

**Submission to**  
**Legal Affairs, Corrective Services and Emergency Services Committee**  
**Re**  
**Civil Partnerships Bill 2011.**

**From**

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## **Introduction**

The John Paul II Centre for Family and Life is an agency of the Catholic Archdiocese of Brisbane. Through its Director, the Centre offers consultation, research, counseling, instruction and provision of information on contemporary ethical questions associated with marriage and family. The Director acts as consultant to the Most Reverend John Bathersby, Archbishop of Brisbane.

### **Time for consultation**

The very short time between the introduction of this bill and the due date for submissions has given the public very little time in which to respond to this important piece of legislation, legislation which touches upon basic institutions of our society. The unreasonably short period of time is even more exacerbated by the lack of consultation preceding the introduction of the bill. The public have been given very little time to reflect deeply upon this important issue.

### **The Civil Partnership Bill 2011 and Marriage**

Society is served through the support of marriage as a community formed by a man and a woman who publicly consent to share their whole lives, in a type of relationship oriented toward the begetting, nurturing and educating of children together. This makes it a very special relationship deserving State recognition and support. But the reason why the State has been interested in marriage and why it has attracted public support is because of its procreative aspect, encompassing the generation and raising of children.

It is clear that the Civil Partnership Bill has as one of its aim to give same-sex couples recognition at the State level, similar to marriage. Mr Fraser has indicated that he is going as far as the State can go in putting same-sex relationships on the same level as marriage, although it is beyond the power of the State to legislate regarding marriage itself.

Rather than repeat the numerous arguments regarding the difference between genuine marriage and same-sex unions, I have attached to this submission the document *Revising Marriage* which has been widely endorsed by Church leaders from many different traditions, and others. Note that the arguments given in this document do not rely upon religious belief, but are grounded in sound philosophical reflection upon the nature of the person, marriage and family and the role of the State.

These arguments also count against same-sex civil partnerships.

## **Civil Partnerships Bill 2011, relationships and the common good**

In the presentation of this bill no real reason is given as to why the people of Queensland need this bill. Various “reasons” are given in the explanatory memorandum and in the speeches by Mr Fraser, but no-where is it indicated how this bill serves the common good of the State of Queensland nor how it meets the needs of the people of Queensland. The fact that a group of people might desire certain things (such as some form of recognition for their relationship) does not establish a need that should concern the government.

This bill seems to be about legislating regarding what are fundamentally private relationships. But, as the philosopher Martha Nussbaum pointed out in a lecture at Stanford University, USA, it is difficult to imagine on what basis the state should ever be charged with legislating with respect to private affections!

The law is not a good place to try and deal intelligibly with affective relationships. Governments should leave people free to choose the relationships they want, but they should not trivialise the meaning and value of marriage.

As is pointed out in the attached paper, the State has a good reason for being concerned about marriage, but those reasons do not apply to other kinds of relationships.

## **Recognition of “de facto unions”**

Some reference is made to the fact that people in *de facto* unions have been given all the privileges and entitlements that normally follow upon marriage. However, this was because *de facto* unions were recognised as common law marriages, that is, the unions had the same characteristics as marriage, namely sexual complementarity and procreativity, except they lack a public ceremony. *De facto* couples were granted the privileges and entitlements of marriage for the sake of the families produced by these unions.

## **Recognition of Civil Partnerships undermines Marriage.**

As civil partnerships are presented in this legislation it is clear that they are intended to mimic marriage. The process required for “making a declaration of civil partnership” under sec.6 (b) clearly follows the process required for marriage. Similarly the criteria for exclusion from forming a civil partnership follows that for marriage.

The establishment of another public institution which mimics marriage but which does not have its inherent relationship towards the begetting and nurturing of

children is bound to undermine the good of marriage itself. Laws and public institutions have an educative effect on the public ethos. The recognition of civil partnerships and treating them as equivalent to marriage but without any of the rationale for exclusivity and permanence will further undermine those characteristics of marriage itself. The establishment of “civil partnerships” sends a mixed and confused message about the value of marriage and the kinds of relationships we hope our children will form someday.

It is important to recognise the truth of relationships. It is important to recognise the truth of the differences in relationships. A same-sex relationship, which may be loving and may or may not involve a sexual relationship, is inherently different from the sexually complementary relationship of a man and a woman ordered towards their own good and the good of procreating and nurturing children.

