



the  
Presbyterian Church  
of Australia

# A submission re Marriage Equality Amendment Bill 2010

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March 2012

Authorised by the Church and Nation Committee

Convener: Rev. Stefan Slucki

## SUMMARY

- 1) This submission is authorised by **The Church and Nation Committee of The Presbyterian Church of Australia**, which advocates on Australian social issues.
- 2) The Committee **does not support** the Bill.
- 3) The Bill redefines and undermines an ancient and vitally important social structure.
- 4) The Bill is irrelevant and/or self-defeating in its stated objectives.
- 5) The Bill contravenes the *United Nations Declaration on the Rights of the Child (1990)*, and the *United Nations Universal Declaration of Human Rights (1946)*.
- 6) The Bill ignores the critical lessons learned from the *Stolen Generation*; from the distress of donor conceived children; and from children removed from parents through forced adoption.
- 7) The Bill undermines the structure of the natural family, and inherently denies the vital roles of both fathers and mothers in the raising of children.
- 8) The Bill unjustly redefines the basic nature and meaning of existing marriage contracts.
- 9) The Bill is most likely unconstitutional.
- 10) The Bill will pave the way for polygamous and polyamorous family structures.

## STATEMENT OF ARGUMENTS

1. Marriage is an ancient social structure that predates the recorded history and laws of all known civilisations.
  - 1.1. Excepting very recent reformulations, marriage has only ever referred to the lifelong and exclusive bond formed by a man and a woman.
  - 1.2. The fact that some cultures have permitted polygyny or polyandry does not belie the fact that marriage has always brought together a man and a woman.
  - 1.3. Marriage has thus been an institution that brings together the two incomplete parts of the human reproductive system, and binds together the natural parents of the children that are naturally and very often conceived by such unions.
  - 1.4. Governments have in the past been motivated to regulate and protect marriage because of this natural connection to children. Protecting marriage means protecting an institution that gives stability and safety to the children naturally born to male-female couples.
  - 1.5. The rearing of children by their natural parents in a stable and safe environment in turn does much to guarantee the future security and prosperity of society.
2. The Bill redefines this timeless and universal definition of marriage: reducing it to essentially a romantic-sexual connection between two adults.
  - 2.1. The existing natural sexually complementarian aspect of marriage is abrogated.
  - 2.2. The existing natural connection between marriage and conception and child-bearing is abrogated.
  - 2.3. The timeless marriage function of providing a stable and safe environment for the children naturally born to male-female couples is abrogated.
  - 2.4. The hitherto basic social structure that has done so much to guarantee the future wellbeing of children and society is redefined and undermined.
3. The Bill is irrelevant in terms of its first stated objective:

*to 'remove all discrimination from the Marriage Act 1961 to ensure that all people, regardless of their sex, sexual orientation or gender identity have the opportunity to marry'.*

- 3.1. The current Marriage Act 1961 **does not discriminate** in relation to sex, sexual orientation, or gender identity. Every Australian adult already has the right to marry, no matter their gender, sexual orientation, or gender identity.
- 3.2. The Marriage Act 1961 precludes Australian adults from marrying those who are already married; from marrying a minor; from marrying a person who does not consent; and from marrying a person of the same sex. These restrictions protect the integrity and best interests of family, children, and the vulnerable, but **apply equally to all Australians no matter their gender, sexual orientation, or gender identity.**
4. The Bill is irrelevant in terms of its second stated objective,  
*that freedom of sexual orientation and gender identity are recognised as fundamental human rights.*
  - 4.1. Homosexual practice has been decriminalised in every Australian state and territory, and every state and territory legally recognises both opposite-sex and same-sex relationships as de facto couples.
  - 4.2. These freedoms will continue to be affirmed whether or not the Marriage Act (1961) is amended.
5. The Bill is irrelevant in terms of its third stated objective, to  
*promote acceptance and the celebration of diversity.*
  - 5.1. *Australian Marriage Equality* claims that 62 per cent of Australians are in favour of same-sex marriage.<sup>1</sup> The proponents of the Bill thus acknowledge that the homosexual community already has a broad degree of acceptance.
  - 5.2. Celebration of various Australian community groups and their diverse customs, lifestyles, beliefs, and values will not necessarily be initiated or strengthened by redefining marriage in the Commonwealth act. In fact such a redefinition will *work against* true diversity, blurring the very real physical and procreative differences between same-sex and heterosexual couples that marriage currently recognises.
6. The exemptions that apply to ministers of religion defeat absolutely the stated objective of 'marriage equality.' The full title of the Bill says that it intends to:  
*Create the opportunity for marriage equality for people regardless of their sex, sexual orientation or gender identity...*

