



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

Bishops Commission for Family, Youth and Life

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Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Dear Sir/Madam

Re: A popular vote, in the form of a plebiscite or referendum, on the matter of marriage in Australia

This submission from the Australian Catholic Bishops Conference (ACBC) has been prepared by the Bishops Commission for Family, Youth and Life (BCFYL).

The ACBC is the assembly of Catholic Bishops of this country and the means by which the bishops act nationally and address issues of national significance. The BCFYL is one of the commissions established by the ACBC with responsibility for a range of issues including marriage.

The ACBC appreciates the Senate Legal and Constitutional Affairs References Committee's invitation to make a submission.

Summary

Marriage is a fundamental institution for all societies because of its importance in uniting spouses as potential parents and in providing for the upbringing of their children. It has therefore been understood as the union of a man and a woman in all cultures, religions and legal systems until very recent times and is still so defined in the law of most nations (including Australia), in international law and in most religious and secular traditions.

The Australian Catholic Bishops Conference acknowledges that there are now diverse views about this matter and that several bills are presently before the Commonwealth Parliament that would redefine marriage in Australian law so as to allow 'same-sex marriage'. Any decision to redefine marriage would be of profound significance for present and future Australians.

In this submission the ACBC will argue these six central points:

- Marriage is an essential institution for ensuring children are brought up by their natural mother and father
- Many marriages do not involve children, but where children are born they have the right to grow up with their mother and father and marriage helps achieve that
- Redefining marriage would deliberately create motherless or fatherless families, which would deprive children of at least one of their biological parents
- We do not have a view on whether the issue should be resolved by Parliament or by popular vote, but note there is a strong case for a public vote so the community can be consulted on a change that would alter the essential character of our community
- The *Marriage Equality Plebiscite Bill 2015* does not provide all the elements necessary for a healthy and open public debate and popular vote
- Australians should strive to ensure the character and quality of the debate around marriage exemplifies the best traditions of fairness, respect and tolerance.

We also note that the time given to provide a submission to this Inquiry is very short and thereby diminishes the likelihood that the Senate will hear from all those who might have useful matters to put before it and the likelihood that proper consideration is given to the issues. This is not a matter on which the government should rush to judgment.

Human dignity

The public debate over redefining marriage is a very personal and challenging one, both for those wishing to change marriage and for those who want to retain its distinctive character.

The Christian tradition teaches that all people have human dignity, are created in the image of God and loved by God. The Catholic Church teaches that every man, woman and child has great dignity and worth which can never be taken away. This includes those people who experience same-sex attraction. They must be treated with respect, sensitivity, and love, without unjust discrimination.¹

Marriage and the law till now

Marriage is a natural institution, that is, one that is logically and historically antecedent to the laws of particular states or religions. Though there are important cultural variations and the institution has evolved in various ways, marriage has always been understood to be *the union of a man and a woman*. The biological, emotional and social significance of it being between 'man and wife' is that this union unites those spouses as potential parents through the life giving nature of the intimate expression of love through marital

¹ *Don't Mess with Marriage: A Pastoral Letter from the Catholic Bishops of Australia to all Australians on the 'Same-sex Marriage' Debate* (Australian Catholic Bishops Conference, 2015).

intercourse between husband and wife, and helps ensure they will be committed not only to each other but to any children of that union.

This is not a criticism of other kinds of relationships and by recognizing this particular type of relationship our marriage laws do not unjustly discriminate against other relationships: rather, our laws recognize the essential connections between male-female bonding and child-bearing, and between children and their natural parents. The Commonwealth has an interest in ensuring that children have the benefit of those connections.

Marriage has been understood as the union of a man and a woman in all cultures, religions and legal systems until very recent times, and is still so defined in the law of most nations, in international law, in most major religious traditions and in many secular philosophies. Marriage has always been understood as the union of a man and a woman in the common law of Australia and in recent years this has been made explicit in the Marriage Act. While there are now diverse views about this matter and several bills are presently before the Commonwealth Parliament that would redefine marriage in Australian law so as to allow 'same-sex marriage', it must be recognised that any move to redefine marriage would be of profound significance for present and future Australians.

