

Submission

To the

**The Senate Legal and Constitutional Affairs References Committee
inquiry into the matter of a popular vote on marriage in Australia.**

**The Secretary
Senate Legal and Constitutional Affairs References Committee,
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Canberra ACT 2600
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by

**The Australian Family Association
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In the matter of a popular vote, in the form of a plebiscite or referendum, on the matter of marriage in Australia" the Australian Family Association makes the following Submission:

1. The present government has said it believes that the Australian people should have a direct say on this issue, and the Prime Minister has stated the government's intention that the issue will be taken to the Australian people for a vote during the next term of government.

The Labor Party is already committed to redefining marriage to allow any two people to marry regardless of gender.

So whichever party is elected at the election next year, the issue of marriage will be dealt with, whether by a plebiscite or referendum or by a vote on a bill to amend the Marriage Act.

The proposed Act is not necessary as the issue will be dealt with in the next term of government regardless of which party is in government. Further the bill effectively pre-empts allowing time for cross party discussion and/or debate over the terms of an enabling bill, instead seeking to lock in the terms of a plebiscite in a bill coming from seven senators – not by a decision of the whole parliament.

2. In particular it would appear to pre-empt a whole-of-parliament debate, with MPS representing their constituents, on:
 - **The question to be put to the Australian people:
The wording of the question or questions in any popular vote is of crucial importance and should not be constrained by any draft question such as in the proposed bill under inquiry. That would limit the discussion around what the question should be by setting up the premise on which the question must be based.
The question as framed in the proposed bill is based on the premise of equality and rights which terms are unclear and nebulous.**

Proposed Clause 3 of the bill says: "The object of this Act is to enable the views of electors on *marriage equality* to be determined by national plebiscite." The short title as provided by proposed Clause 1 is the *Marriage Equality Plebiscite Act 2015*.

"Equality" is not appropriate to describe what the issue is about. There is no equality being denied by the current marriage law. All Australians are equally able to marry subject to the same conditions, age, consent, not being within the prohibited degree of consanguinity, not already being married. These conditions to be eligible to marry apply to everyone, including that one must seek to marry someone of the opposite sex. And that condition is not unreasonable or irrelevant but rather fundamental to what marriage is and the function it fulfils for society – a sexually complementary union (a man and a woman) naturally orientated to the bearing and raising of the children born of their union, intended to last and to be exclusive to ensure the care and nurture of those children. Marriage has been understood to be the enduring union of a man and a woman throughout human history across millennia and across

cultures to ensure the care and nurture of children of the union for their benefit and wellbeing and for the benefit of the state.

The debate is also not about “rights”. In *Schalk and Kopf v. Austria* (No. 30141/04, ECHR 2010) the European Court of Human Rights held that the European Convention on Human Rights did not require European countries to allow same sex couples to marry. And in *Hämäläinen v. Finland [GC]* (No. 37359/09, § 62, ECHR 2014) the Court held that while some *Contracting States* have extended marriage to same-sex partners, Article 12 of the Convention does not impose any obligation to allow same-sex marriage. So there is no requirement in international conventions or treaties that same sex marriage is required by human rights principles.

Proposed Clause 6 treats allowing any two people to marry regardless of gender as what “marriage equality” means. It provides: “The question to be submitted to electors ... is “Do you support Australia allowing marriage between 2 people regardless of their gender?” The question is thus very weighted towards one outcome – that same-sex marriage is “equality” and that the question should be whether one supports same-sex marriage and therefore “equality.” The question(s) to elicit a true response of the view of those voting must be so framed that the voter knows what exactly he/she is supporting as marriage – the union of a man and a woman that protects children’s rights to the care of their biological mother and father wherever possible or the union of any two people regardless of gender where if there are any children conceived for the couple those children will be separated from either their biological mother or father.

- **The effect of a YES result:**

Proposed Clause 3 (2) provides – “It is Parliament’s intention that if the result of the national plebiscite is that the majority of electors respond in the affirmative to the question specified in section 6, the Parliament will:

- (a) pass any legislation necessary to allow marriage between 2 people regardless of their gender; and
- (b) do so within 6 months of that result being provided to the Minister under subsection 7(1).”

Plebiscites do not have to be binding – yet proposed Clause 3 (2) would make a plebiscite held under its provisions binding and require that the government hold that plebiscite within 6 months. This is forcing the government, whichever party is in office after the next election, to act in a pre-determined manner when both parties have said they will deal with the issue of marriage.

3. Other related matters:

Freedom of religion, thought, belief and conscience are fundamental human rights protected by international human rights instruments, most notably the International Declaration of Human Rights (Article 18) and the International Covenant on Civil and

Political Rights (Article 18). Many Australians have a long held and deeply convicted belief, whether on formal religious grounds or for deeply cultural reasons, that marriage can only be the union of a man and a woman. This is a view that can be held without a person being guilty of “homophobia” or “hatred” towards same sex attracted or gender diverse people. **The protection of religion, thought, belief and conscience must be protected if marriage is redefined so as to be in conflict with deeply held views of many Australians. Those of a different view must not be discriminated against.**