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COMMITTEE

Reference: Marriage Equality Amendment Bill 2009

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SENATE LEGAL AND CONSTITUTIONAL AFFAIRS

LEGISLATION COMMITTEE

Monday, 9 November 2009

Members: Senator Crossin (*Chair*), Senator Barnett (*Deputy Chair*), Senators Feeney, Fisher, Ludlam and Marshall

Participating members: Senators Abetz, Adams, Back, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Eggleston, Farrell, Ferguson, Fielding, Fierravanti-Wells, Fifield, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Williams, Wortley and Xenophon

Senators in attendance: Senators Barnett, Crossin, Fisher, hanson-Young, Marshall and Polley

Terms of reference for the inquiry:

To inquire into and report on: Marriage Equality Amendment Bill 2009

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Committee met at 9.29 am

CHAIR (Senator Crossin)—I declare open this hearing of the Senate Legal and Constitutional Affairs Legislation Committee’s inquiry into the Marriage Equality Amendment Bill 2009. This inquiry was referred to the committee by the Senate on 25 June for report by 26 November. This is a private senator’s bill that seeks to remove from the Marriage Act 1961 all discrimination on the basis of sexuality and gender identity and to permit marriage regardless of sex, sexuality and gender identity.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence that is given to the committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. We do prefer all the evidence to be given in public, but under the Senate’s resolutions witnesses have the right to be heard in private session—that is, going in camera. If you want to give your evidence in private session, you just need to seek the agreement of the committee to do that and we will oblige wherever we can.

[9.31 am]

GARDINER, Mr Jamie, Vice-President, Liberty Victoria (Victorian Council for Civil Liberties Inc)

GERBER, Dr Paula, Deputy Director, Castan Centre for Human Rights Law, Monash University

O'ROURKE, Ms Anne, Vice-President, Liberty Victoria (Victorian Council for Civil Liberties Inc)

SIFRIS, Dr Adiva, Member, Castan Centre for Human Rights Law, Monash University; and Senior Lecturer, Family Law, Monash University

CHAIR—I welcome representatives from the Castan Centre for Human Rights Law and Liberty Victoria. We have a submission from the Castan Centre for Human Rights Law, which we have numbered 87 for our purposes. Liberty Victoria, the submission we have from you has been numbered 43. Do either of you need to make any changes or amendments to your submission before we go to opening statements?

Dr Gerber—The Castan centre does not.

Ms O'Rourke—We do not, no.

CHAIR—All right. We will go to some brief opening comments about your submissions and then we will go to some questions. I might start with the Castan centre first if that is okay.

Dr Gerber—Thank you for the opportunity to address the committee today. The Castan Centre for Human Rights Law acknowledges that this is, to quote Frank Brennan and the Human Rights Consultation Committee in their report, a 'hard issue', but we submit that it need not be so. If you take a step back from the emotive arguments and extreme positions and look at this issue through the lens of human rights law, I think the action that parliament should take on this issue becomes clear. Looking at the issue as a legal one that invokes principles of equality and non-discrimination as opposed to a religious one led Spain, a predominantly Catholic country, to legalise same-sex marriage in 2005. In July this year Albania, a predominantly Muslim country, announced through its Prime Minister that it would be legalising same-sex marriage. If those countries, steeped deeply in religion as they are, can legalise same-sex marriage then surely Australia, a secular country that prides itself on separation of church and state, can take similar action in the name of equality and human rights for all.

The Castan centre's submission was divided into two distinct components. The first looked at international human rights law emanating from the UN and the second looked at comparative human rights law, examining jurisdictions where same-sex marriage has been legalised. I do not propose to repeat what we have said in our very comprehensive submission over 20 pages, but I would like to briefly add to those two separate but complementary areas of human rights law. I contend that, after examining human rights law, the only conclusion that can be reached is that Australia must legalise same-sex marriage.

I start with international human rights law. Australia is a party to numerous human rights treaties which all have at their core the fundamental principles of dignity, equality and nondiscrimination. One such treaty is the International Covenant on Civil and Political Rights, the ICCPR. Whilst it does not contain an express right for same-sex marriage, it does have a prohibition on discrimination. Article 26 expressly prohibits discrimination, which is any distinction, exclusion, restriction or preference on any ground which has the purpose or effect of nullifying or impairing the enjoyment or respect of human rights by all on an equal footing. The Toonen case for the UN Human Rights Committee, which I am sure many of you are familiar with, found that discrimination includes discrimination on the grounds of sexual orientation. So, taking that rationale, it becomes clear that to discriminate, to exclude people from the right to marry solely based on sexual orientation, is a breach of article 26 of the ICCPR.

Same-sex couples are now having children. International human rights law recognises that the family is the fundamental group unit of society and deserves special support and protection. Article 2 of the Convention of the Rights of the Child protects children from discrimination on the grounds of their parents' status, and that status includes their sexual orientation. The UN Committee on the Rights of the Child has expressly stated that it is concerned that discrimination based on the sexual orientation of the parents impacts negatively on the children. The Convention on the Rights of the Child also requires that any decision that impacts or affects children must be made with the best interests of the child being a primary consideration. Prohibiting a child's parents from marrying is not in the best interests of the child. All children deserve the chance to grow up in a stable and loving home with parents in a relationship that is publicly recognised and respected. There is extensive empirical research—which I think others on this panel will cover—that says that children raised in

same-sex families are not disadvantaged by the fact that their parents are of the same sex, but what will disadvantage them is when those parents are discriminated against purely on the basis of their sexual orientation.

Turning now to comparative human rights law, as mentioned in our submission there are currently seven countries and five US states where same-sex marriage is legal. These countries come from diverse continents—Europe, America, Africa. As yet there is no country in the Asia-Pacific region that has legalised same-sex marriage, which gives Australia an opportunity to take a leadership role on this issue in our region. The list of countries considering same-sex marriage is constantly expanding. I have already mentioned that Albania has announced that it will be ending discriminatory practices in the area of marriage—so too have Luxembourg, Iceland, Portugal and Slovenia. There are examples of strong, well-organised religious opposition defeating attempts to legalise same-sex marriage, but the international trend is undeniably in favour of making the institution of marriage open to all, regardless of sexual orientation.

We know from the experience of other countries that the sky does not fall in when same-sex couples are allowed to marry. We only have to look at Spain. It legalised same-sex marriage in 2005. Since then, the average number of same-sex couples entering into the institution of marriage is less than two per cent. So 98 per cent of marriages are still heterosexual couples. Same-sex couples are only ever going to constitute a very small minority of marriages, but, in a democratic country that respects human rights, the majority cannot be allowed to trample on the rights of the minority. All people should be able to enter into the institution of marriage regardless of their sexual orientation.

To conclude, the Castan Centre for Human Rights urges the committee to endorse the Marriage Equality Amendment Bill so as to legalise same-sex marriage in this country. There have recently been a suite of reforms that have removed discrimination against gays and lesbians in the areas of taxation, superannuation and social security—the last bastion is marriage. In accordance with international human rights law, principles of nondiscrimination and equality, this too must be addressed. Civil unions and domestic partner registries are not sufficient. They are the equivalent of the ‘separate but equal’ response in America in the era of segregation, and we know from that time that that does not result in uniform enjoyment of human rights by all.

Let me end my statement with a quote from the famous English poet Samuel Johnson, who said:

Prejudice, not being founded on reason, cannot be removed by argument.

It is time for our politicians to take a leadership position on this issue to end prejudice against gays and lesbians when it comes to marriage, to reject the arguments of those who seek to exclude people from marriage solely based on their sexual orientation, to comply with international human rights laws such as the ICCPR and the Convention on the Rights of the Child, and to enact legislation in this country to legalise same-sex marriage in accordance with the global trend.

CHAIR—Dr Sifris, would you like to add to that?

Dr Sifris—Absolutely. I would like to expand on a few things that Dr Gerber has said and extrapolate a few things that are in our submission. The first thing is that the family is and was regarded as the foundation of society. Historically the family was based on marriage, and it was for this reason that the state has furiously protected the institution of marriage. But we need to understand that, in 2009, families are not what they were even 20 or 30 years ago. Families come in diverse forms. I have some statistics here from the Australian Bureau of Statistics which basically set out the different kinds of family forms. One can see that one-parent families and couple families without children are on the increase, whereas couples with children are on the decrease. On the other hand, de facto couples—people who do not marry—have increased from less than six per cent of all couples in 1986 to nearly 15 per cent now. Our whole concept of family in 2009 is very different to what it was 20 years ago.

Moreover, something that has come to the fore is same-sex couples. Same-sex couples have only been included in the census figures since 1996, but they are continually on the increase, with over 50,000 people acknowledging—and we know that this is an underestimate—being in same-sex relationships in 2006. Once one acknowledges that there is a change in society and a change in family forms, it is most important to address the interaction between the law and society—the so-called ‘pull and push’ effect. What changes first? Does the law change first and pull society with it or does society change first and push the law along, or do they do it in tandem?

I put to you that the law plays a major part in the eradication of discrimination. I do this by putting to you the example of legitimacy. Children were illegitimate in every negative sense of the word until the 1970s. With

the acknowledgement that more children were being born out of marriage, the laws throughout Australia changed and all disabilities that were placed on illegitimate children were eradicated. These children are now called ex-nuptial. With the removal of the term 'illegitimacy' and with the acknowledgement that these children were in fact legitimate in every sense of the word, more and more children were born out of marriage and, not only that, nobody even thinks in terms of illegitimate children. We think in terms of children. These children are no longer discriminated from both a social and a legal point of view.

We also know that the Commonwealth in 2008 passed a raft of legislation which eliminated discrimination against same-sex couples. You can already see the flow-on effects of this. A recent Galaxy poll showed that the number of same-sex marriages had increased by three per cent from two years ago. As the law changes, it starts to pull society along with it.

We have a number of same-sex couples who are as committed as heterosexual couples. To allow them to simply register their relationships, which has been done in certain states, is insufficient. It is something that should be on the smorgasbord but it is not the ideal. They should be allowed to have all the items on the menu as same-sex couples and then the discrimination, which is perpetrated and remains against same-sex couples, will in time be eradicated. Basically, the law will pull the people along and the people will pull the law along. It is very important for the Commonwealth to make a stand and to say that we are not going to discriminate against same-sex couples, because once they do it society will in turn follow.

In conclusion I want to quote from the decision of Justice Sachs in the case of the Minister of Home Affairs and Fourie in South Africa, which sanctioned same-sex marriage. He said:

... same-sex couples are outsiders, and that their need for affirmation and protection of their intimate relations as human beings is somehow less than that of heterosexual couples.

... ..

It signifies that their capacity for love, commitment and accepting responsibility is by definition less worthy of regard than that of heterosexual couples.

This is simply not true. It is up to the law to basically sanction what is already happening on the ground. As Dr Gerber has said, the Castan centre endorses this bill. We urge that it be accepted and brought into law.

Mr Gardiner—Thank you for inviting us to speak with you today. I would like to begin by acknowledging the traditional owners on the land on which we meet, the people of the Kulin Nation, and acknowledge their traditional ownership. I will give a brief outline of our submission and talk to some points in it. My colleague Anne O'Rourke, the Vice-President of Liberty Victoria, will deal with some specific parts of the submission.

Liberty is a human rights organisation. We are very comfortable with what the Castan centre says about human rights because that is very much our take. We also represent some of the diversity in our society. Anne O'Rourke is a heterosexual woman and a mother. I am a gay man who has been in a relationship for over 20 years without children.

The human rights of lesbians and gay men have historically been trampled on in a way that is now recognised as utterly wrong—in violation of international human rights law, in violation of the undertakings that Australia in its sovereign capacity made when it participated in the Universal Declaration of Human Rights just over 60 years ago and when it signed and then ratified the International Covenant on Civil and Political Rights in 1972 and 1980. These breaches of human rights are summed up in a way by the illegitimacy—to quote Dr Gerber—that the insistence on unequal marriage creates.

The issues that we have set out in our submission are fairly simple. Firstly, we acknowledge that a lot of the opposition to accepting the reality and the necessity of equality comes from bodies which derive their attitudes from belief in supernatural beings. Anne is going to speak particularly about some of the aspects of that. Marriage in Australia, as we say—and Ms O'Rourke will elaborate on this—is a civil institution.

Our submission goes on to talk about overseas marriage, and in particular about another international treaty that Australia freely entered into, in 1984 approximately: the Hague Convention on Celebration and Recognition of the Validity of Marriage, in which it is absolutely clear that we undertook to recognise foreign marriages validly contracted unless to do so would be manifestly incompatible with the public policy of the state of celebration—that is, of Australia. We point out that equality is not manifestly incompatible with Australian society and public policy. Indeed, equality is a fundamental principle of our society. Our governing party, the Labor Party, in its recent national conference said, in chapter 7, 'Securing an inclusive future for all Australians':

And it includes sexual orientation in its list of things which it does not discriminate on. It also says:

We oppose all attempts to divide Australians by pandering to prejudice.

In our submission, the current state of the Marriage Act, as it came about in 2004—Senator Hanson-Young's bill would so importantly and wonderfully change it back to where it should be—pandered to prejudice. It is your opportunity now, Senators, to recommend to the Senate and to the parliament, that that pandering to prejudice cease.

We point out that there are no valid reasons for discrimination and that courts in Canada, the United States and South Africa, as you have just heard, have realised that if equality under the law is a principle of the legal system of a country then discrimination in who can marry is clearly wrong. The United States realised this some years ago in relation to another discrimination which was sanctioned by tradition and by those who believe in supernatural beings—namely, the laws against marriage across racial lines. That appalling piece of racist discrimination started to fall in 1948, when the Californian Supreme Court said it was inconsistent with the United States constitution and it finally fell in 1967 in the case rather beautifully called *Loving v Virginia*, where the US Supreme Court finally held that the ban on sex and, particularly, on marriage between persons of different races was a fundamental violation of the rule of law and of equality. This ban is exactly the same. It is the imposition of bad tradition and of prejudice to bar equality.

I refer to that question of whether in Australia a ban on same-sex marriage—and even on recognising other countries' valid marriages—is valid. It would not be a breach of the Hague convention if such a policy was manifestly incompatible with Australian public policy, but it is not. Australian public opinion is clearly in favour. The most recent poll suggests that it is of the order of 60 per cent in favour and 36 per cent against equality in the marriage laws.

Of course, as has already been mentioned, the Australian parliament, the current government, introduced a huge raft of excellent moves towards equality in 2008, amending some 84 or 85 federal laws to introduce equal treatment for same-sex couples, leaving only one glaring hole in the edifice of equality. That has real consequences. As our submission points out—and it is the last point I want to make—the ban on same-sex marriage authorises discrimination. It authorises a climate of homophobia. It diminishes the government's achievements in 2008. Young same-sex attracted people—young gay girls and gay boys, including those who have not yet realised it for themselves—are harmed by the environment that authorises discrimination. There are pressures on young gay people growing up in a society which is not merely largely heterosexual but heterosexist, which says, 'If you are not heterosexual then you are unworthy.' That is difficult. The existing marriage law, with its insistence on inequality, creates an environment, as we say in our submission, which authorises discrimination and which harms young people. It creates an environment in which they feel they cannot speak to anyone, and I am talking at this stage of 12-, 13-, 14- and 15-year-olds. In my day it would have been 18-, 19-, 20- and 21-year-olds, but nowadays it is much earlier. Those young people are pushed in the direction of depression and, indeed, suicide, by the environment which is created by things like this marriage law.

Our submission is that Senator Hanson-Young's bill, subject to the amendments we point out about language, needs to be passed. The inequality in the marriage law must be fixed. The final point on that is that there are two ways you can fix it. There are two separate things. Clearly, Australian couples who want to get married should be able to get married without discrimination. Also, and quite separately, the Hague convention should be obeyed, not violated. There are couples from Canada, from the United States, from South Africa, from Belgium, from the Netherlands, from Sweden and Norway, and soon from Albania and others, as you have heard, who are validly married under their laws and who have a right under the Hague convention to expect that we will acknowledge their marriage if they come here, and that should be done, too. Repealing section 88EA of the Marriage Act is quite independent of the question of whether people can get married here. Both should be done, but section 88EA could be repealed much more simply, and should be. I now hand over now, if I may, to Anne O'Rourke to address another point.

CHAIR—Before you do, I want to remind you that we have eight witnesses today, and we have allocated 45 minutes for each witness. So I do not know, Ms O'Rourke, if you want to incorporate your comments in answers to questions.

Ms O'Rourke—I will be very brief—less than five minutes.

CHAIR—We have only got about 20 minutes left for questions now, which is where we get the most benefit about your view of the bill. So please be brief. Just bear in mind that you are eating into our question

Ms O'Rourke—I will do it in just two point forms. The first is basically covered in section 2 of our submission. Marriage has become entangled with religion in Australia. One of the points that we wanted to make is that this is historically incorrect: marriage did not become a religious sacrament within the Catholic church until around the 1200s. Today, even under our law, it is not recognised as a religious ceremony. If you look at the latest Australian Bureau of Statistics site, they say that even in Australia today the majority of marriages—in fact, 65 per cent of marriages—are now performed by civil celebrants. So marriage in Australia itself is a civil, not a religious, institution. That is one point we wanted to make.

The other point is that something happened to come up this week after the submission was done. It was an article in the *New York Times* referring to a major study—which they were able to do because there is now a larger cohort of same-sex couples with children—of the impact on children of having same-sex parents. What they found was that children of same-sex couples are on average just as well adjusted as children of heterosexual couples. That just came out this week, but we can find the study and provide it to the committee if you wish to have it.

CHAIR—Thank you, and thank you very much to the four of you for your opening comments. I am going to ask Senator Hanson-Young first if she has some questions. I do that out of recognition that it is her piece of legislation that we are scrutinising.

Senator HANSON-YOUNG—Thank you, Chair. The first question I have is to Dr Gerber. In your legal opinion, do you believe there has been any increase or change in discrimination within the Australian context since the changes that were made in 2004, under the previous government, to the Marriage Act? If so, how could that be redressed by this piece of legislation?

Dr Gerber—I think the changes in 2004 discriminated against particular individuals who had undertaken lawful marriages and whose legal marriage contracts were not recognised in this country. The discrimination against gays and lesbians when it comes to marriage has clearly escalated and become more entrenched. It really bucks the international trend. You have all these countries saying, 'Our ship is going in the human rights direction, upholding and respecting equality, dignity, and justice,' and Australia has taken a step backwards and said, 'We're going to entrench discrimination even further, and remove what little ambiguity there was in the laws, against gays and lesbians.' So I think the outcome has been very negative for the same-sex community and has made them feel even more isolated and discriminated against than they were before.

Senator HANSON-YOUNG—Picking up on one of Mr Gardiner's comments in relation to the Hague convention, what did the centre think about the fact that we are obviously not abiding by that treaty?

Dr Gerber—We are clearly in breach of that treaty. We even recognise legally performed polygamist marriages from Saudi Arabia and other such countries out of respect for our international obligations under the Hague convention. Professor Hilary Charlesworth referred to Australia as being 'Janus faced'. We present one face to the international community as an upholder and respecter of international human rights law by ratifying all these treaties and saying we are a worthy, human rights respecting country, and we are seeking a seat on the UN Security Council. But domestically it is the opposite in many cases, with children in immigration detention centres and our treatment of Indigenous Australians, and you can now add to that our treatment of sexual minorities. Internationally we are saying: 'We are going to uphold these laws. They are good, just laws; we agree with them,' but domestically we are ignoring them.

Senator HANSON-YOUNG—Mr Gardiner, you mentioned that there were some minor amendments to the bill in terms of the language. Could you elaborate on them for us?

Mr Gardiner—There are several that we set out. One is a general one of terminology. You, Senator, in your concluding remarks in your speech on the second-reading referred—in my submission, very correctly—to 'sexual orientation' being the terminology that should be used. The term used in the bill is 'sexuality', which means something else. So I would urge that that and cognate changes should be made.

There are a couple of other things which we are a bit puzzled by. In proposing a change to the definition to remove discrimination on the basis of sexual orientation, or gender identity for that matter, you also remove the requirement against bigamy. First of all, replacing 'a man and a woman' with 'two people' in the definition of marriage is absolutely what we think should happen. Then you insert a non-discrimination phrase, which is fine, subject to that terminology question. The third issue is the omission of the words 'to the exclusion of all others'. We have not got a view as to whether that is or is not appropriate, but it seemed to us surprising to branch out on a different tack and a completely different issue. We just thought it was probably somewhat confusing.

We also noted in our submission that a couple of the provisions in sections 2 and 4 of the schedule were actually unnecessary because, if I remember rightly, they relate to specific changes to the wording that should be used in the marriage ceremony, whereas there is already a provision that says 'or words to that effect', which effectively does already allow people to do their own so long as the core, vital bits are in there. Also, in the current sections the use of the words husband and wife is actually not discriminatory because if there can be two husbands or two wives then they are both husbands or both wives. So that is an unnecessary item in our view. Those are the specific drafting suggestions that we have.

Senator HANSON-YOUNG—Thank you. In light of the time, I will throw to the rest of the committee.

Senator BARNETT—Yes, in light of the time we unfortunately only have the chance for a few questions. Section 1.1 on page 4 of the Castan Centre submission reads:

The Marriage Legislation Amendment Bill 2004 (MLAB) amended the *Marriage Act 1961* (Cth) to define 'marriage' as 'the union of a man and a woman to the exclusion of all others'.

You source those quotes to the act. On reflection, is that correct?

Dr Gerber—I am not sure I understand.

Senator BARNETT—Is that correct? Do you stand by that statement?

Dr Gerber—Yes.

Senator BARNETT—I have got the act in front of me and it reads:

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

So there is a mistake in the first sentence of your submission.

Dr Sifris—Not really. It just does not include some of the words at the end of it, but otherwise that is an exact quote.

Senator BARNETT—You have referred to a definition.

Dr Sifris—That is an exact quote, though.

Senator BARNETT—It is not an exact quote, so it is incorrect. To my next question, in your executive summary you say that the Marriage Legislation Amendment Bill 2004—and I have a personal interest in this as the author of the letter to the Prime Minister signed by over 32 coalition backbenchers asking for this very bill to come into being, and that is why I am very interested in your views—has breached fundamental human rights principles and it has breached the Universal Declaration of Human Rights. If you are so sure about that, why have you not instigated legal action, perhaps a High Court case?

Dr Gerber—That is not the role of the Castan Centre. The Castan Centre is a scholarly research body. Our mission statement is to increase public awareness and to produce high-quality scholarly research and that is what we do. We are not an activist organisation. We do not initiate lawsuits. That is not part of our brief.

Senator BARNETT—But in your view would it be open to others to pursue litigation, perhaps in the High Court?

Dr Sifris—Canada, which has a charter, or South Africa, which has a bill of rights, allows you to attack legislation on the basis of it being unconstitutional or that it does not accord with the charter of a bill of rights. Australia does not have that, so it is very difficult to initiate legislation on that basis in Australia.

Dr Gerber—There is no cause of action for breach of an international legal obligation.

Senator BARNETT—You do not concede that it is a basic human right to be in a marriage and raise a family? Is that a basic human right that we have in Australia and do you recognise that right? And is that recognised internationally?

Dr Gerber—Yes, there is a human right to marry and to raise a family.

Senator BARNETT—You talk about discrimination as though it is an evil thing and it is a terrible thing and it is terribly wrong. I would agree with you that unjust discrimination is wrong and unfair and entirely inappropriate. With respect to the bill before us, does it discriminate against people of a young age to marry? Does the bill before us, Senator Hanson-Young's bill, discriminate based on age? Yes or no.

Dr Gerber—Discrimination based on age? There is a marriageable age, yes.

Senator BARNETT—Right, so it discriminates based on age. Does it discriminate based on the fact that more than two people cannot marry under this bill—that is, it excludes polygamous marriages. Does it discriminate?

Dr Gerber—It excludes polygamous marriages. I do not think that fits within the definition of discrimination. Discrimination is, to quote you, ‘it’s evil, it’s wrong’ and to discriminate against people based on their sexual orientation is a breach of their human rights. We can go through all sorts of hypotheticals. It discriminates against people marrying sheep or dogs, yes, but that is not what this legislation is about. That is not protected by international human rights law. I am looking at this through the lens of universally accepted and agreed international human rights law standards and without this bill Australia is in breach of international human rights standards because they are discriminating against someone purely based on their sexual orientation.

Senator BARNETT—And I am asking you the question: does it discriminate based on polygamy? Does it discriminate against polygamous marriages?

Dr Gerber—It excludes polygamous marriages, yes.

Senator BARNETT—Right, that is what we want to know. Thank you.

CHAIR—Dr Gerber, in relation to your quote from the Marriage Act, ‘to the exclusion of all others’, that section you have quoted is accurate—is that right?

Dr Gerber—It is accurate, and I also point out that the full stop does not appear before the quotation mark, it appears after the quotation mark. So I am not saying that that is the end of the quotation; it is simply the extract of the quotation that I have included. It is not a full stop before the end of the quote.

CHAIR—The issue before us here is ‘man and woman to the exclusion of all others’ rather than voluntary or involuntary enforced.

Dr Gerber—Correct. That was a relevant part to include in the quotation.

CHAIR—So you have included the relevant section of the quotation to highlight your argument. Is that what you have done?

Dr Gerber—Yes.

CHAIR—If people were legally married overseas, let us say in Holland or wherever, and they came into this country prior to the changes in 2004, that marriage was recognised, whereas with the changes to the act in 2004 that is now not the case.

Dr Gerber—That is correct.

CHAIR—Can you give us any examples of any other areas of law where, when people move into this country, we do not recognise that status? Is there anything in tax, or superannuation or pensions?

Dr Gerber—I cannot think of any. The other thing I would say is it is not as if Australians could all run off to Spain and get married and come back and demand that that marriage be recognised in Australia. In countries like Spain, the laws say that one of the people getting married must be a Spanish resident or citizen. They are not opening the floodgates to everyone from countries that discriminate against same-sex couples and saying, ‘Come here, we’ll marry you, then you can go back home and it’ll be legally recognised.’ I would just add that. But, off the top of my head, I cannot think of any other situation where a status that is legally recognised in other jurisdictions is not going to be legally recognised when a person immigrates to Australia.

CHAIR—Given your research and that you are a think tank in this area, could you take that notice? Would you like to have a think about that or do some research for us about that?

Dr Gerber—Yes, I am happy for the Castan centre to undertake that.

CHAIR—Same-sex relationships can be officially recognised and registered in this country in some states and territories. Is that correct?

Dr Gerber—Yes.

CHAIR—Is that recognition inconsistent? Is that registration of those relationships inconsistent across this country?

Dr Gerber—Yes.

Dr Sifris—There is only registration at the moment in Victoria, the ACT and Tasmania. It is not right across

CHAIR—So what do I have to do to get my relationship registered in those three jurisdictions?

Dr Sifris—Each jurisdiction has different criteria, but in Victoria, for example, you have to be a resident here for a certain amount of time. Off the top of my head, I think it is two years.

CHAIR—Do I have to go through some civil ceremony?

Dr Sifris—No, there is no ceremony at all. In fact, it is just a registration process; you basically fill out forms. But you have to have residency requirements beforehand to show that you do live in Victoria. So not everyone can just come here and register.

CHAIR—Is that consistent across those three jurisdictions, or does that even vary?

Dr Sifris—It varies to some extent between them.

CHAIR—I see.

Senator POLLEY—Tasmania has led the country in relationship registration. Can you tell us then, with all of the research you have done, how many gay or lesbian couples are registered in Tasmania?

Dr Sifris—I do not know off the top of my head. I do not suspect it is very many, but that is not the point. The point is it is a question of options and choices. Heterosexual couples have that choice too. If they want to register, they can register like they can in Victoria—they do not have to register in Victoria—or they can marry in Victoria. It is all about what is available on the relationship menu: what is available to heterosexual couples should be available to same-sex couples.

Senator POLLEY—And of those that can register in Tasmania, can not a brother and sister register to ensure that their estate and things like that are taken care of? So you do not have to be—

Dr Sifris—I am not an expert on Tasmanian law, but there is a provision I think for caring relationships.

Senator POLLEY—So would you then agree that there is less than 100 couples registered in Tasmania?

Dr Sifris—I cannot agree because I do not know the exact figure. I do not suspect it is very many, but to me that is not the issue. The issue is not the number; the issue is do people have the choices and do they have the same choices?

Senator POLLEY—Would it be less than 60 couples?

Dr Sifris—As I said, I do not know the number.

