



# AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

## Bishops Commission for Pastoral Life

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31 July 2014

Committee Secretary  
Senate Legal and Constitutional Affairs Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

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Dear Sir/Madam

### **Inquiry into the Recognition of Foreign Marriages Bill 2014**

This submission is from the Australian Catholic Bishops Conference (ACBC) as prepared by the Bishops Commission for Pastoral Life (BCPL).

The ACBC is a permanent institution of the Catholic Church in Australia and the instrumentality used by the Australian Catholic Bishops to act nationally and address issues of national significance.

The BCPL is one of a number of commissions established by the ACBC to address important issues both within the Church and in the broader Australian community. The BCPL has responsibility for marriage and family.

The ACBC appreciates the opportunity to make a submission on the *Recognition of Foreign Marriages Bill 2014* (the Bill).

The Bill is designed to “recognise same-sex marriages solemnised in a foreign country”.<sup>1</sup>

The Bill would in-effect undermine the definition of marriage in Australia by recognising couples as being married when those same couples cannot be married

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<sup>1</sup> Clause 3, *Recognition of Foreign Marriages Bill 2014*.

under Australian law in Australian territory. The Bill's author acknowledges this, saying changes proposed in the Bill would be a step towards recognising same-sex marriage in Australia.<sup>2</sup>

The Bill would create the legally absurd situation where Australian same-sex couples would marry overseas in order to be recognised as married in Australia, but they could not solemnise their marriage in Australia. No matter one's position on same-sex marriage, that would be an absurd situation.

In-effect it would change the law for any same-sex couples in Australia with the motivation and finances to travel to New Zealand. Couples where at least one member is a British citizen need only go to their local British consulate in Australia to marry to have that marriage recognised in Australia.<sup>3</sup>

Consequently, the Bill would act against the very clear decision of the Australian Parliament to reject same-sex marriage.

The Senate has already decisively rejected a similar bill by Senator Hanson-Young, the *Marriage Act Amendment (Recognition of Foreign Marriages for Same-Sex Couples) Bill 2013*, by 44 votes to 28 on 20 June 2013.

Both the Senate and the House of Representatives have rejected proposed legislation allowing same-sex marriages to be solemnized in Australia. On 19 September 2012 the House of Representatives rejected the *Marriage Amendment Bill 2012* by 98 votes to 42. The next day the Senate rejected the *Marriage Amendment Bill (No.2) 2012* by 41 votes to 26.

The Marriage Act clearly states that marriage can only be between a woman and a man.<sup>4</sup>

The ACBC views marriage as an important institution which ensures children are connected to both their mother and father. This view does not unjustly discriminate against anyone but recognises the essential biological connection between children and their natural parents.

The same-sex marriage debate is about the meaning and purpose of marriage. Is marriage simply about love or does it have the deeper meaning and purpose to unite a woman and a man and any children born to them?

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<sup>2</sup> Senator Hanson-Young, Senate Hansard, 15 May 2014, page 28.

<sup>3</sup> Lisa Cox, Date Set: Same sex couples can use British laws to marry in Australia, *The Sydney Morning Herald*, 5 June 2014. See: <http://www.smh.com.au/federal-politics/political-news/date-set-samesex-couples-can-use-british-laws-to-marry-in-australia-20140605-39jwl.html>; Benedict Brook, First Australian gay wedding under UK law to take place in Sydney tomorrow. *Star Observer*, 26 June 2014. See: <http://www.starobserver.com.au/news/local-news/first-australian-gay-wedding-under-uk-law-to-take-place-in-sydney-tomorrow/124579>

<sup>4</sup> Marriage Act 1961 (Cth), s5.

Marriage between a man and a woman is the primary relationship governments formally recognise because it is in the interests of the community that children should be brought up in a stable, happy home with their biological mother and father. Marriage is more than something for individual fulfilment and happiness. It is more than romance.

Governments and the public do not have an interest in whether two people love each other or not, but they do have an interest in a relationship that can naturally lead to children because children are the future of our community and we want the best for them.