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<sup>1</sup> <http://www.australianmarriageequality.com/wp/get-informed/quick-facts/>

- 6.1. Marriage equality for Australia means by definition that **there should only be one form of marriage. Two or more forms of marriage would inevitably result in difference and inequality:** one kind of marriage for one group of Australians, other kinds of marriage for other groups of Australians.
- 6.2. However Items 2 and 4 of Schedule 1 of the Explanatory Memorandum make exemptions for ‘Ministers of religion.’
- 6.3. The Bill will thus allow thousands of **government registered religious marriage celebrants to refuse to marry** or to **refuse to recognise the marriages of same-sex couples.**
- 6.4. The Bill will therefore bring into being by default **two forms of marriage into Australia.** This will fundamentally defeat the kind of marriage equality which is the *raison d’être* of the Bill.
7. The Bill implicitly contravenes Articles 7 (1) of *The United Nations Convention on the Rights of the Child* (1990), of which Australia is a signatory.

**Article 7 (1)** *The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*

- 7.1. That the Convention means by ‘parents’ the child’s biological parents is clear. Every child will *of course* know their adoptive or foster parents, or legal guardians, and will be cared for by the same. This article can only thus affirm that the child will have a right to know and be cared for by his or her *biological* parents.
- 7.2. This is how Article 7 is interpreted by the *Donor Conception Support Group of Australia*, whose submission to the Australian Senate on *Donor conception practices in Australia* (2011), was cited in Chapter 6.16 of the report:  
  
*...the Convention on the Rights of the Child supports the right of every child to know their biological identity.*
- 7.3. Marriage is a compound right, incorporating the right to start a family. If marriage is redefined to allow two men or two women to marry, then we implicitly endorse same-sex parenting, and the procuring of children through gamete donors for same-sex couples.
- 7.4. The means the **unnecessary** and **unjust** removal of the child from the care of his or her parents.

8. The Bill implicitly contravenes Article 9 (1) of *The United Nations Convention on the Rights of the Child* (1990):

**Article 9 (1)** *States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.*

8.1. By implicitly endorsing the procuring of children by same-sex couples through donor conception, the Bill will endorse the right of adults to separate children from their parents even when that separation 'is not necessary for the best interests of the child.'

8.2. The Bill will have the effect of endorsing **the purposeful conception of fatherless or motherless children.**

9. The Bill implicitly contravenes Article 18 (1) of *The United Nations Convention on the Rights of the Child* (1990):

**Article 18 (1)** *States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.*

9.1. By endorsing the procuring of children by same-sex couples through donor conception, the Bill will implicitly endorse the right of adults to forego, without necessity, the 'primary responsibility for the upbringing and development of the child.'

10. The Bill contravenes *United Nations Universal Declaration of Human Rights* (1946) **Article 16:**

*(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*

*(2) Marriage shall be entered into only with the free and full consent of the intending spouses.*

*(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

10.1. The family is defined as that which formed by 'men and women of full age', is 'natural', 'fundamental', and entitled to protection.

10.2. The proposed Bill, by breaking down this natural definition of family, inherently undermines rather than protects the natural family.

11. The Bill implicitly ignores the injustices and lessons of *The Stolen Generation*, where children were unnecessarily removed from their parents and wider biological kin.

12. The Bill implicitly ignores the plight of donor conceived children, who lament their removal not only from their fathers (as is usually the case), but also from their wider biological family and heritage.