### **Coherency of the law**

There is also a problem with the coherency of the law as proposed. The Bill limits civil partnerships to couples, but no rationale for this limitation is given in the legislation, nor does there appear to be any inherent reason why a civil partnership as distinct from a marriage should be limited to “couples”. Some people would like to enter into a three way civil partnership. This legislation gives no reason why they should be discriminated against. Such arbitrary law undermines the law itself.

### **Conclusion**

I respectfully submit that this bill is bad law. It does not respect the common good of the people of Queensland; it further undermines the institution of marriage, and hence has a detrimental effect upon the common good; and it fails to offer any reasonable rationale for the limits it imposes upon the proposed partnerships. The bill should be rejected.

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# Revising Marriage

## The Revisionist Proposal

There is a bill before the Australian Parliament to change the current definition of marriage to allow same sex couples to marry.

This debate is about the function and purpose of the law in relation to marriage and not a discussion that goes to personal motivation and attitudes. We ought to deal fairly with every member of the human family and their needs, including people of homosexual orientation. In the same spirit *ad hominem* attacks on defenders of traditional marriage spiced by the use of pejoratives such as 'homophobic' and 'bigot' do not add to understanding of the issue. It is significant that everywhere the issue has been debated it begins on the issue of fairness and justice and with majority support but that soon changes when people realise that there are deeper issues involved. After their legislature experimented with same sex marriage, the people of California voted against the revisionist concept of marriage.

The main claim in favour of changing the law in this way is that the current law unfairly singles out people who experience same-sex attraction not allowing them to have the same status as people who are married. It is important to note that the Federal law in Australia has already been changed to give same sex partners the same legal rights as those who are married and in an increasing number of States to register their unions. The remaining issue therefore is the definition of marriage.

*Changing the law so that marriage includes same sex unions would be a change to what marriage means. Currently marriage involves a comprehensive union between a man and a woman, and norms of permanence*

*and exclusivity. Marriage has a place in the law because a relationship between a man and a woman is the kind of relationship that may produce children. Marriage is linked to children, for the sake of children, protecting their identity and their nurture by a mother and a father. The State would have no interest in the permanence and exclusivity of marriage if it were not the fact that marriage may produce children.*

**Marriage protects the rights of children**

There are many variations of households that nurture children, including those that can only have occurred through the use of technology. In all circumstances in which children are nurtured, the State has a *parens patriae* interest in the welfare of children. It is for that reason that the State is involved with legislating to ensure the identity and status of children. The law determines who are a child's parents in circumstances in which reproductive technology has created ambiguity by separating reproduction from the biological relationship between a man and a woman.

In the same way the State has an interest in marriage because the relationship between a man and a woman is capable of generating children. *The State supports marriage because children may result from it. The State lacks a reason to legislate to promote relationships that do not produce children. The State has an interest in the exclusiveness and permanency of marriage because they are needed to protect the identity and status of any children who result from marriage, in the first instance, and to preserve their rights to know, to have access to and to be cared for by both a mother and father.*



Altering the definition of marriage to include relationships that are not the kind of relationship to generate children removes the primary basis and justification for the State's interest in marriage.

If children happen to be in a same-sex household they will always have come from outside that relationship, either through an earlier relationship or through the use of some other biological parent and technology. In the case of a same sex male household that would be through someone else being the child's birth mother. The law already operates to secure the relationship of that child to social parents. There is no direct relationship between a same sex relationship and children and those relationships are of no more interest to the law than any other kind of relationship.

***If the law were to be changed so that marriage included same sex relationships, then marriage would no longer be about children. It would be about adults only.***

**Marriage links a child to a mother and father**  
Changing the definition of marriage would thus be a blow to parenthood generally, with the State withdrawing its interest in promoting the stability of parenthood. It is interesting that when Victoria legislated to permit surrogacy, through the *Assisted Reproductive Technology Act 2008* it introduced the concept of "substitute parenthood" and the first casualty was fatherhood. There are no fathers in the legislation, just mothers and parents. Everything turns on the woman who gives birth and her relationships and those whom she

appoints to be the substitute parents. The significance of being a father to a child has been completely lost in the new law. Those who are most harmed by that are the children who no longer have a right to both a father and a mother, and their biological connectedness to a father no longer has any status in the law.

By declaring a legal equivalence between same sex relationships and marriage, the revisionist approach would further bury the rights of children, because they would cease to be the focus of marriage. Marriage would be about adults only and, in that sense, self-serving for them. The significance of the current legal concept of marriage is about securing the relationship of the child to both a mother and a father. Marriage involves the couple committing to be parents together through their love for each other. If you take that out of the meaning of marriage it becomes just like any other relationship, of meaning to the couple, but of no direct relevance to anyone else.

