

Submission

on the

Qld Civil Partnerships Bill 2011

to the

Legal Affairs, Police, Corrective Services and Emergency Services Committee

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Introduction

On 26 October 2011, the Queensland Legislative Assembly referred the Civil Partnerships Bill 2011 to the Legal Affairs, Police, Corrective Services and Emergency Services Committee for examination and report. The committee is required to report to the Parliament on the Bill by Monday 21 November 2011.

The Bill is a private member's bill, introduced by Hon Andrew Fraser MP. The Bill proposes to:

- provide for the legal recognition and registration of civil partnerships, regardless of gender;
- allow couples to make a declaration of their intention to enter into civil partnerships before a civil partnership notary, prior to the registration of their civil partnership;
- provide for the termination of civil partnerships;
- recognise interstate civil partnerships;
- create a registration process for civil partnership notaries;
- make consequential amendments to a number of Acts.

Submissions are due by 4 November 2011. The 45 pages of this Bill include complex legal details which cannot be adequately analysed in the very short time (just ten days) currently allowed for review. Consideration of this private member's bill should be delayed at least until next year. Meanwhile this brief submission addresses some of the main problems with this Bill.

1. Civil Partnerships Bill 2011

The Civil Partnerships Bill 2011 has serious problems from the outset.

1. The Bill seeks to include "civil partnerships" in the Queensland Register of Births, Deaths and Marriages – effectively equating civil partnerships with marriages. The Bill would thus confuse and dilute the meaning marriage has always had throughout recorded history: the permanent union of two biologically complementary humans – a man and a woman.

2. Marriage has been given special recognition and status throughout history precisely because it is a permanent union of two biologically complementary humans who have the potential (not necessarily always realised) to procreate and provide a stable environment for raising the next generation with both male and female role models.

3. Other types of unions (eg two close friends, two siblings, two lesbians) may be loving and committed, but do not have the potential to produce children of the union. There is no good reason for governments to register or regulate these other types of unions.

4. Unions of two men or two women cannot naturally produce children, nor can they provide both mother and father role models for children procured by other methods (adoption, surrogacy or assisted reproductive technology).

5. Surrogacy and artificial insemination is increasingly being used by same-sex couples to procure children. But these methods are associated with increased risk of identity problems in such children – a greater risk than in adopted children. Part of the problem is that children created artificially know

they were deliberately conceived as a commodity, rather than because of any love or commitment between their natural parents.¹

6. Including civil partnerships on an equal basis with marriages in the Register of Births, Deaths and Marriages would not only confuse the meaning of marriage by including same-sex couples as well as opposite sex couples in the register – it would give high status to the sexual practices of some same-sex couples.

7. Anal intercourse is associated with serious health risks because the rectal lining is extremely fragile compared with the thick muscular vaginal wall. Capillaries in the rectal wall are breached in almost every act of anal intercourse, even when lubricant and a condom are used – allowing faecal pathogens to enter the bloodstream. Anal intercourse should never be given “equality” with heterosexual reproductive intercourse. Such “equality” would send a dangerous health message to the community, quite apart from any moral considerations.

8. If the Civil Partnerships Bill is passed, it would have significant implications for education and anti-discrimination requirements in Queensland. School children would be taught, regardless of parental wishes, that same-sex partnerships are the legal and practical equivalent to a "mum and a dad" for children, and that two men or two women can replace a mum and dad. Anti-vilification provisions in the Anti-Discrimination Act could lead to the silencing of any Queensland citizen who dares to say publicly (or tweet) that marriage is a union of a man and a woman. Toowoomba GP Dr David van Gend has already experienced this kind of litigation. The recent vilification complaint against him based on his support for man-woman marriage was ultimately withdrawn, but not before it had cost the doctor thousands of dollars in legal advice and lost surgery time. It cost his complainant nothing. Many more similar complaints are likely if this bill is passed, and they are less likely to be withdrawn. Freedom of speech, along with the freedom of parents to teach their moral values to their children, are both under severe threat.

