

Ad Hoc Interfaith Committee

Friday 30th March 2012

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

email: legcon.sen@aph.gov.au

Dear Sir/Madam,

Submission to the Inquiry into the Marriage Equality Amendment Bill 2010

The Ad Hoc Interfaith Committee was formed to provide an opportunity for people of different faiths to meet and to respond to the many social issues that are currently the subject of public policy formation. The membership of the Committee is by invitation to people who share similar ideas about being unafraid to give witness to faith and to seek respectfully to persuade others by that witness as well as by appeal to reason. We regard it as a civic responsibility to listen to what others are saying and to add our voices to the discussion on issues that shape the kind of community to which we belong.

We welcome this opportunity to make a submission to the Senate's Legal and Constitutional Affairs Legislation Committee in relation to Senator Hanson-Young's private bill, the *Marriage Equality Amendment Bill 2010* which seeks to replace the current definition of marriage in the *Marriage Act 1961*, viz

marriage means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

with

marriage means the union of two people, regardless of their sex, sexual orientation or gender identity, to the exclusion of all others, voluntarily entered into for life.

We are opposed to Senator Hansen Young's proposed new definition for marriage.

Not all Australians share all elements of a religious understanding of marriage, but we hold much in common. The majority of Australians have a moral framework informed by the predominate Judeo Christian heritage, and we believe that all humankind possesses a sense of the natural law given by God in Creation and able to be understood as a matter of practical reason.

We will proceed by setting out an argument based in practical reason against a redefinition of the law of marriage to include same-sex couples, i.e. the things that we know as a matter of our common humanity and regardless of specific religious or ideological positions. We do not believe in a God who arbitrarily creates moral norms, rather we believe in a loving God who has given us the freedom to love and wishes us to act towards each other in love. Theological belief gives a deeper appreciation of love and what love means, especially the idea that love means giving oneself for the sake of others. Theological belief yields the theological virtues of faith, hope and love. A theological morality supports justice but goes much further than mere justice because it requires us to love one another. In our submission we hold that considerations of justice are sufficient to make the claim that marriage should not be redefined. However we acknowledge that there are other considerations based on a theological understanding of the creation of man and woman and the complementarity of their love for each other in the Divine plan. For that reason we include appendices from our different religious perspectives.

Before we proceed to do so, we wish to draw attention to the objects of this Act:

- (a) to remove from the *Marriage Act 1961* discrimination against people on the basis of their sex, sexual orientation or gender identity; and
- (b) to recognise that freedom of sexual orientation and gender identity are fundamental human rights; and
- (c) to promote acceptance and the celebration of diversity.

It is not strictly correct, as object (a) states, that the proposed amendment removes discrimination against people on the basis of their sex, sexual orientation or gender identity, since the proposed redefinition still discriminates in limiting marriage to the union of *two* people. Whilst we agree marriage should be between two people and no more, it is a fact that there are people who wish marriage to encompass more than two people, which means that in already removing the requirement that the two people be a man and a woman, it is likely that pressure will build for a further modification of the definition of marriage removing the stipulation of two people. Similarly, the law prohibits incestuous relationships and it is in a sense discriminatory that marriage would not include an incestuous relationship. For example, Sweden already allows half siblings to marry, breaking away from the traditional established concept of marriage as the paradigm for family formation. If we follow the logic of this Bill, then in the future the way will be open for a wide range of variations that are now rejected.

In other words, proceeding in manner proposed by Senator Hanson Young opens up the prospect of future agitation for the amendment of the Act to permit group marriage, and other alternatives, much in the same way as Senator Hanson Young's bill seeks to incrementally change the current definition of marriage to encompass same-sex couples.

In relation to (b) it should be noted that freedom is a concept that has content. Freedom is meaningless if it simply means no restriction on choice. Some choices restrict freedom, such as choices to self harm, to suicide, to sell oneself into slavery or to take mind altering or addictive substances. We have no right to act in ways that affect the person in those ways because human rights, as defined by the human rights instruments, are based on the idea of human flourishing. We have rights to those things that are essential to human flourishing. In the case of marriage, the matter at hand is not about individual freedom, but about a relationship that forms the family, the

fundamental unit of society, a relationship that is the kind of relationship that may generate children. It is inappropriate to talk about marriage as though it were just a matter of individual freedom. It clearly is not. By marrying, the parties give to each other a freedom to participate in mutual love for each other, but it also commits to limiting freedom to participate similarly in relationship to others, because it voluntarily excludes all others.

