of social responsibility. Marriage has a normative consequence; children and family; and thus has a profound social purpose. A nation that does not produce children does not have a future.

#### **4. Marriage and Philosophical Perspective.**

In her fascinating book Evil in Modern Thought (2002), Susan Neiman explores someone whose philosophy is seldom seen as such - the writings of the Marquis de Sade. Interestingly, the two positions on marriage outlined above are in no way a new phenomenon. Says Neiman: "While Voltaire imagined sex as a pillar of natural religion, Rousseau imagined it as the basis for civil society. For erotic love provides the only link between us that is natural as well as reasonable - in principle if not in practice. The desire for another's pleasure as part of your own is the paradigm of the bond that could tie members of society together as contracts cannot" (p178).

But Rousseau's work never threatened the notion of order in general. Sade's did. So Neiman writes: "His (Sade's) is a world of violence and split. ... It was not only personal taste that fuelled his endless praise of sodomy as the perfect erotic act. He was often explicit in explaining why: he viewed it as the antiteleological exercise par excellence. Sodomy was celebrated because it was sterile; it leads to nothing, and were it practiced more widely, it would counter humanity's own interest in self-preservation. All the more reason to promote it." (p 179).

Marriage between a man and a woman is fruitful. It brings life. It sustains society. It is generative. It enhances human development. It encourages growth. Homosexuality does not and cannot. It is, as Sade pointed out, sterile and leads to nothing, but it is not something society should endorse or embrace as marriage, no matter how compelling the emotivist and romantic rationale may be.

In stating the case in this way one needn't take the extremist self and socially destructive stance that Sade did. Neither should one deny potential pleasure, or even the fact that there can be significance and meaning in such a union between people of the same gender. The only critical point is that such a union is lifeless and sterile. It contributes nothing to the social good. It is unreasonable to call it marriage.

There is a further consideration. The technological revolution has made possible the capacity to fly aeroplanes into the twin towers, to create toxins which can kill people, to create "adult films" which degrade us as human beings, and to manipulate human lives in both positive and destructive ways. Technology has equipped us with a range of new options we may now choose; everything from contraceptives in curtailing conception, through abortion for ending the life of what was conceived, to IVF in creating life in the womb.

Technology enables same-sex couples also to have children, by surrogacy, by donor sperm, by IVF, by adoption. But technology while it can provide the means, the “how” - cannot supply the rationale, the “why.” Technology cannot supply a coherent meaning system. And simply because “we can” is a totally inadequate reason for saying “we should.” Technology should serve to enhance the respectfulness we owe to the mystery and wonder of our humanness. The power of technology does not supply grounds for calling the union of same-sex couples “marriage.” It cannot, and it should not.

## 5. Marriage and Religion

That assertion, that only right-wing fundamentalist Christians hold a high view of marriage that excludes same-sex unions, made by some same-sex marriage protagonists simply won’t hold water. Devout Jews hold the same view as do devout Muslims. And there are those who profess no religious faith at all who would hold a similar view.

At the same time, in an age of tolerance and reason in Australia today, to pull the “God” card or the “faith” card carries little weight. Similarly, to rely on the authority of ancient texts that played a significant part in the shaping of western culture for two millennia is not generally accepted as supplying an adequate ground *per se* for the disapproval of same-sex marriage. It convinces those already convinced, but little more.

The problems are obvious. Which sacred texts? Whose authority? What sort of faith? In a multi-cultural society with powerful post-modern currents confirming that my truth is mine and yours is yours, and where individualism reigns supreme, the religious arguments will be tolerated, and may even be respected, but they are not seen to provide adequate grounds for the stance they advocate.

Such a religious stance poses the same questions for those who claim “revelation” as the ground for their faith and practices. The revelation they claim may be from authoritative texts, visions, prophecies, experiences, priests, communities, traditions or other sources. What is not at issue is that such revelation as honoured by various religions and traditions shapes the culture and practices of their community. It is both reason and faith-based. Some would argue reasonable faith, while others would argue faithful reason - it matters not.

Faith communities hold that marriage is between a man and a woman; and even in faiths which allow polygamous relationships the union is still between a man and women. To legislate that “marriage” is now to be defined as “the union of two people, regardless of their sex, sexual orientation, or gender identity,” will be perceived as the state now placing *a faith statement* over and above those that religious communities themselves have determined. It is an attack on religious freedom. It will be legalising and endorsing what many religious faith-based communities find reprehensible and socially destructive.

Historically, most western societies have been significantly shaped by the Christian tradition in their legal and social systems. The Biblical injunction about “the husband of one wife” (1 Timothy 3.2) was addressed to church leaders. The apostle Paul recognised cultures where polygamy occurred. Nevertheless this injunction set the tone and direction towards a normativity of the marriage of one man to one woman. The same Biblical teaching is described in more detail in Ephesians 5 and 1 Peter 3 and other places in the Bible.

Since the middle ages there has historically been a continually greater alignment to this understanding and practice of marriage; it has shaped our social legislation and supported our culture for centuries. Is it wise to undo such a basic cultural, religious, and social framework? Is it just to legislate what everyone already recognises but many find unnatural and repugnant? Does the state have the right or calling to impose a minority view? Justice and wisdom would suggest not.

### **Summary.**

The majority of Australians hold that marriage is between one man and one woman. While there is a clear recognition that relationships exist outside this framework, such relationships ought not be described or defined as marriage. To use the word “discrimination” and apply it to homosexual relationships is simply incorrect and fails to discern between marriage and sexual preference. Marriage is a normative social institution between a man and a woman designed to protect children, build family units, and provide a stable and normative social unit. Marriage between a man and a woman is fruitful, generative and nation-building, making a strong and positive contribution to adults, children, and society. Marriage between one man and one woman honours the history and heritage of western culture, supports faith communities, and sustains both a healthy diversity and a foundational coherence in society.

Respectfully submitted;

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