Senator POLLEY—It is in fact less than 60 couples that are registered in Tasmania in their relationship. Do you also agree that already in society that there are discriminations that are acceptable, for example the fact that there are all boys schools and all girls schools?

Dr Sifris—Not really because if you want you can send your child to a co-ed school.

Senator POLLEY—And now, if you are in a same-sex relationship, in those states that have already made that transition, you can register your relationship. In fact, the federal government has gone a long way to ensure that there is not any discrimination in superannuation and Centrelink benefits and things like that and the reason this bill has come about is because a minority, a very vocal minority, although they do not want to be heterosexual, they want to have the right to marry.

Dr Sifris—I am not sure it is a minority. A recent study shows that a lot of same-sex couples want that option to marry. Once again it comes back to options and choices. If heterosexual couples have the option to marry, the option to register, the option to do nothing, same-sex couple should have that same choice. It is a question of discrimination. Options and choices.

CHAIR—As there are no further questions, I thank the four of you for your time this morning—the Castan Centre for Human Rights Law and Liberty Victoria—and for taking the time to provide the committee with a submission.

Ms O'Rourke—Do you want a copy of the ABS figures?

CHAIR—Yes, thank you. We will take that if you would like to provide that to us.

[10.21 am]

CANNON, Mr Timothy, Research Officer, Australian Family Association

CHAIR—The committee welcomes Mr Timothy Cannon from the Australian Family Association. You have lodged a submission with us and for our purposes we have numbered that as submission No. 70. Do you need to make any amendments or alterations to that?

Mr Cannon—No.

CHAIR—I invite you to make an opening statement, after which we will go to questions.

Mr Cannon—I will just take a couple of minutes. As you are aware, our position is to oppose the Marriage Equality Amendment Bill. It is our contention that the bill fails to recognise the rationale behind marriage as a public institution in Australia. I will emphasise that point. What we are considering here is marriage as a public, legal institution as opposed to a private institution. Marriage could exist without the state's public intervention, but this is a circumstance where the state declares that there is a public institution. That is something we tend to take for granted, but I would suggest that we should not, especially when you consider that it is not normal for the state to intervene in private relationships. To take an obvious example, there is no way for me to formalise a friendship. There is no public institution for that. Usually the state has no interest in publicly ratifying private relationships, so we should take a keen interest wherever the state does intervene in private relationships.

We have marriage as this conspicuous instance where the state decides that it is somehow expedient to become involved. The obvious question is: why? In our view there are two fundamental reasons for a public, legal institution of marriage. The first reason relates to the unique significance of the lifelong heterosexual union as regards human society in general. What is the significance of the heterosexual union? Firstly, of all the relationships that characterise human society, only the heterosexual union is procreative. At least in that capacity we can say that the heterosexual union is an entirely unique kind of relationship. It is different from all others. It can be set apart from all other human relationships because it is progenerative—procreative.

We can ask: is that significant? I do not think I am overstating the case when I say that the heterosexual union is the foundation for our continued existence as a species. So it is not just significant in some peripheral manner. It is profoundly significant for us as a society, as a legal society, and as members of the human species. It might sound like I am stating the obvious but, unfortunately, the obvious tends to be overlooked when it comes to the debate over marriage. Accepting that the heterosexual union carries a unique and profound significance, I would suggest that it does make sense for society to somehow set it apart to mark out that significance. We are suggesting that that is at least partly what the institution of marriage is for. We have had discussions about several relationship registers, and there is a way of publicly registering a relationship. Marriage, we are saying, marks out the significance of a particular kind of relationship.

When it comes to discussions of discrimination, in this sense we can all agree that marriage does in fact intentionally discriminate in favour of one kind of relationship. But that is partly the point: to deliberately and publicly recognise that out of all human relationships the union of a man and a woman is fundamental to our continued existence. That is the first reason we say that marriage exists as a public institution as opposed to merely a private practice.

The second fundamental reason we suggest that a public institution of marriage presently exists relates to the permanence of marriage. Even in the definition of marriage that has been proposed by Senator Hanson-Young, there is a requirement that marriage be entered into for life. Again, keeping in mind that this is a public institution, we can ask the question: why would the state be interested in whether or not two people make a commitment to one another for their entire lives? Why wouldn't the state's interests be merely to register the people's desire to remain in a marriage, to remain in relationship, for as long as they like—like any other kind of contract? Why this requirement of permanence? Again, we suggest that the requirement of permanence only makes sense in the context of the heterosexual relationship; in the context of marriage being the bedrock of the foundation of a family. I think it is a fair presumption to say that a man and a woman who get married intend at some point to start a family and to have children.

With children involved, the state has, all of a sudden, an added interest in the relationship. The state has a duty to promote the rights and interests of children. By endorsing and encouraging the commitment between a man and a woman, the state is actually encouraging a married couple to create a stable environment for their

children as they develop. Again, it makes sense for the state to encourage stability at home both to protect children's best interests and also, on a more pragmatic level, because children from steady homes generally represent a social and economic benefit to the state. There are fewer physical, psychological and sociological problems that are going to arise that the state is going to have to deal with. I am speaking generally here, but that is how we make our laws. We look at the general situation. We say, 'Generally, stable families are more beneficial for children, they are more beneficial for state.' This is why the state is interested.

It can be argued that throwing marriage opened to same-sex couples will ensure that children are being raised by same-sex couples will also be guaranteed stability, if they are able to marry. But stability is not the only thing that children are entitled to. Prior to being guaranteed stability, we are suggesting children have a basic entitlement to be raised by their own biological mother and father—at least wherever that is possible. That is one of the reasons why the Australian Family Association will raise issues with IVF, donor conception and with surrogacy. But it is not just us who are making noises about these issues; there is an organisation we refer to in our submission called TangledWebs. That, as an example, is an organisation made up of donor-conceived people who are now adults. They are not happy about being denied the chance of being raised by their own mother and father.

In our view, what is happening with IVF is that it is creating a generation of children who have actually been removed from one or both of their biological parents. This is just a repetition of old mistakes that the state has made in the past. Decades ago Aboriginal children were being taken away from their own parents. We are still reeling from the fallout. They are now adults. They are holding people accountable. Yet we have a whole generation of IVF children who are starting to ask the same questions: who gave you the right to take me away from my parents?

We are arguing, and will continue to argue, that children have the right to be raised by their own mum and dad, wherever that is possible. If it is impossible and children cannot be raised by extended family, we are suggesting that children at least have the right to be raised by a mother and father, just like they would if they had had access to their natural parents—as close as possible to the natural situation. So we are talking about adoption here. There is research coming through all the time showing how important it is for children to be raised by both a mother and a father. Mothering and fathering are different from one another. We take it for granted. But this is not about what we want; it is not about whether we want to have kids and it is not about whether we have some right to children as if they were property; it is about what children are entitled to.

How is all this related to marriage? As I mentioned earlier, heterosexual marriage does provide for children to be raised by their own mum and dad. Same sex marriage does not—it cannot, and it does the opposite. The common assumption that married persons will found a family will be made for both opposite-sex couples and same-sex couples, but any child being raised by a same-sex couple is not being raised by both of his or her biological parents; it is just not possible. What is more, children being raised by same-sex couples are being denied the opportunity of gender differentiated parenting. No matter how you spin it, two mums or two dads is not a mum and a dad. Children deserve the chance to have a mum and a dad. We do not have the right to take that chance away from them. The bottom line is that same-sex marriage may shore up some children's rights—for example, by creating stability—but it fundamentally undermines other children's rights, and we do not think that is fair.

I have one last consideration. It is about the arbitrary discrimination that would be implemented under this new definition of marriage. The definition reads: 'Marriage is the union of two people, regardless of their sex, sexuality or gender, voluntarily entered into for life.' Several obvious questions arise. Firstly, what is a 'union'? Is living together a union? Could siblings be married? Could a parent marry a child? Could two friends be married? Must there be a sexual relationship? What are the limits as far as the definition of 'union' goes? More importantly, what are the reasons behind those limits? What I have outlined are sound reasons for the limits that exist in the current definition of marriage. If we want to reject those reasons, that is fine, but what we should do is reject marriage. What we should not do is just start drawing arbitrary lines.

Secondly, why is marriage restricted to two people? Clearly, it is discrimination against anybody who wants to marry more than one person. But it does not provide any reason for that. With a heterosexual union the reason is obvious. One man and one woman is all it takes to be progenitive. That is a biological fact of human existence.

Finally, why must persons wishing to be married promise to be united for life? Again, if this is just a matter of choice why does the state care if people are married for life? Why set that limit? Why not just say, 'Be

married for as long as you like'? If that is the case, why does the state have an interest at all? Why not just leave it in the private domain?

We are saying that there are sound reasons underpinning our present definition of marriage, but under the proposed definition marriage as a public institution no longer makes sense. That is why we oppose the amendment. I will leave it at that.

CHAIR—I just want to also remind you that the issue about IVF and invitro fertilisation for gay and lesbian couples was a matter of debate and inquiry by this committee when we did that raft of reforms to the same-sex legislation. So we have been over that ground and we have had legislation through the parliament that reflects the view of this government.

Mr Cannon—Sure. All I am pointing out is that marriage is relevant to that issue because marriage crates a presumption that people will found a family. So all of a sudden we have a presumption that same-sex couples will be having children. So there are consequences if we change the definition of marriage.

CHAIR—Your submission does not tell us exactly who the Australian Family Association is, or who you represent. Can you give me a bit more of a background about what your association is and what it is made up of.

Mr Cannon—We are a grassroots organisation. I think that our membership at the moment stands at around 4,000 active members. We deal with a lot more. We are in most states in Australia but based chiefly in Victoria. We are also active in New South Wales, South Australia, Western Australia and Queensland.

CHAIR—Is it a religion based organisation?

Mr Cannon—It is not an explicitly religion based organisation. We are a family organisation. We do have links with religious organisations but we are not a religious organisation.

CHAIR—What religions do you have links with?

Mr Cannon—Principally, religions of the Judaeo-Christian heritage. So we have links, principally, with Christian organisations, but also with Jewish and Muslim organisations.

CHAIR—Are you a non-government organisation or a lobby group?

Mr Cannon—We are a non-government organisation. We are funded by our members.

CHAIR—And you have women and men in your membership base, I take it?

Mr Cannon—Yes.

CHAIR—I am just trying to get a handle on who you kind of represent. Is it families.

Senator BARNETT—Is it families?

Mr Cannon—We represent the families who choose to be represented by us.

CHAIR—So amongst your membership there may well be gay or lesbian members?

Mr Cannon—There could be.

CHAIR—I am trying to come to terms with your distinction between public institution and private institution. I do not quite get your distinction there. I actually thought that if I was in a de facto relationship and I wanted that registered that would be a pretty public statement as well, I would have thought.

Mr Cannon—Absolutely.

CHAIR—I do not understand what you mean by 'private registration'.

Mr Cannon—If there was no provision for marriage in Australian law people would still be getting married under sacramental forms or under cultural forms. That is what I am saying. Marriage is a private commitment between two people. Two people say, 'I promise to be your spouse for as long as we both shall live.' Regardless of what the state says, two people make that promise in private.

CHAIR—Do you mean in public?

Mr Cannon—No. Well, they might make it in public in front of their friends but as far as a public legal institution goes. There is no need for a public legal institution of marriage.

CHAIR—But you do the same thing if you register your relationship in a de facto way. You make a commitment to each other and you register it. You just do not choose to do it through marriage.

CHAIR—I am trying to come to terms with your distinction between public and private, because to me they are all public; they are registered.

Mr Cannon—I am just talking about a hypothetical situation. I have a good mate and that is just a private matter. He is just a friend of mine. The state has no interest in whether we are friends. The state does not give us an opportunity to register that friendship. All I am saying is that when people make private relationships there is a distinction between that and the state saying, ‘We are going to declare in our law books a provision for you to commemorate this.’

CHAIR—But if you had a private relationship then there would be no legal status to it, surely? They have all got to become public.

Mr Cannon—That is right.

CHAIR—They have all got to be registered—de facto or marriage—in order that when it all goes a bit pear shaped you can take action or settle entitlements. So aren’t they all in fact a public declaration of the status of your relationship?

Mr Cannon—Registered relationships and marriages are all public declarations, yes.

Senator BARNETT—Thank you for your submission and your presentation, which is very much appreciate. In reflection on the chair’s views and reflections on your submission regarding IVF and adoption, I think your views are entirely justified and entirely consistent and, indeed, relevant to the bill before us. I assume—and if you could clarify for us—it gets back to your view that marriage provides the environment and the umbrella under which children can grow and be nurtured and, indeed, can be procreated. That is a key fundamental argument that you have and that is why you have linked it to those views that you have about IVF and adoption.

Mr Cannon—Yes; that is right.

Senator BARNETT—Can you confirm whether you believe this statement is true: every child coming into the world should have a reasonable expectation, all things being equal, to have both a mother and a father?

Mr Cannon—Yes.

Senator BARNETT—If so, why?

Mr Cannon—The first reason is that—leaving out artificial interventions—that is just the way it is. That is how the human species has evolved. We can intervene in that. We can experiment. But what we have to realise is that what we are experimenting with is children’s lives, children’s future. We have no right to make those kinds of interventions.

Senator BARNETT—That is good. That makes a lot of sense to me. In terms of the benefits from marriage and such an arrangement, are you aware of any evidence or research which suggests that children do better and reach their full potential in a situation where they are in a family with a mother and a father in a loving, caring relationship? Do you have any evidence or research that supports that view?

Mr Cannon—I am pretty sure that I did reference some research and studies that were recently done in the US showing this kind of evidence. I think it was just a footnote, but if you like—

Senator BARNETT—If you are happy to take that on notice, I think that would be helpful to us, in terms of what is in the best interests of the child. I assume that is what is, at least in part, motivating your submission. Is that correct?

Mr Cannon—Yes.

Senator BARNETT—So if you could take on notice to provide any research or evidence to support that this is in the best interests of the child, that would be appreciated. I can see it in other submissions that we have received, including from FamilyVoice Australia, but, if you have further evidence, that would be good.

Mr Cannon—Sure.

Senator BARNETT—The other question I have relates to the bill before us. Do you know why this bill would have excluded the words ‘to the exclusion of all others’ from the definition? Those words have now been removed from the definition—apart from changing it to ‘same-sex marriage’. Do you have a view as to why that would be and what implications it may have, particularly with respect to sexual exclusivity within a marriage relationship as being the desired approach under the current law?

Mr Cannon—Certainly. The definition opens up marriage in that sense—taking it away from the traditional idea of permanence. I might add that marriage as a permanent institution can be seen not so much as being established to serve the interests of the adults involved; there is something more than that. There is a certain dimension of a willingness to bear a cost. As any married person will tell you, it is not easy remaining married for an entire lifetime. The state says, ‘Well, there’s a cost that we are going to support you undertaking because there are benefits for children.’ Certainly a lack of exclusivity is going to undermine that whole rationale behind marriage. Under the new definition, there is just no way to justify an exclusivity clause, just as there is no way to justify any of the other restrictions placed on marriage.

Senator BARNETT—I do not think any of us are blind to the fact that many marriage relationships are nonexclusive—let’s face it—but, once you remove this section from the definition, it raises the question about the duration of an average marriage compared to the duration of an average same-sex relationship. Do you have any evidence—or, if you do not have the evidence with you, can you take this on notice—on the average duration of a marriage relationship, a cohabitation relationship and a same-sex relationship? That would obviously have relevance to the views of perhaps senators and the public with respect to the merit of removing those words from such a definition.

Mr Cannon—I have actually been doing some research into this area recently, so I would be happy to follow that up.

Senator BARNETT—Thank you very much.

Senator MARSHALL—Your submission and your presentation today hang on the argument that the main purpose of marriage is to actually have children. But you also acknowledge that the state should not intervene and insist that everyone who gets married has children and that that is a decision that couples might make. If people are getting married with the intention of not having children, they may be getting married because they are in love, for instance—which you do not actually mention in your submission. There might be other reasons that people get married.

Mr Cannon—Sure.

Senator MARSHALL—Do you think same-sex people can be in love?

Mr Cannon—Absolutely.

Senator MARSHALL—If there was no marriage, do you think we as a species would disappear?

Mr Cannon—No.

Senator MARSHALL—Are you opposed to IVF generally, across the board, for heterosexual couples and gay couples? Are you just opposed to IVF?

Mr Cannon—My principal opposition to IVF is where you have a child being denied the opportunity of being raised by its own mother and father. Where you have IVF—and this is where IVF was originally intended to be restricted to—and the man and the woman use their own gamete, they cannot conceive through sexual intercourse, so they have their own biological child, as regards this conversation, there is no issue with that. The child is being raised by its own parents.

Senator BARNETT—Do you support IVF for married couples or not?

Mr Cannon—The question of IVF raises a whole range of bioethical issues aside from this.

Senator MARSHALL—But you did raise it.

Mr Cannon—I did. We can go into discussions on the bioethical issues here if you like.

Senator MARSHALL—We probably will not have time. Do you agree that there should be a legal process for divorcing from the marriage?

Mr Cannon—Yes, I do.

Senator HANSON-YOUNG—Thanks, Mr Cannon, for coming along today. I am a bit unclear about your position around (a) the purpose of marriage and (b) the role that the state should have in it. Are you in fact suggesting that we should abolish the Marriage Act in its entirety?

Mr Cannon—I am not suggesting that we should abolish the Marriage Act; what I am suggesting is that the present definition of marriage recognises that the heterosexual relationship is uniquely significant because that is how we produce as a species. It sets apart the union of a man and a woman, which is how we perpetuate. That is one of the functions of a marriage.

Senator HANSON-YOUNG—Is there anything in the current Marriage Act that suggests that that is why the definition currently includes ‘man and woman’?

Mr Cannon—No. There is nothing in the act, but that is why I raised the issue of a public institution being declared. Why do we have the state’s intervention? I say that the reason is that the state sees it as a worthwhile undertaking to recognise the significance of the heterosexual union. My question is: what is the state’s interest as far as marriage goes? Particularly considering that we have relationship registers in some states, what is the state’s interest in recognising arbitrarily—without any particular reason—decisions by two people, who may be in love, to enter a relationship? As a taxpayer, I can say: why is the state taking an interest in this kind of thing? There have to be reasons for it. I am saying that there are reasons for the present definition of marriage. You may disagree with them and then you may wish to abolish marriage. I agree with those reasons. I think they are worthwhile reasons. That is why I think we should maintain marriage.

Senator HANSON-YOUNG—Just for the record, I do not wish to abolish marriage at all. I want it celebrated by more people. I want it to be more inclusive. I am lucky: I am able to be married. There is a big group of people who are not.

Mr Cannon—Would you draw a line as to who can and cannot celebrate and under what circumstances?

Senator HANSON-YOUNG—The bill that is before us suggests that we need to be more inclusive and remove the discrimination of two people who want to enter into a relationship, regardless of their sexual orientation. That is all my bill is doing. I would like to put a question to you about countries where similar legislation to what I am proposing has been introduced. What do you believe those countries think the purpose of marriage is, and what is the difference between Australia and, for instance, Spain?

Mr Cannon—I think we have very much lost sight of the relevance of marriage. We just presume that it exists. When I talk to my friends about this, the first thing they say is, ‘Why not? Why can’t anybody get married? It is just a personal choice.’ But then you say, ‘Why do we have marriage as a public institution?’ That question is not being asked. They say, ‘They’ve got it, so everybody should have it. This is unfair.’ The first question is, ‘Why does it exist in the first place?’

Senator HANSON-YOUNG—You are suggesting that it exists because it provides—I am paraphrasing you, so correct me if I am wrong—a stable union for bringing up children. Is that the main crux of your argument?

Mr Cannon—In a sense. Marriage to me is the state’s way of recognising certain biological facts about the human species.

Senator HANSON-YOUNG—But if it is about providing that stability for children who belong to those two people, surely children who do have parents of the same sex deserve the same rights to allow their family, their parents—their mum, their dad or regardless—

Mr Cannon—I do not think you were in the room during my opening statements.

Senator HANSON-YOUNG—I do not want to go into the issues in relation to IVF or any of that. I am talking about the children—

Mr Cannon—I addressed this specifically in my opening statement.

Senator HANSON-YOUNG—Okay. I am asking you now.

Mr Cannon—There are certain rights which take priority over stability. They come first. One of those rights is the right to be raised by your own mother and father. If you are going to guarantee stability I am going to ask: why aren’t you going to guarantee those other rights? Why are you being selective with which rights you guarantee?

Senator HANSON-YOUNG—I am taking your reason for marriage and saying: if you believe that that is reason the state would be interested in marriage, surely the state has a responsibility to ensure that that interest is extended to those children and those families who have same-sex parents.

Mr Cannon—Again, the rationale behind marriage for me is not just stability. It is about guaranteeing stability and guaranteeing that children are raised by their own biological parents.

Senator HANSON-YOUNG—What about those people who get married and do not have kids?

Mr Cannon—What about them?

Senator HANSON-YOUNG—Do they deserve to be able to get married, even though they are not entering into the biological, natural process of creating a child?

Mr Cannon—Again, I think this I have covered this in my submission. It is not an issue of whether a particular couple has children. The issue of marriage is whether the state recognises a particular type of relationship. Generally speaking, the heterosexual relationship is procreative. No other kind of relationship is.

Senator HANSON-YOUNG—What about couples who cannot have children? They are not procreative. Do they not deserve to be able to get married as well?

Mr Cannon—If their relationship is of a kind that the state recognises as being the procreative type of relationship—

Senator HANSON-YOUNG—But if they cannot procreate they are not of a kind of relationship that can procreate.

Mr Cannon—It is irrelevant. The state is not interested in—

Senator HANSON-YOUNG—I absolutely agree with you. I think it is irrelevant. You have hit the nail on the head. Over.

Senator POLLEY—Firstly I would like to thank you for your submission and for coming along. We have had lots and lots of submissions and it has been suggested that, because gay and lesbians choose their lifestyle, which is different from heterosexual couples, they are no longer discriminated against in this country. The minority of gay and lesbian people now want to have the same right to marry. I take the point that Senator Hanson-Young made. Actually, when you get married, it is not compulsory to have children; it is not arbitrary that you must have children. Do you have a view on the other submissions that suggest that this is a push by the minority, politically motivated gay movement to discriminate against marriage itself and against heterosexual couples?

Mr Cannon—I am not sure I am qualified to answer that question. My own view is that this kind of amendment will undermine marriage because it removes the rational basis for marriage. Whether that is an intention that is being pursued by certain people, I do not know. I know that certain organisations would like to see marriage abolished, and if not abolished then at least whittled away so that it is no longer meaningful at all. What we are seeing here is that marriage is being reduced to something that has no rational basis; it is based on completely arbitrary limits that are set by the government of the day, obviously amenable to change, more exclusive, less exclusive, whatever we feel like. If there is no rational basis for marriage then you have to ask yourself what is the point of a public institution.

Senator MARSHALL—I just want to follow up what you are saying, that if we give the right to gay people to marry, it would undermine the institution of marriage for heterosexual couples. Is that what you are suggesting?

Mr Cannon—I am suggesting that it undermines the rationale behind marriage. It undermines marriage for everybody. The actual significance of marriage becomes reduced when you say, 'Who can get married? Anyone we say can get married.' There is no rhyme or reason; just whoever we decide on the day, depending on the public vote.'

Senator MARSHALL—But people get married for a reason, and I suspect it is not initially to have children; they probably get married because they are in love, first, and then may decide to have children.

Mr Cannon—Sure, but why does the state recognise that decision?

Senator MARSHALL—For a couple who are in a heterosexual relationship, who are in love, decide to have children and make a lifelong commitment to each other, how does what anyone else does undermine that?

Mr Cannon—It does not undermine the individual's circumstance necessarily. You can take a family and say that they are not going to be affected. But look at it on the general social level. We have a public institution of marriage that stands as a sort of umbrella that we look to and we ask: what is the purpose of that public institution? Why would I tap into that? What are the reasons for society recognising my relationship?

Senator MARSHALL—So you think that, if gay people have the right to marry, fewer heterosexual people will decide to get married?

Mr Cannon—No. I would appreciate it if you did not put those kinds of—

Mr Cannon—Sure. What I am saying is that this bill will open up this marriage to same-sex couples. The fact that it is opening it up to same-sex couples is not the issue in itself. The issue is: why? What are the reasons for marriage? Why, all of a sudden, can marriage be opened up to whomever? Why was it restricted and why is it now free to be tampered with, free to be opened up, and what are the reasons for opening it up to same-sex couples? If those reasons undermine the very rationale behind marriage itself, then fewer people will get married because they will say, 'It is just a question of taste; there is no point.' And if it is just a question of taste, then why does the state care whether people get married? Why does the state bother having a public institution?

Senator MARSHALL—That is a good question.

Senator BARNETT—Using other words, what you are saying is that the law has an educative role.

Mr Cannon—Yes; that is true.

Senator BARNETT—Thank you.

CHAIR—You said that you represent 4,000 members.

Mr Cannon—That is right.

CHAIR—Would you say then that that is a minority in terms of the Australian population?

Mr Cannon—I would say that our active membership is definitely a minority of the Australian population. I would also say that, apart from our active members, we have many more sympathisers.

CHAIR—Thank you, and thanks for your time, availability and for making the effort to put a submission in to our inquiry. It is appreciated.

Mr Cannon—Thank you for having me.

Proceedings suspended from 11.00 am to 11.16 am

CROOME, Mr Rodney Peter, Campaign Coordinator, Australian Marriage Equality

DANE, Ms Sharon, consultant, Australian Marriage Equality

TUAZON-McCHEYNE, Mr Jason Charles, member, Australian Marriage Equality

TUAZON-McCHEYNE, Mr Adrian Logan, member, Australian Marriage Equality

Evidence from Ms Dane was taken via teleconference—

CHAIR—Welcome.

Mr J Tuazon-McCheyne—I am a man who married his husband, Adrian, in Canada in 2004. We sought to get married here but were not able to.

Ms Dane—I am a PhD candidate at the University of Queensland. I was the chief researcher for the recent national survey called Not So Private Lives, which was on the lives of same-sex attracted Australians.

CHAIR—Australian Marriage Equality has lodged a submission with the committee, and we thank you for that. For our purposes it has been labelled No. 90. Do you need to make any amendments or changes to that before I invite you to make an opening statement?

Ms Dane—No.

CHAIR—I now invite you to make an opening statement.

Mr Croome—Thanks to the committee for inviting us to speak today. I will briefly speak to our submission before handing over to the other witnesses and make a couple of points that may be pertinent to some of the issues that have been raised this morning. In our submission we put forward what we believe is a compelling case for equality in marriage for same-sex couples, focusing on the issues, to begin with, of human rights and citizenship. I will not go in depth into the human rights issues, because they have been covered very well by the Castan Centre and Liberty this morning—issues such as equality before the law, discrimination in the law and the way that the law, as it currently stands in the Marriage Act, fosters discrimination more broadly because of the messages it sends out about the incapacity of same-sex couples to form loving and committed relationships that qualify as marriage.

The one other issue that we dealt with in our submission in terms of human rights and citizenship emphasised the issue of citizenship. We cited the issues of freedom of choice and the capacity to marry the partner of your choice as a marker of full adulthood, full citizenship and full humanity and drew the comparison historically with laws which prohibited interracial marriages. I have a particular interest in that and would be happy to talk about that parallel in history not only in the United States but also in Australia, where traditionally Aboriginal people were in some states denied the right to marry the person of their choice, and the way that impinged on their full citizenship.

What I would like to concentrate on today, apart from the human rights issues, are the practical benefits of allowing same-sex couples to marry. These are also cited in our submission. We talk about the fact that marriage allows immediate access to spousal benefits and that marriage allows couples to prove that they have legal entitlements if those entitlements are challenged. We also talk about the way that marriage is portable across jurisdictions in a way that other forms of relationship recognition are not. One of the couples that made a submission to the inquiry talked about the problems they face whenever they move from one state to another and how they have to google what their human rights are in terms of spousal entitlements because it varies so much from state to state. It is an illustration of the way that marriage provides a universal understanding of what spousal entitlements are.

Of course, each of those particular issues—immediate access, ability to prove and portability—contrasts with recognition of same-sex couples as de facto partners, which is something that has occurred in state law and, most recently, in federal law in Australia. That is an improvement of our legal status which Australian Marriage Equality of course embraces, but the fact that exists, particularly at a federal level, illustrates the deficiencies and disadvantages we still suffer because we cannot marry. Another practical benefit of marriage is that at the moment there are many couples who travel overseas to marry. If we allowed marriage of same-sex couples in Australia then those couples would not have to do that. Jason and Adrian will talk a bit more about that and some of the reasons they married overseas and some of the problems they face because of that.