The interests of children are paramount and this is a principle upheld in international law to which Australia is a signatory.<sup>5</sup> Children have a right to an identity and family relations,<sup>6</sup> and as far as possible, the right to know and be cared for by,<sup>7</sup> and maintain personal relations and direct contact with, both natural parents.<sup>8</sup>

Redefining marriage would deny the biological reality of sexual complementarity in marriage between a woman and a man and the value it has for children. Marriage based on that biological reality unites the couple and any children in a number of ways: genetic, gestational, social, physical and spiritual. It is a relationship where the benefits are not confined to the spouses, but through their love they may become mother and father.

That is why the law recognises the biological nature of the relationship between a man and woman in marriage. The couple's relationship is about more than romance, including any children who are conceived as a result of their union. Children are an enduring symbol of a couple's love for one another. The binding nature of marriage gives children both security and identity.

What is being proposed in relation to recognizing same-sex marriage is that gender does not matter. This would be a serious mistake in relation to the biological, psychological and social reality of the connectedness of children to their mother and their father and to their lineage through their biological origins in the relationship between their natural parents. Same-sex marriage would impose a legal fiction indicating an equivalence where no such equivalence exists.

Children exist in same-sex households. Where children are the child of one or other partner though a previous heterosexual relationship or through reproductive technology, the child will be a step-child of one of the partners. A step-parent never has exactly the same status as a natural parent. Their relationship is always overshadowed by the existence of a natural, biological parent. The search for identity of, and access to, natural parents, by donor and adopted offspring is

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<sup>5</sup> UN Convention on the Rights of the Child Art. 21  
<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>6</sup> Ibid. Art. 8

<sup>7</sup> Ibid. Art. 7

<sup>8</sup> Ibid. Art. 9

testament to the importance of biological parenthood. Biological parenthood is about much more than choosing to be a parent.<sup>9</sup>

Where children are adopted by a mother and a father, this matches the model a child should expect of a mother and a father in marriage as a good alternative for when a child cannot be brought up by her or his natural parents. Adoption is a solution to a situation that has arisen. A child should never be produced for the purposes of adoption, for example through surrogacy. Adoption is an attempt to replace as closely as possible, in the interests of the child, what he or she has lost through the death, inability or unwillingness of natural parents.

Equality is about treating like as like and different as different. It is not about treating relationships that are quite different in nature as if they are the same. There is a fundamental biological difference between couples of the same-sex and couples of the opposite sex.

Moves to redefine marriage are not about equal access to marriage. Advocates for same-sex marriage still exclude some people. They do not allow for group marriage or marriage among close relatives notwithstanding that these categories may equally appeal to the claim that their love merits recognition. The 'equal love' arguments being used to argue for change to the definition of marriage apply to a variety of loving relationships. Acceptance of the arguments used for same-sex marriage would mean in-principle acceptance of a variety of new forms of marriage.

The "marriage equality" phrase is thus misleading. Status is given to marriage because marriage is outreaching in being potentially the source of children. This is simply not the reality for same-sex unions. They are not the kind of relationship which can be fruitful in that way and so do not merit the legal status of marriage between a man and a woman.

Though some countries have decided otherwise, it is important that Australian law not be undermined in a way that weakens what marriage means and loses the sense of purpose of the law being involved in marriage to protect the rights of children.

The ACBC submits the *Recognition of Foreign Marriages Bill 2014* would in effect change the definition of marriage, creating an absurd system for recognising marriages in Australia and asks that the Committee recommend against passing the Bill.

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<sup>9</sup> Tonti-Filippini, N, Submission to the Inquiry into Same Sex Marriage Law in NSW, 27 February 2013. Submission number 997.

We would be happy to answer any questions the Committee may have. For further information please contact ACBC Public Policy Director Jeremy Stuparich on tel. 02 6201 9863 or [policy@catholic.org.au](mailto:policy@catholic.org.au) .

Yours sincerely in Christ,

A handwritten signature in black ink, reading "Eugene Hurley". The signature is written in a cursive style with a small cross above the first letter 'E'.

**Bishop Eugene Hurley**

Chair, Bishops Commission for Pastoral Life