9. This Bill would be used to facilitate the adoption of unrelated babies by same-sex couples, thus depriving the child of his or her right to grow up with both a mum and a dad.

10. The attached resource paper, *Marriage versus Civil Unions*, sets out some further reasons why legalisation of civil unions or partnerships would not be in the public interest.

11. The institution of marriage is not discriminatory. It is open to all citizens who fulfil its requirements. This Bill would therefore not provide “equality”. It should be rejected.

Recommendation:

The Civil Partnerships Bill 2011 should be rejected.

2. Reference

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Marriage versus Civil Unions

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In January 2004 Jason McCheyne and Adrian Tuazon - two Australian men - flew to Canada to register their "marriage" in a civil ceremony in Toronto's city hall. Calling each other "husband", they returned to their home in Melbourne. There they announced they were planning a challenge - probably in the Family Court - to have their same-sex "marriage" officially recognised in Australia.¹

It was a wake-up call for this country, challenging our longstanding common law that only a man and a woman can marry. In early 2004 no one could predict the outcome of a Family Court challenge. The Marriage Act did not include a clear definition of "marriage", leaving an opportunity for radical judges to change the historical meaning.

Since making laws is a function of our democratically elected parliament - not unelected judges - the federal government under Prime Minister John Howard saw the need to clarify the Marriage Act to make the definition of marriage absolutely certain.

In August 2004 the Commonwealth Parliament amended the Marriage Act 1961 to enshrine the long-established meaning of marriage as "the union of a man and a woman to the exclusion of all others, voluntarily entered into for life". This move effectively halted any attempt by same-sex couples who had "married" overseas from gaining recognition of their relationships as marriages under Australian law.

However the homosexual lobby has been attempting to gain legal recognition for same-sex relationships via alternate routes - as quasi-marriages under State or Territory legislation. The lobby succeeded in Tasmania with the Relationships Act 2003 and, temporarily, in the ACT with the Civil Unions Act 2006.

The Commonwealth government used its power to disallow the ACT Civil Unions Act on 13 June 2006.² Nevertheless, the homosexual lobby has plans to introduce similar laws in other States.

These moves raise some key questions. What is the nature, purpose and value of marriage? How is marriage different from homosexual relationships? Should legal recognition be provided for same-sex relationships? This paper addresses these critical issues at a watershed in Australian history.

The nature of marriage

Throughout history, in all cultures, marriage has always involved the union of a man and a woman - not people of the same sex.

In ancient Greece for example, Homer wrote in the *Odyssey*: "There is nothing better in this world than that man and wife should be of one mind in a house. It discomfits their enemies, makes the hearts of their friends glad."³ In India, the timeless Hindu ceremony joining a bride and bridegroom in marriage "is the biggest, most elaborate, magnificent, spectacular and impressive of all the life cycle rituals in a Hindu's life."⁴

The Bible notes that at the beginning God created mankind

male and female⁵ and that a man should be united with his wife."⁶ Jesus Christ referred to these statements as the establishment of marriage.⁷

In Australian law marriage is now defined in the Marriage Act 1961, as "the union of a man and a woman to the exclusion of all others, voluntarily entered into for life".⁸ Thus marriage is characterised by being between a man and a woman, exclusive, voluntary, enduring and officially recognised.

Man and woman

The restriction of marriage to a man and a woman is not the only restriction. Marriage is not available to children,⁹ those already married,¹⁰ close relatives,¹¹ or people who are mentally incapable of understanding marriage.¹² Thus marriage is available only to those who satisfy the eligibility requirements - otherwise marriage would become meaningless.

Australian culture, based its Judeo-Christian heritage, follows the biblical man-woman marriage model. Two men cannot naturally conceive a child; nor can two women. Two men cannot be role models for both male and female to a child; nor can two women. For these basic reasons, contrived parenthood by same-sex partners can never be ideal and should not be encouraged, officially recognised or approved.

Exclusive

Marriage celebrants are required, under the Marriage Act 1961, to remind a man and woman about to be married that the relationship they are about to enter is "to the exclusion of all others".¹³ This exclusive nature of marriage originally derives from the biblical commandment: "You shall not commit adultery."¹⁴ Adultery represents a fundamental breach of marital vows.