12.1. Ms Susan Hurst, the mother of a donor conceived child, in her submission to the Senate Inquiry on *Donor Conception practices in Australia*, said that children 'need to be able to form relationships with other biological relatives':

*[t]o be human is to be part of a long line of biological history ...[Donor conceived] children will most likely have a wonderful life [but] there is family that this person deserves to have the opportunity to know. Biological [g]randparents (who may not have wanted their grandchildren donated away), half brothers, half sisters, uncles, aunties and cousins. People that would/could make our cherished donor conceived children 'whole' - and who also deserve consideration. Donor conceived children need transparency. They need to know who they are.*

12.2. The *Anonymous Us Project* archives statements made by donor-conceived children, many of whom express their distress for the loss of family and identity that they suffered through the means of their conception.<sup>2</sup> The following account was submitted to the Anonymous US archive December 7, 2011:

*I was born in 1968, and raised by my gay mother. My mother was 16 when she had me. My father was a foreign student, attending college on a student visa. My mother was just discovering homosexuality, so she did not tell my father she was pregnant. She moved away and never told him I had been born....*

*When I was 11, I asked who my father was. I yearned for my father. My gay mother told me "I did not have a father". I persisted, and insisted that she tell me the truth. She gave me the only photograph she had of him. She only remembered his first and last name. She said she did not know (sic) if he was still in the U.S. or back in South America.*

***I grew up with an identity problem which affected my relationships and self esteem, not to mention the undecipherable (sic) "longing" and constant ache to know the piece of me that was missing.***<sup>3</sup>

13. The Bill implicitly ignores the plight of children who were forcefully adopted between the 1950s and 1970s; as described in the Senate's 29 February 2012 report 'Commonwealth Contribution to Forced Adoption Policies and Practices.'<sup>4</sup>

13.1. One witness described the sense of loss for being removed from biological family:

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<sup>2</sup> <http://anonymousus.org/>

<sup>3</sup> Emphasis added.

<sup>4</sup> [http://www.aph.gov.au/parliamentary\\_business/committees/senate\\_committees?url=clac\\_ctte/comm\\_contr\\_ib\\_former\\_forced\\_adoption/report/index.htm](http://www.aph.gov.au/parliamentary_business/committees/senate_committees?url=clac_ctte/comm_contr_ib_former_forced_adoption/report/index.htm)

*'I did not really know I had a sister...It is very depressing and saddening that I did not develop bonds with my siblings.'*<sup>5</sup>

13.2. The report itself recognises the profound and distressing loss of identity when a person is removed from biological parents and heritage, which is exactly what will happen with the procurement of same-sex donor-conceived children: a practice that is implicitly endorsed by same-sex marriage.

*Many adoptees explained that not knowing who their natural parents were as children, or still not knowing, made developing a sense identity very difficult.*<sup>6</sup>

*'Given away at birth, I was stripped of my innate identity, my intrinsic heritage and formally given a new name and family. I grew up with a profound sense of duality – of being part of a family and yet very much separate from them.'*<sup>7</sup>

*'Being removed from my mother's body after birth traumatized me. Having my identity removed – my entire story about who I was – shattered my sense of self. Having a partial and meagre false identity attributed to me kept me in a state of traumatic confusion throughout my childhood to the current day.'*<sup>8</sup>

13.3. In fact the Senate committee recommended that apologies be made to children who were separated—without necessity—from their biological parents!

**Recommendation 2** *The committee recommends that the Commonwealth Government issue a formal statement of apology that identifies the actions and policies that resulted in forced adoption and acknowledges, on behalf of the nation, the harm suffered by many parents whose children were forcibly removed **and by the children who were separated from their parents.***

**Recommendation 3** *The committee recommends that state and territory governments and nongovernment institutions that administered adoptions should issue formal statements of apology that acknowledge practices that were illegal or unethical, as well as other practices that contributed to the harm suffered by many parents whose children were forcibly removed **and by the children who were separated from their parents.***<sup>9</sup>

13.4. By implicitly granting the right to same-sex couples to procure children through gamete donors, the 'Marriage Equality' Bill will implicitly grant the right for children to be conceived with the prior intention of being removed from biological father and/or mother, and biological heritage. This is unjust, and denies the pain of those children who appeared before the Senate Committee. It likewise makes a mockery of the apologies recommended by the Committee for children removed from natural parents without compelling reason.

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<sup>5</sup> Page 75.

<sup>6</sup> Page 77.

<sup>7</sup> Page 78.

<sup>8</sup> Ibid.

<sup>9</sup> Page xi. Emphasis added.