***In redefining marriage, the law would teach that marriage is fundamentally about adults' emotional unions, not complementary bodily union or children, with which marital norms are tightly intertwined.*** Since emotions can be variable, viewing marriage essentially as an emotional union would tend to increase marital instability. It would also blur the distinction between marriage and friendship. Ordinary friendships are not always permanent and exclusive. Emotional unions need not be either, and so the expectation of marriages to be permanent and exclusive will make less and less sense.

Less able to understand the rationale for these marital norms, people would feel less bound to live by them. And less able to understand the value of marriage itself as a certain kind of union, even apart from the value of its emotional satisfactions, people would increasingly fail to see the intrinsic reasons they have for marrying or staying with a spouse when one's feelings for the other change. In other words, a mistaken marriage policy would distort people's understanding of the kind of relationship that spouses are to form and sustain. And that is likely to erode people's adherence to marital norms of permanence and exclusivity that are essential to the common good because children need them.

The State records marriage to ensure it is not taken lightly. State involvement tests a couple's

mutual consent to each other and to the purposes of their marriage. But this State involvement can *only* make sense if one of the purposes inherent in marriage is children. Through the State, society discourages marrying people from failing their obligations to each other, and hence to their children. Likewise, the State records the births of children, the deaths of their natural parents, and marital dissolution, all in the best interests of children. Similarly, the State now tracks the complexities of assisted reproductive technology – the use of donors and surrogates – again for the sake of children. (However, we think these technological practices fragment parenting. When a child gains a committee of parents, her origin and identity lose definition. She is put at risk by practices that dissipate the security of relationship to her natural mother and father.)

#### **Revising marriage at home and at school**

Marriage has been placed under strain through other social and legal developments. Easy divorce for example has already worn down the ties that bind spouses to something beyond themselves and thus more securely to each other. Endorsing same-sex marriage would mean cutting some remaining but most important threads.

The attraction of the marital norms is the deep (if implicit) connection in peoples' minds between marriage, bodily union, and children. Enshrining the revisionist view would not just wear down but tear out this foundation, and with it any basis for reversing other recent trends and restoring the many social benefits of a healthy marriage culture.

Those benefits redound to children and spouses/parents alike. Because children fare best on most indicators of health and wellbeing when reared by their wedded biological parents, the further erosion of marital norms would adversely affect children, forcing the State to play a larger role in their health, education, and formation more generally. As for adults, those in the poorest and most vulnerable sectors of society would be hit the hardest by the weakening of marriage. Protecting and supporting marriage is an economic advantage in the rearing of children. Supporting marriage as a relationship between parents or potential parents is in the interests of the State.

***A factor to be considered is that if the concept of marriage is revised in the law so that it is***

***no longer about relationships that may produce children, then our schools will be obliged to teach that revisionist concept. It is one thing to say that the law has nothing to do with what two men or two women do in their private life, it is quite another to change the law to promote those relationships. If marriage is redefined, then that is what we are going to have to teach and affirm to our children and in our schools. Why should a minority lifestyle so influence curriculum? Why should teachers be prevented from teaching that marriage is primarily about children?***

#### **Marriage is a union of difference**

The traditional concept of marriage is consistently found across cultures throughout history. This is not to say matters such as customs and rituals have not changed over time. It is simply to say that marriage has always been understood in every society throughout recorded human history as being between a man and a woman.

As a comprehensive union of spouses marriage means a sharing of lives and resources, a union of minds and wills, and hence the requirement of consent for forming marriage. It also means something more as well: the bodily union of a man and a woman, whereby the two become 'one flesh'. If two people want to unite in the comprehensive way proper to marriage, they must, among other things, unite organically – that is, in the bodily dimension of their being through sexual intercourse.

With one exception a person is complete within themselves as to bodily organs and their functions: heart, lungs, stomach and so on. In other words for any of these functions a person does not require a contribution from anyone else. The one biological function for which individual adults are naturally incomplete is sexual reproduction.

In sexual intercourse, but not in any other form of sexual contact, a man and a woman's bodies coordinate by way of their sexual organs for the common biological purpose of reproduction. In this way they perform the first step of the complex reproductive process. Their bodies become *one* by coordinating for the biological good of the whole, thereby securing future generations at the same time as they give unique expression to their love one for the other.