Lastly, in terms of the practical benefits of marriage, marriage is an institution through which partners find connection and belonging not only with each other but within their families and within their communities.

That is why marriage traditionally and conventionally creates kinship. We have terms like brother-in-law and mother-in-law. It is why conventionally at wedding ceremonies those present are asked if they assent to the marriage. It is not simply about the partners, as important as their bond is. It is about a public recognition of that and the creation, like I said, of connection and belonging.

Marriage provides us with a universal language of love and commitment. Everyone in our society understands what a husband is and what a wife is in a way that they do not necessarily understand what a de facto partner or a registered partner may be, and to deny us access to that universally understood institution is to send out the message that we are not capable of the love and commitment that is traditionally associated with marriage.

In terms of the practical benefits of marriage equality, the final point to make is that it is not just same-sex couples, their children, their families and society that benefit; it is also marriage. I have heard from a couple of witnesses this morning how the definition of marriage has remained unchanged for many years and that the government should not be interfering in it arbitrarily. Of course, the definition of marriage, who can marry and why they marry has changed markedly over the years. If marriage were the same today as it was 100 years ago—when women lost their civil rights when they married, when couples of different races could not marry, when marriage between couples of different religious denominations was frowned upon—marriage would be a completely irrelevant institution.

Marriage, like every social institution, changes to keep pace with changing social attitudes, and it is clear from the evidence we have heard this morning that a majority of Australians believe marriage today can encompass same-sex relationships. As I said earlier, Australian public policy is heading in the same direction with the recognition of same-sex de facto marriages. Marriage can and should change to reflect what we understand committed, loving relationships to be. If it does not, it becomes irrelevant and fossilised. In my mind, what degrades and demeans marriage is the fact that we keep it petrified at a certain time rather than allowing it to change.

In our submission we also deal at some length with the major objections to marriage equality, some of which we have heard this morning. One is that it is a religious institution. Of course, some people have spoken eloquently about the fact that it is a civil institution. Another is that it is chiefly about procreation. We have also had that argument, but in fact there is no criteria for entering into a marriage in Australia that requires a couple to have children, and many same-sex couples care for children, who would benefit from their parents' marriage. Perhaps the most interesting discussion this morning was about where we draw the limits. What is a marriage? What is the purpose of marriage? In our submission we go into that subject. On page 17 we address the issue of whether same-sex relationships and marriage as we understand marriage to be are compatible. To answer that question we need to ask what a marriage is. We state:

We firmly believe that a) the purpose of civil marriage is to legally solemnise, entitle and protect a loving, committed, enduring, conjugal or "romantic" relationship, and b) same-sex partners are as capable of forming such relationships and therefore meeting the requirements of marriage as the partners who currently qualify to marry.

Finally, at the end of our submission there are a couple of issues that we thought it important to address. The first was the fact that same-sex partners who seek to marry overseas are denied certificates of non-impediment to marriage by the Australian government. We have had many complaints about what seems to us to be a completely arbitrary bureaucratic barrier erected against people entering into legal marriages in other jurisdictions. I understand that the Netherlands government has now waived that requirement for same-sex partners from Australia because of the difficulty of obtaining that document. I am happy to address any issues about that.

The other issue that we addressed at the end was whether civil unions, however we might call them—registered relationships, civil partnerships or civil unions—are an adequate substitute for same-sex marriage. Of course, we conclude that they are not, based on research conducted in those jurisdictions where such unions have existed as a substitute for marriage for several years. There have been some very useful studies in Britain and New Jersey, amongst others, which have found that, while some people may have their needs served by those forms of relationship recognition, there are many who find difficulties because of the failure of many institutions and society in general to understand what rights adhere to civil partnerships. Marriage, as I said before, as a universal institution, provides a kind of universal recognition and understanding and language that civil unions do not. That was the substance of our submission. I will now hand over to Sharon to talk a bit about some of the research that was cited in our submission, including research that she has conducted through the University of Queensland.

Ms Dane—Good morning, Senators. Thank you for the opportunity to present my argument for marriage equality. I will first discuss the recent findings from a national survey on the lives of same-sex attracted Australians, titled *Not So Private Lives*, for which I was the chief researcher. I will then present international findings regarding the impact of same-sex marriages on the institution of marriage and the impact it has on the same-sex couples involved.

Not So Private Lives was a national survey addressing many aspects of sexual minority life and was conducted through the University of Queensland earlier this year. The questions regarding people's preferences for relationship recognition were part of this larger survey and were completed by 2,232 same-sex attracted participants ranging from 18 to 82 years of age, who were either Australian citizens or permanent residents of Australia.

There are two things I would like to address before presenting a summary of these results. The first relates to the validity of the findings. The raw data is stored with the international survey company Globalpark in Germany. The data from the survey can therefore be verified independently. The second is with regard to the diversity of the sample. Participants were recruited from every state and territory and from both rural and urban areas. The survey was widely advertised in the LGBT media and information was circulated through sexual minority email networks across the country.

What I will be discussing today are the relationship recognition findings of the survey and how these challenge many of the myths regarding the commitment of same-sex couples and their desire for marriage. Of the 2,232 participants reporting on their current type of same-sex relationship, 60.7 per cent reported having a regular partner, 33.7 per cent reported not currently being in a same-sex relationship and 5.6 per cent stated they either had no primary same-sex partner or are currently involved in only casual same-sex relationships. The average duration of a participant's current same-sex relationship was seven years for those over the age of 30, with the longest being 41 years together.

All participants, including those currently not in a same-sex relationship, were asked about their personal preference for relationship recognition. The majority, 54.2 per cent, stated they preferred marriage for themselves; 27.8 per cent stated they preferred a federally recognised relationship documented at a registry other than marriage—this included civil unions and civil partnerships; 15 per cent selected *de facto*; and three per cent stated they preferred no legal status. This majority for marriage was even greater for younger people. For example, 65 per cent of those under 20 and 62 per cent of those under 30 selected marriage as their personal choice.

Results were then considered for participants who had a regular same-sex partner. These show that the majority selected marriage as their personal choice, including those currently in a *de facto* relationship. Interestingly, this majority for marriage was even more substantial among those currently in a state or municipal civil partnership in Australia or an overseas civil union. This was 78 per cent and 60 per cent respectively.

Therefore, these findings suggest that alternatives to marriage, such as civil unions, have a place for those who do not wish to marry, but are clearly not a substitute for the many who do. As a substantial majority of people in these relationships stated that they preferred to marry, it suggests that many are entering into alternatives to marriage simply through lack of choice rather than preference. In addition, close to 80 per cent of all participants felt that marriage should be an option for their fellow same-sex attracted Australians irrespective of their personal choice. Therefore, overall, the findings from the survey work to dispel the myth that most same-sex attracted people do not wish to marry and deflate the argument that marriage rights are simply the concern of a handful of heated activists.

I would like now to move on to the international research addressing the impact of same-sex marriages on heterosexual marriage rates. Those opposed to extending the right to marry to same-sex couples have often argued that lower rates of marriage in Scandinavia and the Netherlands are a result of the introduction of same-sex relationship rights. I would like to briefly discuss the recent data from the national statistical agencies from these countries which clearly indicates that this is not the case. The information from these agencies is available in English and is evidence available to anyone choosing to visit their sites.

Firstly, both Sweden and Norway, which have had same-sex relationship rights since the early 1990s, are now enjoying the healthiest marriage rates in decades. Those who oppose marriage equality have erroneously selected a single year in which marriage rates soared in Sweden, 1989, as their reference point to compare all future figures. That year witnessed new laws impacting the widows pension for unmarried women. The

subsequent lower figures, along with the appearance of the frequently cited article *The end of marriage in Scandinavia*, by Stanley Kurtz. Importantly, with marriage continuing to climb healthily in Norway and Sweden, the governments of these countries have found no valid reason not to extend the right to marriage to same-sex couples and have both recently introduced this right—Norway in January this year and Sweden in May this year.

Opponents of marriage equality have now begun to use the more recent findings on the marriage rates for the Netherlands. The Netherlands was the first country to introduce the right to marriage for same-sex couples, back in 2001. It is correct to say that marriage rates have fallen in this country. However, what the data shows is that most heterosexual couples in the Netherlands are still getting married but smaller numbers are opting for a registered partnership, which was made available three years prior to the introduction of same-sex marriages. This explanation is presented on the Netherlands statistical agency's website and has been statistically supported in a recent 2009 publication in the US. In short, to date there has been no convincing data to support the notion that providing marriage rights to people regardless of their sexual orientation or gender will undermine heterosexual marriage.

Another argument presented by those who are opposed to marriage equality concerns the issue of parenting. With this issue, it is important to look at meta-analysis and large-scale reviews involving hundreds of studies using quality methodology rather than hand-picking studies to simply support one view. In 2007, a large-scale review was presented by members of the Australian Psychological Society to the APS. They concluded:

The research indicates that parenting practices and children's outcomes in families parented by lesbian and gay parents are likely to be at least as favourable as those in families of heterosexual parents ...

The outcome of this review echoes those from the American Psychological Association.

I would now like to end by briefly mentioning new research on the positive impact of marriage on same-sex couples. Not surprisingly, studies involving countries and US states that have extended the marriage right show marriage benefits same-sex couples in much the same way as it has been shown to benefit opposite-sex couples. For example, a recent study by Badgett et al involving 552 married same-sex couples in Massachusetts found that close to 75 per cent felt that marriage had increased their commitment to their spouses. Seventy-five per cent felt more accepted by their community as a result, including by their siblings and parents. Of those living with children, over 90 per cent felt that their children were happier and better off as a result of their marriage.

To conclude, current research shows that marriage is the personal preference of the majority of same-sex-attracted Australians as well as having the support of the majority of Australian people. There is no evidence to show it has a detrimental effect on heterosexual marriages. Importantly, new evidence indicates that, much as marriage has benefits for heterosexual couples, it has a positive impact on the wellbeing of same-sex couples and their children. Thank you.

CHAIR—Thank you, Ms Dane. If there are any further comments, please bear in mind that we are finishing at 12, so we want to go to questions.

Mr J Tuazon-McCheyne—I am appearing on behalf of my husband, Adrian, and myself. We are not political activists. We did not choose a particular lifestyle one day, unless you call getting married, paying your taxes, having a child and contributing to the community a lifestyle, and that is our lifestyle. We have been together for over 11 years. We met in 1998 and married non-legally here in Melbourne in 2000 in front of 90 of our family and friends, and then we were legally married in Toronto, Canada, in 2004. Shortly afterwards, in 2006, we had a son, through a surrogacy arrangement in California, who is almost four now. We also registered our relationship in December last year here in Victoria. We are still not sure what all of that means, but we are kind of hoping that we are getting to closer to feeling like we are married at the end of all of that. The reasons for us marrying are the same as anybody else. We wanted to provide a stable environment for our son in particular. Most people nowadays do get married before they have kids, even though they have bought houses and have lived together for a long time.

I am a marriage celebrant and have married over 1,000 Australian couples. They all receive a blessing from their community and their family and friends when they have their wedding ceremony. The most important thing about a wedding day, and the reason I do it, is that the 80 to 150 people who are there are the key people in their lives. They want to give love and energy to that couple and give them a boost on their journey and they want to celebrate what they have. We do not get that many great days in our lives, and the wedding day, the marriage day, is one of those days. That is one of the reasons why people get married, and that is one of the

It is interesting to note, over the course of the day, that most of the opponents of same-sex marriage have a Christian background. I am a former Christian minister myself, and I find it really disappointing and sad that people who follow the historical man Jesus think that it is really important to rail against couples who want to get married and have a family. They propose arguments that may sound good or may not sound so good, but those arguments are based on an actual belief. They do not reveal to you that they think that I am disordered, that I am a sinner and that I need healing for my orientation. That is a sad thing, and they do not state that. They actually believe that, at the end of the day, Adrian and I are going to hell.

I have tried to meet with some of these organisations and have conversations with them. They say to me, 'I'm not willing to talk to you until you're ready to repent.' I just want to state a personal opinion that my family is not evil; our orientation is fine. We are part of the three to five per cent of the world's population that are same-sex attracted, and that means that there are probably about one million to two million Australians who are in the same boat as us. That is a lot of people, and that is more than the 4,000 people who come from the Australian Family Association or the other hundreds that are represented by the other organisations here today.

We pay our taxes. We contribute. We want to have meaningful, stable, family marriage as it evolves. It is no longer the ownership by the man of the woman, thank goodness; it is about equality and partnership with each other. Black and white people can get married now. Gay and lesbian people are not activists. We have families, we exist, and there are over of a million of us in our country. We deserve to be taken care of for the sake not only of ourselves but of our children.

Reuben has two fathers, and his outcomes will be fine because you only need to have one decent parent of any gender or orientation to be okay. If you have two, you are laughing, because parenting is hard and marriage is hard and making a long-term relationship that is valuable is hard. We accept that. We embrace that, and there are many same-sex couples who want to embrace that as well. Thank you.

CHAIR—Thank you very much for your evidence today. I am going to start with a question. I want to go to one of your recommendations. Mr Croome, in recommendation three, you are recommending:

... that the Government reform Australia's policy on Certificates of No-impediment to Marriage so that they are issued to same-sex partners who intend to marry on the same basis as they are issued to different-sex partners who intend to marry.

For the *Hansard* record, can you just explain to us the background to that recommendation and the impact that you think it would have if the policy were changed?

Mr Croome—What was that last bit, sorry?

CHAIR—The impact it would have if that policy were changed and the background to that recommendation.

Mr Croome—We first became aware of this issue when we received a complaint from the man who is mentioned in the submission, Mr Peter Kakucska, who had sought to marry his partner in the Netherlands. The Australian government refused to issue him a certificate of nonimpediment to marriage, which of course is required by foreign governments to enter into a marriage. It is our understanding that certificates of nonimpediment to marriage are to demonstrate to a foreign government that you are not already married, that you are of marriageable age—that you fulfil all the criteria necessary to enter into a legal marriage in that other country. Yet, when we investigated this, the Australian government responded by saying, 'No, the role of a certificate of nonimpediment to marriage is to show that the marriage being entered into overseas is not recognised in Australia.' This was news to us, and it was certainly news to those lawyers who we contacted to ask about their understanding of what CNIs are—and to those foreign governments, as well, that we contacted and asked, 'Why do you ask for this?' They said: 'Well, it's not to know what the Australian government policy is; we know what that is. It's to know whether these people can marry here.' In our view this has been developed for no other reason than to put up a barrier to same-sex partners marrying overseas. It is not the proper role of CNIs to do that. CNIs should be issued, as the recommendation says, on the same basis to same-sex couples as to opposite-sex couples.

CHAIR—So, if I have a partner in the Netherlands who is of that country by birth—

Mr Croome—Who is Dutch.

CHAIR—who is Dutch, and I meet the requirements in that country, I presume, to marry that person, even if it is a same-sex relationship, are you suggesting that—in order to satisfy the requirements of the Netherlands government—the Australian government's policy is to not issue that certificate of nonimpediment to marriage

Mr Croome—I am saying that the Dutch require that certificate—or they did—and the Australian government refused to issue it in the case of same-sex marriages. Of course, that puts up a bureaucratic barrier to those couples who wish to marry, which the Dutch government has responded to by saying that it will waive that requirement for Australian partners. The only other country, I understand, that it waives that requirement for is Zimbabwe.

That is the impact. It makes it harder for same-sex couples. The Dutch government has responded to that, but in some other jurisdictions where it is required I am not sure that there is a waiver. So, yes, it looks to us like the discrimination inherent in Australian marriage law is not stopping at our borders but is reaching its arm across the world, and that really is not appropriate.

CHAIR—I just have one other question and then I will pass it on. Mr Tuazon-McCheyne, when did you get married in Canada?

Mr J Tuazon-McCheyne—January 2004.

CHAIR—That precedes the changes to the Marriage Act, so is your marriage recognised as legitimate in this country?

Mr J Tuazon-McCheyne—Before we tested that—because we did not do it for political reasons—we came home and, with a female couple, went to the Family Court and asked them to validate our overseas marriage because it was technically going to be accepted as a legal marriage under our laws. The week before the court proceedings were to commence, the Howard government changed the law to the extent where there was no case and we were not allowed to even proceed. They refunded our money. So, yes, I think we were legally married here for a few months.

CHAIR—Can you give us some practical implications of what that has meant for you?

Mr J Tuazon-McCheyne—It was quite shattering, to be honest. Financially it was very expensive to travel to Canada to get married. We wanted to be legally married before we pursued the process of having a child. The biggest thing was that our family and friends were unable to come and were denied the opportunity to celebrate that with us.

CHAIR—Why did you think it was important to be married before you had a child?

Mr J Tuazon-McCheyne—Maybe I am a bit traditional, but most of the couples that I marry as a celebrant express the same thing that I expressed: it is just sort of the right step in the process for us. We always wanted to be married before we had our son, because we are proud of being married and we are proud that we are a family. No disrespect to people who do not wish to be married and have children; I am not judging them by any stretch, but for us it was just a natural progression.

CHAIR—So, in relation to a man and a woman who seek to marry before they have a child, you would say your feelings are the same—your thoughts are the same?

Mr J Tuazon-McCheyne—Yes, exactly the same—no difference.

CHAIR—Thank you. Senator Fisher, do you have any questions?

Senator FISHER—Mr Tuazon-McCheyne, you ventured an estimate of the number of same-sex couples—

Mr J Tuazon-McCheyne—No, same-sex people in the country.

Senator FISHER—same-sex people in Australia. Does your organisation have any evidentiary basis for that?

Mr J Tuazon-McCheyne—Yes. I am actually a PhD student and I am conducting research. Basically, in any population in the world, whether you label as ‘gay and lesbian’, ‘same-sex couples’, ‘same-sex attracted’ or ‘homosexual’, about three to five per cent of any given population on the planet is same-sex attracted. So the figure comes from three to five per cent of the Australian population of 22 million. I was being very conservative.

Senator FISHER—So on that basis you say how many million?

Mr J Tuazon-McCheyne—At least a million Australians.

Senator FISHER—Thank you. I now understand how you get that figure. Mr Croome, how many members does your organisation have? Who are the members? You say you are a community based organisation. How are you funded and what is your membership base?

Mr Croome—The membership of Australian Marriage Equality is several hundred. The last time I looked it was about 550.

Senator FISHER—Are they individuals?

Mr Croome—Most are individuals.

Senator FISHER—What do you have to do or be to be a member of your organisation?

Mr Croome—You need to support the objective of the organisation, which is marriage equality. There is no sexuality test.

Senator FISHER—So you have got several hundred members.

Mr Croome—Like I said, the last time I looked it was over 500.

Senator FISHER—Mr Tuazon-McCheyne well-intendedly made a comparison with a preceding witness and their membership base of some 4,000. Your membership base is some several hundred, so that is another comparison that can be made. The final question I have is: Ms Dane, I note your conclusions and percentages from your survey. What was your survey population? How many people did you survey?

Ms Dane—It was 2,232.

Senator FISHER—From where did they come?

Ms Dane—I could break it down into states, if you would like.

Senator FISHER—Perhaps you could provide that to us on notice, together with, I presume, a copy of your research.

Ms Dane—Yes. The full report of these relationship measures was provided through Australian Marriage Equality to the committee.

Mr Croome—It was an appendix to our submission.

Senator FISHER—Thank you.

Ms Dane—So it is broken down into quite detailed demographics.

Senator POLLEY—Thank you for coming before us. Mr Croome, we have crossed paths before. I was really interested in your opening comments when you talked about the evolution of marriage and the fact that we have now moved on—thank goodness—and a man and a woman from different nationalities and different skin colours can actually marry. What you are saying is that society has moved forward with acceptance of a black woman marrying a white man. So your submission and your organisation—as small as it is—is pushing for change to enable acceptance of your lifestyle?

Mr Croome—No, we are pushing for the reform of the marriage act, so that same-sex couples can marry.

Senator POLLEY—But in your opening comments you said that the changes that have happened over the last couple of hundred years or more, with relation to the definition of marriage, was about social acceptance. So in fact, the changes—with respect to marriage between men and women from different nationalities, or Aboriginal women and white men—have been about social acceptance, and society has changed. Is that not right?

Mr Croome—Yes. My point was that, as society grows to accept that those relationships are no threat and that the love and commitment in those relationships is what defines them, then those relationships have been seen as marriage-like.

Senator POLLEY—To continue on from your opening comments about acceptance by society, that is why the move now with the private member's bill, to have gay marriage become part of the marriage act, is about social acceptance of the lifestyle of those who choose to live with same-sex people.

Mr Croome—It is about removing legal discrimination against couples whom society no longer believes should be discriminated against.

Senator POLLEY—Hasn't the federal government in recent times removed—I think it was 87—pieces of legislation that were considered to be discriminatory in nature and, in turn, hasn't that caused the gay and lesbian organisations to lobby the federal government, because, in fact, there were same-sex couples living together claiming double benefits through Centrelink? Therefore, not all the gay and lesbian people of this country support gay marriage.

Mr Croome—I am not sure of the point there. Yes, we welcomed recognition of de facto same-sex couples and, yes, there was an issue with some people, particularly older couples, receiving double benefits and not being allowed sufficient time to adjust their finances. I am not sure of the relationship of that to marriage. Most of the people I know who advocated for that reform also support this reform on the basis of nondiscrimination. Did I miss something?

Senator POLLEY—With the Tasmanian register of relationships—

Mr J Tuazon-McCheyne—May I ask a question? You are talking about acceptance of a ‘lifestyle’. Could I ask what you mean by that?

Senator POLLEY—Acceptance of the gay relationship—the point of pushing for—

Mr J Tuazon-McCheyne—You have used the phrase ‘the lifestyle’ a few times as if it is different to something else. Could you explain that, please?

Senator POLLEY—The lifestyle that you choose, to marry a man, is very different to a heterosexual—a man and a woman—

Mr A Tuazon-McCheyne—Are you saying that I have chosen to marry a man instead of choosing to marry a woman—that I could have chosen to marry a woman if I wanted to? Legally, I can actually marry a woman now even though I married Adrian in Canada. I am a bit confused by—

Senator POLLEY—Would you then support changing the Marriage Act so that you could marry a man and a woman or I could marry two men? Would you support that?

Mr J Tuazon-McCheyne—I am just confused because you referred to a lifestyle, like a choice. Homosexual orientation, just like heterosexual orientation, is stable and fixed; it is something that has psychobiological causes and you become aware of it at some point in your maturation into an adult. People do not wake up one day and decide to choose a lifestyle. As I said in my submission before, the only lifestyle we chose is that we fell in love, we got married, we have had a child and we contribute to our community. When you refer to the choosing of lifestyle, you are incorrect in saying that. That is not the reality of sexual orientation. I am assuming you have a heterosexual orientation?

Senator POLLEY—I do not think my sexual orientation has anything to do with it.

Mr J Tuazon-McCheyne—No, but you did not choose it; it was just there.

Senator POLLEY—The last time I was at a Senate hearing the senators asked the questions and the witnesses provided the answers. I am not here to justify my sexual orientation; I am trying to gain evidence for an—

Mr J Tuazon-McCheyne—The same—I am trying to understand what you are asking, because it was not very clear.

Senator POLLEY—We will agree to disagree. That is my interpretation.

Mr J Tuazon-McCheyne—No-one chooses their orientation.

Senator POLLEY—Through you, Chair, I would like to ask Mr Croome how many registered relationships there are on the Tasmanian register. Are you aware?

Mr Croome—Yes. As of 30 September 2009, there were 136: 52 male relationships, 51 female relationships, 31 opposite sex relationships and two caring relationships.

Senator POLLEY—That register accepts legitimate relationships, whether that is between a man and a woman, two men or two women? Do you believe it has been successful in Tasmania?

Mr Croome—I believe it has been successful compared to other similar civil union schemes around the world. Certainly, in terms of population, the number of couples who have entered into a deed of relationship in Tasmania is exactly the same—as I said, proportionate to population—as in New Zealand, but, as we said in our submission on several occasions, schemes such as that are not a substitute for equality in marriage. They are to provide a choice for heterosexual couples, obviously, who have that choice. Same-sex couples do not have that choice, which is probably why they predominate. That scheme was established, like I said, not as a substitute for marriage but as a way for couples who do not wish to marry to formalise their relationships. What we find in countries where the choice exists between civil union and marriage, most same-sex couples, as Sharon’s research indicates, choose to marry.

Senator HANSON-YOUNG—Firstly, to Jason and Adrian, thank you for appearing today. Based on the fact that you have been trying to have your own relationship legitimised under Australian law in the country that you are citizens of, appearing before a parliamentary hearing takes great courage. I would just like to thank you for that. One of the things I wanted to ask Mr Croome was in relation to the reasons why civil unions are not an appropriate substitute for marriage. Could you expand on that a little more?

Mr Croome—In my opening remarks I cited some research from other countries where only civil unions are available to same-sex partners. The repeated complaints of partners is that their status as civil union partners is not recognised or understood by key agencies—health insurers, schools or even government agencies—and certainly not in social discourse by their families, friends and neighbours. So while civil unions might grant those partners equal entitlements as married partners in practice they are often denied those entitlements by authorities who are ignorant of what a civil union is or who are deliberately discriminatory.

That is my experience in Tasmania as well. Senator Polley referred to the registry there, which, as I have said—and I think she said—was a really important development, but many of the partners I have spoken to say that, even though they are guaranteed by that registry the same spousal rights as married couples in Tasmanian law, often that is not respected by state authorities, by health insurers, by schools or whomever it might be simply because there is not an understanding of what that means. That may change over time. It certainly would change if the Tasmanian government took greater initiative to promote the scheme in a way that it hasn't, really. But the point is that, as I said in my opening remarks, marriage is a universal category. We all understand what it is. There is a language attached to it and there is a respect for it from authorities and from the general community, which means that the problems that I have noted in terms of civil union schemes both in Australia and overseas do not exist.

Senator HANSON-YOUNG—Thank you. I want to put a question to Ms Dane. I have a question for you in relation to your research. I am not sure whether your research has covered this or not. There is a little bit of the debate in the community around, 'Not all same-sex couples want to marry, so why should we actually amend the Marriage Act?' Of course, I would assume that it would be fairly common knowledge that not all heterosexual couples wish to marry, either, and there is in fact no compulsion on heterosexual couples who are in a relationship together, whether they have children or not, to marry. Did any of your research look at these issues?

Ms Dane—I looked at the rates of marriage—in other words, of heterosexual couples in Australia. I think the recent Australian Bureau of Statistics says that at the moment 45 per cent of people are married. But it is very difficult for me to make the contrast between that and the findings we found in a survey. It is a bit like comparing apples with oranges in the sense that same-sex couples do not have that right. So I did not make a comparison. All we have from the research is that simply the majority of participants in the study—irrespective of what type of legal status their current relationship has or even if they not even in a same-sex relationship currently—selected marriage as their personal preference.

Another argument is that the numbers do not really matter anyway. If 10 per cent or 20 per cent of same-sex couples wanted to be married, that should be enough because it is about having the choice. The same would apply if, all of a sudden in time to come, only 30 per cent or 40 per cent of heterosexual couples chose to marry. Would that be a reason to abolish marriage? People still need a choice. So I have not really gone down the path of the numbers for that argument; I have only stated this to try and dispel the myth out there that I frequently hear that same-sex couples are promiscuous and do not really want to marry, and that is not true.

Senator HANSON-YOUNG—I am interested in the fact that you are a civil celebrant. You said that you have married over a thousand couples. What is the response that you get from people you marry, which is something you do quite regularly? I have been through a marriage and you have quite a discussion with your celebrant about why you are entering into marriage. It is quite a process. What is the feedback that you get from couples when they discover that your marriage is not actually legitimate?

Mr J Tuazon-McCheyne—Ninety-nine per cent of the couples that I marry are really sad for me and my family. Ruben comes running in all the time saying hello. More so, as every year goes on, couples ask for the monitum not to be said. I have to say it; it is a legal requirement or they are not married. But they are personally offended by it—not just them personally but they have family members or friends in the audience who are gay or lesbian and what the monitum says is offensive to many people. It is a statement that must be said at every ceremony as it is part of the Marriage Act. I happily say it. I do not do anything to degrade any heterosexual marriage that I perform, but there is a sense of sadness and there is anger in many people now, particularly here in Melbourne. The cultural and community attitudes are changing. When you have gay or

lesbian family or friends, you realise that they are just like anybody else—it is not a ‘lifestyle choice’ that they have made—and that there is very little difference between a gay person and a straight person or a gay marriage and a straight marriage.