14. The Bill implicitly denies what is taught in Australian state foster-parent training, that the vital connection that children have with their wider biological family and heritage must always be respected and protected, even when close bonds of affection are formed between foster-parents and the children in their care.<sup>10</sup>
15. The Bill implicitly denies what is taught in public hospital run ante-natal classes, that the intimate involvement of *both* father and mother is vital for the well-being and healthy development of children.<sup>11</sup>
16. The Bill denies the crucial ongoing role of both fathers and mothers in raising children.

16.1. Karin Grossmann and Klaus E. Grossman report in the conclusion of their paper, 'The Impact of Attachment to Mother and Father and Sensitive Support of Exploration at an Early Age on Children's Psychosocial Development through Young Adulthood',<sup>12</sup> that

*2. Mothers' as well as fathers' sensitive supportiveness, acceptance of the child and appropriate challenging behaviours, each in its own right and taken together, were powerful predictors of internal working models of close relationships in young adulthood.*

*3. Mothers' and fathers' sensitivity during joint play with their children in various settings in the first six years of life contributed significantly to the child's later quality of partnership representation...*

*4. The single most influential variable in Project 1 was the fathers' sensitive challenging behaviour during play with their 24-month-old toddlers.*<sup>13</sup>

16.2. The U.S. Department of Health and Human Services cites 'noted sociologist' Dr. David Popenoe:

*Fathers are far more than just 'second adults' in the home.... Involved fathers bring positive benefits to their children that no other person is as likely to bring.*<sup>14</sup>

*Teenage boys without fathers are notoriously prone to trouble. The pathway to adulthood for daughters is somewhat easier, but they still must learn from their fathers, in ways they cannot from their mothers, how to relate to men. They learn from their fathers about heterosexual trust, intimacy and difference. They learn to appreciate their own femininity*

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<sup>10</sup> See for example the lesson notes given to foster care parents being trained by the Tasmanian *Child Protection Services*.

<sup>11</sup> This information was obtained by interview with a couple who participated in 2011 in ante-natal classes run by the Royal Hobart Hospital.

<sup>12</sup> [http://www.child-encyclopedia.com/pages/pdf/grossmannangxp\\_rev.pdf](http://www.child-encyclopedia.com/pages/pdf/grossmannangxp_rev.pdf)

<sup>13</sup> 'Project 1' refers The Bielefeld longitudinal studies of children's social and emotional development from birth.

<sup>14</sup> <http://www.childwelfare.gov/pubs/usermanuals/fatherhood/chaptertwo.cfm>



*from the one male who is most special in their lives. Most important, through loving and being loved by their fathers, they learn that they are love-worthy.*<sup>15</sup>

16.3. Common sense and long experience tells us that mothers have a crucial role in modelling to their daughters what it means to be a female, and teaching their sons how to relate to women in a healthy way.

16.4. Common sense and long experience tells us likewise that fathers have a crucial role in modelling to their sons what it means to be a male, and teaching their daughters how to relate to men in a healthy way.

17. The Bill will contribute and accelerate the breakdown of the natural family structure, the structure that is best for men and women and the children that they may bear.

17.1. Families are under immense strain in Australian society, and the number of children requiring foster care has increased at an alarming rate.<sup>16</sup>

17.2. There is therefore an urgent need to promote and strengthen the natural and best family structure of a man and woman living together and caring for the children that they have conceived and born.

17.3. All laws have an educative function. Redefining marriage will have the effect of teaching our citizens that the natural family structure, which is best for children, need not be protected or pursued; but that it is simply one structure among many.

18. The Bill is unjust in that it will retrospectively redefine the kind of relationship that was formed by those who are already married.

18.1. Those who have been married in Australia have entered into a contract to form a **male-female union**; a union that is sexually and reproductively complementarian.

18.2. The marriage contracts that have been formed have not been a generic partnership between two people, but a **specifically male-female union**.

18.3. Redefining the Marriage Act for the future will necessarily change the meaning of past marriage contracts. Past marriage contracts (which formed male-female unions), will be redefined into generic adult partnerships, **without the consent of those who formed those contracts**.

18.4. To change the meaning of a contract after the fact, without the explicit consent of the contracting parties, is profoundly unjust.