In relation to c), as a culture we accept and celebrate diversity, but within limits that respect each human person. We do not celebrate diversity in criminal acts, diversity in racism or sexism. The question at stake in relation to marriage is whether there is social importance in the traditional concept of marriage as a particular kind of relationship, the relationship between a man and a woman, the kind of relationship that may generate children and therefore needing to be protected for the sake of those children, their identity and security and right to a relationship to both a mother and a father.

Reflection on the Level of Support for Same-sex Marriage in the Australian Community

The "marriage equality" lobby has consistently overstated the support for and urgency regarding same-sex marriage in the Australian community. Any number of newspaper polls have been conducted by media groups, some indicating a majority in favour and some with a majority against.

At the end of 2010, the House of Representatives approved a motion proposed by Mr Adam Bandt calling on all parliamentarians, "consistent with their duties as representatives, to gauge their constituents' views on ways to achieve equal treatment for same-sex couples including marriage". Further, they were to note "a growing list of countries that allow same-sex couples to marry including the Netherlands, Belgium, Norway, Spain, Canada and South Africa". This is hardly a formidable list given there are 193 member countries of the United Nations.

Significantly, the French Constitutional Council (often considered to act as France's supreme court) last year upheld the legislature's refusal to name same-sex relationships as marriage. It held that France's parliament has the freedom to retain marriage as currently understood.

The Council ruled that a refusal of same-sex marriage does not violate the French constitution. French lawmakers, it said, had agreed that the "difference in situations between same-sex couples and couples made up of a man and a woman can justify a difference in treatment concerning family rights". Earlier still in June 2006, the European Court ruled that the region's human rights convention "did not oblige a state to grant a same-sex couple access to marriage" as marriage has "deep-rooted social and cultural connotations".

In other words, this ruling acknowledges that no one is disadvantaged when a society retains a distinctive name for these lifelong, faithful, exclusive and potentially procreative relationships between men and women which are oriented towards securing cognitively and spiritually the biological relationship that may result in the bearing and nurturing of children.

As it turned out, when thirty members of Parliament stood on August 24, 2011 to give an account of their constituents' views on same-sex marriage, it was discovered opinion in both Coalition and Labor seats was overwhelmingly against legalising same-sex marriage, with only 6 out of 30 MP's indicating their members were favour of change. Most of the numbers being reported were very lopsidedly against same-sex marriage. Especially striking was the failure of the organisation, GetUp!,

which likes to describe itself as a movement of almost 600,000 members, to get its members to sign their petition in favour of same-sex marriage. In fact on the morning that MPs were reporting their findings it was found that the Get Up! numbers had been trumped by the Australian Christian Lobby numbers – less than 10% of Get Up members had signed the petition.

It is also worth pointing out that when on February 17, 2012, GetUp! reported the results of its survey the previous week of “hundreds of thousands of Australians” same-sex marriage was not listed as a top 10 issue for 2012 despite the enormous amount of time and money GetUp! spends on the issue. Even within the homosexual community, opinions are divided about marriage.

The point we are making is a simple one: outside the homosexual lobby (but not all sections of the homosexual community), there is no consensus about same-sex marriage in the Australian community. Moreover, the present Parliament has no mandate to make a change of this order to the Australian community.

The Argument from Practical Reason in favour of retaining the current definition of Marriage

Given the far reaching nature of a decision to extend in law marriage to same-sex couples, a reasonable question to ask is, “what principled reason has been advanced for such a change in the law of marriage?”

Senators will receive arguments like, “it’s time” or “my homosexual daughter (or son) wants to marry her (or his) partner” or “they can do it in Massachusetts or Holland or Spain, why not here?”.

But what’s the principle? What is the rational, logical argument that carries sufficient weight for such a significant change in the law of marriage?

Last year former NSW premier Nick Greiner reportedly said¹, “(s)elf-evidently (it is) a matter of natural justice”.

It is no such thing.

It is simply wrong and misleading to depict the case for same-sex marriage as a case for ending discrimination or for equal legal recognition of relationships. The Federal Parliament amended 84 pieces of legislation after the 2010 election to place homosexual rights and entitlements on the same basis as others. The push for same-sex marriage is therefore largely ideological, because there is clearly no intention in any jurisdiction that they be subjected to discrimination on entitlement.