This way of viewing marriage has become less persuasive only because widespread

contraception has masked the connection between marital sexual activity, and the rearing of children. That in turn conveys the impression that all modes of sexual expression seem equivalent. But marriage remains deeply and uniquely orientated to bearing and rearing children. By contrast, two men or two women cannot achieve the same kind of union, since there is no child-oriented outcome or function toward which their bodies can coordinate. Same-sex partnerships lack any essential and natural orientation to children: they cannot be sealed by the generative act.

***A child's relationship to both mother and father is inherent to marriage. Children conceived by other means may find themselves with people in parental roles who are in a same sex relationship, but such relationships are not the origin of the child. It is possible for children to be nurtured in such a household, but however good that nurturing, it will not provide the biological link and security of identity and relationship that marriage naturally demands and confirms.***

Marriage also provides children a role model of the human love of their parents relating as man and woman. Its complementarity ensures the unilateral love of each parent to the child and the necessary differences between motherly and fatherly love. In contrast, the revisionist case asserts that there is no necessity for a child to experience both fathering and mothering within the family.

These arguments are not negated by marriage breakdown, the early death of a parent, the adoption of children, de facto relationships, or the practice of step-parenting. The complications and tragedies of an imperfect world do not justify the redefinition of marriage.

### **Children need marriage**

Given the marital relationship's natural orientation to children, it is not surprising that, according to the best available sociological evidence, children fare best on virtually every indicator of wellbeing when reared by their wedded biological parents. Studies that allow for other relevant factors, including poverty and even genetics, suggest that children reared in intact homes fare best on the following measures:

- *Educational achievement:* literacy and graduation rates;

- *Emotional health:* rates of anxiety, depression, substance abuse, and suicide;
- *Familial and sexual development:* strong sense of identity, timing of onset of puberty, rates of teen and out-of-wedlock pregnancy, and rates of sexual abuse; and
- *Child and adult behaviour:* rates of aggression, attention deficit disorder, delinquency, and incarceration<sup>1</sup>.

The bodily union integral to marriage helps to create stable and harmonious conditions suitable for children. Consider the conclusions of the reputedly progressive research institution Child Trends:

*[R]esearch clearly demonstrates that family structure matters for children, and the family structure that helps children the most is a family headed by two biological parents in a low-conflict marriage. Children in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships face higher risks of poor outcomes. . . . There is thus value for children in promoting strong, stable marriages between biological parents. . . . "[I]t is not simply the presence of two parents, . . . but the presence of two biological parents that seems to support children's development<sup>2</sup>.*

In contrast to the current understanding of marriage, the revisionist view asserts that marriage is the union of two people (whatever their sexual identity or orientation) who commit to romantically loving and caring for each other and to sharing the burdens and benefits of

<sup>1</sup> For the relevant studies, see *Ten Principles on Marriage and the Public Good*, signed by some seventy scholars, which corroborates the philosophical case for marriage with extensive evidence from the social sciences about the welfare of children and adults. THE WITHERSPOON INSTITUTE, MARRIAGE AND THE PUBLIC GOOD: TEN PRINCIPLES 9–19 (2008), available at [http://www.winst.org/family\\_marriage\\_and\\_democracy/WI\\_Marriage.pdf](http://www.winst.org/family_marriage_and_democracy/WI_Marriage.pdf).

<sup>2</sup> Kristin Anderson Moore et al., *Marriage from a Child's Perspective: How Does Family Structure Affect Children, and What Can We Do About It?*, CHILD TRENDS RESEARCH BRIEF, June 2002, at 1–2, 6, available at <http://www.childtrends.org/files/MarriageRB602.pdf>.



domestic life, so long as love and mutual care remain. It is essentially a union of hearts and minds, enhanced by whatever forms of sexual intimacy both partners find agreeable. In this revisionist view, the couple also has a right to rear children, however conceived. The procreative element intrinsic to marriage is replaced by an expectation that children may be acquired optionally, by acts of the will, not of the body. According to this understanding, the State should recognise and regulate marriage because it has more interest in romantic partnerships than in the concrete needs of children.

#### **Revising marriage would cause harm**

At the heart of the argument for same-sex marriage lies the revisionist propositions that same sex marriage harms no-one, and that to deny gay and lesbian couples marriage is a denial of 'natural justice'. But under these proposals, marriage would be totally changed. Marriage would be something else. It would place adult sexual choice and emotional commitment at the centre. In other words, marriage would not be about securing the rights of children, but rather meeting the needs of adults. Under these conditions (rarely articulated, but nevertheless the case), there is of course no reason why marriage rights should not be granted to polyamorous relationships, or indeed any other type of sexual relationship. Indeed, it is unclear even why sexual activity should be the focal point – why couldn't long term housemates or inseparable golfing partners likewise seek recognition at law for their relationships?

