Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Australia

Submitted online

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Marriage Equality Amendment Bill 2010

We appreciate the opportunity to comment on the above Bill and write on behalf of the Anglican Church Diocese of Sydney. The Social Issues Executive is an advisory group within the Diocese on social and ethical issues, and matters of public policy.

As the Committee considers the Marriage Equality Amendment Bill 2010, we ask the Senators to consider that:

a) The intended change in the definition of marriage would mean that marriage as traditionally understood no longer exists.
b) The Bill imagines governments can reinvent central aspects of human social ecology.
c) The Bill misconstrues the nature of equitable treatment of citizens.
d) Marriage understood properly is not solely a matter of personal interest, but also a social and legal construct crucial to humanity.
e) A 'marriage equality' amendment is likely to result in social disharmony.

On the basis of these considerations we urge the Committee to recommend that the Marriage Act remain unchanged.

In the following section we wish to expand on these points:

a) Redefining marriage has unintended consequences for traditional marriage

The Bill proposes the redefinition of marriage. Supporters of same-sex marriage prefer to speak of 'extending' marriage to include same-sex couples. But the real effect of the Bill will be to take away traditional marriage.

At present, people still recognise a difference between same-sex and opposite sex relationships. This isn't a question of superiority, but recognition that there are simple and basic differences. The proposed changes mean that there will no longer be a legal category or word to describe what has been called marriage for centuries – the voluntary union of one man and one woman for life.

Does this redefinition of our terminology offer us a better view of reality and serve the good means of society? We are being asked to classify two things that we currently compare and contrast (marriage and civil partnerships) under one term. And this term is not a new one, but the name which has always been used for the more common heterosexual model. The recognition of differences referred to above

is vital, and it is rarely helpful to eliminate existing categories by subsuming two distinct and different phenomena under the same term.

The result of the proposed Bill is that it will become difficult to recognise marriage as traditionally defined, once it has ceased to have legal definition. It terminologically eradicates that particular way of life which is the 'voluntary and exclusive union of one man and one woman for life'. This change serves no useful social purpose. It is not 'heterosexist' to retain the name for this way of being a couple.

b) Social ecology

Marriage is not simply a contract to be renegotiated by each generation. Christians understand marriage as a part of human history to be recognised and upheld. Until recently, marriage has been understood by Western society as a way of life that includes several aspects, such as:

- lifelong companionship;
- the expression of complementarity between the two genders;
- the proper place for sexual expression;
- an openness to procreation during the course of the relationship;
- a stable environment for the raising of children with a father and a mother; and
- public recognition and affirmation.

The churches' deep interest in marriage should not be regarded as a case of special religious pleading. It is true that Christians regard the Bible as the authoritative interpreter of marriage: for example, biblical authors ultimately rejected polygamy, loveless male dominance and sexless marriage, since all these reinventions fall well short of what is best for humanity. But these insights have persuaded others, and in this way religious thought about marriage has contributed to the good of society. It should not be sidelined simply because it is 'religious'.

Government recognition of marriage only responds to the place marriage holds in our social ecology. The law cannot reinvent this 'institution' any more than it could dictate, say, that rainforests should grow faster.

In a liberal society, people are free to remain single and celibate, to have temporary sexual relationships, to have multiple concurrent sexual relationships, to engage in same-sex relationships, to avoid having child and to attend only to adults. Legal redress against any of these ways of life is inappropriate. But when a government privileges marriage, it recognises that this lifelong, gender complementary, sexually exclusive, procreative and child-oriented project is actually quite hard, but that such unions help the common good. Legal support of this project is a form of 'positive discrimination' towards this distinctive entity called marriage. No apology is needed for this instance of 'positive discrimination'.

As an aside, many people no longer recognise sexual difference and gender complementarity as being important, believing it simply to be a difference in 'plumbing'. It may be that bodily differences correspond to deeper psychic differences that make marriage an important and beneficial expression of gender complementarity. We recognise that this conception of 'gender complementarity' is highly contested in our society; but we ask Senators to consider that it may remain important at least from the perspective of children. The diminution of the significance of gender difference is linked to a de-coupling of procreation from marriage (an already questionable cultural movement). Adoption of the Bill is tantamount to a final, formal declaration that children *should* have no reason to be concerned about being raised with no mother or father. Such a declaration is quite presumptuous.

The *Marriage Equality Amendment Bill* imagines that a government can reinvent marriage. Of course the logic of such reinvention opens the way for all sorts of other versions of 'marriage'. It is not particularly fanciful or offensive to imagine them, and indeed in other jurisdictions that have tried to reinvent marriage, calls are already being made for the 'reinvention' to be stretched to a range of other types of relationships. But we cannot continually reshape social institutions like plasticine: good leadership recognises and serves the best in our social institutions.

c) Equality

The *Marriage Equality Amendment Bill 2010* is partly motivated by a desire to enable same-sex couples to feel positive about their relationships. But same-sex couples currently enjoy equitable treatment in all aspects relevant to de facto couple status. Recent changes to Federal law were enacted with the cooperation of even socially conservative Australian Christian churches, who accept that in a liberal democracy, the law needs to function for all Australians.

The use of the term 'marriage' for the way of life described above serves to note its particular and special place in society. Same-sex couples could join in accepting this recognition. When a society chooses to uphold particular people in a special way, it does not follow that others are less important. (Single people, for example, are not 'second class citizens' because they are not married.)

d) Marriage is an essential social and legal construct

It is a common view today that marriage is simply a matter of personal interest and personal freedom, and that no wider social considerations are relevant to it.

Obviously, marriage is deeply related to personal choice and freedom. But married couples participate in a social and legal construct designed to protect and nurture particular human 'goods'. Senators are charged not simply to fulfil the wishes of any one interest group, but to weigh all proposals against the goods necessary human and social being. We think these goods are well-served when stable families where a strongly bonded man and woman rear children together – an arrangement that marriage makes possible. We urge the Senators to seriously interrogate whether the other conceptions of social good implicit in the Bill are necessarily superior.

e) Social disharmony

As noted, many Australian Christians agree with same-sex claims for equal treatment before the law, with respect to financial and other entitlements due to adult couples. We accepted legal alterations in these areas as having been necessary for the common good, despite our conservative views about sexual ethics.

But adoption of the proposed amendment is likely to incite serious social disharmony, since many cannot accept same-sex unions as a true form of marriage. Consider the problem posed to freedom of assembly around a shared vision of human sexuality. Many churches inhabit a community vision where single people remain celibate and where sexual expression occurs only between each married man and woman. Members hold each other quite seriously to this vision. But should the state extend marriage to same-sex couples, it remains entirely unclear how this kind of free assembly can continue without confusion, animosity, discord and ultimately, endless litigation.

The amendment, though well-intended, risks provoking litigious acrimony and great resentment on both 'sides' – all resulting from an idealistic and highly contestable account of 'equality'. Some will undoubtedly argue that such disputes are the fault of 'homophobic' people who should change their

attitudes; but not all opposition to this same-sex initiative is 'homophobic', and the fact remains that the marriage equality amendment will heighten community tensions when it seriously changes our social arrangements.

If the Bill is passed, the parliament will need to consider how best to handle the legal and community disputes that will inevitably arise. Obviously, we think that there is no compelling reason to trigger such disputes in the first place.

We wish the committee well in its deliberations.

Yours sincerely

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for and on behalf of the Social Issues Executive
Anglican Diocese of Sydney