The interests of children are paramount and this is a principle upheld in international law to which Australia is a signatory². Children have a right to an identity and family relations³, and as far as possible, the right to know and be cared for by⁴, and maintain personal relations and direct contact with both natural parents.⁵

Redefining marriage would give legislative endorsement to motherless or fatherless families, depriving children of at least one of their biological parents. By implication, this would mean mothers and fathers are interchangeable and that whether one or other is present in a child's life makes no important difference. The ACBC rejects that view.

Redefining marriage?

Much of the public 'debate' over redefining marriage has been shrill and on the level of slogans and name-calling, rather than a careful examination of the meaning and purposes of marriage. Much of the debate has been about the 'rights' or desires of adults, to the neglect of consideration of the welfare of children. Is marriage just about the emotional desires and hopes of two (or more) consenting adults and therefore open to endless redefinition as long as people say they love each other? Or is there a deeper purpose in our human ecology to this act of uniting a woman and man and any children born to them?

² UN Convention on the Rights of the Child Art. 21
<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

³ Ibid. Art. 8

⁴ Ibid. Art. 7

⁵ Ibid. Art. 9

Marriage is an important institution which helps ensure children are connected to both their mother and father over time. The Commonwealth has an interest in ensuring that children have the benefit of those connections. To recognize these facts is not to criticize or demean other relationships; to define marriage in ways that recognize the essential connections between male-female bonding, child-bearing and child-rearing is not to discriminate against other relationships which have other goals.

Children have a fundamental right to know and be cared for by their natural parents. Marriage is recognised by governments because of the biological-social reality that the union of a woman and man can produce children and that being raised by that very couple is generally best for those children. It is not the business of government to inquire into whether such couples love each other or to tell them how or how long they should do so: the state's interest is the more limited one of ensuring that future generations are born and well cared for by their parents.

Children are conceived by their parents, so they have a genetic as well as emotional and social relationship. They have a unique bond with their natural mother and father and the 'family tree' that goes with that. It is a well-established conclusion of human experience and social science that children are normally best brought up by their natural parents in a stable home⁶ and this is precisely why states have an interest in supporting marriages.

We recognise that there are many children who are raised in other than these 'ideal' circumstances. Some grow up in unsupportive or even harmful environments even though their parents are married to each other and stay with them. Others grow up with single-parents, 'blended' families or same-sex couples who care for them lovingly and generously. To say that the state should continue to recognize real marriages because

⁶ See e.g. P Amato, "Research on Divorce: Continuing trends and new developments," *Journal of Marriage and Family* 72 (2010): 650-666; S McLanahan and C Percheski, "Family Structure and the Reproduction of Inequalities," *Annual Review of Sociology* 34 (2008): 257-276; S McLanahan and G Sandefur, *Growing Up with a Single Parent: What Hurts, What Helps* (Cambridge, Mass.: Harvard University Press, 1994); B Ellis, et al., "Does Father Absence Place Daughters at Special Risk for Early Sexual Activity and Teenage Pregnancy?" *Child Development* 74 (2003): 801-21; T Finn, 'Social science and same-sex parenting,' *National Catholic Bioethics Quarterly* 13 (Autumn 2013): 437-44; K Young and P Nathanson, 'Redefining marriage or deconstructing society: A Canadian case study,' *Journal of Family Studies* 13 (2007): 133-178; W B Wilcox, et al., *Why Marriage Matters: Twenty-Six Conclusions from the Social Sciences*, 2nd ed. (New York: Institute for American Values, 2005); E Marquardt, *Family Structure and Children's Educational Outcomes* (New York: Institute for American Values, 2005); P Amato, "The Impact of Family Formation Change on the Cognitive, Social, and Emotional Well-Being of the Next Generation," *The Future of Children* 15 (2005): 75-96; C Harper and S McLanahan, "Father Absence and Youth Incarceration," *Journal of Research on Adolescence* 14 (2004): 369-97; S Brown, "Marriage and Child Wellbeing: Research and policy perspectives" *Journal of Marriage and Family* 72 (2010): 1059-1077; D P Sullins, "Emotional Problems among Children with Same-Sex Parents: Difference by Definition," *British Journal of Education, Society and Behavioural Science* 7(2) (2015): 99-120; W B Wilcox, "Reconcilable Differences: What Social Sciences Show about the Complementarity of the Sexes and Parenting," *Touchstone* 18, no. 9 (November 2005): 36; M Regnerus, "How Different Are the Adult Children of Parents Who Have Same-Sex Relationships? Findings from the New Family Structures Study," *Social Science Research* 41 (2012): 752-70; and L Marks, "Same-sex Parenting and Children's Outcomes: A Closer Examination of the American Psychological Association's Brief on Lesbian and Gay Parenting," *Social Science Research* 41 (2012): 735-51, 748.