Exclusive marriage was protected by Australian law through one of the grounds for divorce being adultery. Matrimonial law passed from Church to State with the British Matrimonial Causes Act 1857, which applied in the Australian colonies until they passed separate legislation. Federation in 1901 transferred marriage and divorce powers to the Commonwealth Parliament, which first exercised these powers in the Matrimonial Causes Act 1959. Adultery was retained as a matrimonial offence, thereby upholding the exclusive nature of marriage.

The passage of the Family Law Act 1975 removed fault from divorce proceedings and thereby undermined the exclusive nature of marriage.

Nevertheless, Australian married couples still expect faithfulness from each other. The very public separation of Shane and Simone Warne over famous spin bowler Shane's repeated infidelities is indicative of that expectation.¹⁵

However those advocating recognition of homosexual relationships say those relationships are not expected to be exclusive. "Among gay male relationships, the openness of the contract makes it more likely to survive..." wrote Andrew Sullivan, the most eloquent proponent of gay "marriage", in his book *Virtually Normal*.¹⁶

Researchers have found that same-sex partners tend to be very promiscuous. The authors of the book *The Male Couple* concluded: "Many couples learn very early in their relationship that ownership of each other sexually can become the greatest internal threat to their staying together."¹⁷

Legal recognition of homosexual partnerships would further undermine the exclusive nature of marriage.

Voluntary

Australian law requires the consent of both parties for a valid marriage. A supposed marriage may be declared void if consent was lacking due to duress or fraud¹⁸ or to mistaken identity or the nature of the ceremony.¹⁹

Consent has long been an essential part of a Christian wedding. Indeed, until the Council of Trent in 1563 established a canonical form of marriage, consent was the only formal requirement for entering into marriage.²⁰ Consent is still an important part of a Christian wedding, when the bride and groom are each asked in turn "will you have ... as your wife/husband ..."²¹

Enduring

The Australian Marriage Act 1961 requires a civil celebrant at a wedding to say: "I am to remind you of the solemn and binding nature of the relationship into which you are now about to enter ... for life."²²

In a Christian wedding service the man and woman pledge to each other, for example, "to have and to hold from this day forward, for better for worse ... until we are parted by death."²³ This is an enduring promise - for life. Not all marriages endure, but most first marriages do last until the death of one party.²⁴

In contrast, neither civil unions nor registered relationships involve any enduring commitment. They are inherently temporary and can be terminated at will by either party through simply serving a termination notice on the other party.²⁵

While some homosexual partners remain together for lengthy periods, most are relatively brief. Dr James Dobson, of Focus on the Family, has said: "Studies show that homosexual men in particular have a difficult time honouring even the most basic commitments of 'marriage'. A recent study conducted in the Netherlands ... found that the average homosexual relationship lasts only 1.5 years and that gay men have an average of eight sexual partners per year outside of their "primary" relationship..."²⁶

Consequently, civil unions or registered relationships do not foster endurance. Instead they cultivate a culture of transience and promiscuity that would undermine the ideal of lifelong commitment in marriage.

Recognition

Since a marriage is fundamentally a public commitment, a wedding must have witnesses - and this is a requirement of the Australian Marriage Act.²⁷

Hints of the public nature of a wedding in New Testament times are given in the parable of the ten virgins.²⁸ William Barclay explains the background:

*In a village in Palestine a wedding was a great occasion. The whole village turned out to accompany the couple to their new home, and they went by the longest possible road, in order that they might receive the glad good wishes of as many as possible.*²⁹

In Australia today, the Commonwealth Marriage Act provides for public recognition of marriages through authorised marriage celebrants, essential elements of a wedding ceremony, marriage certificates, and provision for state registration of marriages.

Public recognition of other relationships lacking the essential attributes of marriage can only weaken and undermine the unique status and social significance of marriage.