Senator BARNETT—Mr Croome, we have crossed paths before, like Senator Polley. I would like to ask you a few questions, firstly about Australian Marriage Equality. In earlier answers, you confirmed that it has several hundred members—I think you mentioned over 500. When was it established?

Mr Croome—In 2004.

Senator BARNETT—For the specific objective outlined in your paper?

Mr Croome—Yes.

Senator BARNETT—You have a pretty good track record in establishing community based organisations for that objective. How many organisations have you been involved with, in terms of getting them established for that purpose?

Mr Croome—I do not believe I established Australian Marriage Equality. It was established by others.

Senator BARNETT—How many organisations have you been involved with, in terms of getting them established or being involved as either a member or in support to achieve that objective?

Mr Croome—The objective of marriage equality?

Senator BARNETT—And gay equality, using your own words. I do not want to put words in your mouth.

Mr Croome—Senator, as you know, I have been involved for many years in the Tasmanian Gay and Lesbian Rights Group. I am also involved with the Australian Coalition for Equality—I was involved as a board member—which is speaking this afternoon.

Senator BARNETT—Are there any others?

Mr Croome—I worked with the Human Rights and Equal Opportunity Commission on a project that they had about disadvantaged gay youth in rural areas, but that was not specifically a gay organisation.

Senator BARNETT—So you are very active in this arena and at the political level—as a political activist, you would say. Is that a fair observation?

Mr Croome—I am quite active, yes, as an advocate and as a lobbyist.

Senator BARNETT—Do you support polygamy?

Mr Croome—No, I do not. Are you asking for my personal views or as a—

Senator BARNETT—Either way. I would like your personal views and I would also like to know the views of Australian Marriage Equality.

Mr Croome—Australian Marriage Equality does not—no.

Senator BARNETT—What about you?

Mr Croome—It is not really relevant, but, no, I do not.

Senator BARNETT—I think it is relevant because the bill before us—Senator Hanson Young’s bill—excludes and discriminates against polygamous relationships. Would you agree with that?

Mr Croome—Because it does not recognise them?

Senator BARNETT—Yes.

Mr Croome—Yes.

Senator BARNETT—And does it discriminate based on age?

Mr Croome—Yes.

Senator BARNETT—So the bill does discriminate. So what we are focusing on is unjust or unfair, inappropriate discrimination rather than discrimination in and of itself. Would that be a fair observation?

Mr Croome—Yes. We are not just talking about distinctions; we are talking about discrimination and disadvantage.

Senator BARNETT—Do you see the 2004 amending bill as unconstitutional and in breach of Australia’s international human rights?

Mr Croome—I certainly see it as a breach of Australia's international human rights. I think it is a breach of the right to equality before the law as enshrined in the ICCPR. On the constitutional issue, that is for the High Court to decide.

Senator BARNETT—Have you considered litigation to test the case, or do you think others should consider that?

Mr Croome—Because this is a grave injustice, of course that should be considered. We have not considered it in depth, though, because we wish to seek the route of parliamentary reform.

Senator BARNETT—Whether the 2004 amendments will be challenged I guess remains to be seen, but it was raised here earlier, this morning, by the Castan law centre and obviously by you.

Mr Croome—We certainly agree that there are human rights which are being violated.

Senator BARNETT—I will move on. The bill before us drops the reference to exclusivity in the relationship. I am wondering why you think that is the case. That obviously raises the question of non-exclusive relationships and the duration of relationships. I am interested to know—and you have been very active in this arena—whether you know the average duration of the average marriage and of the average gay relationship.

Mr Croome—First, in terms of the definition in the senator's bill, Australian Marriage Equality strongly supports equality in the current Marriage Act in marriage as defined in that act—and, of course, as you pointed out, that includes being to the exclusion of all others.

Senator BARNETT—So you support that reference being included in the bill—

Mr Croome—However marriage is defined in the Marriage Act, that definition should be applied without discrimination.

Senator BARNETT—But it is being removed from the current bill. Do you support the current bill?

Mr Croome—Not that part. In terms of your second question about duration of relationship, would you mind if I defer to Sharon?

Senator BARNETT—No, not at all. I am even happy for you to take it on notice if you do not know the exact answer today.

Ms Dane—Senator, according to the research that we conducted for the *Not so private lives* survey, it was seven years on average for people over the age of 30. Obviously younger participants are not always in relationships for very long. I think for 18- to 20-year-olds the average was around one year or less. But it is also very difficult to get accurate figures on this because a lot of same-sex attracted people, because of oppression and discrimination in the past, did not come out until later years, so they may not have entered into a same-sex relationship until their later years—this applies at least to the older generation. To try and get accurate figures on the longevity of those relationships is very difficult because we have to take into account all the things that inhibited them being those relationships in the first place.

Senator BARNETT—So it is one or two years if it is below 30 and seven years if it is over 30? If not, can you please advise the committee?

Ms Dane—No. I can certainly give the exact years, but it is not one or two for those under 30—that was for groups under the age of 20. The survey was for people aged 18 and above. So I am talking about 18- and 19-year-olds.

Senator BARNETT—Okay, so under 20.

Ms Dane—Yes, 18- and 19-year-olds were in relationships that ranged from a few months to a year or two. I do not think this would be any different with heterosexual young people at that age, and that could probably be verified by comparing research. For people over the age of 30, it was seven years.

Senator BARNETT—Perhaps on notice could you confirm—I could not hear properly—where that research came from and where we can look at it?

Ms Dane—The research is online, at www.entsoprivatelives.com. It is a report through the University of Queensland.

Senator BARNETT—Thank you. If you have any further evidence with respect to the duration of same-sex relationships, that would be of interest to me and I think other members of the committee.

Mr Croome—Of course, a possible point to make about your question is that you have, as Sharon said earlier, compared apples and oranges. You have compared the duration of heterosexual marriages with the duration of same-sex relationships in general, and the whole point of today's discussion of course is that marriages tend to confirm commitment and may tend to be longer than unformalised relationships. So the correct comparison, if we are to compare apples and apples, would be between heterosexual marriages and same-sex marriages. Of course, the statistics that we have on that—

Senator BARNETT—Don't worry about the demonstration outside; they are coming exactly according to plan, I am sure, Mr Croome, so you should not be too surprised.

Mr Croome—No, I had no idea this would happen, Senator.

CHAIR—I do not think that is appropriate, Senator Barnett.

Senator BARNETT—Okay, well, if that is denied—

CHAIR—Senator Barnett, I am the Chair and I am speaking.

Senator BARNETT—If Mr Croome says that is not true I believe Mr Croome.

CHAIR—Senator Barnett, I am the Chair—

Senator BARNETT—I accept Mr Croome's comment.

CHAIR—Senator Barnett, I am the Chair; when I speak, I expect you to stop speaking. There are plenty of demonstrations inside and outside Parliament House at all times of the day, and this is a hearing of the Senate, so we should not be too surprised if we have demonstrations occurring inside or outside this venue either. Mr Croome, please proceed.

Senator BARNETT—The noise from outside does make it hard for us.

CHAIR—It does make it a bit difficult.

Senator BARNETT—I have no more questions, Chair.

CHAIR—I think it is going to be a bit hard to continue while we have the background noise.

Mr Croome—Perhaps the interruption is evidence that I did not in fact have any role in planning this.

CHAIR—Okay.

Mr Croome—Just to finish that point, to compare apples and apples would be to compare heterosexual marriages and same-sex marriages. The research we have cited in our submission is that the divorce rates of those couples in jurisdictions where same-sex marriage is recognised is almost exactly the same. So that would suggest that, when we do compare apples and apples, duration—which I think was the issue your raised—is comparable.

Senator BARNETT—If you have any evidence to support that, I am happy for you to provide that on notice. As indicated earlier, that would be appreciated.

Mr Croome—We will; thank you.

Senator BARNETT—Thank you.

CHAIR—Can I just remind senators that the reference to the *Not so private lives* research conducted by Dr Dane is actually outlined in detail on page 46 and 47 of the submission. As Dr Dane said, it is attachment 3. There may be no need to go to the website if people look at the submission carefully.

Mr Croome—Certainly people can go to the website to see how many people were surveyed and the spread of those people, and they will see that they are representative.

CHAIR—I thank the four of you for your attendance this morning, and particularly you, Dr Dane, on the end of the telephone. I thank you for your submission and the time you have given us today for this inquiry.

Mr Dane—Thank you very much for the opportunity.

[12.19 pm]

PHILLIPS, Dr David Michael, National President, FamilyVoice Australia

CHAIR—Welcome. FamilyVoice Australia has lodged a submission with the committee. For our purposes we have labelled it No. 8. Before I ask you to make an opening statement, do you want to make any changes or alterations today?

Dr Phillips—No, no changes. I do ask you whether it might be possible to arrange for the demonstration to be moved a little further away so it does not interfere with this hearing.

CHAIR—We do not have any jurisdiction outside this venue, Dr Phillips, I am afraid. We can hear you and, when we consider our report, it will certainly be on *Hansard* for us to read, so please continue.

Senator BARNETT—On a point of order, Madam Chair: Dr Phillips has made and expressed concerns about the environment in which he is providing evidence. I think as a committee we should note those concerns in terms of the noise and the disruption to the committee and, as noted, the concern about free speech and that Dr Phillips should have the right to express his views without such interference. Can I just suggest that we monitor the situation and, if it becomes unruly and disruptive unnecessarily, then at that time we should intervene. But at the moment it appears adequate.

CHAIR—Senator Barnett, if you did not want to take up so much time, Dr Phillips could almost have been halfway through his initial presentation now.

Senator BARNETT—You—

CHAIR—I am chair, and it is being monitored by me and the secretary. Dr Phillips, please proceed.

Senator BARNETT—I raise a point of order, Madam Chair. You gave the distinct impression to the committee and indeed to the witness that his views were not appropriate or to be accommodated, and I have responded. I hope that point of order is taken into account.

CHAIR—You are incorrect there. I simply stated that we as a Senate committee have no jurisdiction, capacity or power to control people outside on a footpath. They were banging on the windows and that has now stopped, and we are taking further action. If we stop wasting time and get on with it, we can hear your evidence. Dr Phillips, please.

Dr Phillips—Thank you, Senator Crossin. I will just make the further observation that when I have appeared in Senate committees in Parliament House in Canberra there has been no possibility of such interference because of the Senate meeting rooms being sufficiently removed from the public areas. I will just make that observation.

Senator MARSHALL—We are not in Canberra.

Dr Phillips—No, I understand we are in Melbourne today. That was where my plane—

Senator MARSHALL—I am not sure what point you were trying to make then.

Dr Phillips—Just that there are hearings in Canberra where this situation would not arise. I will proceed with making some preliminary remarks—first of all, just a few remarks about FamilyVoice Australia. We are a national organisation. We have supporters throughout Australia, and we have functioning branches in all five mainland states. Secondly, we are a Christian organisation and we work with Christians across the denominational spectrum. Thirdly, we are non-partisan politically. We have no connection with any political party and we endeavour to engage with politicians of all political parties. Fourthly, we are concerned primarily to address the issues which we summarise under family, faith and freedom. Today the matter before us is in our family area, where we are concerned about issues connected with marriage.

In relation to the core of our submission, we are arguing that marriage is a recognition of fundamental realities of life. The first of those is that humans are made of two varieties, male and female. That is part of observed reality. We are basing this in observable reality. Secondly, the procreation of the species occurs naturally through the sexual union of a man and a woman. That is again a natural reality with which we live. The third reality is that children are best raised in the context of that natural union—where children are raised in the context; they are born into a family formed by a man and a woman when they marry. Human babies are very vulnerable. Unlike some other mammals, humans take something like 20 years to grow to maturity, and that requires a long-term, stable relationship. Some may argue that they do not even mature after 20 years! But it does require a long-term, stable environment for children to mature into responsible, well-adjusted adults, and it is marriage that provides the framework which allows for that.

Society has an interest in that because any society which has a concern for its future needs to think about the next generation of that society. A society which does not have a next generation does not have a future as a society or as a culture, and the nation has a stake in providing a relationship which provides for good citizens of the future.

Fifthly, the understanding of marriage that we have in Australia is partly a natural thing that observes and acknowledges human reality. In part it is a recognition of the Christian heritage that has contributed to this nation's formation and history. I could elaborate on this more, but there is a strong argument that the Christian faith has contributed to some of the most beneficial aspects of society in history and in our present day and age. So our Christian heritage in Australia is actually a considerable benefit.

Some of the other submissions today have made various claims. There has been an appeal to United Nations documents, covenants and so on. I would make the point that these international documents are useful to the extent that they express what might be described as 'discovered reality' to the extent that these United Nations documents are saying, 'This is what real life is like. We observe that like observing the force of gravity. We observe that is what life is like.' To the extent that they are doing that, they perform a useful function. But if they indulge in the area of invented fantasy, setting out an agenda of some utopian dream, they are not useful documents.

Secondly, there is the concept of discrimination, which is heralded as the ultimate principle behind most of the United Nations documents. Discrimination or nondiscrimination as a principle is a flawed principle. It just does not apply universally. Just one example of that is in sporting events such as the Olympic Games where there are separate men's and women's events and discrimination based on sex. If that were not the case, then you would probably find that most of the track and field events would be won by men and probably the gymnastics events would be won by women. There are differences, physically and emotionally in all sorts of ways between the sexes. So nondiscrimination is not a universal principle. It has numerous exceptions.

The third point about the declarations and conventions is that they are primarily concerned with the rights of individuals, not the rights of couples. One can affirm the rights of individuals to freedom of speech, freedom of movement, freedom of accommodation and things like that without making any statement at all about implications for couples. One of the rights that is stated in the ICCPR at article 23(2) is the right to marry. This is a right of men and women of marriageable age to marry. That is a right of an individual man to marry an individual woman, or an individual woman, vice versa, to marry a man. That is a nondiscriminatory right. Once you recognise the definition of marriage, then everyone without discrimination who satisfies the criteria of what marriage is, is under that article 23(2) given the right to exercise that in a nondiscriminatory manner.

Finally, marriage under Australian law, as defined in the Marriage Act, has a number of criteria. First of all, it is a union, a sexual union. It is not a business partnership, although sometimes it may also be that. Secondly, it is a union between a man and a woman, and that is what is in contention today. Thirdly, it is an exclusive relationship. It is not about polygamy or serial monogamy or having mistresses or anything like that; it is intended to be an exclusive union. Fourthly, it is a voluntary union. The Marriage Act definition does not support forced marriages, and there was a recent case in the Northern Territory of a man wanting to exercise what he believed were his rights to a forced marriage. The Marriage Act does not support that. Fifthly, it is between adults; children cannot marry. You must be over the age of 18 normally, with some minor exceptions. There are also prohibited degrees of consanguinity or relationship: a man cannot marry just any woman—he cannot marry a sibling or a child or anyone within a prohibited relationship. So marriage is a defined entity and it has a whole variety of restrictions that give meaning to the notion of marriage. Within that meaning there is no discrimination. Anyone who satisfies those criteria is free to marry without discrimination. Thank you, Senators, those are my opening remarks.

CHAIR—Thank you, Dr Phillips. You talked about United Nations conventions inventing fantasies. Which ones would they be? I am a bit perplexed about your choice of language there given that as a country we take those conventions very seriously and ratify them and sign up to them—and not lightly by any means—and some conventions we have signed but not ratified. So I am a bit perplexed by your use of language there and I am wondering whether you think there are some conventions that do in fact invent fantasies, and I am wondering which ones they might be.

Dr Phillips—I am making a general observation that the fact that a group of people in the United Nations have sat around in a room and come up with a written document and it has received general consent in that room and been adopted by other countries, does not necessarily make it a statement of absolute truth.

CHAIR—It is really not that simple. Conventions are not made that simply. They can take years to be negotiated and agreed to by member states of the United Nations.

Dr Phillips—Yes, I recognise the process is complex. What I am seeking to deny is that they have ultimate authority over everyone in the world. They are human documents subject to human limitations and, even though the process of agreeing to them is, as you have said, complex and it takes a long time, there is no guarantee that they are necessarily the epitome of truth and wisdom. They are human documents and fallible, and there are some international agreements that Australia has not signed and has not ratified. There are some which, in our opinion, maybe it should not have signed or ratified—

CHAIR—Which ones would they be?

Dr Phillips—I do not want to go into details. It is not really the purpose of today's hearing. I simply wish to make the observation that they are not the ultimate source of authority. To claim that United Nations documents are the source of ultimate authority is actually to make a religious statement. It is a statement of faith or belief that a certain statement is absolute truth and has absolute authority. I am making the point that it is a religious assertion and it does not necessarily have to be assented to by every human being in the world who may disagree with it.

CHAIR—I think that you seriously undermine the role of the United Nations and the role we play as a country in the Assembly and our process with the other 193 countries that sign up to the UN and all it stands for, that is all. We might have to agree to disagree, but I think that it is a very unusual view that you portray. Is that your association's view or your own personal view?

Dr Phillips—As an association, we have opposed the signing and ratification of some other United Nations conventions over the years, basically on the ground that I have just stated. I think that we may need to agree to disagree and move on to other issues.

CHAIR—It is a fairly significant one, because we have signed up to conventions and ratified them, which means that we give an international commitment to implement them.

Dr Phillips—And perhaps in some instances we should, as a nation, review the way in which some United Nations conventions are interpreted by the Human Rights Committee, for example. The Human Rights Committee when I last looked was dominated by members of numerous dictatorships and authoritarian regimes that do not represent the kinds of democratic freedoms we have in Australia, and yet we—

CHAIR—You are talking about the United Nations Human Rights Committee?

Dr Phillips—Yes. That committee is representing governments around Australia, yet the members do not enjoy the democratic freedoms of Australia. In submitting to their interpretation of United Nations conventions we are submitting to the views of people who may be representing authoritarian or dictatorial views and as a democracy in Australia, I believe, we need to recognise that there are limitations to the United Nations conventions that we have signed up to.

CHAIR—You do realise that the Human Rights Committee of the UN would support your position. In a test case they have actually determined that the Marriage Act is not discriminatory. Are you aware of that?

Dr Phillips—I may not—

CHAIR—The evidence given to us this morning by the Castan Centre for Human Rights Law plus quite a number of other submitters to this have re-stated to us a test case—

Dr Phillips—Are you reassuring my—

CHAIR—No, I just want to make sure for the public record that we actually get some facts in this debate and put the facts on the *Hansard*.

Dr Phillips—So that was in the Castan Centre for Human Rights Law—

CHAIR—In the case of *Joslin et al v New Zealand*, the Human Rights Committee in a brief ruling concluded that the Marriage Act was not discriminatory, relying solely on New Zealand's argument—this is a case concerning a gay and a lesbian couple—that homosexual couples failed to fall under the definition of the term 'men and women' in article 23. So that actually supports your case.

Dr Phillips—I am happy to hear that, Senator.

CHAIR—I am a bit surprised that you would denigrate the HRC on the basis of that.

Dr Phillips—When it comes to the right conclusion, I applaud it.

CHAIR—I see. Well, that gets that record straight, doesn't it?

Senator BARNETT—I can understand some of your concerns, Dr Phillips, with respect to the influence of certain international conventions in Australian law—so just to placate your interest in that regard. You said in your submission, page 3, that marriage provides the best environment for raising children. Can you just provide us with further and better particulars with respect to your views as to why it provides the best environment for raising children? I am also interested in your views on whether you agree that a child coming into the world should have a reasonable expectation—all things being equal—of having both a mother and a father.

CHAIR—Dr Phillips, just before you answer that question—and I am going to allow you to answer it—the issue and the debate about same-sex couples having or not having children having access to IVF or not having access to IVF was the subject of months and months of inquiry by this committee when we wrote our report and moved and changed 102 pieces of legislation. That debate has happened with this committee today and we are dealing now with the definition in the Marriage Act not about whether or not same-sex couples should or should not have children, essentially. I am just saying that because we have got limited time and I think there are issues that we could better concentrate on.

Senator BARNETT—I will take a point of order, Chair. I see that intervention as unnecessary and unfair and potentially a slight on my question to Dr Phillips. I see some of those issues as directly relevant to the issue of marriage and the definition in the Marriage Act and the bill before us. So I would not want Dr Phillips to think that in any way the two questions that I have put to him are inappropriate or irrelevant.

CHAIR—That is your view, Senator Barnett. As Chair, I am ruling that they might be appropriate but they are not relevant to the bill that is before us. We have had those questions—

Senator BARNETT—That is your view—that is fine.

CHAIR—Senator Barnett, I am speaking. We have had that debate in previous legislation that we have reported on.

Senator BARNETT—Dr Phillips, I have put two questions to you. I have happy to repeat them if you need me to, in light of the interjections we have had, but if you could assist the committee—

CHAIR—They are not interjections. I am the Chair, Senator Barnett.

Senator MARSHALL—The terms of reference are about the bill in front of us—

Senator BARNETT—Exactly. It is directly relevant to the bill.

Dr Phillips—I said in my opening remarks that we are dealing with human realities. Marriage is a discovery of human realities. The first reality is that human beings are male and female. The second reality is that children are produced naturally through the sexual union of a man and a woman and, thirdly, the reality is that children do best in the environment of a marriage.

They do best for several reasons. One is that men and women have different attributes. They contribute different things to a child. A mother contributes particularly self-esteem and a father contributes primarily in the area of challenging the child or encouraging the child to engage with the wider world. It is important for a child both to feel secure and have good self-esteem and for the child to have the confidence to engage in the wider world as the child grows up. The mother and father contribute different things and the balanced child requires input from both a father and a mother. That is best provided by a child being the biological child of the mother and father. That is not always possible. We live in a world which has got problems in it and not everyone has that experience. But where we are arranging for a child to be brought into the world, if we are serving the best interests of the child, we will do so in a manner which allows the child to have a mother and a father. To do anything other than that is irresponsible.

Senator BARNETT—And my second question regarding the reasonable expectation of a child to come into the world, all things being equal—

Dr Phillips—Yes.

Senator BARNETT—My second and final question relates to your submission—which I say is very comprehensive and very useful, thank you—and exclusivity. The reference to exclusivity has been removed from the bill before us. On page 8 of your submission you say that it should be for life and you refer to the duration of a certain relationship including same-sex relationships having a 303 per cent break-up rate for lesbian relationships, and 135 per cent increase in break-up rates for same-sex male relationships. Do you have

any further evidence or could you to take on notice the average duration of a same-sex relationship and, secondly, the average duration of a marriage and the average duration of a cohabiting heterosexual relationship? If you are happy to take those on notice, that would be most useful.

Dr Phillips—I am happy to take those on notice. Certainly the available figures, as we see them, are that the average duration of a marriage is very much longer than a cohabiting relationship and a same-sex relationship. There are figures available and I will obtain those and supply them as an answer on notice.

Senator BARNETT—Thank you. I did have a final question about the human rights issue. There has been some debate about whether the 2004 bill is in breach of our international human rights conventions. If you agree or disagree, could you take on notice and provide the reasons? I presume you disagree with that and if you could provide the evidence or research to support that view, that would be useful.

Dr Phillips—I can do that as well. Senator Crossin has just remarked on the New Zealand case, but that may provide—

Senator BARNETT—If you are happy to take it on notice, thank you.

Senator MARSHALL—Dr Phillips, I am just now a little bit unclear about what your objection is. If same-sex couples were not seeking to bring up children, would you still object to them getting married just because they were in love with each other?

Dr Phillips—Our concern is to defend the institution of marriage. Marriage, as I said earlier on, is a sexual union between a man and a woman. It is exclusive and it is voluntarily entered and it is intended to be for life. It is between adult people and it does not breach consanguinity constraints. That is what marriage is. A social institution is something which creates expectations and conventions to provide for the future of society—

Senator MARSHALL—No, you have not even come close to my question. If same-sex couples did not seek to bring up children, would you then object to them being able to get married simply because they were in love with each other? Leave the children part to one side.

Dr Phillips—I hope I may be able to answer the question my way and I have approached it tangentially by affirming what marriage is—

Senator MARSHALL—But you have already done that in the evidence.

Dr Phillips—We are defending marriage in toto as an institution necessary for the benefit of society. If society is going to produce a next generation of stable, responsible, law-abiding adults, it needs to encourage marriage. The law can do several things. The law can comment and foster things, or government policy can commend and foster things. For example, contract law where someone entering into a contract can have that upheld in the courts—

Senator MARSHALL—Okay, if you do not want to answer the question, that is fine.

Dr Phillips—I am answering the question, Senator Marshall. May I finish my answer—

Senator MARSHALL—Well, maybe you could put it in writing and respond on notice, and I will ask another question. Let us come back to heterosexual couples who do not get married, who have children and bring them up in loving, stable relationships. Is that different? Do people have to be married? You are making a point about this institution and you talked about the role of a male and the role of a female in the relationship all based on marriage itself. But not everyone gets married.

Dr Phillips—I am defending marriage as an institution. It is a package with seven ingredients. If any one of those is missing, it is not marriage. I am defending marriage. I am answering your question. I am answering both of your questions. I am not taking a question on notice—I am answering it now. I am answering it in my own way. I am answering it on the way we believe. I am answering it on behalf of FamilyVoice Australia. We are defending the institution of marriage.

Senator MARSHALL—Against what though? What are you defending it against?

Dr Phillips—It is not against anything. We are saying that for the benefit of society as a whole there are certain things we value. For example, we uphold—and it is not quite an institution—the whole concept of freedom of speech, which is being exercised here today. We impose limits on it—you are not allowed to defame other people and so on. There are some things that the law proscribes. You are not allowed to murder people. There are some things that are illegal. There are some things where the law is neutral and there are some things where the law positively affirms certain things. Marriage is an institution which is of benefit to the nation. It is essential for the long-term wellbeing of the nation and the nation has a stake, an interest, in

upholding the set of conventions and expectations that make up the institution of marriage. Anything that detracts from those, detracts from the institution of marriage. That is my answer to both of your questions, Senator Marshall.

Senator HANSON-YOUNG—I have a question directly following on from that. It sounds to me that you have put unmarried parents in the same category as people who defame and people who murder. That is what you just did. Are you suggesting, as the organisation, FamilyVoice Australia, that the children of unmarried couples—parents—are in the same category as people who deliberately defame others or are murderers? If that is not so, I suggest that you rethink the comments that you have just made.

Dr Phillips—First of all, Senator, I would be glad if you did not put words into my mouth—

Senator HANSON-YOUNG—They were your words, Dr Phillips.

Dr Phillips—No, I was not making the point which you purported to make. I was saying that the way the law functions in society commends some things, is neutral on some things and prohibits other things, and I was giving some examples of things which the law prohibits. It also prohibits assault. One can think of a large number of things that the law, for the safety and benefit of the citizens of Australia, prohibits as antisocial behaviour. The point that I was making is that the law has a function of prohibiting some things.

The other point I was making is that the law or government policy sometimes has the opposite role of positively affirming things that are of benefit. The example I gave of that was contract law. The whole of our economic system depends on contracts being enforceable. If contracts were not enforceable, I could engage a builder to build a house for me, for example, and then decide when the house is halfway up that I do not want to finish the contract and I am not going to pay it. The law upholds contracts because our whole economic system depends on upholding the concept of contract law being valid. I am saying that the law rightly has a role in upholding the institution of marriage with all of the seven ingredients that I have listed because it is ultimately of benefit to the nation and of benefit to the wellbeing and development of—

Senator HANSON-YOUNG—Why, if it is such a benefit—which I do not disagree with, actually; I completely agree with it—

Dr Phillips—I am glad to hear you, Senator.

Senator HANSON-YOUNG—I completely agree that marriage is a benefit to society. What would we not want to extend it to other people who are in a loving, committed relationship? Why would we not want to extend it to same-sex couples to contribute to that benefit of society?

Dr Phillips—Well, what about extending—

Senator HANSON-YOUNG—No, answer my question.

Dr Phillips—I am answering your question but I am doing so in my own way, Senator. Why not extend it to non-exclusive relationships and embrace polygamy? Why not extend it to non-voluntary relationships and allow forced marriages, as happened in the Northern Territory? Why not extend it to allowing children to marry? Why not extend it to incestuous relationships?