In 2011, shortly before the reporting back to Parliament from members as required by Adam Bandt’s motion, *the Australian* columnist, Peter van Onselen, like former NSW Premier, Nick Greiner, argued² for same-sex marriage as a human right, but never actually demonstrated why it was a human right. Instead Van Onselen constructed a series of arguments designed to show that same-sex marriage was the natural consequence of a long evolutionary development in marriage. Of course, having gone down this path he might have considered a further evolutionary development

¹ Article in the Sydney Morning Herald, April 13, 2011 by Phillip Coorey, *Greiner dismisses same-sex marriage concerns*:<http://www.smh.com.au/national/greiner-dismisses-samesex-marriage-concerns-20110412-1dcmh.html>

² <http://www.theaustralian.com.au/news/opinion/gays-denied-human-rights/story-e6frg6zo-1226118404188>

as we have already noted – Senator Hansen Young’s bill for same-sex marriage still limits marriage to two persons, itself arguably discriminatory to those favouring group marriage. How long would we have to wait for that example of discrimination to be addressed?

If a human rights basis is to be developed for same-sex marriage, it is first necessary to determine whether same-sex couples actually qualify for marriage. What is it about marriage that determines who may enter into marriage?

What we can say about marriage is that, despite varying cultural expressions in customs and rituals, across all cultures and eras it has been the union of a man and a woman who make a permanent and exclusive commitment to each other, of the type that is fulfilled by bearing and rearing children together. Marriage involves a comprehensive union of spouses, with norms of permanence and exclusivity. These combine to create a special link to children, for their sake, that protects their identity and nurture by a mother and father.

It is the link to children that gives marriage its special character.

But why a man and a woman, and not two men or two women?

With one exception a person is complete within themselves as to bodily organs and their functions: heart, lungs, stomach and so on. In other words, to fulfil any of these functions a person does not require a contribution from anyone else. The one biological function for which individual adults are naturally incomplete is sexual reproduction. In sexual intercourse, and no other form of sexual contact, a man’s and a woman’s bodies are joined by way of their sexual organs for the common biological purpose of reproduction. Their bodies become *one*, thereby securing future generations at the same time as they are giving unique expression to their love for each other.

Marriage is deeply and uniquely orientated to bearing and nurturing children. Marriage ensures children access to both their mother and father and the security of the love between the parents. It provides for them a role model of human love of the parents relating as man and as women, and its complementarity also ensure the unilateral love of each parent to the child and the necessary differences between motherly and fatherly love.

The fact that divorce happens, or one spouse dies, or some couples are infertile and perhaps circumvent that lack to conceive through artificial reproductive technologies, including the use of donor gametes and surrogate mothers, or a couple beyond the years of childbearing marry, does nothing to change the reality of marriage. Same-sex couples simply do not qualify. Their relationships are not capable of generating children. Where children exist in same sex relationships, they have always resulted by the involvement of someone from outside that relationship. The law in relation to the status of children seeks to define those relationships and establish who will act as parent(s) or substitute parent(s) to the child.

At its deepest level, marriage is the union of difference, the combining of a man and a woman to make one flesh, a union that is physical, emotional and as well, spiritual, and oriented to the nurture of children. Under the proposal to redefine marriage, in its stead is to be offered a view of marriage which places sexual choice and emotional commitment at the centre. Same-sex marriage would be the union of sameness, without the distinctive and historical orientation towards the bearing and

nurture of children. Redefining marriage would make marriage about adults only, not about potential motherhood and fatherhood and protecting children

So, let's be clear on this: redefining marriage to include same-sex couples would represent a radical revision of the public understanding of marriage as a social institution. To go down this path would be for the law to teach that marriage is fundamentally about adults' emotional unions, not complementary bodily union or children. Because there is no reason that primarily emotional unions (any more than ordinary friendships in general) should be permanent, exclusive, or limited to two, these norms of marriage would make less and less sense. Less able to understand the rationale for these marital norms, people would feel less bound to live by them, to their own detriment, and especially to the detriment of children.

