The Australian Family Association (AFA)

Submission to the inquiry into the *Civil Partnerships Bill 2011*

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To the Committee:

I am writing on behalf of the national office of the Australian Family Association (AFA). We thank you for the opportunity to make a submission to this inquiry.

The AFA respectfully submits that the Committee should recommend *against* the implementation of the *Civil Partnerships Bill 2011*.

Summary of reasons

This bill should be rejected for the following reasons:

1. The bill does not end discrimination. Rather, it replaces a justifiable policy of positive discrimination with an unjustified policy of arbitrary discrimination.

2. Not even same-sex activists want civil unions.

Explanation of reasons

1. The bill doesn't end discrimination, it results in *arbitrary* discrimination

It is a trite fact of human biology that the heterosexual union – the sexual union of one male and one female – is the means by which our species reproduces itself. Nature, it seems, discriminates by conferring upon the heterosexual union alone the biological responsibility for our species' continued existence. This fact distinguishes the heterosexual union from all other kinds of human relationship.

It is no surprise, then, that the laws and institutions of human society should reflect the fact that the heterosexual union is special. Human societies, including Australian society, have done so chiefly through the institution of marriage. Because the heterosexual union is inherently procreative, bringing children into the world, societies have sought to attach legal obligations of permanence and exclusiveness to preserve the unity of the biological family in the best interests of children and of society at large.

Children have a right – and in many respects, a *need* – to be raised by their biological mum and dad, wherever that is possible. In other contexts – the Stolen Generations, the Forgotten Australians, the children who were in the past subjected to forced adoptions – we seem to have slowly and painfully grasped this notion, and have seen fit to apologise for past wrongdoing. In those cases, we acknowledge that our forebears had no right to arbitrarily separate children from their biological kin. We know the harm it has done.

Marriage is the means by which the state helps to ensure that children are not unnecessarily denied the opportunity of being raised by their own biological parents. Marital status places public obligations on couples, and affords certain benefits to them, for this purpose.

That is to say, the heterosexual union warrants – and has been afforded – special legal treatment which corresponds to its uniquely procreative nature. Any so-called discrimination in terms of the

legal treatment of heterosexual marriage is justified because the state has a unique interest in preserving the unity of the biological family unit.

Despite these reasons for shaping law and public policy in accordance with the unique significance of the heterosexual union, the Deputy Premier has suggested that the aim of the proposed bill is to end any differential treatment of heterosexual relationships.

However the proposed civil-unions scheme does not end discrimination. Rather, the bill erects a legal fence around an arbitrarily nominated kind of human relationship – intimate couple relationships – and says, without justification, that such relationships will henceforth be granted official government recognition. Whereas in the case of policies which treat the heterosexual union as unique, the procreative nature of the relationship has traditionally provided a sound basis for differential treatment, in the case of broadly defined 'couple relationships', no such basis exists.

The arbitrary recognition of intimate couple relationships to the exclusion of other kinds of relationships - such as friendships, carer relationships, or intimate polyamorous relationships - highlights the need for the state to provide substantive reasons which justify the granting of official recognition to some relationships, but not others. Already some academics, such as Nancy Polikoff of the American University, Washington, and Linda Kirkman of Monash University, Melbourne, have argued that if couple relationships are worthy of recognition, there is no reason that polyamorous relationships should be excluded.[1]

The arbitrary nature of the proposed civil union scheme would mean that the state could no longer justify its intrusion into the realm of private relationships on the grounds of the significant public interest in preserving the biological unity of the family, and ensuring that children are given the opportunity of being raised by their own mum and dad. Rather, the scheme raises the question: on what basis *can* the state justify recognising some relationships, but not others?

We respectfully submit that the Committee should acknowledge that the Deputy Premier's stated intention of ending discrimination will not be fulfilled by this bill; rather discrimination will simply become arbitrary and unjustified.

2. **Same-sex activists don't want civil unions – they want to redefine marriage**

The main reason that same-sex activists oppose civil unions is that civil unions create a two-stream system; opposite-sex and same-sex relationships are deemed to be "separate but equal." As same-sex advocacy group *Australians for Marriage Equality* states on its website:

> *A number of courts around the world have ruled that schemes separate from marriage cannot be equal to marriage. Most recently, the California Supreme Court ruled on 15 May 2008 that giving the unions of same-sex couples a name that was separate and distinct from marriage reduced gays to "second-class citizens"*.

Where supporters of same-sex marriage *do* support civil unions, it is only as part of an incremental strategy to eventually redefine marriage. The Committee and the Government should be frank and honest about this reality, which is borne out by evidence from same-sex marriage activists in other jurisdictions. For example, writing in the *New York Review of Books* in 2009, reviewer David Cole had this to say about the decision by two US state supreme courts to redefine marriage:

> *The fact that the legislature had already extended virtually all the benefits and rights of marriage to same-sex couples under the rubric of civil unions or domestic partnerships was crucial to the legal victories.*

Indeed, Cole lays out the incremental strategy in explicit terms:

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[1] See Polikoff, <http://beyondstraightandgaymarriage.blogspot.com/>; and Kirkman, <http://www.latrobe.edu.au/news/articles/2010/opinion/poly-is-the-new-gay>.

> *In [the book entitled]* Gay Marriage*, [the authors] … advocate a strategy focused on civil unions, although on more pragmatic grounds. Citing an article by Professor Kees Waaldjik, who helped develop the strategy behind the Netherlands' recognition of same-sex marriage, [the authors] argue that the best way forward is incremental.*
>
> *On this view, states (or nations) are likely to recognize same-sex marriage only after a step-by-step process in which they first eliminate laws criminalizing homosexual sodomy, then amend anti-discrimination laws to cover sexual orientation, then extend some government employment–related benefits to same-sex partners of civil servants, and then enact a domestic partnership or civil union law.*

We respectfully submit that the Committee should make it clear to Parliament and to constituents that in other jurisdictions civil unions have not been a compromise solution. They have been used as a strategic stepping-stone to the total redefinition of marriage, and are likely to be used in the same way in Queensland.

Sincerely,

Tim Cannon

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