Senator HANSON-YOUNG—I would argue that your belief as to why we would not do that, and mine as well, is that that perhaps would not be a benefit. But what is the disbenefit of extending the institution of marriage to two men who are in a loving, committed relationship or to two women who are in a loving, committed relationship? What is the disbenefit of that to the community? Please explain.

Dr Phillips—Certainly. The reason why incestuous relationships—

Senator HANSON-YOUNG—No, that is not the question I asked you. If you do not want to answer our questions, we are over time, and I would ask the chair to wind up.

Senator POLLEY—On a point of order, Chair: we had a senator put a question. The witness under standing orders has a right to answer that question. If we are going to turn this into a badgering exercise, I would ask you, Chair, to call senators to order and to remind them of the standing orders.

CHAIR—Senator Polley, Senator Hanson-Young did not ask about incestuous relationships. We are short of time, Dr Phillips, so can you just try and answer the question you were asked.

Dr Phillips—My answer is very clear. I have said it several times. The institution of marriage involves seven ingredients. I have named those seven ingredients on at least two occasions, and I have said that any departure from those seven ingredients no longer constitutes marriage. We want to uphold the institution of

Senator HANSON-YOUNG—You have not been able to give me an answer as to what the disbenefit to society is of allowing two people who happen to be of the same sex and are homosexual to have their love for each other recognised in the same way as a heterosexual couple. How is that a disbenefit? You have not been able to answer, and I do not—

Dr Phillips—I have answered your question in the way that I wanted to answer it—namely, that we uphold the institution of marriage and the conventions and expectations that surround that institution as being for the benefit of society as a whole. If that institution and those conventions are not upheld by society, society as a whole will not have as good a future as it could by upholding those things. So it is to uphold the conventions and the institutions of marriage in society.

CHAIR—All right. Thank you very much for your submission today.

Senator POLLEY—I have some other questions.

CHAIR—Sorry, Senator Polley.

Senator POLLEY—In relation to the previous witnesses, I think you were in the room when Mr Croome made his opening comment. He spoke about society's acceptance of change to marriage over the last 200, 300 or 400 years and he cited where white men and black women can marry and different nationalities can marry. But my understanding is that fundamentally the Marriage Act and our understanding of marriage have not changed—that is, it is between a man and a woman. This bill seeks to have two men or two women who are—and I would not dispute that they have feelings and love each other. Senator Hanson-Young asked you where the disservice was to marriage and to our society. I then pose the question: if I as a woman am in love with two men or three men, why then shouldn't I be able to marry under this change? Won't we in fact be coming back and back and back to further erode what we as a society consider marriage to be about? Do you have any comments?

Dr Phillips—Absolutely. The example was given by Mr Croome that marriage has changed, that there was a sentiment in the community that marriage between different races was inappropriate. That was never a legal constraint. There was also a suggestion that marriage between different religions was inappropriate. I have listed the seven fundamental ingredients of marriage. Race is not one of them. Religion is not one of them. So those changes did not change the fundamental sevenfold understanding of marriage. So the assertion by Mr Croome that there has been a change fails because there was no change in those seven fundamental elements.

The other thing that the amending bill would do would be to remove the exclusivity, which would open the door to polygamous and polyandrous marriages. That would be another breach of the essential ingredients of marriage as we understand it in Australia and have done for many hundreds of years.

Senator POLLEY—This is my final question. A lot of the submissions and witnesses we have heard today have spoken about where gay relationships have been acknowledged legally in other countries like the US and Scandinavian countries. In Scandinavia, can you have more than one wife or more than one husband, to the best of your knowledge?

Dr Phillips—I do not know the answer to that.

Senator POLLEY—So that could still be considered to be discriminatory as well?

Dr Phillips—If that is the case. If it is only two people then it would still be considered discriminatory in that sense.

Senator POLLEY—Thank you, Chair.

CHAIR—Thank you very much. Dr Phillips, thanks for your time today and the submission that you have provided to this committee.

Dr Phillips—Thanks very much, Senator.

Proceedings suspended from 1.00 pm to 1.51 pm

ARGENT, Mrs Shelley, OAM, National Spokesperson, Parents and Friends of Lesbians and Gays

CHAIR—Welcome. Parents and Friends of Lesbians and Gays has provided the committee with a submission, which we have labelled No. 2. Do you have any changes or amendments to that?

Mrs Argent—No.

CHAIR—I invite you to make an opening statement.

Mrs Argent—Thank you for allowing me to speak here today to discuss same-sex marriage, an issue that affects thousands of couples and their families and one of my sons. As you may know, I am the parent of two sons. My eldest son, James, is gay and the other is straight. As a mother who loves both her sons equally, it is heartbreaking to see one of my sons continuing to be discriminated against in his own country because of his sexual orientation. Homosexuality is a natural orientation that is neither chosen nor caused by poor parenting, and it cannot be cured because it is not an illness. I always equate sexual orientation to eye colour and fingerprints. No-one chooses. We have to accept what we are given.

My straight son has all the privileges that go with being heterosexual, including legalising his relationship and the respect that brings. James, my gay son, does not share these privileges. As a parent, I see my very caring, respectful gay son being denied the opportunity for equality and the benefits that marriage brings. Marriage, to me, is about building a life together. It provides emotional, financial and social commitment and it is a symbolic expression of love. It is also about people being happier and healthier because of being in a stable relationship, which of course is what any parent wants for their child, regardless of their orientation. Additionally, marriage provides companionship, which acts as a buffer against stress and instability and helps people get through the best and worst of life. This is what I want for my son. Many parents' greatest fear is that their same-sex attracted children will grow old and lonely, but I really believe recognising same-sex marriage would go a long way to reassuring these parents that this does not have to be the case.

My son now is off travelling, but before he went overseas he was one of the youngest Queensland police sergeants. He received bravery citations for actions taken during his line of duty and was regularly called on to protect the public and calm dangerous situations. But he still was not and still is not good enough to have the same rights and privileges that the murderers, rapists and drug dealers he arrested take for granted in respect of marriage. I believe the country should be run by the state to improve lives, not oppress them. If the government of the day does not protect minorities, no-one will. Nobody loses by embracing a society where everyone is equal.

As a mother, I have watched my son work harder than most people to achieve and be seen as worthy. When he was a police officer in Kuranda, the Indigenous population wanted to give him a corroboree when they knew he was leaving the area, because they respected him so much. When he resigned from the force, his work colleagues, whom he was out an proud to, were very sad to see him go, because of his work attitude and general demeanour. But still his own country is reluctant to permit him the privilege of giving his relationship the respect it deserves by the decision to marry the person whom and when he chooses.

A marriage ceremony puts the same-sex relationship into a context everyone is familiar with and has the potential to transform what the couple means to each other in the eyes of the family, friends and society in general. For many parents it will also take the sting out of their son or daughter identifying as lesbian or gay, because one of the main concerns parents experience is the loss of the tradition of having the marriage option for their child. For many this is a huge source of disappointment. For others it can also help the family come out and come to terms with their sexual orientation in a positive setting. Supporting friends and family bearing witness to the ceremony certainly helps to strengthen the couple's bond and show the relationship as meaningful in society.

Some people say it is about rights—which is true—but as a parent it is more about seeing one of your children being treated differently and unfairly, in a country that talks about giving everyone a fair go, because of something they have no control over. We should also keep in mind throughout this inquiry that a person's sexual orientation does not denote whether they are decent individuals or not and it does not dictate morals or negate the family values a person has grown up with. History, I believe, will view legislation against same-sex marriage as insensitive, invalid and illogical, as was the legislation that prohibited interracial marriage not that many years ago. I, like the many parents I represent, want my son and the other parents' sons and daughters to become full and equal citizens under Australian law, and I ask those involved with the outcomes of this inquiry to keep in mind, when making the decision, how, if you had a gay child, you would want the government to

treat him or her regarding respect and rights. Would you want them to be kept as second-rate citizens or would you want them to be seen as equals in society? Thank you.

CHAIR—Thank you very much.

Senator HANSON-YOUNG—Do you think that, regardless of exactly what is recommended in this inquiry's report, parliamentarians should be given the opportunity to discuss the bill and have a conscience vote?

Mrs Argent—Yes, I think so.

Senator HANSON-YOUNG—Prime Minister Rudd says that he does not believe that this needs to happen. Should he give his members the opportunity to represent their constituents?

Mrs Argent—I think that would be an excellent idea, because then it is not just the party line; it is individuals. I think that if that were the case—and I think that might be what he is frightened of—the legislation would go through.

Senator HANSON-YOUNG—What do you mean by that? That if people were perhaps given the opportunity to vote—

Mrs Argent—on a conscience vote the legislation would be passed allowing same-sex couples to marry.

Senator HANSON-YOUNG—Regarding the organisation that you represent, PFLAG, are the types of things that you have expressed about how you feel as a mother similar to those of people who do not have gay children or a child who is in a same-sex relationship in terms of understanding that what they want for their child is for them to be able to make a choice about who they love and what they want to do with their lives? You do not think that it is necessarily any different; it just happens that you have a barrier. Is that right?

Mrs Argent—That is exactly right. It comes down to choice. I know that when my straight son is ready, and when he chooses, he can marry whomever he likes and there will not be an issue about it. My gay son was in a 10-year relationship. He is 32 and, from about the age of 21 to 31, he was in a 10-year relationship. It was heartbreaking in a sense because they had their own home, they had invested in other properties, they had joint bank accounts, they had the dog, they had the family holidays overseas—they had everything that you would wish for for your child, except the marriage. So the relationship was never recognised. At the time, my son was a police officer. If he had been killed in action, or whatever you would like to call it, his partner would not have even got a sympathy card from the federal government, because they were not recognised—they are nothing; they are absolutely invisible. And that is not fair.

Senator HANSON-YOUNG—I am saying this as a senator, not as a member of the government party—

Senator MARSHALL—Because you are not.

Senator HANSON-YOUNG—Exactly. The government have introduced various pieces of legislation in the last 12 to 18 months that have removed, to be honest, a lot of discrimination.

Mrs Argent—And I think they are to be commended for that.

Senator HANSON-YOUNG—But what you are saying is that marriage is something different.

Mrs Argent—It is. It is the ultimate. For me, for your child to be married, it sort of goes up a step in society. It is an instant recognition. It is symbolism. It cuts out any legal issues. Even for a lot of same-sex couples there is the issue of next of kin. So if one was to be injured or could not speak for themselves, their partner cannot necessarily always just walk in and say, 'I'm the partner and I can speak for them'.

Senator HANSON-YOUNG—Would you agree with the argument put forward by Mr Croome—who was here earlier—that it is the universal understanding around the language and meaning of marriage that, without achieving equality under the federal act, same-sex couples are never going to be able to access?

Mrs Argent—That is right. You can give them civil union or you can give them relationship recognition, but it is still telling them that they are different—that they are not equal. Again, as everybody has been saying here today, it comes down to choice. My gay son does not have the choice; my straight son does have the choice.

Senator HANSON-YOUNG—And you do not think for any moment—or maybe this is something that you have reconciled; I am not sure—that the ability for your gay son to marry somehow diminishes the marriage that your straight son has?

Mrs Argent—No, not at all; it just shows that he is equal. No parent of a lesbian or gay wants special rights; we just want equal rights.

Senator BARNETT—Thanks for your submission and your evidence today and your heartfelt views and for confirming on the record your love for both your kids. That is really noted and totally understandable and fantastic. I understand from your point of view that you think gays are seen as second-class citizens or are being treated as second-class citizens. I just wanted to assure you that that is certainly not my view and I know that it is not the view of many. You said that they felt that all the legislation is oppressive—or words to that effect—and again I wanted to assure you that, from my point of view, that is certainly not the view that I would hold. I again commend you on your steadfast love for both the kids. Can you tell us a bit more about the Parents and Friends of Lesbians and Gays and how many members you have and when you were established?

Mrs Argent—It is an international organisation that started after the Stonewall human rights march in the US in, I think, 1969. It is voluntary; nobody is paid. You cannot really give an estimate of members, because it does not operate like that. But I can tell you that we have 300 people on our mailing list. We are more a peer support group. We will get parents ringing up wanting to understand and get support with their sons and daughters. We support them and we talk about the issues and the emotions that they will go through. Normally what happens is that once the parents go, ‘Oh, yes, okay; I feel better now and I understand,’ they move on and you never hear from them again. As somebody said here this morning, there are probably a million people in this country who identify as lesbian or gay. You would never get all of those parents ringing, but it is still a lot of people.

Senator BARNETT—You are the president and it appears you are based in Brisbane. So the organisation is based in Brisbane. Do you have an executive officer and a committee?

Mrs Argent—Yes.

Senator BARNETT—Can you describe that for us?

Mrs Argent—There are groups throughout the country and I am just president of the Brisbane group. We have a president, a secretary, a treasurer and four or five committee members.

Senator BARNETT—Do you have a national organisation as well?

Mrs Argent—No. I was elected the national spokesperson at a national conference that we had about three years ago.

Senator BARNETT—You have been president ever since?

Mrs Argent—Yes—the national spokesperson ever since.

Senator BARNETT—Do you have annual meetings?

Mrs Argent—No.

Senator BARNETT—Have you had an annual meeting since three years ago?

Mrs Argent—No. What happens is the groups go up and down in strength. What may have been a group last year is no longer a group because either the parents have got tired or the groups have failed for various reasons.

Senator BARNETT—In Australia, when was the organisation established?

Mrs Argent—Probably about 20 years ago.

Senator BARNETT—Just in terms of the bill before us and your understanding of the current law, do you agree that it discriminates against polygamous marriages? Do you support that position?

Mrs Argent—The way I see that is, if polygamy were legal for heterosexual couples, then it should be for same-sex couples, but it is not. I do not see that polygamy is even an issue, because we are not even talking about that; we are talking about two people marrying, whether they are straight or gay. Polygamy is a non-issue to me.

Senator BARNETT—What about age?

Mrs Argent—Do you mean somebody under the age of 18 marrying?

Senator BARNETT—Yes.

Mrs Argent—No, because they are still classified as children.

Senator BARNETT—So the current law discriminates against people who are under 18. Do you accept that?

Mrs Argent—Yes.

Senator BARNETT—It is likewise for sibling relationships—the bill discriminates against sibling relationships and marriages in those relationships.

Mrs Argent—One would hope so—yes.

Senator BARNETT—There is a view that has been put that discrimination is altogether bad. I do not accept that. I do not agree with it and I do not think most people would agree with that either, in the sense that it is unjust or unfair discrimination. I think that is your argument—you see this as unjust or unfair discrimination, not just discrimination and therefore it is bad, because you can discriminate based on age, polygamy or sibling relationships, but it is this type of discrimination that you do not support?

Mrs Argent—If people are of a legal age and are able to make their own decisions, I do not see why two same-sex attracted people should not be able to marry. It is not like they are intellectually impaired. If they are willing and happy to make the decision, why not? That is the whole argument. I do not see why my gay son should be discriminated against just because he is gay. He has done nothing wrong. He has not chosen to be gay; he was born gay.

Senator MARSHALL—I want to ask you some questions about your personal experience with community attitudes. In order to do that I want to first of all ask you a couple of questions about your son. If you do not want to answer, we will move on. When did he come out? How long have you known that he is gay?

Mrs Argent—My son came out officially when he was about 18, but I suspected he was gay from the age of about 11 or 12.

Senator MARSHALL—How long ago was that?

Mrs Argent—He is 32 now.

Senator MARSHALL—Okay. Could you do the maths for me?

Mrs Argent—That was 21 or 22 years ago. That is when I suspected.

Senator MARSHALL—Could you tell me the community views of gay people at that time?

Mrs Argent—Let's just start at the beginning. When he first came out, I knew that he had not chosen it. I do not believe anybody chooses to be gay or lesbian. I taught him to never apologise for being gay and never step back, because he has done nothing wrong. So I have never really encountered homophobia, and, because of his attitude, he has never really encountered true homophobia. Even in the police force, he has never really encountered any. He was always out and proud. He took his partner to social events, which I thought was very brave, and it was fine. In the general community—

Senator MARSHALL—They are his experiences. I am actually interested in the way you have seen it.

Mrs Argent—Being the president, I have noticed that parents these days are becoming concerned about different things. They are not concerned so much about the physical abuse and such. They are now more wanting their children to be seen as equal and they are more concerned about their rights and about them being abused than before, with the physical safety, the shame and the guilt. Also, we used to get quite a few calls from people looking for assistance and wanting face-to-face contact, whereas now our website is getting a lot more hits than it used to and I am finding that when they come to us people are feeling much more comfortable about the whole issue. Sometimes all they want to do is just to talk to another parent of a gay person, and when they can see that you are okay they feel okay.

Senator MARSHALL—We have had some evidence of some polling that has been done over a period of time, and each time the polling—and without knowing exactly what sorts of questions were asked is always hard to make an exact judgment—gives me the impression that as time goes by gay and lesbian issues become more accepted and more tolerated and there is less discrimination. As has been pointed out, we have moved to remove a whole range of legal discrimination. I am asking you to reflect on that. I suspect that 21 years ago, when your son came out, we would not even have been here as a Senate considering gay marriage, but here we are today. In terms of the natural progression, what do you see? I probably have not put my view very well. I am looking to where you think we are going. Is this move inevitable in the evolution of community attitudes?

Mrs Argent—I really think so.

Senator MARSHALL—Maybe we are not quite there yet but maybe we are not too far away.

Mrs Argent—It will come. I think society is getting more comfortable because they are seeing same-sex couples out and about, they know that they are having children and they see that the sky is not falling in. So people are feeling comfortable. When I go out people ask me, ‘What do you do?’ and I tell them. People say, ‘Yes, I have a gay brother’ or ‘I have a gay friend’ or ‘I have a gay cousin’, but until somebody says it they all sit quietly. But people are out there. Anecdotally, I believe that one in five families has a gay family member, whether they know it or not.

Senator MARSHALL—Do you think it is important for us as the Senate to understand what the specific community attitude is to this issue? I know there has been some polling done, and it may be worth while finding out what the actual view of the general public is in relation to this issue.

Mrs Argent—Realistically, a lot of people do not care.

Senator MARSHALL—But that might be about marriage in general, not just same-sex marriage.

Mrs Argent—It could be just generally. I find that a lot of people say, ‘Look, it’s just becoming less of an issue.’ Once upon a time when I would say to people, ‘I have a gay son’ they would say, ‘Oh, really? You’re very brave talking about it.’ Now they say, ‘Mmm.’ That is how I perceive it: people are getting less and less shocked all the time when you tell them you have a gay child.

Senator MARSHALL—Yes. If your son were to get married, do you think his marriage would somehow undermine someone else’s marriage?

Mrs Argent—I can never understand that logic. It would be an enhancement; it would show the community and society generally that we are inclusive. They do not want anything different from what we do—that is, respect, stability, having their relationship recognised.

Senator MARSHALL—Heterosexual marriages are failing every day, as we know.

Mrs Argent—Yes.

Senator MARSHALL—Do you think your son getting married would increase the rate of failure?

Mrs Argent—No, I do not. And people say that same-sex relationships do not last. The thing is they are often coming from a situation where they are already living under pressure. A lot of them do not have family support and their partners are not welcome in the family home, so of course that is going to put pressure on the relationship. If you have to go home alone and you cannot take your partner with you at Christmas time, of course that puts pressure on the relationship. Then you also have this societal expectation, even from some parents, that the relationship will not work because it is a same-sex one. I just think that is insulting. With my boy I always worked on the theory of bringing him in and encouraging the partner into the home as I do with my straight son and his partner. I really believe that is what kept it together, because they knew they were accepted, they could be themselves, there was no pressure and they knew that they were treated equally. Even though my son has separated from his partner, that boy still knows he is our third son and he comes to us. It is all about respecting them as individuals and respecting their relationship.

CHAIR—The humorous side of me says I suppose your son-in-law and your daughter-in-law still have mother-in-law issues and joke about that, occasionally, just like everyone else does.

Mrs Argent—No. My third son always tells me that I am much more understanding than his own mother and he comes home to me with his problems because he knows I listen.

CHAIR—I think what Senator Marshall is saying is right: there is a movement towards more acceptance. We certainly saw that in the previous 12 months, where we had a major inquiry into a raft of changes—101 or 102 pieces of legislation were amended—to end discrimination against same-sex couples in a whole raft of areas, including superannuation, family law et cetera. But it stopped short of the Marriage Act. Do you have any ideas about how your organisation or other organisations could garner that broader support from the public to pursue this, if that is what is wanted among this group?

Mrs Argent—What I am very keen on is general education and awareness. I have written lots of resources for people to become informed, and one of the latest is called ‘How to be a straight ally’. I have given a few tips and then some websites that people can visit to get general information about gay rights and such things, to make them more aware. Also, I am putting together a six-fold brochure which contains 10 points about why same-sex marriage is the same as heterosexual marriage and so on. I think it is just general education and awareness and it removes that fear factor that so many people have of the unknown, because people always

fear what they do not understand. If you put that information out there for them, they pick it up and read it. Even if they throw it in the bin later, at least they have thought about it. As a parent body, that is really all we can do.

CHAIR—Is there any international dialogue between your organisation and equivalent organisations? Your submission says, and we have heard it this morning, that legislation to allow same-sex marriage has occurred in Canada, Spain, Belgium, the Netherlands and so on. Do you have any dialogue with similar groups in those countries?

Mrs Argent—I do. I have contact with Canada and with PFLAG USA.

CHAIR—Do you have any feedback from them that you could provide us as evidence?

Mrs Argent—With Canada, I am told that when the legislation first went through there was a lot of kicking and screaming from the opposition. They were going to repeal that legislation if they got into government, but they never did. They could see, I am sure, that nothing was happening. Society was not falling into decay, so they just left it.

CHAIR—Society had moved on, essentially.

Mrs Argent—That is right.

CHAIR—And in the USA?

Mrs Argent—There they have only got some states.

CHAIR—Yes, six.

Mrs Argent—So it is just a state issue. As Rodney said, people Google their rights. That is appalling. As a straight person, we would never have to Google our rights when we move interstate. It is a given. We just know what our rights are. But that is what same-sex couples do all the time. They just do not know what their rights are, because they change—and that should not be the case.

CHAIR—Because it changes from state to state?

Mrs Argent—Yes, from state to state. It does not matter what it is—whether it is parenting or just relationship rights—they are always different.

Senator MARSHALL—We will fix up the federation at the next inquiry.

Mrs Argent—That is what we need. We need it to be equal across the board, so that when they move they know what they are doing where they are.

CHAIR—So it would be useful, do you think, for maybe the Law Reform Commission, for example, to do an analysis or a stocktake of those rights and maybe an analysis of where there is consistency or inconsistency across the board?

Mrs Argent—Absolutely.

CHAIR—I suppose that might be a good start. As there are no further questions, I thank you, Mrs Argent, very much—certainly for your submission. You have come from Brisbane to be part of our inquiry.

Senator MARSHALL—Sorry it is so cold in here for you.

Mrs Argent—Actually, I would rather be at home at the moment because it is cooler.

CHAIR—Thank you very much for your submission and for making yourself available today. The committee does appreciate the fact that you have put yourself out to come down to Melbourne.

[2.22 pm]

ELLIOTT, Most Reverend Peter, Auxiliary Bishop, Southern Region, Catholic Archdiocese of Melbourne and Catholic Archdiocese of Sydney

JOSEPH, Miss Mary, Research and Project Officer, Life, Marriage and Family Centre, Catholic Archdiocese of Sydney

MacDONALD, Mr Matthew, Executive Officer, Life, Marriage and Family Office, Catholic Archdiocese of Melbourne

MENEY, Mr Christopher, Director, Life, Marriage and Family Centre, Catholic Archdiocese of Sydney

CHAIR—Welcome. For the *Hansard* record, could you please state the capacity in which you appear?

Bishop Elliott—I am Auxiliary Bishop of the Catholic Archdiocese of Melbourne for the southern region. I am also Director of the John Paul II Institute for Marriage and the Family. I served for 10 years in the Vatican's Pontifical Council for the Family. I was on the delegation of the Holy See at the UN international conferences on population, social justice and women.

CHAIR—We have received a submission from the Catholic Archdiocese of Melbourne, and we have labelled it and numbered 77. The Catholic Archdiocese of Sydney's submission is with us and that has been labelled No. 26. Before I invite you to make an opening statement, would you like to make any changes or amendments to those submissions?

Bishop Elliott—No, thank you, Madam Chair.

CHAIR—Sometimes people need to adjust tables or correct figures or something. I invite you to make an opening statement, at the end of which we will go to questions.

Mr Meney—Thanks for the opportunity to appear before the committee. We are appearing on behalf of the Archbishop of Sydney, Cardinal Pell, and the Archbishop of Melbourne, Denis Hart, and we would like to reserve the right for the archbishops to further clarify any comments we make.

To begin with, we recognise there are people of integrity and goodwill on both sides of the debate, but goodwill is not sufficient in itself to make for good public policy. Marriage is a natural institution whereby a man and a woman give themselves to each other for life in an exclusive sexual relationship that is open to the possibility of children. As the natural environment in which the mutual love of a husband and wife expresses itself in children to whom both are genetically and socially bound, marriage is unique. Marriage between a man and a woman is the fundamental family relationship across all cultures, the relationship on which society and extended family is built. It is a union that is publicly recognised and treated as special, distinguished from other types of relationships because of its unique capacity to generate children and to meet children's deepest needs for the love and attachment of both their father and mother. In the words of Professor George of Princeton:

... marriage is the community formed by a man and a woman who publicly consent to share their whole lives in a type of relationship oriented towards the begetting, nurturing and education of children together. This openness to procreation, as the community's natural fulfillment, distinguishes this community from other types.

By contrast, although the community formed by a homosexual couple may involve genuine caring, affection and commitment to one another, it is not an inherently procreative community, because their sexual relationship is not designed to generate children. Marriage is not simply a loving, committed relationship between two people but a unique kind of physical and emotional union which is open to the possibility of life.

The definition of marriage as an inherently procreative community does not exclude heterosexual married couples who cannot have children for reasons of age or infertility. They are still married, because their sexual union is naturally designed to give life, even if it cannot give life at a particular point in time or ever. Marriage between a man and a woman always has an inherent capacity for and orientation towards the generation of children, whether that capacity is actualised or not.

Unjust discrimination against any human being is always wrong. However, it is not unjust discrimination against homosexual couples to uphold marriage as being between a man and a woman. Marriage and same-sex unions are essentially different realities. Justice in fact requires society to recognise and respect this difference. While there is no fundamental right to sexuality, the Universal Declaration of Human Rights recognises the fundamental right of men and women to marry and found a family. The United Nations' Human Rights

Committee, which monitors international human rights treaties, has stated that the right to marry implies, in principle, the possibility to procreate.

Parliament should not seek to change the definition of marriage. Marriage is an objective and natural institution found in all cultures and is not a subjective concept. While it is certainly possible for parliament to legislate that a circle will from now on be called a square, it is beyond the power of parliament to actually change a circle into a square. The state has always recognised that marriage is a public institution because the marital relationship makes a unique and essential contribution to the common good. The primary reason why nation states have been interested in marriage and why it has attracted public support is its procreative aspect, encompassing the generation and raising of children.

Marriage makes a unique and irreplaceable contribution to society, because a stable, loving marriage provides the best conditions for raising children. Through marriage, children are able to grow up knowing that they were created through an act of intimate love, with the knowledge that their mother and father had committed to each other for life. Marriage also makes a unique social contribution in modelling the way women and men live interdependently, recognising the equal dignity, beauty and value of the other and committing to seek the good of each other. A family based on marriage is the best social framework for the promotion of intergenerational and intragenerational biological connectivity, which is an important and vital social good.

The state cannot grant the legal status of marriage to same-sex unions without failing in its duty to promote and defend marriage as an institution essential to the public good. For same-sex couples, having a child will always involve the use of one or more persons outside their relationship. This is unjust to children and destructive of their family connectedness. This practice should not be publicly endorsed or encouraged, because it involves a profound loss and deprivation for the child concerned—the loss of a pre-eminent and vital relationship with their biological father or mother.

Laws play an important and sometimes decisive role in influencing behaviour. A law that removes the natural parental dimension from our collective understanding of marriage profoundly devalues parenthood. As a result, our understanding of children also changes. When we equate same-sex relationships with marriage, it changes our understanding of family by wrongly implying that biological connectivity of children with their parents and siblings is not important.