The purpose of marriage

The public purpose of marriage, summarised by Maggie Gallagher writing in the *Louisiana Law Review*, is: "to foster a certain kind of sexual union between men and women

characterized by caretaking, sharing of resources, procreation, and long-term commitment in order to encourage the protection of children and the reproduction of society."³⁰

This purpose has an ancient origin, as Jesus Christ explained in answer to a question about divorce. "Haven't you read," he replied, "that at the beginning the Creator 'made them male and female,' and said, 'For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh'? So they are no longer two, but one."³¹

The purpose of marriage emerges as part of the created order, intended for all mankind, with two key elements. Firstly humans are created male and female to be fruitful and increase in number.³² Secondly, it is not good for man to be alone. He needs to be united with his wife for complementary companionship.³³

This dual purpose for marriage set out in Genesis has been amplified by Joseph Hertz, the Chief Rabbi of the British Empire and Orthodox Jewish communities from 1913 to 1946,³⁴ in the following terms.

The duty of building a home and of rearing a family (Gen. 1:28, Be fruitful and multiply) figures in the Rabbinic codes as the first of the 613 Mitzvoth (ordinances) of the Torah. To this commandment is due the sacredness and centrality of the child in Judaism - something which even the enlightened nations of antiquity could not understand.

*Companionship is the other primary end of the marriage institution. Woman is to be the helpmate of man. A wife is a man's other self, all that man's nature demands for its completion physically, socially, and spiritually. In marriage alone can man's need for physical and social companionship be directed to holy ends... (Gen. 2:24).*³⁵

In Christian understanding, this second purpose includes two elements: the appropriate expression of human desire for intimacy and the complementary companionship of a man and wife. Thus a threefold purpose of marriage is described in the Church of England marriage service:³⁶

First, it was ordained for the procreation of children, to be brought up in the fear and nurture of the Lord, and to the praise of his holy Name.

Secondly, it was ordained for a remedy against sin, and to avoid fornication; that such persons as have not the gift of continency might marry, and keep themselves undefiled members of Christ's body.

Thirdly, it was ordained for the mutual society, help, and comfort, that the one ought to have of the other, both in prosperity and adversity.

Procreation

Australia has a fertility crisis which could lead to an aging and declining population. The problems were addressed in the Australian Institute of Family Studies' journal *Family Matters* in 2002 by the director, David Stanton.³⁷ He quoted Paul Kelly of *The Australian* who highlighted the need for a policy ... "to reverse the fertility decline, to devise a strategy of long-term population growth..."

He also quoted Hon Kevin Andrews, when federal Minister for the Ageing in 2002, noting that Australia faces a "challenge: procreate or perish... We have an obligation to future generations and we ignore the falling fertility rate at our peril."

He cited Hon Wayne Swan, as shadow Minister for Family and Community Services, who spoke to the Sydney Institute on 2 July 2002 on the subject *Is the Australian family an endangered species?* "In the long term," Mr Swan said, "Australia must dramatically rethink its approach to supporting families ... (or) our birth-rate will continue to decline to a point where our future economic capacity as a nation will be put at risk."

A good way to start addressing Australia's fertility crisis would be to restore respect for marriage, which provides the best social environment for bearing and raising the next generation of Australians.

Same-sex partnerships do not naturally contribute to producing the next generation of Australians. Moreover, same-

sex partners should not be encouraged to have children using artificial techniques, because children are best served by growing up in a family with both male and female role models.

Intimacy

The human race has been created with a strong desire for physical intimacy. The mode of expression of that desire - within marriage, or in unmarried cohabitation, or in homosexual activity - has different consequences. A review of research into these consequences reached the following conclusions:³⁸

Married people have sex considerably more often than single people do, and they enjoy it more. Studies consistently show that both married men and married women enjoy sex much more than single people do... Despite all the myths and television shows, men value commitment nearly as much as women do. Researchers also have observed that sexual infidelity hampers sexual satisfaction and general happiness in both sexes. Fidelity makes you happier and improves your marriage, and ... people in happier marriages live longer.

Heterosexual couples who cohabit - who live together without marriage - do not enjoy most of these benefits of marriage... Marriage matters...