they normally offer children the best start is not to say that children and parents in these other situations should be denied support of various kinds.

We also recognise not every marriage will result in children, either by the choice of the spouses or because of circumstance. The important point is that while not all marriages result in children, all children deserve to grow up with both their mother and father and marriage in the law affirms that principle.

Marriage equality?

The terms of reference of the present inquiry (especially the title and question (d)) frame the debate in terms of “marriage equality”. Such sloganeering and pre-judging of the question is unpersuasive on closer examination. Everyone is in favour of ‘marriage equality’ in the sense of treating all real marriages equally: but this means we must work out what is *a real marriage*.

To put this another way: any marriage law will regard some relationships as marriages and some as not, some people as married and some as not. Some of those on the ‘not’ side of this line may regard the law as failing in ‘equal treatment’. Such laws would indeed be arbitrary if they are not based on a relevant difference; but they would not be failing in justice if they differentiate between people or relationships on the basis of a relevant difference.

Justice and equality require that we treat like cases alike and different cases differently – that we only ‘discriminate’ on the basis of a relevant difference. Women’s hospitals rightly only admit women; primary schools justly restrict enrolment to children; Aboriginal programmes reasonably direct their resources to indigenous Australians: these restrictions are all based on relevant differences. That marriage acknowledges the way opposite sex bonding and child-bearing and rearing are connected is not unjust or ‘unequal’.

Indeed a case can be made that to redefine marriage in the way currently proposed by some would be to treat those already married, those who in the future would like to enter into marriage properly understood, and the children of such unions unjustly and unequally. It will, for instance, deny children’s fundamental right to know and be cared for by their natural parents.

New inequalities caused by redefining marriage

There are further implications in changing the law of marriage. Bills and proposals to redefine marriage in Australian law have generally allowed very limited accommodation for those who disagree with same-sex marriage – mostly along the lines of allowing ministers of religion and places of worship to decline to marry same-sex couples. Such ‘exemptions’ are grossly inadequate.

Freedom of religion is not just freedom of worship and not just about exempting ministers of religion or places of worship from certain activities. Rather, freedoms of conscience, religion, speech and worship are positive liberties essential to human flourishing. Most people of faith are not ministers of religion; most people of faith carry their beliefs with them into the choices of their daily lives. In an environment of growing intolerance of religious or other conscientious beliefs in this area and the ready application of anti-discrimination laws, and financial and other pressures upon people unsupportive of 'same-sex marriage', it is very likely that people of faith will suffer discrimination and vilification of various kinds for holding fast to the traditional understanding of marriage.

For example, 'same-sex marriage' would pose a particular challenge to Catholic schools, which are responsible for passing on the faith to the children placed in their care by parents. Would Catholic schools be allowed to continue to teach about marriage being between a woman and a man? Even if this would be allowed, what pressures would there be from curriculum authorities, teachers' unions or other pressure groups to teach differently? Would these schools be allowed to hire teachers who reflect those Christian values in their beliefs and in their lives? If these and many difficulties will present themselves to those in Catholic schools, how will the consciences of children, families and catechists (Special Religious Education or scripture teachers) in state schools be accommodated?