Implicit in this bill is the judgment that for children to have both a mother and a father is an unnecessary and superfluous duplication. It is contrary to everything we intuitively and sociologically know about effective parenting to claim that mothers can father just as well as men and that fathers can mother just as well as women. To know and experience having a mother and a father is the right of every child and should be secured as far as possible. It does not follow that, because some parents courageously succeed in the difficult job of raising children without a spouse, marriage is no longer the best place for children to be nurtured and loved. The state has always given marriage special recognition and support above all other sexual and romantic relationships. This is because of its unique ability to produce children and to meet the needs of those children.

Marriage is the union of a man and a woman and deserves the continued support and recognition by the state. Its enduring character cannot be legislated away. Marriage cannot be changed to become something which it is not, but altering people's perceptions of marriage will profoundly impact our culture for the worse. Thank you for the opportunity. We would be happy to answer any further questions from the committee.

CHAIR—Bishop Elliott, do you want to say anything at all as an opening statement?

Bishop Elliott—As an opening statement, I would make it clear that our presentation is not theological. We do not come here to present some Catholic agenda. One of the great traditions within our faith includes respect for natural law, natural society, the nature of the human person and the good of society. We have a whole range of social doctrines that have been developed over the last 120 years which respect this. It is in this framework that we are here today: not to promote our religion or theology but to promote the natural institution of marriage and family that is interconnected and inseparable.

Mr MacDonald—I would not add anything to that just for a moment. I am happy to answer questions.

Senator BARNETT—Thank you very much for your submissions. Mr Meney, your opening statement was very much appreciated and, in my view, very persuasive. A number of submissions have been made to us this morning that it is discriminatory. You used the words 'unjust discrimination' in your opening statement. Could you clarify on the record for the committee your views as to whether it is discriminatory or otherwise with respect to same-sex marriage. We are denying that under the current law, but under this bill it would be

allowed. Do you see it as discriminatory under the proposed legislation but not unjust discrimination? We have discrimination against age and polygamous relationships—where it is discriminatory against those situations. Can you outline in further detail your views with respect to whether or not it is discriminatory?

Mr Meney—Societies always try to discriminate in one way or another in all sorts of different forums. As you have mentioned, we discriminate on the basis of age by saying that people have to be of a certain age before they can get married. We have various ways in which we limit who can drive a car—you have to be of a certain age in certain jurisdictions. It is not a matter of showing that you are an excellent car driver at 15 years of age; you will not get a licence. There are prudent reasons why societies discriminate on the basis of good social policy. Marriage is understood as being between a man and a woman. It has a particular understanding within the community and it promotes an enormous social good. Societies generally have always been interested in regulating marriage because of its inherent and appropriate capacity. That is why it discriminates and preferentially makes decisions in certain ways with reference to what marriage means. I do not believe that it is unjust in any way. There are good reasons why societies should continue to support what marriage is and its common understanding, and should continue to preclude adulterations of what people purport to make marriage mean.

Senator BARNETT—I want to move now to the area of international law and human rights. With respect to international law, you have made reference in your submission and in your opening statements to the Universal Declaration of Human Rights. You said the right to marry and found a family is affirmed in that declaration. You also referred to the Human Rights Committee saying that the right to marry implies in principle the possibility to procreate. Can you express your views on the record? We had the Caxton Legal Centre saying that the 2004 amendment was contrary to that international covenant and contrary to our international obligations. I would like to know your views, whether you disagree with that—I assume you do—and, if so, why. And could you provide further and better particulars with respect to the fact that our current law is legal and we are acting in accordance with international human rights law?

Mr Meney—I will make just one point and then I might ask Mary Joseph to make some comments. There are many societies which that make certain rules with respect to marriage which we do not recognise here in Australia, particularly in reference to polygamy. We readily accept that our understanding of what marriage means should override any interpretations that other jurisdictions may have with respect to marriage. I might ask Mary to make some additional comments on that in terms of how that plays out international law.

Miss Joseph—International law is clear that the right to marry and found a family is a right of men and women to marry each other, and that has been affirmed by the Human Rights Committee. In their General Comment 19 they say that under international law it is clear that the right to marry implies in principle the possibility to procreate. With regard to the point raised by the Caxton Legal Centre, we would say that we are not under an obligation to recognise marriages which would otherwise be invalid under international law. So same-sex marriages in those jurisdictions which have legalised same-sex marriage have not acted in accordance with their obligations under the UNDR, the Universal Declaration of Human Rights, and the ruling from the Human Rights Committee. Because there is a prior law which says that marriage must be between a man and a woman, those countries have not harmonised their domestic laws in accordance with that higher law; therefore, we are not under an obligation to recognise those marriages.

Senator BARNETT—Would you say they have acted in breach of that international law?

Miss Joseph—Yes, I would.

Senator BARNETT—That is very persuasive.

Mr MacDonald—If you go through the international convention, in numerous places, when referring to people in general, it refers to ‘human beings’ or ‘all people’. There is only one clause where it says ‘man and woman’, and that is when it refers to marriage. So it is quite clear that in the drafting of the human rights conventions they deliberately meant a man and a woman. In the case of *Joslin v New Zealand*, which I know some have referred to, that was the point that was brought out—that it is quite clear in international law that around marriage it is between a man and a woman and where they wanted to refer to people in general, a right in general for all people, they used different language altogether.

Senator BARNETT—Can you give us a reference, either now or on notice, to marriage being between a man and a woman?

Miss Joseph—Yes, we can provide that.

Senator BARNETT—If you have any further evidence to assure the committee that Australia not only is not in breach of its international obligations but is acting within its international obligations that would be greatly appreciated.

Miss Joseph—Yes, certainly, Senator.

Mr MacDonald—In the international convention it is article 23 paragraph 2 which refers to men and women.

Senator BARNETT—Thank you. If you are happy to take that question on notice that would be good. We have had a view put to us today by Mr Croome and others that marriage has evolved over time, referring to race, for example. An example is black not being able to marry white and so on. But you have put the view to us that marriage has not changed in terms of the fundamentals of marriage across cultures, across religions and across time. Can you further elucidate, advise the committee as to your views in that regard and provide evidence to support that view?

Mr Meney—Marriage has always been understood—even in very ancient societies—to be between a man and a woman. Even though certain forms of sexual behaviour have been tolerated—and widespread in some cultures—it has never been seen as marriage. The laws on preventing interracial marriage never sought to change the definition of what marriage is. It was certainly unjust discrimination in reference to people who should have been allowed to marry. A person of age who is a male and a person of age who is a female who freely choose to spend their life together should be allowed to marry. These laws that are under consideration within this committee will fundamentally change the understanding of what marriage is, and they are very different to the situation with respect to interracial laws.

Senator BARNETT—Bishop, do you want to add to that?

Bishop Elliott—I teach the history of marriage at a postgraduate level and I have also studied it in Rome at the postgraduate level. The kind of proposal that is embodied in this proposed legislation is unheard of in any society, because here we are, as it were, going for the jugular. This is the most radical approach to completely redefine the federal law of this country in terms of a new, completely novel idea of what marriage is—which is not found in any of the societies of the world. Here we also want to be very careful. Some countries are cited as legalising same-sex unions and turning them into marriage—even using the word ‘marriage’—although not always. Yet what are these countries? They are Western, secularist countries. We are part of a much wider world and there are much wider communities in this world, particularly in this 21st century when we have, for example, the whole question of Islam. The idea of proposing this in a normal Islamic society—you do not have to be an Islamist, I make that clear—they would regard it as an abomination and as madness. I am afraid that I must not mince words here. Yes, marriage takes different forms in societies—polygamy, polyandry and things like that, although the latter is somewhat rarer than polygamy. It is important to understand this. We cannot be culturally relativist about this. It does not work.

Senator BARNETT—There is a view that has been put that there is a movement across the countries of the world—that they are moving towards gay marriage and a number of countries have been cited and a number of states in the US have been cited. What is your view with respect to the view that majority of nations in the world are moving this way? Can you provide an update with respect to this movement or this transformation towards gay marriages and whether or not that is accurate?

Bishop Elliott—Other submissions have listed those countries that have and there are some considering this process and this change. These countries fall into the category of Western Eurocentric societies—even if they are not in Europe—who are heavily influenced by modern and post-modern secularism. There is also behind this—and I must put this on the table—an ideology. There are no illusions about this. During the preparations for the United Nations world conference on women that was held in Beijing, the Holy See delegation came across the driving force in United Nations bureaucratic circles of what is called ‘gender feminism’. Gender feminism redefines sex. It will not use the word ‘sex’—the two sexes—it thinks in terms of a whole spectrum of genders, which we choose, adapt and change. This sounds preposterous to many people when you first mention it, but this fringe ideology is exercising great power through the UN and this, I believe—and have seen from my own experience—has trickled down into national legislations, regretfully.

Mr McDonald—When you look at the numbers, we are talking about the seven states out of 194 of the UN. It is less than five per cent. You can hardly say that that is a great tide of change. In the US it is six out of 52 states. It is a little difficult to say that that is an enormous tide of change. If we consider the family to be the social building block, the basic cell of society—it even comes before the state—to radically change that to say

that it is not what it used to be changes the whole way in which our society is constructed. We would not change, for example, our Constitution without a referendum. Yet it would seem that there are some who would propose that just with a simple bill we would change the family and marriage, which constitutes the very building block on which we found our society—on the basis that seven international states or six US states have changed their laws. To me it hardly seems convincing.

Senator BARNETT—Okay. Thank you for that. My final question relates to your views that the best interests of the child is served by maintaining the current law. I am wondering whether you could perhaps provide your confirmation of that and further reasons why it is in the best interests of the child that the marriage laws remain as they are?

Mr Meney—We would certainly say that fatherhood and motherhood are very different entities in what they offer children. I am happy to take on notice the opportunity to respond with a number of examples of studies which show the specific contributions that fathers make to the development of sons and daughters and the contributions of mothers. We know that there is a lot of evidence to support the fact that the involvement of fathers in the development of teenage daughters puts off girls of that age getting pregnant. It is very, very important to have the father involved when the girl is of that age. We know that there are specific differences in each parent in terms of what they offer kids. We know that fathers can offer sons the ability to undertake risks and to learn how to do things in a prudent way in society, and that risk taking is something that all young men seek to engage in in different ways. Having a father involved is very, very important for them. We also know that mothers are very important in nurturing children of a young age, establishing those emotional links with them at a very early age, and in guiding daughters through the emotional turbulence of adolescence. Mothers are very important. To deliberately orchestrate and allow legislation which would support the formation of parent-child relationships where children would deliberately not have access to a mother and a father is discriminatory and against the interests of those children.

Many people often say, ‘Oh, well, there are studies on both sides. Where is the evidence for this in these particular groups?’ I would like to cite two particular studies. They are meta-analysis studies. The first was 14 studies of homosexual parenting by Belcastro et al. They reported that all of the studies that they looked at ‘lacked external validity’ and that ‘a conclusion that there are no significant differences in children raised by lesbian mothers versus heterosexual mothers is not supported by the public published research database.’

A second study by Lerner and Nagai, who are professionals in the field of qualitative analysis, evaluated 49 studies on same-sex parenting. They said:

We conclude that the methods used in these studies are so flawed that these studies prove nothing. Therefore, they should not be used in legal cases to make any argument about homosexual versus heterosexual parenting. Their claims have no basis.

In one further study by Professor Nock, he said:

Through the analysis I draw my conclusions that all of the articles I reviewed contained at least one fatal flaw of design or execution, and not a single one of those studies was conducted according to general accepted standards of scientific research.

In the absence of any compelling evidence to suggest that what same-sex parenting offers is equivalent to heterosexual parenting we should be very careful in how we move to deliberately creating social structures which will say that they are equivalent to heterosexual parenting. I do not think by any stretch of the imagination that the evidence is there. Prudence would dictate that we should always exercise the appropriate level of care wherever the interests of the child are concerned.

Senator BARNETT—If you are happy to take on notice any further evidence, empirical or otherwise, in support of your view that it is in the best interests of the child, that would be greatly appreciated.

CHAIR—I have a few questions I want to ask. There is the issue of same-sex parenting. I have said this a few times today: we looked at 102 piece of legislation last year in the legal and constitutional committee. We wrote a report and legislation has now passed the parliament that recognises the rights of same-sex couples to have access, in whatever form, to their parenting rights. We have had that debate. That debate did not include whether or not that should be within or outside marriage. It stopped short of that. I also want to preference my question by coming to this personally: I have a Catholic background, I had a marriage annulled and I entered a second marriage. I am a great believer in the institution of marriage, but I also recognise what Mrs Argent was saying earlier, and that is that there would be a whole range of us who know people who identify as gay or lesbian. My question goes to what you believe. If the basis of a lifelong commitment to somebody is that you

plenty of people who get married and do not have children and there are plenty of people who do not get married, are in a de facto relationship and do have children, so I do not believe the basis of marriage is to have children; I think the basis of marriage is that you love someone so deeply that you want to spend the rest of your life with them—does that put a circle around a man and a woman as opposed to two men or two women?

Mr Meney—I will make an initial comment. There is something that is very different and there is why nation states have always been involved in marriage. You have indicated that it is because of a loving and caring relationship between two people who want to spend their lives together. I do not think nation states have ever been interested in regulating that. There have been plenty of examples of people in all sorts of societies who have wanted to form those relationships. They can be very close, they can be very caring and they can be very intimate, but nation states have not been involved. I have a very close relationship with my mother who is in a nursing home. If I walked away from my responsibilities to her, the state would not intervene. If I walked away from my wife and my children, the state would intervene. The state treats marriage differently because of what it offers in return to society. That is a very important difference between what traditional and heterosexual marriage offers compared to other forms of unions.

The law itself is a very blunt instrument. Societies operate in a very rich number of ways: there are certain things that societies greatly encourage; there are certain things that societies provide incentives for; there are other things that they tolerate; some things they are neutral about; some things they try to discourage; and there are some things that they absolutely prohibit. The law tends to operate down that end of the spectrum. It is quite blunt and it does not really have the capacity to differentiate across those other aspects of the spectrum. It is important to acknowledge that the law tends to legislate for those things which are of a social type and of benefit to the society. It tends to act in that way.

CHAIR—Regarding the discrimination laws we dealt with last year, if you choose to register your relationship and you walk away from that relationship, the law does intervene now. That was the purpose of the changes in the law, in terms of custody, rights and access to superannuation. As I said, it gives rights to same-sex couples; it just fell short of changing the Marriage Act.

Mr Meney—I think there were probably good reasons why there were deliberate choices made to do that, because of the value that marriage offers in terms of its social return to the culture. We know that marriage is under great challenge in many respects. We know that marriages break down. We know that a lot of people do not value marriage. But I think it is important to acknowledge that societies and nation-states who traditionally flourish have given some legislative and public support to marriage.

Mr MacDonald—Coming back to what you said at the beginning about it simply being about two individuals who love each other and want to commit to each other, what we maybe fail to recognise adequately in a statement like that is that, as we famously know, men are from Mars and women are from Venus. We are different. I think anyone who is in a heterosexual relationship understands that men and women are not the same. When a man and a woman have that relationship of intimate love it is different because it has a capacity built into it that same-sex relationships simply do not have. It is a fundamentally different kind of relationship. I guess that is at the basis of what we are saying.

CHAIR—I am not sure someone who identifies as gay or lesbian would agree with you there.

Mr MacDonald—That men and women are different?

CHAIR—No, that they have a fundamentally different relationship with their partner to that of a man and a woman in terms of their feeling for each other.

Mr MacDonald—What we are saying is that it is not just about feelings; there is a biological reality in the difference between a man and a woman. When a man and a woman come together in a loving relationship there is a biological fact, regarding children, which is significantly different. That is what we cannot escape. It is a natural and biological reality.

CHAIR—But it does not always have to end up in children.

Mr MacDonald—It does not, but the nature of masculine and feminine love is that it has that capacity, and in a homosexual relationship that capacity simply does not exist as a fruit of their love.

CHAIR—You put the argument to us that only seven countries and six states in the USA have amended their marriage acts. I notice that the first of those countries did that only as recently as 2001—only eight years ago. But we would not have been having this discussion even 10 or 15 years ago in the Senate. Perhaps world views are moving in some respect and there is a shift in societal views. Do you have a comment about that in

relation to the fact that this bill has been produced and there is a lobby group out there—no matter how small or big—arguing for change? I recognise of course that the people in that lobby group may or may not identify as Catholics, or some other religious group either, I might say.

Mr Meney—I think it is true that there is a lot of lobbying going on to try and get people to take notice of what others say about marriage and what they think it is. If nothing else, this inquiry might promote a wider debate within the community about what marriage is and why it is very important and valuable. I think it is interesting to note that we often talk about those five or six states in the United States, but it has gone back to five now with the recent situation in Maine. Maine has become the 31st state to reject same-sex marriage at the ballot box. All the others have withheld it.

Senator BARNETT—How many?

Mr Meney—It is the 31st state to reject same-sex marriage at the ballot box.

Senator BARNETT—Wow.

Mr Meney—When it is turned over to a popular vote—

CHAIR—Do you mean it is part of that party's policies when they go to the election?

Mr Meney—No. When it is put directly to the people as a referendum in the States they have turned it down. I do not think that the vast majority of Americans are homophobic, but I do think the American society is enormously interested in the value of marriage and what it offers the culture. As you rightly pointed out before, we are not talking here about what benefits might apply to different sorts of couples. But I think it is interesting how the popular vote of people is so supportive of what marriage is and how they really want to do whatever they can to maintain it being recognised as between a man and a woman.

Senator HANSON-YOUNG—Professor, I just wanted to pick up on something that Mr MacDonald said and that you reiterated several times—the idea that men and women are not the same. I would like to point out that that is exactly the same argument that was used as to why women should not be allowed to work and should not be allowed to vote. It is the same argument. I do not disagree that physiologically, of course, men and women are different, but I do not know whether it is a good point to use to argue about whether one person's relationship is more valid than another's.

Mr MacDonald—Can I respond to that?

Senator HANSON-YOUNG—Sure.

Mr MacDonald—There is a clear difference in that I will never bear a child within my womb.

Senator HANSON-YOUNG—Well, you do not have one, I would imagine.

Mr MacDonald—That is right. We are clearly quite different.

Senator HANSON-YOUNG—We are.

Mr MacDonald—I will never have the capacity to feed a child at my breast. That is a biological fact.

Senator HANSON-YOUNG—I think I made my point. No-one who has appeared in front of this committee today who does not support the idea of amending the Marriage Act in the way my bill suggests has been able to clearly articulate the disservice or lack of benefit of extending marriage to a man who loves a man or a woman who loves a woman. I do not believe that the four of you before us have done so either. I understand that you do not like the idea and that there are fundamentals as to perhaps the traditions and the religious ideology behind the way you view marriage. I guess I am challenging you: can you clearly articulate the disservice of extending marriage to those same-sex couples that are already in a loving, committed relationship and want to be so for the rest of their lives? We saw a couple today who are living like that. In fact, they were married in Canada, but they are simply not recognised here. What lack of benefit or disservice is their relationship to the community, if that is the argument?

Mr Meney—I might take that one. No-one is disputing you have loving and caring relationships between homosexual persons. I do think, though, that it is important to listen to what some people who are very active within the homosexual lobbies are saying about how they treat marriage. I would like to read two quotes. The first quote is from Michelangelo Signorile, who has been a *New York Times* and *LA Times* columnist and a TV commentator in the United States and who was named by Newsweek in America's 100 cultural elite. He is not some sort of fringe dweller, whatever you might think of that. He said:

... fight for same-sex marriage and its benefits and then, once granted, redefine the institution of marriage completely, ... to debunk a myth and radically alter an archaic institution ... The most subversive action lesbians and gays can undertake—and one that would perhaps benefit all of society—is to transform the notion of ‘family’ altogether.

Senator HANSON-YOUNG—Don’t you think that that is perhaps an opinion that would be held by plenty of heterosexual couples who do not believe and do not value marriage? It is not necessarily something that is reflective of same-sex couples.

Mr Meney—No, I do not—I do not think that at all. I think there is a strong enthusiasm within some elements of the homosexual lobby to fundamentally undermine marriage. I would just like to read one other quote; I did suggest I would read two into the record. The second one is by Andrew Sullivan, a former editor of the New Republic and a prominent commentator. He has a conservative bent in many respects, but on this particular issue he is very much a supporter of homosexual interests. He says that, once same-sex marriage is equalised, heterosexuals will have to develop ‘a greater understanding of the need for extramarital outlets between two men than between a man and a woman.’ He notes:

The truth is, homosexuals are not entirely normal; and to flatten their varied and complicated lives into a single, moralistic model is to miss what is essential and exhilarating about their otherness.

These are people who are commenting very openly about the nature of homosexual relationships and their interpretations of how they see things like marriage going in the future.

Senator HANSON-YOUNG—I think there are just as many people within the broader community who see themselves as heterosexual and reject the idea of marriage. I am not one of them. I got married relatively young because I fundamentally believe in the institution of marriage. I am not one of them. The whole reason I put up my bill is that I think it should be expanded to allow two people who love each other, who happen to be of the same sex, to enjoy what I enjoy. There are plenty of people out there in heterosexual relationships who do not believe in the institution of marriage, so they do not do it—they do not get married. They still have kids, though. I think that point was raised by the chair. I reject the assertion that you are making—that those comments somehow reflect the idea that there are people out there who, simply because they are in a homosexual relationship and love each other, such as Mrs Argent’s son, cannot enjoy the same rights as a heterosexual couple, and they fundamentally believe in and want to be part of the institution of marriage. We talk about the decline of marriage. That was mentioned by almost all of you. Why would we not want to increase the ability for more people to embrace it?

Bishop Elliott—You speak of encompassing, including, expanding everyone into marriage, but in fact this proposed legislation explodes marriage, because the word becomes meaningless. It can include anything. Once you go behind this to the ideological basis, some of which has been indicated, you find this problem: in this proposed legislation, there is discrimination in favour of perhaps two to three per cent of the community—a minority within a minority—who may want this. Many gay people are not interested in marriage at all. Let us be honest about—

Senator HANSON-YOUNG—Just as heterosexuals.

Bishop Elliott—Precisely. I agree with you there. This legislation would therefore be an act of massive discrimination against those people in this country who value marriage in its different forms—it is massive—because the word is almost meaningless.

Senator HANSON-YOUNG—Why is it meaningless? You have not been able to explain to me why it is meaningless. What is it about extending the ability for two people who happen to be of the same gender, who love each other and who have chosen to spend the rest of their lives together? What is it about that that changes the meaning of marriage? In fact, they are simply saying, ‘Me too. I want some of that. That sounds pretty good.’

Bishop Elliott—There are other legal ways of gaining that without defining it and naming it as marriage. Marriage: from maritus and maritata—husband and wife in Latin. Matrimonio; matrimonium—matrimony; making of a mother. It already has the two sexes written in the whole etymology of the language. You, in the postmodern and philosophical mode, want to completely recreate reality. That is what is at the base here.

Senator HANSON-YOUNG—I think the reality is reflecting that there are people in same-sex relationships—and there probably have been since the turn of time—and it is about saying, ‘That is the reality. And if these people are in a loving and committed relationship, and it does not disservice the community and it does not disservice anything else in society, why would we not extend it to them?’ You have not been able to give me an explanation.

Bishop Elliott—You steal the word ‘marriage’—that is the basis.

Miss Joseph—Perhaps I could answer that question. Once you remove the life dimension of marriage—the openness to life which makes it more than simply a loving, committed and sexual relationship—once you take out that element, you have taken it out for everyone. The whole concept of marriage fundamentally changes.

Senator HANSON-YOUNG—I am not saying that marriage should only be for same-sex couples.

Miss Joseph—No, but, once you say a man and a woman are not necessary for marriage, there is nothing essential about being a man and a woman that makes marriage what it is. You have removed the orientation towards life which is what distinguishes marriage from every other kind of sexual relationship. That is why the state has always recognised marriage and privileged marriage—because it has that orientation towards life.

Senator HANSON-YOUNG—As my final question, I will ask you: why then does the Federal Marriage Act not mention procreation or children? If that is the fundamental reason, why does the highest level piece of legislation we have in this country that underpins the legalities of marriage not mention any of those things?

Miss Joseph—Because that is implied by the very use of the words ‘man’ and ‘woman’. The procreative element is there. When you put a man and woman together, it is there. That is just by nature. That cannot be changed.

Senator HANSON-YOUNG—There are plenty of men and women who cannot have children who are married.

Miss Joseph—Sometimes that is true, but they still have the capacity to. Their relationship is designed to give life, even if they cannot give life.

Senator HANSON-YOUNG—If that were the argument, we would have a fertility test that had to be submitted to before a marriage certificate was written. That would be the reality.

Miss Joseph—Men and women who are infertile can still get married. Their union, their sexual relationship, is still designed to produce life, even if because of infertility they cannot at a particular point in time.

CHAIR—Senator Marshall.

Senator MARSHALL—You may have partially addressed this, but the area I wanted to explore with you—Mr Meney, in particular—was your description of the process of marriage and the values that you put on it, which I think are there. Many people obviously share that view and enter into marriage on that basis, with that philosophical background, with that commitment, and that is fine. But how does a same-sex couple marrying undermine that relationship if they have entered into it on the same basis as heterosexual marriage that you have discussed? How does what another couple does somewhere else, whether on the other side of the world, in another state, in another suburb but certainly a different house, actually subvert—I think you used the word ‘subvert’—and undermine that heterosexual marriage between two people, when that other couple have married for the very same reasons that they got married? What harm can a same-sex marriage do to that?

Mr Meney—I think there are many things that go on in a society. I mentioned before that some we encourage, some we are neutral about, some we discourage, some we prohibit and so forth. But the law is blunt in terms of how it operates. It usually prohibits or allows. If you legislate to say that a same-sex couple is equivalent in every way to a heterosexual couple, what you are essentially saying is that fatherhood is an optional extra or motherhood is an optional extra because it does not really matter to an individual child that they have both a father and a mother.

Senator MARSHALL—I know you have not finished, but can I just explore this a little bit further with you. Again, let us just talk about a man and a woman who fall in love and decide they want to have a family for all those reasons that you talked about, and they go ahead and do that. How is the man’s fatherhood or the woman’s motherhood, or their marriage, in any way—again—undermined or subverted because another two people somewhere else who happen to be of the same sex get married? That is the point I want you to address, because I do not see it. How is the relationship that a man and woman enter into to meet that purpose undermined by what someone else does somewhere else? That is the question I would really like an answer to, if you can.

Mr Meney—The law sends social messages, and it sends them to the community writ large. It does not send a message to just an individual family there, an isolated individual there; it sends it out to all the community: ‘This is what we as a society think family life is now about and marriage is about.’ I think it does

send a message to the vast majority of heterosexual couples and families within the community that there is nothing particularly special about motherhood or fatherhood.

The law is saying that there are other groups who have chosen to go down a certain path which the state recognises as being completely equal and should be treated in a completely equitable way and is equally beneficial to the interests of children. I think the law does send a profound social message right across the society when it legislates on these sorts of things. I do not think it is confined just to individual family groups.

Senator MARSHALL—Earlier you made a comment that if you walked away from your responsibility to your mother the state would not intervene, but if you walked away from your wife it would. But it would in terms of child welfare, it would in terms of property, whether you were married or not. So we have actually dealt with all the legal ramifications, the legal aspects, of a union. It really comes back to marriage just being that commitment to each other, doesn't it?

Mr Meney—No, I do not think it does. I don't think that marriage is just about commitment, because it is of a particular type of commitment between two people who are committing to one another for life, committing to stay together, to have children and to raise them and to support one another—

Senator MARSHALL—That is my other point. Again, I do not mean to interrupt you, so feel free to finish the answer, too. So if same-sex couples

Mr McDonald—Too late.

Mr Meney—This is the third time you have interrupted me.

Senator MARSHALL—Sorry, I will give you plenty of time to answer. Hopefully, the chair will. But if a same-sex couple did not seek to have children, is your objection to them being married only the fact that children may enter the equation? If it were simply a matter of people making a loving commitment to each other and no children were ever going to be involved, would you still have the objection to the marriage?

Mr Meney—Our commitment is to defend the value of marriage for the society at large. We think it is good for the society—for everybody. We acknowledge that some people within society do not choose to get married. Some choose to have relationships outside of marriage. But we think there is an enormous value for the society in privileging marriage as a heterosexual union for all the reasons that we have put forward. We think it is really important for the nation state—in this case, Australia—to continue to do that, to continue to privilege it, because as a social institution it offers an enormous benefit to the nation state. That is why a nation states have always been interested in what goes on.