Mr Greenwich, the national convener of Australian Marriage Equality, claimed the existence of "an unstoppable momentum for a reform that continues to win hearts and minds in the wider community and the parliament". We are convinced that a full examination of the issue by the Senate's Legal and Constitutional Affairs Legislation Committee will demonstrate that no case exists for the redefinition of marriage along the lines of Senator Hanson Young's bill. Moreover we argue that should the issue be placed before the Australian people in a referendum with a properly conducted campaign setting out the all the issues, pro and con, the Australian people would reject same-sex marriage by a substantial margin.

Should there be the opportunity to appear before a public hearing, we would appreciate an invitation to do so.

Yours sincerely,

Rev David Palmer, Presbyterian Church of Victoria

On behalf of the following:

Pastor Peter Stevens, Victoria State Officer, Family Voice Australia

Rev Dr Max Champion National Director of the Confessing Movement within the Uniting Church in Australia

Rabbi Dr Shimon Cowen, Director, Institute for Judaism and Civilization.

Dr Rosalie Hudson, Uniting Church in Australia

Marlene Pietsch, Lutheran Church of Australia, Victorian District

Prof Nicholas Tonti-Filippini, John Paul II Institute for Marriage and Family

Rev Ross Carter, Uniting Church in Australia

Rev. Fr. Geoff Harvey, Antiochian Orthodox Church in Australia

Marcia Riordan, Life, Marriage and Family Office, Catholic Archdiocese of Melbourne

Fleur Letcher, Church and Nation Committee, Presbyterian Church of Victoria

Matthew McDonald, Life, Marriage and Family Office, Catholic Archdiocese of Melbourne
Pastor Ken Vogel, National General Secretary for the Seventh-day Adventist Church
Maurice Benington, Executive Pastor – Stairway Church Whitehorse
Rev Darren Middleton, Convener, Church and Nation Committee, Presbyterian Church of Victoria
Rev Dr John Wilson, Clerk of the General Assembly of the Presbyterian Church of Victoria
Rev Greg Pietsch, President, Lutheran Church of Australia – Victorian and Tasmanian District
Rev Albert Esselbrugge, Christian Reformed Churches of Australia
Dr Adam Cooper, Senior Lecturer, John Paul II Institute for Marriage and Family, Melbourne
Rev John Hudson, retired minister, Uniting Church in Australia

Appendices: Christian and Jewish Understanding of Marriage

1. The Christian Understanding of Marriage

We are concerned for the future of marriage because the Bible shows it to be foundational to a healthy society. Over many generations Christians have reflected on the teaching of Scripture in relation to marriage and have developed a distinctive view. Although marriage exists in all human cultures, the Christian tradition has particular insights into its nature and purpose. Our confidence in the view we advocate stems from our faith in a God who created all things and designed our sexuality as men and women for the relationship of marriage.

Sexual differentiation as male and female is an aspect of all humans made in God's image (Genesis 1:26-27). On the basis of sexual differentiation God established marriage as a unique, exclusive relationship between a man and a woman. Jesus affirmed that marriage is established by God and is a lifelong relationship between a man and a woman which requires sexual faithfulness (Matthew 19:4-6).

The inviolability of marriage as between a man and a woman is further enhanced in Christian theology by considering the marital union of a man and a woman as a picture of the great mystery of salvation – the union of Christ and the believing community. Jesus Christ is described as the bridegroom (Mark 2:19,20) and the Church his bride (Revelation 21:2)

The Bible describes marriage as a covenant (Proverbs 2:17; Ezekiel 16:8; Malachi 2:14) reflecting the mutuality of the relationship. Various Biblical passages celebrate the joy and intimacy of married sexual love (e.g. Proverbs 5:15-19; Song of Songs) and there are many Biblical affirmations of the blessings and comfort of marriage. The "bone and flesh" statement of Genesis 2:23 echoes other such statements in the Old Testament (e.g. Genesis 29:14) emphasising the claim of kin upon kin, and the way in which kin offer each other strength ("bone") and are faithful despite and during weakness ("flesh"). The Bible celebrates a long "honeymoon" (Deuteronomy 24:5); marriages lasting to old age (Genesis 23:2; 35:7); simple marital joys (Proverbs 5:18; 12:4; 18:22; 19:14, 31); and relief from meaninglessness through marriage (Ecclesiastes 9:9). The New Testament ideal of marriage is of a relationship of love, of giving and receiving throughout life (e.g. Ephesians 5:22-33).