In our recent pastoral letter the Australian bishops listed many other areas of life where overseas and Australian experience suggest that the rights of people of faith will be at risk in a same-sex 'marriage' regime. Any future vote should not be about a question so narrow that people are unable to express their concern that these matters be addressed.

A public vote?

Same-sex marriage continues to be a controversial issue in the Australian community. Both the Senate and the House of Representatives voted strongly in 2012 against changing the definition of marriage.⁷ Some groups continued campaigning to change the law. It may be that any bill to redefine marriage would fail again this year in the Australian Parliament if put to the test, or prevail in one house of parliament but not the other, or prevail by a narrow majority in both houses. Such parliamentary votes would be unlikely to resolve such a fundamental issue in our community and might only serve further to divide us. Polls suggest that three quarters of Australians want a popular vote on the issue of whether to redefine marriage and at least half want more time for an informed debate.⁸

The ACBC does not have a view on whether the matter should be decided by the Commonwealth Parliament alone, or by Parliament after hearing the views of the

⁷ 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.

⁸ D Shanahan and R Lewis, "Leave gay marriage to us: voters," *The Australian*, 17 August 2015, 4.

Australian people in a plebiscite, or by a Constitutional amendment put to a referendum of the Australian people. There are arguments to be made for each proposal.

We recognize, however, that there is a strong case for a public vote, whether consultative or definitive, on any proposed redefinition of marriage as this could allow for a pause for reflection by our community and for the whole community to be consulted on a matter of such vital significance for its future. Profound social changes should not be imposed by Parliament after only very short 'debate' and before all the arguments have been heard and considered. If such informed debate and decisionmaking is to occur it will be essential that:

- a climate of respectful dialogue is encouraged
- the public is given the opportunity to hear and consider the arguments on both sides
- the arguments for both sides are given adequate and equal funding
- the debate is not clouded by other concerns or overrun by a general election.

Because of the importance of this matter for the future of our community a strong case can be made for deciding the matter by referendum rather than plebiscite or parliamentary vote, as this 'sets the bar high' in terms of informed public debate and consensus required (a majority of votes nationally and in a majority of states after a clear explanation of the arguments for and against).

If the matter is not to be decided by referendum, a strong case can be made for deciding it by plebiscite rather than parliamentary vote, as this would allow for informing and consulting the Australian community on a matter of fundamental social import and would minimise the influence of party political considerations and considerations internal to political parties.

If Parliament decides to settle this issue with a popular vote, the enabling legislation for a popular vote should include the following requirements:

- The vote should be compulsory, to bring all Australians into the debate and determine the public view
- The vote should *not* be held at the same time as a general election as that would risk clouding or crowding out public debate on this matter of vital social importance
- There should be adequate time allowed for a considered and respectful public debate; this has not occurred to date and would be very difficult to accommodate before the next election; any vote should therefore be postponed until after the next general election
- There should be adequate and equal public funding for each side to allow them to inform the public of their arguments
- The major television, radio, newspaper and other media groups should, to the extent possible, be obliged to offer equal time to the two sides of the debate, in

interviewing, advertising and commentary; the recent decision by some networks to run advertisements for one side only highlights the dangers in this area⁹

- While the question itself should be short and clear, the implications of the vote should be set out clearly in the enabling legislation and especially in the supporting material provided to voters; for example, the protections provided (or not provided) for religious freedom and conscientious objection should be clear
- There must be limits to the campaign funding made available from overseas sources, so the popular vote is truly a reflection of the Australian public's view
- The question(s) put to the people should, as far as possible, be worded in 'neutral' language rather than the slogans of one side or the other.

Marriage Equality Plebiscite Bill 2015

The *Marriage Equality Plebiscite Bill 2015* falls short of the requirements set out above. It also betrays the bias of its sponsors by framing the debate in the terms preferred by by pro-'same-sex marriage' side in the very title and terms of the bill.

The Bill seems designed to stifle open and considered debate by scheduling the plebiscite at the next election when there will be many other competing issues discussed and little time and space for informed community discussion.