Homosexuals of both sexes ... have much higher rates of interpersonal maladjustment... One study in San Francisco showed that 43 percent of male homosexuals had had more than 500 sexual partners. Seventy-nine percent of their sexual partners were strangers. Lesbians, in contrast, are less promiscuous than male homosexuals but more promiscuous than heterosexual women: One large study found that 42 percent of lesbians had more than ten sexual partners. A substantial percentage of them were strangers.

The statistics speak for themselves: If homosexuals of either gender are finding satisfaction, why the search for sex with a disproportionately high number of strangers? The more radical homosexual activists flaunt their promiscuity. But even more conservative advocates of gay marriage ... admit that for them, "fidelity" does not mean complete monogamy, but just somewhat restrained promiscuity... And without exclusiveness, their "marriages" will have little meaning.

Homosexual activity is condemned in the Bible as morally wrong and offensive to God. The apostle Paul warns in his letter to the Corinthians: "Do not be deceived: Neither the sexually immoral nor idolaters nor adulterers nor male prostitutes nor homosexual offenders nor thieves nor the greedy nor drunkards nor slanderers nor swindlers will inherit the kingdom of God."³⁹

Complementarity

The complementary companionship which a husband and wife provide each other is unique because of the fundamental physical, mental, emotional and spiritual differences between men and women. The essence of these complementary natures is captured in the title of John Gray's popular book *Men Are from Mars, Women Are from Venus*.⁴⁰

Abundant evidence is available of the universal physical, neurological and psychological differences between men and women, for example in *The Psychology of Sex Differences*.⁴¹ The complementary natures of men and women can contribute a vitality to a marital relationship not present in other relationships.⁴²

The Russian existentialist philosopher Nicholas Berdyaev suggested that loneliness occurs because, deep down, we all realise that neither a man by himself nor a woman by herself is biologically completely human. Each lacks the attributes and capabilities of the opposite sex, and in that sense each is incomplete - and lonely - without the other.⁴³ Homosexual relationships fail to satisfy this deep longing.

Spiritual significance

For Christians, marriage has a special spiritual significance. The first miracle recorded in John's Gospel was at a wedding, where Jesus turned water into wine.⁴⁴ Jesus compared the kingdom of heaven to marriage in two parables.⁴⁵ And the church

is pictured at the end of the age "as a bride beautifully dressed for her husband," the risen Christ.⁴⁶

Thus every Christian marriage has the potential to be a living picture of the gospel, reflecting the relationship between Christ and the church.⁴⁷

The value of marriage

The institution of marriage has been, over the centuries, a civilising and liberating experience for millions of men and women. As Edmund Burke once wrote, "The Christian religion, by confining marriage to pairs, and by rendering that relation indissoluble, has by these two things, done more towards the peace, happiness, settlement, and civilization of the world, than by any other part in this whole scheme of divine wisdom."⁴⁸

Value to the couple

Evidence that married people generally enjoy longer lives and better general health than non-married people has been provided by Linda Waite and Maggie Gallagher in their book entitled *The Case for Marriage: Why Married People Are Happier, Healthier, and Better Off Financially*.⁴⁹

Marriage is good for longevity. After an extensive examination of US population data, Dr James Lynch reported that "in almost every case, for both males and females, widowed, divorced, and single people have significantly higher death rates than married people."⁵⁰ Marriage is also good for mental health.⁵¹

Cohabitation does not offer the benefits of marriage. Married men and women enjoy an advantage in mortality rates over those who live alone and over those who live with someone other than a spouse.⁵² Dr Jan Stets, a leading scholar on cohabiting relationships found in general, "Cohabiting couples compared to married couples have less healthy relationships. They have lower relationship quality, lower stability, and a higher level of disagreements."⁵³

Homosexual behaviour does not provide the benefits of marriage. Numerous studies show that homosexuals have shorter life expectancy and poorer physical and mental health than others. Male and female homosexuals have much higher rates of interpersonal maladjustment, depression, conduct disorder, domestic violence, alcohol or drug abuse, anxiety, and dependency on psychiatric care than heterosexuals.⁵⁴