Marriage offers a special intimacy and communion (Genesis 2:20-25), and it is the relationship in which children are to be born and raised. God's design is that sexual union is not only an expression of the communion of marriage but also the way in which children are conceived. Sexual union is a tangible expression of married unity, an expression of mutual care, honesty and openness, and an affirmation of acceptance and intimate knowledge of each other at the deepest level. The obvious connection between sexual union and procreation is central to current discussions about marriage. It is because of this connection that marriage is essential to the common good and so should be subject to state laws. The introduction of same-sex marriage completely severs the connection. It is difficult to see any reason why the law should take an interest in same-sex relationships, beyond regulating relevant property concerns.

A sexual relationship has its place and purpose within marriage alone. The human body, with its sex, and its masculinity and femininity seen in the account of Creation, is not only a source of fruitfulness

and procreation, but a part of the whole natural order. From the beginning, it includes the nuptial attribute – that is, the capacity of expressing love in which a person becomes a gift and, by means of this gift, fulfils the meaning of his or her being and existence. Man and woman were made to be a perfect gift to each other.

A central message of Christianity, expressed most fully in Christ on the Cross, is that human beings find fulfilment in being a gift to others. Marriage is the paradigm of human love in being a complete, permanent, exclusive, mutual gift of self that goes beyond the spouses in outreach to others through its fruitfulness and commitment to nurturing children. The universal vocation to give oneself in love takes many forms, including committed celibacy as a witness to the Kingdom of Heaven (Matthew 19:12) and the many other ways in which we express love for one another and for our Creator.

The vocation to give oneself in love is shared by people of same-sex orientation, and finds expression in the many ways in which we give of ourselves in ways other than in marriage, including friendship and contribution to our community. There is a distinguished and much loved history of creative contribution to our culture by people known to be of homosexual orientation, whereby they give themselves in love to others and in that way live in accordance with the universal likeness to God. However, marriage is a particular type of giving that reflects God's plan for sexuality including the complementarity of man and woman, their openness to the divine gift of procreativity, and the nurturing of children.

2. The Jewish understanding of Marriage (prepared by Rabbi Shimon Cowen)

For over three thousand and three hundred years, since the giving of the Ten Commandments, and the wider revelation associated with it, at Mt Sinai, the Jewish people have adhered to a Divine template of personal and interpersonal morality. Within this revelation are also a number of common denominator values of all humanity, embraced by traditional Christianity and Islam. By a somewhat different route, these values came down to the other major world religious cultures of Hinduism and Buddhism.

Central to these key universal values, are norms relating to human sexuality. This universal sexual ethic endorses the stable sexual union of a man and a woman in a socially recognized relationship of mutual commitment. It rejects four other sexual behaviours - adultery, incest, bestiality and homosexuality. At the same it acknowledges that every person is to be loved, not for their actions or their success or failure in their personal struggles, but for their innermost being and potential as made in the image of the Creator.

Not only is this universal sexual ethic *historically* given. Generation after generation ratifies it, finding in it the same spiritual resonance and validity. It is true that there have been episodes, when numbers in society have breached one or more of these norms. This is true in our own generation. One of the main sources of the breach was a "putsch" led by activists in a cultural - academic and professional - citadel, the American Psychiatric Association in 1973, which redrew the human being, declassifying homosexuality as an abnormality. The confusion of the last 40 years, however, is only a ripple in the ongoing human experience of thousands of years, which returns and will return to the norm which the human soul recognizes: that of heterosexual marriage.

The message of the world faiths in sexual ethics is not primarily restrictive. It is positive. Normative human sexuality – the stable and committed union of a man and a woman – has to do with the concept of family. The biblical verse states “Therefore a man shall leave his father and mother and cleave to his wife and become one flesh”. A human being is meant to seek actualization through participating in the higher union of man and woman in marriage. A man and woman’s union is expressed ideally in the “one flesh” which their two separate persons produce, namely a child. This is the essential bond of the family. Husband and wife see their union in their children, and children understand themselves as the product (the union) of their mother and father.

This propagation, which is the idea of a family, is not only a physical one. It is also an ethical or spiritual one. The purpose in having children is to produce ethical beings, that is, who receive the moral and spiritual teachings of their parents, live by them and in turn bear children who will take this ethical agency further. In a time of much despair, moral emptiness and nihilism, we must affirm the most basic unit of society, the family based on the marriage of man and woman, as an absolute value in itself – as a source containing and sending on goodness, light and hope.