

30 March 2012

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

Dear Members of the Committee

**RE: Marriage Amendment Bill 2010 Inquiry**

I write to the Committee to express my strong support for the Bill in seeking to remove discriminatory references from the *Marriage Act 1961* (Cth) and allowing all persons, irrespective of sex, sexuality and gender identity, the opportunity to marry.

This support is based on three primary bases. First the current position at law amounts to discrimination. Second, the concept of marriage has evolved since 1961. Third, arguments suggesting that same-sex marriages cannot be productive or will diminish the meaning of marriage are misguided. I shall deal with these three bases accordingly.

**1. The existing law amounts to discrimination**

Under the *Marriage Act 1961* (Cth), ‘marriage’ is defined in section 5 as “*the union of a man and a woman to the exclusion of all others, voluntarily entered into for life*”. This is a direct example of discrimination on the grounds of sexuality and gender, both of which have been recognised in Australian law as areas requiring legal protection. To deny committed persons in a relationship the recognition of the state, of their union to the exclusion of all others, voluntarily entered into for life, on the basis that the committed persons are both of the same gender is discriminatory. It specifically denies sub-groups of the population civil rights or opportunities, which they ought to be afforded in a nation that principally supports the notion of equality. The definition of marriage as it currently exists has been influenced by religion. No argument, other than religious arguments, can support a definition that marriage must be between a man and a woman. Such definitions have no place in contemporary, multicultural Australia.

Further, it is also an example of positive discrimination. The definition of marriage as it currently exists, privileges heterosexual persons and affords heterosexual couples rights that are not available to non-heterosexual persons. These special protections, privileges and recognitions are not justified. Heterosexual couples are not a minority group and are not discriminated against, yet our current laws continue to be coloured by heterosexism. They are examples of bias in our laws in favour of opposite-sex relationships.

Homosexual persons have made contributions as valid and essential to Australian history, society and culture as heterosexual persons. They have contributed to law, politics, medicine, education, defence, sports and all other essential aspects of the rich Australian tapestry. Yet still our laws do not afford these people, these parents, these couples in committed relationships, these Australians,

the rights and privileges of heterosexual couples. Our laws are discriminatory and in desperate need of revision to remove all forms of discrimination.

## **2. The concept of marriage has evolved**

Community standards and social norms are constantly evolving. Fifty years ago, Indigenous Australian people were not considered to be citizens of Australia. Indigenous Australian people did not have the right to vote or to be counted in the Australian census. It was only within the twentieth century that women in Australia received the right to vote, to be elected to Parliament, to receive equal pay for equal work and other civil rights available to men. These barriers to equality were removed as social attitudes and community standards evolved. It is my submission that similarly, community standards towards same-sex couples have evolved and liberalised considerably. Arguably, those standards have evolved to a point where the majority of Australian society now supports the legalisation of same-sex marriage.

The relevance of considering the liberalisation of social attitudes ties in with the argument that the concept of marriage has also evolved. Whilst in 1961 and indeed, at the time the marriage power was inserted into s 51(xxi) of the Australian Constitution, the concept of marriage was shrouded in religion. That is, the union of man and woman formalised through (Christian) religious ceremony. Today that cannot be said to be the norm particularly in a society where over 25% do not practice a religion or identify as atheist. Today, the community understanding and acceptance of marriage certainly extends to non-religious unions. To suggest that marriages officiated by civil or non-religious ceremonies ought to be restricted on the basis of chromosomal structures cannot be supported. It is a restriction imposed on the basis of outdated community standards and social norms, which, as I have argued, have considerably changed towards same-sex attracted persons.

## **3. Marriages between same-sex persons are productive and meaningful**

Some submissions, including the submission of Professor Margaret Somerville AM have argued that the opportunity to marry ought not be extended to same-sex couples “*to continue to establish cultural meaning, symbolism and moral values around the inherently procreative relationship between a man and a woman*”. However, arguments such as these are logically misguided as they are based on a notion that procreation is incidental or inherent to marriage. That is to say, that marriage deserves special legal protection on the basis that procreation is a corollary to marriage. This is wholly untrue. Many children in Australia are born outside of marriage: to parents in de facto couples, to parents not in a committed relationship and to single parents. Further many married couples do not procreate either by choice or inability. Both of these significant pools of the population are examples of why such arguments are misguided. They demonstrate that it is not necessarily incidental to marriage that children will be born; and equally, that children can be born as validly and as equally outside of the union of marriage, without detriment to the child. The dark days in Australian history where notions of wedlock and bastardry were commonplace, where such arguments find their foundation, have passed.

Regarding the diminution of the cultural meaning and symbolism of marriage, it can be argued that the increasingly climbing divorce rate amongst married Australian couples contributes far more powerfully to the loss of meaning and symbolism in marriage, if any loss of symbolism or meaning

has occurred at all. Indeed, no evidence has been or can be provided in support of such arguments that the extension of marriage opportunities to same-sex couples will in any way affect the meaning or symbolism of marriage. Such propositions ought to be rejected as hypothetical.

In conclusion, I implore Members of the Committee and of the Parliament of the Commonwealth of Australia to take a stand against discrimination, to listen to the will of the people as democratically elected representatives of the nation and to vote in support of the *Marriage Equality Bill 2010* (Cth) on the basis of community support and reason, not religion or personal opinion.

Kind regards

Justin Rassi