Value to the children

Children who are raised by their natural or adoptive married parents are likely to be much healthier than the children of divorced parents or the children of single parents who were never married. The evidence shows that being born into a happy marriage gives the average child great statistical advantages in health, happiness, future longevity and career success over children born into less fortunate circumstances.⁵⁵

Divorce and unmarried child-bearing have negative effects on children's physical health and life expectancy.⁵⁶ The health advantages of married homes remain, even after taking socioeconomic status into account.⁵⁷ Even married parents who fight often have happier and healthier children than divorced parents.⁵⁸

Kids just want Mum and Dad to be there, and if one of them (usually Dad) goes, his departure never stops hurting, and it never stops generating painful consequences.⁵⁹ And the health disadvantages associated with being raised outside of intact marriages persist long into adulthood.⁶⁰

Remarriage generally does not help the children of divorce. Children in "blended" families are many times more likely to be the victims of physical violence or sexual abuse than children who live with both natural parents,⁶¹ and they are far less healthy, happy and successful in the long run.⁶²

Since cohabiting couples break up more frequently than married couples divorce, the risks to children of cohabiting parents are greater.⁶³ Studies show that children raised in families containing one non-biological parent are many times more likely to be abused than children raised by both biological parents.⁶⁴

Same-sex partnerships are even more transient than heterosexual cohabitation and for this reason alone pose the greatest risk to any children involved. An important study of primary school children living in three family types - married heterosexual couples, cohabiting heterosexual couples and homosexual couples - suggests that children raised by same-sex couples may be at risk of academic under-achievement, social problems and gender confusion.⁶⁵ Even more worrying are indications of an increased incidence of incest between minor children and homosexual parents of both sexes.⁶⁶

Value to the nation

Traditional marriage provides numerous benefits for the nation. Marriage encourages an adequate replacement birth rate, resulting in enough well-developed and productive young people who can contribute to society and provide social security to the elderly. Marriage civilises men and focuses them on productive pursuits. It protects women who have given up or postponed their careers to have children from being abandoned and harmed economically by uncommitted men.

These positive results of traditional marriage are not new. British anthropologist Joseph Unwin studied 86 cultures spanning 5,000 years and found that the most prosperous cultures were those that maintained a strong traditional marriage ethic. Every civilisation that abandoned this ethic by liberalising their sexual practices began to deteriorate, including the Sumerian, Babylonian, and Roman empires.⁶⁷

Dr Unwin said that the energy holding a civilisation together is essentially sexual energy. When a man is devoted to one woman and their children, he is motivated to build, save, protect and plan for the future on their behalf. But when a man's sexual interests are dispersed - and when he has no children - then he lives mainly for the present moment and for self-gratification.

When a "critical mass" of the population shares these selfish values, culture collapse is not far away.

Homosexual behaviour is a liability to a nation. It increases health problems among those who practise it, including colon and rectal cancer, hepatitis, HIV/AIDS and other sexually transmitted diseases.⁶⁸ Blood donated by homosexuals spread HIV/AIDS to haemophiliacs before 1985. The high medical cost of treating AIDS patients places an additional burden on public health system.

Conclusion

Marriage is one of the fundamental building blocks of a stable and productive nation. Since time immemorial marriage has been understood as it is now defined in the Australian Marriage Act 1961: "the union of a man and a woman to the exclusion of all others, voluntarily entered into for life".

Marriage is characterised by being between a man and a woman, exclusive, voluntary, enduring and publicly recognised. Its purpose is procreative, intimate and complementary. It contributes to the welfare of the nation by providing the best context for children to be born and raised as future responsible citizens.

In contrast, homosexual relationships are a liability to society. Unlike marriage, they are not characterised by a commitment to be exclusive and enduring. They are not naturally procreative; they do not achieve satisfying intimacy and they are not complementary. They often pose a health risk to the participants and to any associated children and impose a disproportionate burden on public health services.

Homosexual relationships should not be officially recognised by governments.

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