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<sup>15</sup> <http://mkg4583.wordpress.com/2010/07/29/life-without-father-by-david-popenoe/>

<sup>16</sup> <http://www.aifs.gov.au/nch/pubs/sheets/rs1/rs1.pdf>

- 18.5. Such an 'after the fact' changing of the meaning of the marriage contract will also be deeply offensive to those who view the specifically male-female union as unique, and essentially different from a generic adult partnership.
19. The Bill does not recognise the *sacredness* of marriage for many ethnic and religious groups, as well as 'average Australians' of the older generations.
20. The Bill is unconstitutional, in that it contravenes the Constitution's understood meaning of the word 'Marriage.' This is admitted even by those who argue for the redefinition of marriage:

*The [High] Court would likely find that the connotation of the constitutional term "marriage" in 1900 was formal, monogamous and heterosexual unions. And if this interpretive technique is something more than a mere linguistic device (which I think it must be) then in my view it is difficult to argue that heterosexuality was not an essential or core element of "marriage" in 1900.*<sup>17</sup>

*At the time of federation the meaning of the term "marriage" most commonly acknowledged was that contained in the cases which refused to recognise foreign polygamous marriage because such unions did not satisfy the traditional meaning of marriage now explicitly embodied in the Marriage Act 1961 (Cth). Not surprisingly this will make it difficult for the [High] Court to accept that same sex marriages now come within the meaning of the term "marriage".*<sup>18</sup>

*On balance, it cannot be said with any great confidence that the High Court at the present time is likely to find the Commonwealth possesses legislative power to permit same-sex unions under section 51(xxi). Indeed the most likely conclusion is that the meaning which is currently employed by the Marriage Act represents the full extent of the Commonwealth's power.*<sup>19</sup>

21. The Bill will pave the way for polyamorous and polygamous 'marriages.'
- 21.1. Ean Higgins reported in the Australian in December 2011 that supporters of polyamory believe that the ALP's decision to back marriage equality at the national conference in December 2011 will eventually pave the way for marriage equality for their own form of marriage.<sup>20</sup>

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<sup>17</sup> Dan Meagher,

[http://www.gtcentre.unsw.edu.au/sites/gtcentre.unsw.edu.au/files/mdocs/644\\_DanMeagher.pdf](http://www.gtcentre.unsw.edu.au/sites/gtcentre.unsw.edu.au/files/mdocs/644_DanMeagher.pdf)

<sup>18</sup> Geoffrey Lindell, 'Constitutional Issues Regarding Same-Sex Marriage: A Comparative Survey — North America and Australasia'. *Sydney Law Review*, 30:27 ( [http://sydney.edu.au/law/slr/slr30\\_1/Lindell.pdf](http://sydney.edu.au/law/slr/slr30_1/Lindell.pdf)

<sup>19</sup> Parliament of Australia, Senate Legal and Constitutional Affairs Legislation Committee, Marriage Equality Amendment Bill 2009, 26 November 2009, paras 2.13-2.16, cited in Griffith, 'Same-sex marriage', [http://www.parliament.nsw.gov.au/prod/parlament/publications.nsf/key/Same-sexmarriage/\\$File/SAME-SEX+MARRIAGE+BP.pdf](http://www.parliament.nsw.gov.au/prod/parlament/publications.nsf/key/Same-sexmarriage/$File/SAME-SEX+MARRIAGE+BP.pdf)

<sup>20</sup> 'Three in marriage bed more of a good thing', *The Australian*, December 10, 2011.

<http://www.theaustralian.com.au/news/features/three-in-marriage-bed-more-of-a-good-thing/story-e6frg6z6-1226218569577>

21.2. Ann Black and Kerrie Sadiq reported in the *University of New South Wales Law Journal* that polygamous arrangements already exist in Australia in the Islamic community.<sup>21</sup> That they will ask for 'marriage equality' for these arrangements is far from unlikely.

## **RECOMMENDATIONS**

- 1) We urge the Federal Parliament not to change the Marriage Act, in order to allow same-sex couples to form 'marriages.'
- 2) We urge instead that Federal Parliament implement policies that will strengthen marriages, and will help and support men and women to parent the children they bear.
- 3) **We wish to appear before the Committee.**

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<sup>21</sup> Ann Black and Kerrie Sadiq, 'Good and Bad Sharia: Australia's Mixed Response to Islamic Law', *UNSW Law Journal*, 34 (2011).