My example before with my mother was simply to illustrate that society has laws around marriage that it does not have around other sorts of relationships. It has always been interested. It is not just one among many relationships; it is treated differently and I think for good sociological reasons.

Senator MARSHALL—Thank you, Mr Meney.

Mr McDonald—Can I add a point there. The Gay and Lesbian Rights Lobby in their submission as their first point said that for them it is mostly about symbolism—that was their first point—and that legislation does have a symbolic value. It does say what is important in our society. What we are trying to say is that the relationship of a man and a woman, a stable family environment, is important and that is what the state should be holding up. It is not simply about the relationship between the two people; it is about what naturally comes as a consequence of that, and that marriage ought to be held up between a man and a woman, because there is value in that as unique from and as quite different from a homosexual relationship.

Senator MARSHALL—As a symbol?

Mr McDonald—Yes.

Senator MARSHALL—Because plenty of people argue that marriage in itself is a symbol.

Senator BARNETT—Let him finish. Mr McDonald, you were about to conclude your comment—if you wish.

Mr McDonald—I simply share the view in one respect of the Gay and Lesbian Rights Lobby: that legislation has a symbolic value. It says something, it sends a message to our people that we ought to hold up that men and women together in their relationship is different.

Bishop Elliott—This can be summed up in the concept of the pedagogy of the law. Well-framed, wise laws—good legislation—reinforces the common good of society. We have in history—in the last century—the

being forbidden—in National Socialist Germany. Unfortunately, it did have influence on the nation. If you do have imperfect, poor legislation on the marriage relationship, it does impact on society in many ways. This is an area we are deeply concerned about and we express our concern as the Catholic Church for Australian society.

CHAIR—That is a good point to finish on. On behalf of the committee can I thank you for the submissions from both Melbourne and Sydney and thank you for your appearance today before this committee. It is much appreciated the fact that you have given up your time to assist us with our inquiry.

Mr McDonald—Thank you.

Mr Meney—Thank you for the opportunity to come.

Proceedings suspended from 3.20 pm to 3.34 pm

McRAE-McMAHON, Reverend Dorothy Margaret, Private capacity

NETTLETON, Reverend Nathan, Private capacity

IRLAM, Mr Corey Brian, Spokesperson, Australian Coalition for Equality

Evidence from Rev. McRae-McMahon was taken via teleconference—

CHAIR—I welcome representatives of the Australian Coalition for Equality. Do you have any comments to make on the capacity in which you appear?

Rev. McRae-McMahon—I am a minister in the Uniting Church, but I am not speaking on behalf of the church in general.

Rev. Nettleton—I am an ordained minister of the Baptist Union of Victoria and currently service pastor of the Baptist Church in South Yarra. I represent my congregation, not the whole union.

CHAIR—The Australian Coalition for Equality has lodged a submission with us. We have numbered that 88 for our purposes. Do you wish to make any changes or amendments to that?

Mr Irlam—No, but we would be happy to do a supplementary if required.

CHAIR—I invite you to make an opening statement. We will go to questions when that is finished.

Rev. McRae-McMahon—I should mention that I work for the South Sydney Uniting Church, which is in the Redfern-Waterloo area. I am sure they would be very glad to support what I am saying.

Obviously, it is important to retain the balance between differing freedoms in a democracy. In this instance this balance may need to be between religious rights and freedoms and those of nonreligious people. If the rights of religious people are seen as paramount in relation to the rights of homosexual people to marry in present terms then we may now be overriding the valid rights not only of the nonreligious community but also in the end those of some religions. There is already one church in this country, the Metropolitan Community Church, which believes in marriage for homosexual people. Given its recent decisions on the ordination of openly gay and lesbian people who are in relationships, the Uniting Church may eventually move in this direction also.

The reality is that, because we who are religious serve a living god, there is an evolving of the faith over the ages. We no longer believe that the earth is flat. We do not support slavery, although parts of the Christian church opposed its abolition at the time. Women are not regarded as unclean when they menstruate and so on. There are of course also variations between religions on and which permit polygamy. In relation to marriage, even in my lifetime Catholics could once not marry Protestants and the remarriage of divorced people was forbidden. The balance between the power of women and men in marriages in some traditions has also shifted into equality rather than the submission of women. I say that because I am emphasising that things do change. They are not fixed in concrete, even in the great religions of the world.

If the Uniting Church in Australia moves to change its rules on marriage, it would be consistent with similar mainstream Protestant churches around the world, like the United Church of Canada, the United Church of Christ in the States and some churches in Sweden and the Netherlands. As you look at the discussions taking place around issues of sexuality you can see a definite shift within many churches. This is happening alongside Western-style governments, which are of course introducing gay marriage in parts of the United States, Canada and the United Kingdom.

If they are making these changes it is partly because at last they are being honest about the fact that they have long received ministries and leadership from homosexual people—that is, the churches. They are honouring the command of Jesus Christ, who when his disciples were deciding not to respect certain people because they were different said to them: ‘Don’t do that. By their fruits you will know them.’ In other words, look at their life rather than the differences between you.

The churches around the world faced the reality of my sexuality at the time when I was moderator of the World Council of Churches worship committee. I had not long before ended my term as the person representing all of the Australian member churches on the general committee of the Christian Conference of Asia. I was deputy chairperson of the international network of Urban Mission and held the second most senior national position in the Uniting Church in Australia as its national director for mission. I was then, and still am, writing liturgy—that is, the prayers—for churches in six countries and I have had 10 books of liturgy published by the churches. I am not telling you this to boast about myself, after all I am old and I hope I have

achieved something in my life, but to make the point that I am a normal and recognised member of the Christian clergy. I would also share that I have held my ground about my sexuality at some cost.

In 1988 I was awarded the Australian Human Rights Medal and an honorary doctorate of letters from Macquarie University in 1993 for my work in relation to minorities and the spiritual life of the community. So I ask: why should I be honoured in this way and then not be able to celebrate and make formal my long-term relationship? My grandchildren ask this question as well as my children and, indeed, my ex-husband. When she was five, my granddaughter said to me, 'Are you and Ali married, Grandma?' I said, 'No.' And she said: 'Why not? You're just the same as Mummy and Daddy.' A child saw that, saw the quality of the relationship. If the Australian government fails to allow marriage between people in same-sex relationships then it sends a powerful message to the whole community about whether homosexual people are respected at all. Those who believe that same-sex marriage would in some way diminish heterosexual marriage are also either demeaning homosexual people or admitting that heterosexual marriage is a very fragile institution. After all, there are many varieties of heterosexual marriage already between people who are old or young, fit or fragile, childless or with children and so on.

I also believe that people cannot have things both ways: they cannot critique the models of homosexual relationships as promiscuous et cetera and then deny the respecting and acknowledging of long-term faithful and committed relationships. In terms of the government, while it recently made some good moves in equalising financial rules and regulations in relation to people in same-sex relationships, it also, with virtually no warning, removed the pensions of some quite vulnerable members of our community. When we protested that we needed more time to rearrange our affairs, something which is normally given when pensions change, we were told, 'You want equality, now you have it.' I would say that we still do not have equality until our relationships are recognised and honoured just as those of heterosexual people are.

Finally, I waited a long time to find my true self and the love of my life. I will be with her until death do us part and I am already travelling with her in ways which are tough and challenging because of threats to her health. In my view, the whole community should recognise and celebrate when two people make their faithful commitment to each other and try to model creative and loving relationships together. Surely this adds to the world, whatever the sexuality of those concerned. Thank you very much.

Rev. Nettleton—I am an ordained minister of the Baptist Union of Victoria, currently serving in a neighbourhood that has one of Melbourne's largest gay populations. Marriage equality is often portrayed as an agenda of those who oppose the Christian faith and who despise heterosexual marriage, so I am grateful for the opportunity to appear before you today as a married heterosexual evangelical Christian pastor and theologian who supports the legislative amendment to allow same-sex couples the right to formalise their commitments in the legally recognised covenant of marriage. While personally I would gladly conduct and bless same-sex weddings, some of my evangelical brothers and sisters cannot go that far but still support this legislative amendment. The basis of our shared support lies in the doctrines of religious freedom and the separation of church and state. These beliefs, for which some of my Baptist forebears endured violent persecution, teach us, firstly, that it is a Christian duty to defend the right of others to follow their own conscience before God, free from coercive attempts to impose conformity of belief or practice, and, secondly, that the state should not privilege the convictions of any religious tradition, even a majority tradition, over the convictions of those who dissent from it. It follows from these beliefs that Christians can hold that while same-sex marriage may not be allowed in some churches, it should still be provided for by the state. It is of course these same doctrines that underpin the churches right to pursue their own distinctive beliefs and practices even if the state provides for things that they disagree with.

As an evangelical pastor and theologian, I am committed to the authority of the Bible. If I had all day, I could carefully take you through the biblical cases for and against, but that is a debate for the church, not for the state. The state ought not to privilege anyone's reading of scripture, including mine, in reaching its conclusions on this issue. Anyway, as I am sure you are aware, the level of robust debate in the churches makes it clear that neither biblical case is a lay-down misere.

Marriage has been practised by almost every culture down through history. Christians have no more claim on it than anyone else. The question at issue here is whether this almost universal human institution should be made more universal still by being opened up to those whose sexual orientation has previously excluded them. Both church and state can surely agree that prohibiting homosexual marriage has not and will not diminish the incidence of homosexuality in the community. Both can surely agree that promoting sexual fidelity and family stability is preferable to fostering cultures of promiscuity and easy dispensability. And most married couples,

Christian and non-Christian alike, will acknowledge that fidelity and stability are not easy and would be far more difficult still without the vows we have taken and the explicit social endorsement and support of our marital relationships.

To criticise the homosexual community, as many do, for its alleged promiscuity while at the same time working to deny them access to the social structures that encourage and support fidelity for the rest of us is surely disingenuous. Even if I still believed, as I once did, that homosexual love-making was always a sin, I think I would still find myself compelled to conclude that anything we can do to promote the cause of faithful, stable relationships in the homosexual community is, at the very least, a significant step in the direction of righteousness. And surely, if we can foster the valuing and practice of marriage in a sector of the community that has previously been excluded from it, that can only increase the valuing and practice of marriage in the community as a whole, and that, it seems to me, ought to be a cause about which church and state can agree.

Mr Irlam—May I formally start by thanking you for your time over the last 12 to 18 months, particularly with the three bills that removed discrimination from some 85 laws. The gay, lesbian, bisexual and transgender communities greatly appreciate the time and the recommendations that this committee made. I appear today before the inquiry to humbly submit that, having listened to and read many of the submissions, the only possible outcome that I can see for this inquiry is four things: that this bill be debated openly in the chamber, that this committee recommend that the bill be passed, that this committee recommend that the support and recognition of overseas marriages occur and they recognise the unique experience of each ceremony, and that this committee recommend the removal of the specific requirement to make a specific statement as part of any marriage ceremony.

I know that is a big opening statement to make, but as I have read many of the various arguments in the many thousands of submissions that have been put forward, it is the only one I came to, and let me explain why. One of the key arguments opposing marriage equality is the natural order of things, is for the procreation of children created through the love of a man and a woman. While I respect the opinion of those who make this argument, it is inconsistent with the decisions of the Australian Senate to date. The Senate, in its wisdom, in 2008 recognised that children deserved the love of two parents, same sex or opposite sex. Indeed, this very committee, in its entirety, made a recommendation that supported same-sex parents to be recognised as parents.

Another argument opposing equal marriage is that marriage holds a special place in society and some say that social research shows that marriage is the best situation to raise a child. If you accept this argument, then surely it is in the best interests of children in families headed by same-sex couples for their parents to be afforded the opportunity to be married and provided this more stable, better committed better situation, according to that social research. I have seen no credible evidence submitted that children in same-sex married families are worse off or any different from non-married same-sex families, so I logically assume that the heterosexual research indicating marriages provide a better outcome is in the best interests of those children.

I would like to point out, however, that I believe it is love between two people that makes the best environment for children and not the nuclear family that is so often considered outdated in modern Australia. We recognise that here in Australia children are raised in single-parent families, in abusive families, even grandparent-headed families, in same-sex families, in blended families, in cross-cultural families and many other types. If we accept that this is a reality in Australia and that marriage provides that better outcome for families, then this committee must surely recommend in favour of same-sex marriage. If not, you are therefore not sending a message that the community does not agree with that social research provided by the opponents of same-sex marriage that marriage is the best environment to raise a child.

But we also have those that have no children, who wish to be married and are in a same-sex relationship or have gone overseas to be married, who, like their heterosexual cousins and colleagues, have no desire to have children at this point in their relationship. The logical argument to support same-sex marriage has been made and provided to you. You have heard from two people of the faith based community who have shown you that freedom of religion mandates that such discrimination be removed from the Marriage Act 1961. You have received submissions and heard from various faith based sources that supporting the ability to perform a religious and faith sanctioned marriage ceremony between two people of the same-sex—progressive Jews, Quakers, Buddhists, pagans, people from a rich tapestry of religions united in their view—should be legislated under the state here in Australia.

If the committee were to decline supporting the bill, I would respectfully request that the committee explain in its report why the religious opinions of some religious groups have been elevated over the religious views of

others in a secular society where our Constitution allows for the free exercise of religion. Important to remember is that by having such a law that restricts marriage it is discriminating against some religions compared to others. Whereas, allowing marriage between two people would not discriminate against any religions as the state has no place to dictate to a religious organisation inside its place of worship whom they may or may not perform the ceremony on. We recognise this separation of church and state for the ordination of women and for the rules around marrying divorced couples. Why would same-sex marriage be any different?

Sixty per cent of Australians support the introduction of equal marriage laws. Only 55 per cent of Australians supported the national apology to the stolen generation just a few days before the Prime Minister made it. Surely the argument that not enough Australians support same-sex marriage cannot be mounted if this precedent is available especially when you recognise that two weeks after the Prime Minister's apology the Australian support for the stolen generation soared 14 per cent to 69 per cent, according to the polls. It is with the utmost respect and support for the Prime Minister's statement that I share this example of how leadership on a particular issue can win the hearts and minds of the Australian population.

Marriage has not always been marriage as it is understood today. It has been an evolving cultural beacon symbolic of the principles held by society at a particular point. No longer are slaves unable to marry, or Aborigines prohibited, or female children married to older men, or married against their will. I appear before you today to ask you to show leadership and courage, to recognise that as another part of marriage's natural evolution allow same-sex marriage through support of the Marriage Equality Amendment Bill 2009. Thank you.

CHAIR—Senator Hanson-Young, do you have any questions?

Senator HANSON-YOUNG—I do, but if someone wants to go first—

Senator MARSHALL—It was very comprehensive, thank you.

Senator BARNETT—Thanks for your submission and for your evidence. Mr Irlam, consistently in your opening remarks you referred to word 'discrimination' in the context of it being negative, critical and offensive and therefore bad and not appropriate. I am sure that in some contexts—and perhaps in some of the examples you used—that may have been the case. But I support the use of the words 'unjust discrimination' or 'unfair' or 'inappropriate discrimination', and you have probably heard some of the evidence earlier today when we had those debates or discussion across the table. So for the record I would like to clarify your view of the current laws that it does currently discriminate against polygamous marriages and, firstly, whether you support that and, if so, why?

Mr Irlam—That is an interesting question: does it discriminate against polygamous marriage or does it shape an argument that Australian society believes that it is in the best interests of society that two people aged 18 upwards actually form the best situation for a marriage. There is a lot of cultural background to why polygamous marriages are available overseas and perhaps not recognised for the purposes of marriage but recognised for the purposes of family law here in Australia. Is it discrimination? I will seek to refer to the Australian Human Rights Commission for a legal interpretation of whether it is. But it is something that is accepted and probably broadly welcomed by Australian society as the basis on which they wish marriage to be defined here in Australia, which is different from the broad support for same-sex marriage for which they actually wish the laws to be changed.

Senator BARNETT—But what is your view?

Mr Irlam—What is my view about—

Senator BARNETT—Do you support polygamy or do not you support polygamy?

Mr Irlam—I personally do not support polygamy and I do not have an organisational position that I consulted with my colleagues on to make a comment.

Senator BARNETT—That is interesting.

Mr Irlam—We do not believe that same-sex marriage will move towards polygamy and we do not feel that it is something that is really relevant to this criterion—

Senator BARNETT—Do you support the current law which outlaws polygamy and which bans marriage below a certain age?

Mr Irlam—Yes, those two aspects.

Senator BARNETT—How is it that your organisation, the Australian Coalition for Equality, does not have a view on the polygamy?

Mr Irlam—Polygamy as a broader concept I do not have a view on; polygamy within the context of the Marriage Act, I do.

Senator BARNETT—And that is the view of the Australian Coalition for Equality?

Mr Irlam—Correct.

Senator BARNETT—Okay. So you are just wanting the law to be changed with respect to the discrimination, with respect to same-sex couples, but you are happy to support the discrimination against those of an age lower than 18 and, for example, people who wish to live in a polygamous relationship or in, for example, a close family relationship?

Mr Irlam—Could you clarify the last point?

Senator BARNETT—That is, incest in terms of brother and sister—siblings, for example—or even mother and child of an adult age. The law prohibits that currently.

Mr Irlam—Senator, if you are saying to me that same-sex couples were not able to enter into a polygamous marriage and heterosexual couples were, I would be saying to you that we do not support that. There is a broad—

Senator BARNETT—I was not saying that.

Mr Irlam—There is a broad-brush definition across the board for all types of couples over the age of 18 as a voluntary union between a man and a woman that is currently within the Marriage Act 1961. We support the two principles: being between two people over the age of 18 to the exclusion of all others. I would however point out that my understanding is that people under the age of 18 do have a mechanism to be married, but I can take that on notice to give you further advice about it.

Senator BARNETT—All right. Let us go back a step. Can you tell us a bit about the Australian Coalition for Equality and, specifically, when it was established and how many members you have.

Mr Irlam—The Australian Coalition for Equality was established in June 2005. It is a broad coalition of human rights advocates and lobbyists that has a supporter base of around 7,650.

Senator BARNETT—How do they support the organisation? Is it via an email or are they members?

Mr Irlam—There is not a membership base of the organisation in the sense that you are posing—a sign up here membership. As I said, it is a coalition of human rights advocates. There is an e-based supporter network.

Senator BARNETT—So you have sent these people an email and said: ‘Do you support these views? Please respond if you support—

Mr Irlam—We discuss, engage and debate broadly across the LGBTI communities—

Senator BARNETT—The what?

Mr Irlam—The lesbian, gay, bisexual, transgender and intersex communities.

Senator BARNETT—And you are a spokesperson?

Mr Irlam—That is correct. I am a committee member and a spokesperson.

Senator BARNETT—Do you have annual meetings?

Mr Irlam—Yes, we do.

Senator BARNETT—And you have been elected by the executive?

Mr Irlam—To speak on behalf of the organisation, yes. I should note that I am not the only spokesperson; there are others.

Senator BARNETT—You have obviously been very busy over the last many months and years in that role. Reverend Nettleton, I do not know if you heard the views of the Catholic diocese in the evidence given before your evidence earlier this afternoon.

Rev. Nettleton—I heard part of it but not all of it.

Senator BARNETT—Their view and the view of others put to this committee earlier today is that marriage is about not just love and commitment; it is about the possibility of procreation. Do you support that view?

Rev. Nettleton—I would support the view that many marriages involve procreation, but I am yet to hear from the groups who argue that that we should outlaw postmenopausal marriage. It seems to me to be inconsistent. There are many marriages that we know where there is no possibility of children and we still support those marriages.

Senator BARNETT—I am trying to find out your view though.

Rev. Nettleton—My view is that procreation is a part of some marriages, but is not one of the conditions that define a marriage as a marriage.

Senator BARNETT—So a prerequisite for you for a marriage is love and commitment. Are they the two prerequisites?

Rev. Nettleton—Love is often a product of the marriage rather than a prerequisite for it. Commitment is a prerequisite, yes.

Senator BARNETT—Just flesh out for us your criteria to be married.

Rev. Nettleton—It is the willingness to commit to a lifelong exclusive, faithful relationship.

Senator BARNETT—Whether it be between a male and a female, two men or two women; is that right?

Rev. Nettleton—Yes.

Senator BARNETT—So love is not a prerequisite.

Rev. Nettleton—It is not a prerequisite.

Senator BARNETT—Why is that?

Rev. Nettleton—Because I am looking at it globally across history and across the world rather than just in Australia. Our practice here is that marriage is a product of romantic love. In many parts of the world marriages are arranged and the couple do not know each other well prior to the marriage. I would not be advocating that for our society but I am also not saying that it disqualifies it from being a marriage. Very often those marriages become very loving and committed relationships. Love can be a product of faithfulness rather than a prerequisite for it.

Senator BARNETT—Sure, but it is not required.

Rev. Nettleton—No. And in fact the view that love is a requirement is one of the main things that are undermining heterosexual marriage in our community because people then see it as dispensable—if love is gone then the marriage should be gone.

Senator BARNETT—What about the other two requirements in the current law with respect to the definition of marriage. Do you think it should be voluntary?

Rev. Nettleton—Yes, I do.

Senator BARNETT—So you think that should remain part of the definition?

Rev. Nettleton—Yes, I do.

Senator BARNETT—So presumably you do not support the current bill with respect to the dropping of the words ‘exclusive of all others’. You think it should be exclusive.

Rev. Nettleton—I do.

Senator BARNETT—You do?

Rev. Nettleton—That is my view.

Senator BARNETT—So you believe the bill in its current form should be amended to include the words ‘exclusive of all others’?

Rev. Nettleton—That would be my personal view, yes.

Senator BARNETT—You are a minister of religion with the Uniting Church?

Rev. Nettleton—No, the Baptist Church.

Senator BARNETT—And this is your view obviously and not the view of the Baptist Church of Australia; is that correct?

Rev. Nettleton—That is correct.

Senator BARNETT—Can you provide, either now or on notice, any scripture references to support your position? I think you said in your opening remarks that you are a pastor and you believe your view of the *Bible* supports your position of a long-term commitment not requiring love?

Rev. Nettleton—I certainly could. It would be a long and detailed document. As I said earlier, I do not think it is the role of the state to privilege anybody's reading of scripture. Separation of church and state requires that my scriptural views or anybody else's scriptural views are not the basis on which you make your determinations.

Senator BARNETT—All right. So the Judaeo-Christian history and heritage in this country is not that important to you?

Rev. Nettleton—It is very important to me, but I represent the church and you represent the state.

Senator BARNETT—Okay. It is not relevant for us as legislators to determine our views—

Rev. Nettleton—It is relevant up to a point, but it is not your role to privilege that tradition over those who dissent from it.

Senator BARNETT—It sounds like if we follow your approach it is pretty much anything goes. There are no requirements or discrimination at all.

Rev. Nettleton—Discriminations can be on the basis of what is determined as necessary for protecting the vulnerable from exploitation and so on. In those situations I wholeheartedly support those sorts of discriminations, but we would consistently stand against discriminating against one set of religious views in favour of another set of religious views. As a Baptist I would defend the right of others to hold views and practice the views that we disagree with.

Senator BARNETT—As it happens, I am also a Baptist—the City Baptist Church in Launceston—and I have never heard that view from a Baptist pastor. Have you raised your view with the Baptist churches of Victoria, for example? What do they say?

Rev. Nettleton—Certainly. Thomas Helwys, one of the founding fathers of the Baptist movement, was jailed over exactly this issue—arguing for the separation of church and state. If we argue for our religious position to be privileged by the state now, subsequently, with a change of government, that could be used against us. That was our Baptist position. We recognise that we would be vulnerable.

Senator BARNETT—You are not expecting that to happen in your case, are you? I hope not.

Rev. Nettleton—I am not expecting to be jailed for it, no.

Senator BARNETT—Have you had some interaction with your hierarchy, as it were?

Rev. Nettleton—Certainly. I was part of the Baptist Union of Victoria's taskforce in 1997 that explored the possible ordination of homosexual people. Yes, I have been actively involved in the Victorian Baptist Union on this issue. My views are well known.

Senator BARNETT—Is your church an independent Baptist Church or part of the Baptist Union?

Rev. Nettleton—My church is part of the Baptist Union of Victoria.

Senator BARNETT—Thanks for your evidence.

Senator LUDLAM—Senator, are you still seeking something on notice?

Senator BARNETT—Only if Reverend Nettleton wishes to provide on notice scriptural references to support the views he has. If not, that is fine as well.

Rev. Nettleton—If you are telling me that that is what the Senate inquiry requires in order to move towards its decisions, I will provide it.

Senator BARNETT—I am not requiring it, but if you want to provide it you are welcome to provide it. I am certainly not requiring it.

Mr Irlam—Senator, would you be swayed by looking at biblical references in making your own ethical decision around how to recommend going forward?

Senator BARNETT—I hope to be swayed every day of my life by scripture.

Rev. Nettleton—In that case, I will be happy to provide it.

CHAIR—I think Reverend Nettleton in part answered some of this in response to Senator Barnett. I am

theological position about marriage and what constitutes a marriage? Are they one and the same with the views you are putting today?

Rev. Nettleton—Historically, my churches have not supported same-sex marriage. There is a movement of change occurring at the present time, and we are seeing more and more change. As recently as the last few weeks, a major Pentecostal pastor here in Melbourne preached a very significant sermon of acceptance of gay and lesbian people in the church. That was quite unprecedented for that sector of the church, as part of the evangelical end of the churches that I am also part of. It was a very significant breaking of the ranks, if you like.

Mr Irlam—Dorothy, do you have anything to add?

Rev. McRae-McMahon—Yes. I would simply point to the international situation. As I said in my presentation, you can see that there are movements for change that have been happening over the last 50 years, where churches are gradually, gradually beginning to discuss these issues both in terms of ordination and in terms of marriage. I think it is quite clear to see that there is a shifting of opinion. As I also said, the churches have changed their minds, as has the community, over the years about what human rights really mean. I think both those who are non-religious and those who are religious are all the time faced with the question about what is best for the wellbeing of humanity—and that shifts as we go. As one part of it changes, like the non-religious part of a country, the churches are then challenged and then, as the church changes, so is the community challenged.

I think we have all been working on that over the centuries, and, therefore, there will be shifts. I have certainly seen that in my own church in terms of ordination, where the church made a very clear decision, by a large majority, to ordain openly gay and lesbian people. That happened in 1997 and was confirmed again in the year 2000 at its national assembly. Probably in about a year's time, after it has a rest on issues of sexuality, the church will indeed be talking about marriage and becoming consistent with some of the other mainstream Protestant churches around the world.

If I mention the ordination issue it is because that is usually the way churches go first—and you can see that beginning to happen in the Anglican communion as well, where they have, as you know, ordained a bishop. I must say that, when I came out as a lesbian, because I was in fact in an international position, the news went round the ecumenical international networks and all of a sudden I found myself part of a huge club of gay and lesbian clergy around the world. And the church is going to have to face that, but it has been hypocritical.

Senator HANSON-YOUNG—Mr Irlam, I thought your synopsis of the submissions and the process was really good—and thank you for that. I want to pick up on the point that you made about same-sex couples who are married overseas and come back to Australia and step off the plane at Sydney international airport and all of a sudden their marriage is not valid and that perhaps we are contravening conventions and treaties that we had agreed to. Do you have any more information about that?

Mr Irlam—I have not brought notes on international human rights, knowing that you had Castan here this morning. Can I take that on notice?

Senator HANSON-YOUNG—If you could, that would be really helpful. I have put to numerous witnesses throughout the day who have opposed the amendments that this bill makes to the Marriage Act what it is about extending marriage to same-sex couples that is somehow doing a disservice to the community. You obviously do not agree with that, but what is it that you think they believe is a disservice?

Mr Irlam—I might ask Dorothy if she is comfortable responding to that. You have got the best experience outside of the gay and lesbian community, Dorothy.

Rev. McRae-McMahon—I suspect that, from church to church, very often the procreation issue is raised, and all of us have responded to that one, in that, although that is of course part of some marriages, it cannot be part of all marriages, even heterosexual marriages. So it cannot be sustained, I do not think. I have a feeling that the churches, too, have not faced the fact that we now have civil marriages. When I started out, you could only be married in a church; whereas now we do have marriages outside the churches, outside the religious situation. I think that the churches need to face that and to think again about the overall rights of the non-religious community to work out what they think marriage really is and could be and look at the nature of relationships and the encouraging of that. There is something very beautiful, I believe, about encouraging people to make commitments to each other, to work in love, to work out what love might mean and how deeply it can go and to work out what commitment might mean and how deeply that might go. That models for our children, it models for the world, the nature of respectful, supportive and, often costly relationships

between people. I cannot see that that is not just as possible between people of the same gender as those of different genders. I really cannot see the case that the church makes there.