***The revisionist case reduces marriage to a matter of choice and love between adults. For the most part advocates have avoided discussion of the deeper meaning of marriage, insisting instead that the change will be minimal in impact. But if the definition of marriage is changed, that will affect all of us, children in particular, because 'marriage' will primarily serve the interests of adults.***

Marriage is a public, not a private matter. Revisionists, by advocating so strongly for change, tacitly acknowledge this. It is not simply therefore a matter of allowing a freedom for ourselves. It is a matter of determining what best promotes human flourishing.

#### **Marriage is not unjust**

In respect of the argument around ending discrimination, it is wrong and misleading to

depict the case for same sex marriage as a case for ending discrimination or for equal legal recognition of relationships. The Federal Parliament amended 84 pieces of legislation after the 2010 election to place homosexual rights and entitlements on the same basis as others. The Marriage Equality website itself admits that after these amendments the Marriage Act is the only legislation requiring change – this is not an issue of substantive discrimination. Not only so, but homosexual couples in NSW, Victoria, Tasmania and the ACT are able to register their same-sex partnerships on a relationships register that provides public recognition and affirmation of their relationships. The push for same-sex marriage is therefore largely ideological, because there is clearly no intention in any jurisdiction that they be subjected to any substantial discrimination on entitlement.

No one is done a real injustice when we positively honour and uphold marriage as currently understood. We currently honour those men and women who are united in lifelong, complementary, faithful and procreative relationships by calling them 'married'. In a liberal democracy, others can form other types of relationships; but 'marriage' is a term reserved for a particular kind of relationship that brings with it obligations to others beyond the two parties. Marriage is shared obligation for children. That marriage has come under stress from a variety of causes over the past 50 years, no fault divorce included, is no reason for radically altering its core nature, its aspirational value to society that it is *the union of a man and a woman to the exclusion of all others, voluntarily entered into for life*.

The motion calling on Parliamentarians to canvass their constituents on same sex marriage noted "a growing list of countries that allow same-sex couples to marry including the Netherlands, Belgium, Norway, Spain, Canada and South Africa". This is hardly a formidable list given there are 192 member countries of the United Nations. Significantly, the French Constitutional Council (often considered to act as France's supreme court) recently upheld the legislature's refusal to name same-sex relationships as marriage. It held that France's parliament has the freedom to retain marriage as currently understood.

The Council ruled that a refusal of same-sex marriage does not violate the French constitution. French lawmakers, it said, had

agreed that the “difference in situations between same-sex couples and couples made up of a man and a woman can justify a difference in treatment concerning family rights”. In June 2006, the European Court ruled that the region’s human rights convention “did not oblige a State to grant a same-sex couple access to marriage” as marriage has “deep-rooted social and cultural connotations”.

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

The Parliamentary motion also noted that there was “widespread support for equal marriage in the Australian community”.

Democracy does not mean government by opinion polls or government by majority opinion. Democratic principles require government for the people and by the people.

***Our representatives elected by the majority of people have obligations to govern for the people. They have obligations to protect minorities, even against majority opinion. They have a particular obligation to protect children. The traditional concept of marriage has a place in the law for the purpose of supporting the exclusivity and faithfulness of those biological relationships that result in children. Marriage in the law is for the sake of children and society, and for providing a paradigm to set a comparative standard for the complexity of relationships in which children might otherwise find themselves.***

This pamphlet was prepared by Rev. **Rod Benson**, Baptist Union of Australia; Dr **Denise Cooper-Clarke**, ETHOS Evangelical Alliance Centre for Christianity and Society; Rev. Dr **Andrew Cameron**, Social Issues Executive, Anglican Diocese of Sydney; Dr **John McClean**, Presbyterian Theological Centre, Sydney; Mr **Chris Meney**, Life, Marriage and Family Centre, Catholic Archdiocese of Sydney; Rev. **David Palmer** Presbyterian Church of Victoria; A/Prof **Nicholas Tonti-Filippini** KCSG, John Paul II Institute for Marriage and Family; and Brig. (retd) **Jim Wallace** AM, Australian Christian Lobby. [19/5/11.]