The Bill would also allocate minimal government funding to help inform members of the public and restrict publicly funded information to a skeleton of arguments for and against. The costs of an adequately funded process are trivial compared to the importance of the issue at hand for the future of our community and the arguments must not be over-simplified. Radically to limit the debate for cost or ideological reasons would bias the process.

The Australian bishops support the Bill's proposition that, if there is to be a plebiscite or referendum, that there be compulsory voting as is usual in Australia. This will ensure that any result best reflects the views of all Australians. The Bishops ask that the other sensible provisions proposed above be adopted in any process to resolve this issue.

Open and respectful debate

Most importantly, discussion leading up to a public vote needs to be carried out in an open and respectful manner. In June Australian Marriage Equality national director, Rodney Croome, threatened Catholic Archbishop of Hobart, Julian Porteous, with legal action for distributing a booklet to parents at Catholic schools in Tasmania – a booklet that expressed the view of the Catholic Bishops of Australia. Mr Croome urged teachers

⁹ "Seven and Ten reject anti same-sex marriage advertisement," *The Sydney Morning Herald*, 7 August 2015. Several other media groups likewise refused to show the advertisement: 2DayFM, Australian Radio Network and Nova: see transcript of *MediaWatch*, Episode 29, 17 August 2015: <http://www.abc.net.au/mediawatch/transcripts/s4295137.htm>

and parents to complain to the Tasmanian Anti-Discrimination Commissioner.¹⁰ Such actions are designed to suppress debate and intimidate people who support the current definition of marriage. They should be condemned.

Recent commentators have noted the bias in media interviews, reporting and commentary and the silencing of the pro-marriage side.¹¹ A healthy discussion would see:

- the arguments for each side put fairly, clearly and respectfully (non-provocatively)¹²
- each side engaging with the other's arguments, rather than dismissing them without consideration¹³
- each side trying to come to some sort of consensus while acknowledging any ongoing disagreement and that it is fine for people to disagree
- each side "playing the ball and not the person".

Ultimately the character and quality of debate will depend on all Australians, but also on the leadership shown by parliamentarians and other community leaders. Will this be a debate we can be proud of as a community, even though it is a challenging examination of fraught issues? Will it be a shining example of how we should approach divisive national questions? Or will it be a 'debate' where one side is effectively silenced, or where people talk past each other, or where people call each other names and refuse to hear and understand the arguments of their opponents?

Australia's Catholic bishops want marriage as traditionally understood to continue to be supported in our laws and social policies. A process should be found to resolve this divisive issue that involves the whole community in an open and respectful debate. Recognising this is an important matter for all Australians, we encourage all of the parties to work together towards an acceptable solution.

¹⁰ A Shanahan, "Same-sex lobby threatens Catholic archbishop over Christian booklet," *The Weekend Australian*, 4-5 July 2015.

¹¹ Transcript of MediaWatch, Episode 29, 17 August 2015: <http://www.abc.net.au/mediawatch/transcripts/s4295137.htm>; P Kelly, "The same-sex marriage debate and the right to religious belief," *The Australian*, 11 July 2015; B O'Neill, "The new dark ages, where the perfectly normal are branded bigots," *The Australian*, 19 August 2015.

¹² R Hini, "Vile bile as journalists vent spleen on marriage defenders," *The Catholic Weekly*, 26 August 2015 reports some of the language used in tweets by journalists and others dismissing defenders of traditional marriage: e.g. one defender was described as a 'nauseating piece of filth', and another as the equivalent of Zaky Mallah and a 'batsh*t crazy lady'. The phrase 'tedious imbeciles' was also used in reference to those who question 'same-sex marriage'.

¹³ Hini, *ibid*, further cited the following: "[there is] no need to give equal air time to both sides of the debate when one side is discriminatory"; "Who cares if Katy Faust and co are bigots, they're delusional either way"; and one website argued that the media should be biased "when the choice is truth or hate".

I would be happy to answer any questions the Committee may have. I can be contacted via Mr Jeremy Stuparich, Public Policy Director at the ACBC.

Yours sincerely in Christ

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