Senator HANSON-YOUNG—You made a point about the fact that there has been a change to the way people can get married. In fact, you can be married by a civil celebrant. We had evidence given to us earlier in the day from the Australian Bureau of Statistics showing that over 65 per cent of marriages in Australia are actually conducted through a civil process and a civil celebrant, not under the guise of a particular religious group. Why do you think that is?

Rev. McRae-McMahon—There was a time—and I am old enough to remember this, as I keep saying—when anyone who was at all respectable had to have some sort of links with the church and that marriages were not really felt to be true marriages unless they were within the bounds of the church. I have watched over the decades of my life people feeling much freer to disassociate themselves from the churches, unless they genuinely and authentically have faith in that particular god and religion. So I think that, culturally, we have greater freedom and we have set people free to make their choices and to be open about whether or not they are religious. I think that is the foundation for the shift—people now do not feel that maybe it is not a real marriage if it is not in a church. It is the same with funerals and all sorts of rituals in general. I am very experienced in that, because that is the centre of my profession.

I think too that the fact that people do see marriage as real, genuine and authentic outside the church has meant that the community itself has begun to ask itself what marriage might mean at its heart, as opposed to obeying, if you like, the rules of a religious marriage and the religion that underpins it. I think it is a cultural shift and an honesty by the Australian people when they acknowledge that they are really, fundamentally, a fairly secular society.

Senator HANSON-YOUNG—Do you think that perhaps particular religious organisations within Australia feel threatened by that?

Rev. McRae-McMahon—I think that the churches always grieve when they feel they are losing ground. I suppose too that people are genuinely committed to the values and to the faith that they hold and feel that it might be slipping out of their grasp. Even if people are not religious, the religions often would nevertheless like to influence the rest of the community towards what they believe to be right and true—in terms of behavior as against belief. That is fair enough. But I always have said that if the churches are going to try to point the community to what they believe is a moral and ethical stance, then we have to give the wider community a clear reason for doing that. We have to describe what the ethical position is, separated out from ‘we are obeying our religious faith’ sort of stuff. That is why, if I am talking about marriage outside religion, it is because I think I can make that case, and I can make it for same-sex people as well as heterosexual people.

Rev. Nettleton—I think you are right that the churches feel threatened about their loss of membership. I think there is also a genuine sense of threat to the institution of heterosexual marriage. Heterosexual marriage is under threat, but the threat is from within and not from without. The real threats to marriage come from the commodification of sex and relationships and a consumerist mindset that sees everything as ephemera that can be discarded and replaced as soon as a new model comes along that offers a greater level of satisfaction.

Unfortunately, it is a universal human phenomena, when things that we hold dear are under threat from things we feel powerless to tackle, that we have a tendency to deflect the blame onto a scapegoat—a more reliably identifiable ‘other’ who we can then make the face of everything we fear and crucify to appease our wrath. I think that is what the churches have often tended to do with the homosexual community. Now what we have here is a group who are recognising the value of marriage—of faithful, lifelong vowed relationships—and asking for the right to participate in the benefits of that. Some heterosexual people are asking them, ‘Why would you bother? Why do you want into that?’ suggesting that marriage itself is an outmoded institution that they are better off without. So surely if a group who have been stereotyped as the champions of hedonistic promiscuity begin extolling the virtues of marriage, that can only increase the regard in which marriage is held by the community as a whole.

Rev. McRae-McMahon—Could I add one sentence to that. I agree with you. Could I also say that quite a few of the people I know who are in long-term same-sex relationships have paid quite a heavy price for that. I have myself. So what we are really modelling is a relationship that has such love and commitment to it that we would pay that price in order to sustain it against attitudes of discrimination and all sorts of things. I had my life threatened for a while—because I was in a same-sex relationship—by a neo-Nazi group who stalked me, harrassed me and lit a fire on my doorstep. They did that over a two-year period, and yet I love this person so

much that I am not prepared to give way to that. So we can demonstrate a faithfulness and a commitment that might be an example to heterosexual marriage sometimes.

Mr Irlam—Could I wrap that up with two quick points. Often people do not know that they know someone who is gay, and therefore they do not have a face to put to that cause. As a gay man, on a personal note when I grew up, you think of marriage in a heterosexual environment; you do not have many role models to look at, and you buy in to that hetero-normative symbolism that is shown in society for that marriage. I think that part of the reason why there is 74 per cent of support among younger Australians for same-sex marriage is because there have been more role models to show that and to open their minds to the possibility that it will happen one day, and hopefully this committee will speed that day to come sooner.

CHAIR—Thank you, Reverend McRae-McMahon. We certainly appreciate your contribution to our inquiry this afternoon. Thank you to Reverend Nettleton and Mr Irlam as well.

[4.25 pm]

WARD, Mr Robert Paul, Victorian Director, Australian Christian Lobby

WILLIAMS, Mr Benjamin Peter, Research Officer, Australian Christian Lobby

CHAIR—I welcome representatives of the Australian Christian Lobby. The Australian Christian Lobby has provided us with a submission, which for our purposes has been labelled No. 71. Do you need to make any amendments or alterations to that submission to begin with?

Mr Ward—No, we are quite happy with the submission we have made.

CHAIR—All right. I will ask you to make an opening statement, but I just point out to you that Senator Barnett needs to go at 20 minutes to five, so if you can make your opening statement fairly brief, or briefer than some of the others, then we will get a chance to go to questions from Senator Barnett.

Mr Ward—As I am a former preacher, you have no idea what you are asking! But I will try to be brief.

CHAIR—Thanks.

Mr Ward—Firstly I would like to thank the committee for the opportunity to address it today. I think this is an important issue and one that deserves the attention of a committee such as this. The Australian Christian Lobby occupies a somewhat different space to some of the other church related groups that have spoken here today and made submissions. We are not a church. We are not a denomination, a peak body representing schools or a welfare agency, and we are certainly not a political party. The Australian Christian Lobby seeks to see Christian principles and ethics accepted and influencing the way that we are governed and the way we do business and relate to each other as a community. We are, to use the most commonly accepted term, a parachurch group with the goal of speaking in the political and public policy areas at both federal and state levels. Parachurch organisations are Christian faith based organisations which work outside and across denominations. As such, the Australian Christian Lobby is, I believe, in a unique position to reflect to the committee today the depth and breadth of concern felt across the wider Christian community over some of the proposals contained in the Marriage Equality Amendment Bill 2009.

We must begin by questioning the need for such a bill to be placed before parliament at all. As members of this committee will be aware—and it has been referred to several times today—for the purposes of Australian law homosexual couples are already treated in exactly the same way as any other couple in Australia who declare a commitment to a shared life. Homosexual couples now have legal rights almost identical to those of heterosexual de facto couples, following a raft of same-sex law reforms passed by the federal parliament within the last year. The question of ‘equality’ has therefore already been largely answered and homosexuals are treated fairly under Australian law in the same way that heterosexual de facto couples are.

The claim by homosexuals that they are being discriminated against because they cannot be married is, we believe, without merit or legitimacy. Law reform supported by the Australian community has given them equality with de facto heterosexual couples. De facto heterosexual couples do not try to claim marriage equality and nor should homosexual couples. This is because marriage has unique characteristics which governments should commit, and indeed have committed, to actively protect. This bill is nothing more than a push to have accepted into law an ideological position that is driven by selfish motives. Some homosexuals claim that children who find themselves with same-sex parents are discriminated against because their parents are not married. This is clearly a nonsense. Children being cared for by de facto couples or by homosexual couples have the same protection under law against discrimination. We hear no such clamour for more rights by de facto couples.

As is made clear in our formal submission, the clear evidence of a wide range of social science research is that children both need to be and do better when parented by both a mother and a father. To cater for the desires of homosexual couples to be married is to ignore these facts. Despite sometimes succumbing to human failings, marriage between a man and a woman remains overwhelmingly the optimum environment for children and the bedrock of a harmonious society. The unique and complimentary love of the male and female genders is vital if a child is to reach his or her full potential and should not be discarded to suit the transparently political agenda of the, I would suggest, small activist component of what is less than two per cent of the population. I am sorry to be so blunt with this description, but simple anatomy and common sense tells us that both male and female are required to produce children. Equally, both mother and father provide the best environment in which to raise such children.

I state, because I feel this very strongly, that men and women who, generally by reason of relationship breakdown or some other tragic circumstance, find themselves as sole parents deserve our support and often our admiration. I find myself frustrated when I hear about ‘sporting heroes’—people who are able to hit a golf ball in a straight line over a certain distance. That is not a hero. A mum or a dad who looks after a child on their own is a hero. However, to legislate for and to encourage in law the false notion that children can have two parents of just one gender may well be looked upon as social engineering out of control, an experiment that would seem to have serious consequences for the wellbeing of children deliberately placed in this artificial construct. Law has an educative role, as has been mentioned today. It has a restraining role. It also has a role to create liberties. These liberties can be good or bad. There is certainly an indication, as we read law, that if it is legal it must be okay.

Finally, the ACL recommends in our submission that this committee recommend to the parliament that the bill be rejected, that the parliament reaffirm the importance to children and our society of marriage as defined in the Marriage Act and that the federal government conduct an ongoing public awareness campaign about the importance of mothers and fathers to children and the importance of marriage in ameliorating social exclusion, poverty and homelessness.

CHAIR—Thank you. Mr Williams, did you want to add anything to that?

Mr Williams—No, thank you.

Senator BARNETT—Thank you Mr Ward and thank you to the ACL for its submission and your presentation today. It is appreciated. You have said in your submission that children do best in an environment with a marriage relationship with a mother and a father. Can you explain why and, even if you have to take on notice, provide evidence to support that view?

Mr Ward—Certainly. Our submission makes reference to a number of studies. The word being bandied around a bit today is ‘meta-analysis’. It is certainly clear from the studies we have seen—which are referenced in our report, for those who are able to take the time to look at them—that the availability of a male and female role model in a parental situation provides the best possible outcome for children. Children do better on a whole range of criteria if they are in a stable relationship with a mother and a father present. The evidence is clear on that. To suggest otherwise is to play with the facts.

Senator BARNETT—We have had the view that a relationship that is loving and committed for life is what is required to satisfy the definition of marriage. What is your view to that objective that has been expressed here today?

Mr Ward—I would have to concur with some of the earlier speakers. We have to acknowledge that it is possible and does happen for two men or two women to have a loving relationship. The question is not whether they love each other; the question is what is best for the children. Again, common sense tells us that having a mother and a father in a relationship is key to the success and wellbeing of that child longer term. Better education outcomes, better socioeconomic outcomes and better emotional outcomes have been proven by the research.

Senator BARNETT—The Baptist pastor who was here a little before you said that there must be a long-term commitment and marriage did not require love. Do you have a view on that?

Mr Ward—I am a registered minister of religion as well, and also a marriage celebrant, and next year my wife and I are celebrating 35 years of marriage. I would like to think that every wedding that I have celebrated began not just with a commitment to live together and to share a home and resources but with love involved. That love—and this is perhaps a personal reflection—does evolve and change over time. It is tested; it is tried by circumstances. But, on my learned friend’s suggestion that love is an optional extra for marriage, I beg to differ.

Senator BARNETT—The bill currently before us omits the reference to exclusivity within the relationship. What are the implications of that?

Mr Ward—One wonders why that was left out, because I would think exclusivity would certainly be an expectation about marriage in the majority of people’s minds today, rather than the phrase that was being bandied about some years ago, ‘open marriage’. I wonder if that is because evidence has shown that the commitment to monogamy within homosexual relationships is much lower than it is within heterosexual relationships. Now, let me say, not every heterosexual relationship is monogamous; I wish they were. But certainly the figures are vastly different for homosexual and heterosexual relationships.

Senator BARNETT—If you have any evidence on that perhaps you could take that on notice and forward it to the committee. That would be of great assistance.

Mr Ward—We will give you the figures for that.

Senator BARNETT—In your submission at page 8 under ‘Public opinion on same-sex marriage’, you have reflected in a very vigorous manner on the poll commissioned by Australian Marriage Equality. Can you provide more details with respect to your view as to why that poll was not as credible as it should have been?

Mr Ward—I would like to ask Mr Williams to comment on that.

Mr Williams—Senator, all sorts of opinion polls are conducted in this day and age and they are taken as conclusive evidence of whether the majority of people support something, but the nature of polls these days is that nobody is likely to commission one unless it is going to elicit the desired response. We would argue that this particular poll was structured in such a way as to elicit a particular response, with a leading question that spoke to an issue of perceived injustice directed towards homosexual couples who were married overseas and did not have that relationship recognised in Australia. That question led on to the next one, which was deemed to be the smoking gun on support for same-sex marriage in Australia. So we would say that the answer to that question was very much driven by the previous question.

Mr Ward—I think the term is ‘framing bias’.

Senator BARNETT—So you are saying that that poll had those particular views that you have expressed in terms of framing bias and leading questions.

Mr Ward—Again, we always qualify that all surveys must be looked at very carefully, but the fact is that the number of homosexual relationships that are being picked up on relationship registers, for instance, is very low, and we think that is indicative of less of a desire for marriage than some other surveys might suggest.

Mr Williams—We would also argue that, on complex social issues such as this, the issues are far too important to just be determined on a simple show of hands. If we look at the example of euthanasia, the vast majority of people polled about the issue come out in support of euthanasia, but when committees such as yours examine in precise detail what such a social initiative as euthanasia entails they routinely reject it.

Senator BARNETT—You were very strongly in support of the 2004 amendments to the Marriage Act, and the parliament spoke very persuasively and strongly, with both major parties in support of that bill, at the time. Do you think that there has been a huge shift in public opinion since 2004 or do you think the majority of people are still opposed to same-sex marriage?

Mr Ward—We see no evidence of a major shift. Interestingly, one of the earlier submissions or comments was that the state of Maine was the 31st state to reject gay marriage. It is worth putting on the record that wherever the issue of gay marriage has gone to a referendum, where the public has decided, it has never succeeded anywhere—full stop.

Senator BARNETT—That is interesting. Thanks for that.

CHAIR—And where has it gone to a referendum, Mr Ward—only in the United States?

CHAIR—And where has it gone to referendum, Mr Ward? Only in the United States?

Mr Ward—Primarily in the United States. As has been mentioned, there are a number of states that have put that to the vote and in every case it has failed. In some cases, it has actually reversed a political decision that had supported gay marriage.

CHAIR—Is there anywhere outside of the US that has gone to a referendum?

Mr Ward—Could I take that question on notice? I am not absolutely sure what other countries, what other jurisdictions outside of the United States have put it to a referendum, but I am aware that in every case in the US it has certainly failed.

CHAIR—Seven countries as well as six states in America have changed their laws to recognise same-sex marriage since 2001. We were commenting this morning that this is not a discussion you would have anticipated in the Senate even 15 years ago, so perhaps that is a sign that attitudes are moving slowly.

Mr Ward—I would suggest it is a sign of political activism by the homosexual lobby rather than a shift in public opinion.

CHAIR—But isn't that how a lot of things change? They start with lobby groups who gather momentum and then embark on changing the wider society. Look at the republican movement. That would be something similar you could suggest.

Mr Ward—The republican movement failed as well 10 years ago, which is interesting.

CHAIR—They have not given up though.

Mr Ward—And neither have the homosexual lobby. I do not think either will give up as long as they are breathing. Certainly one of the beauties of our democratic process is that we can lobby. I can come here today as a citizen of this country, as a representative of a group of people, and put my case to a parliamentary committee. That is one of the beauties of it. In the end, that process needs to be followed through. This committee is not going to decide on behalf of the whole nation whether or not gay marriage will go ahead or not. It will make a recommendation to parliament as to whether or not the bill be proceeded with, there will be votes, there will be debate, and then the people speak—that is the way it goes. I have no objection to activism, but I cannot agree with the proposition that the fact that we are debating this today is evidence of a groundswell of public opinion.

CHAIR—No, I do not think we are suggesting that either; we are just saying that maybe it is evidence that the thinking in society is moving along to the point where there is now a Senate inquiry about that where there would not have been 20 years ago.

Mr Ward—The fact there is an inquiry, the fact that there is a discussion, I have no problem with that at all. We have the opportunity here to state our case and do it well.

CHAIR—Certainly in the last year or so, the Australian Christian Lobby played a major role in the inquiry this committee did into the removal of discrimination in a whole range of areas for people in same-sex relationships. In fact, if I remember correctly, in most cases your spokesperson was quite supportive of a range of them. But that support seemed to stop at marriage, and I am wondering if you could concisely identify for me why suddenly, when we have got to the end stage of recognising relationships in that way, your support is not there for marriage.

Mr Ward—Certainly. It is a very complex issue and certainly the Australian Christian Lobby was supportive of removal of parts of legislation and changes to legislation that, to quote Senator Barnett, who has had to leave us, 'are unjust or unfair or unjustified discrimination'. I do not think that a fish and chip shop owner should be restrained in his use of his superannuation money because he is in a same-sex relationship. All of those issues were dealt with by that raft of legislation.

What we are trying to determine here, as a point of societal good, is marriage. One of the ways to ruin something is to change the meaning of the word. I believe that this bill will change the meaning of the word 'marriage'. It will take it away from being something between a man and a woman with, as has been said by earlier submissions today, at least the possibility of children and change it into something else. A homosexual relationship is not a marriage, it cannot be a marriage, it should never be described as a marriage. You will also be aware that the Australian Christian Lobby did not oppose the introduction of relationship registers in Tasmania and here in Victoria, where I was personally involved. We do not want to see homosexuals treated badly. We do not want to see homosexuals discriminated against in the areas of finance and property. But marriage is not an issue that we would want to see changed.

CHAIR—With respect to the relationship registers do you believe there needs to be some work done to look at making them more consistent, with national standards and national processes, rather than jurisdictions doing their own thing?

Mr Ward—I think that there are largely similarities between the two states and one territory that have relationship registers at present. I would be wary of consistency without some reasonable debate about what that meant because certainly in the ACT there is quite a push to play around with the relationship register to make it more marriage like and we would certainly resist that. Consistency and recognition across state bounds, yes, but with some qualifications as to how far that went.

CHAIR—What is your view as to why the state intervenes in marriage?

Mr Ward—I heard that raised a number of times. I think the Catholic submission mentioned that quite extensively. I would have to broadly agree with their suggestion that marriage is a relationship. It is not a contract. It is not something that people enter into for financial gain. If it were, I think I have been done!

CHAIR—That is on the public record now.

Mr Ward—But I love my wife very much and I will put that on the public record as well. She is worth every penny.

CHAIR—My husband would probably say after 35 years that it is three life sentences!

Mr Ward—You get less for murder and all those kinds of comments. I think it is because of the value that a marriage and family provides to society overall. There is that stable environment for the raising of children. In our submission we list a number of benefits that we see in marriage and we will stand by those. Has it evolved? Yes, it has, but not on the core issues. There have been changes in marriage. When I got married nearly 35 years ago, I took advantage of some of those opportunities. My wife was 17 when we got married and I normally follow that up by saying 17 and not pregnant. It required a magistrate's consent to get a marriage and we wanted to get married by a certain minister who was going overseas, so we brought the wedding forward—long story. The core values of marriage have not changed, the core reasons why people get married have not changed and I think they apply to a man and a woman.

Senator HANSON-YOUNG—Do you think in accepting homosexual relationships that the view of the Christian community has changed over time? Can I preface that by acknowledging the support that the Australian Christian Lobby gave to the last round of reforms that the government put forward.

Mr Ward—Not without controversy I may add. Not everybody sees it the way that we do and we worked really hard to ensure that we were bringing justice and fairness where it was appropriate without giving away something that was really important which was marriage. That is why we have drawn the line there. Have attitudes changed towards homosexual relationships? I would say, yes, they have. In our broader society they have. Homosexual activity is now normalised. I do not approve of that. I do not think that homosexuality is a normal function. I think the homosexual act is not a normal act as opposed to a heterosexual union.

Senator HANSON-YOUNG—Surely, it is normal to someone who is homosexual and not so normal for someone who is heterosexual.

Mr Ward—A number of people today have stated unequivocally that people are born gay and cannot help being gay—that is the way that they are. I would suggest that the evidence is contrary to that. There has been no evidence of a gay gene; there is no evidence that people are born homosexual. I would suggest that people who have exited the homosexual lifestyle put a lie to that. Attitudes have changed to complete my answer. Within the church there is certainly a greater desire to love and accept homosexual people without condoning their lifestyle choice.

Senator HANSON-YOUNG—How do you respond to the corners of the Christian community who do not have a problem with the idea of expanding the federal Marriage Act—which is a piece of civil law—to same-sex couples? How do you respond to the fact that there are people within the Christian community who do not think that the sky is going to fall or that it is going to undermine marriage?

Mr Ward—We have had some of them here today, sitting in this seat and speaking on the speakerphone. The church is a very broad group of people. I have been involved in the church for a long time both as a minister and as a lay leader. The instance I often use as an example of how the broad the church is the issue of baptism. Do you dunk them? Do you sprinkle them? What words do you say when you baptise them? Can you baptise children? Shouldn't you baptise children? Can a person be re-baptised? Baptism is a core part of most churches' belief, yet across the church there is a wide variety of belief. I think the fact that we can accommodate that kind of wide variety of belief on a core issue like baptism makes disagreements on areas like same-sex marriage and same-sex relationships pretty easy to understand. The church is not some simple homogenous group where everybody agrees with everybody else. One of the earlier speakers talked about robust debate, and I am quite happy to engage in that.

I will put on the record, too, that one of the speakers earlier today said that no Christian would talk to him. I regret that I was not able to grab him as he left the building today. I do not need him to repent before I would talk to him. I would love to get to know that particular person and understand where they are coming from. I just want to put that on the record, because it came across as though we are all mean, nasty Christians—and I do not think that is true.

Senator HANSON-YOUNG—I do not think that is necessarily true, either. I want to pick up on something that you said earlier to, I think, Senator Barnett. You made a comment that it is in the best interests of the child and the best environment for a child to flourish, all things being equal—although not as equal for some, which is I guess what we are talking about—is to have a mum and dad at home together. I assume that is what you meant.

Mr Ward—Not necessarily at home.

Senator HANSON-YOUNG—I mean as a family unit, a mum and dad who live together, a household.

Mr Ward—Absolutely.

Senator HANSON-YOUNG—And you did say that love was not the prerequisite for that; that it was the mum and the dad.

Mr Ward—No, I did not say that love was not a prerequisite for that. I do not believe I said that.

Senator HANSON-YOUNG—I will go back and check the *Hansard*, and you might want to check it also.

Mr Ward—If I misspoke I apologise. I would suggest that most parents do love their children.

Senator HANSON-YOUNG—I know the previous speakers spoke about love not being a prerequisite for marriage. I am not talking about that. I am talking about love not being the fundamental part of making that household, that family unit, the best environment for a child. You said that it was a mum and a dad and not necessarily love.

Mr Ward—I certainly believe that having a mother and a father present during the raising of a child provides the best possible environment. I would take it as a given that there would be love between the mother and the father.

Senator HANSON-YOUNG—There is often not.

Mr Ward—I myself grew up in—and I hate to use the word, because I think it has lost meaning—a dysfunctional family. My mother and father split up on a number of occasions.

Senator HANSON-YOUNG—Many of us grew up in dysfunctional families.

Mr Ward—I am wondering if we are all dysfunctional sometimes. They did what they could for the children, and I think sometimes they put aside their differences for the benefit of us, their children. And that cost them, and their love for each other waxed and waned—they have both passed away now, so I am little freer to say this than I might have been some years ago—but they loved us. There is no doubt about that in my mind. They did what they could to provide the best possible environment for us.

Senator HANSON-YOUNG—Isn't that what is important—that the parents involved are able to provide an environment where that child knows they are ultimately unconditionally loved and cared for and will always have their parents looking out for them?

Mr Ward—To follow that through—and I believe you ought to play the tape to the end—there was a time not that long ago when some people thought that providing a child with a warm bed, plenty of food and a safe place to be was all that was necessary for their healthy development. We have learnt, perhaps to our cost, that it is more than that. It is not just food and water and a nice warm bed that makes a home. It is certainly being loved. Certainly—and evidence is increasingly showing this—the presence of a mother and a father in a home is really important to the development of a child.

Senator HANSON-YOUNG—Is it the presence of a mother and father at home or is it the presence of understanding that you are cared for and loved unconditionally, that your parents—regardless of whether they are a mum and a dad, a dad and a dad or a mum and a mum; maybe it is just one; maybe it is two—

Mr Ward—Before I hand over to my colleague to comment a bit more on that, the facts are clear that if you look at families where the father is absent—just taking that example—the child is twice as likely to end up before the courts than when they are both there. It is the role model.

Senator HANSON-YOUNG—What if the person had two mums?

Mr Ward—Two mums or two dads. I do not think the data is in really clearly on that yet.

Senator HANSON-YOUNG—I think you are absolutely right. I do not think we do have the data there. I think they are assertions drawing on the idea that the impacts on a child in a single-parent household or a household situation where one parent is predominantly away a lot are going to be the same as the impacts on a child of two people who happen to be of the same sex and who happen to be in a loving, committed relationship—and, hopefully, a married relationship, if they were able to—that that is somehow going to have the same effect on that child

Mr Ward—Preliminary data is worrying. My comment about the data not being in referred specifically to the possibility of a child ending up before the courts, not in general outcomes. So I just wanted to clarify that.

Mr Williams—What I am getting is that you are perhaps creating a false hierarchy of needs that a child has, which is suggesting that love is more important than the gender of the parents.

Senator HANSON-YOUNG—I am asking you what the priorities are.

Mr Williams—I would argue that they are equally important and that there is growing evidence that children who are denied a full parental relationship with their biological parents are suffering and have experienced some hardship because of that. The unfortunate inevitability of a same-sex relationship where there is a child involved is that the child is going to be denied a direct parental relationship with one of their biological parents, and there is evidence coming in on that particular issue indicating that that will be a disadvantage to that particular child.

Senator HANSON-YOUNG—I think we will have to agree to disagree that the evidence is not as clear as, perhaps, it is in other cases. Putting that aside, my bill is actually about marriage, not children. In fact, the federal act does not even reference children. It does not say that being fertile has to be a prerequisite. It does not say that you have to plan to have children. That is not in the federal act. I understand the connections we all make about it, but it is actually not what the piece of civil law that currently exists in Australia is about. What is the difference? What is the concern of the Australian Christian Lobby about the idea of marriage being expanded to allow for two women or two men who are in a committed relationship, loving each other deeply and wanting to be able to celebrate that love and have it recognised in the same way as their best friends down the road who happen to be in a heterosexual relationship and have no children? What is it that is so threatening to the idea of marriage?

Mr Ward—Senator Hanson-Young, to suggest that changes to the Marriage Act would have no impact on families and children—I am struggling for a word that is not in any way derogatory. ‘Naïve’ is the best I can come up with. Any change to the Marriage Act will have an impact on families and children.

Senator HANSON-YOUNG—I am talking about relationships that do not involve children—heterosexual or same-sex.

Mr Ward—So why call it marriage?

Senator HANSON-YOUNG—Because they are married. There are plenty of heterosexual people who are married and do not have kids, are not able to have kids or do not have a plan to have children. Is their marriage devalued because they do not have children in their lives?

Mr Ward—To suggest that the Marriage Act can be amended to include same-sex couples without having a detrimental effect on our basic family structure—I cannot see how that can happen. The changing of the meaning of marriage that would be brought about by this change would be visible to everybody. It would change people’s expectations and understanding of what marriage is about. Yes, there are certainly marriages that have no children.

Senator HANSON-YOUNG—Are they less important than those that do?

Mr Ward—No. But the point is: when we talk about marriage in a general sense we talk about people who are getting married to form a family. That capacity does not exist within same-sex relationships, except with the assistance of medical technology.

CHAIR—Senator Fisher, do you want to add anything?

Senator FISHER—No, thank you, Chair.

CHAIR—We are going to finish there. I think it is an appropriate point to finish on. Thank you very much for your appearance before our committee today and for taking the time to put in a submission. We certainly appreciate it, and it assists our deliberations in looking at this legislation. May I publicly thank witnesses and members of the public who attended today’s hearing, and I place on record the committee’s thanks.

Committee adjourned at 5.01 pm