



# AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

## Bishops Commission for Family, Youth and Life

Archbishop Anthony Fisher OP (Chairman)  
Bishop Peter Comensoli  
Bishop Mark Edwards OMI  
Bishop Michael Kennedy

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Mr Gerry McInally  
Committee Secretary  
Select Committee on Same-Sex Marriage  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600  
Email: [samesex.marriage.sen@aph.gov.au](mailto:samesex.marriage.sen@aph.gov.au)

Dear Mr McInally

### **Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill**

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

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 BCFYL 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 BCFYL has responsibility for marriage.

The Catholic community is the largest religious group in Australia with 5.4 million Australians or one in four Australians identifying as Catholic. The Church provides Australia's largest non-government grouping of hospitals, aged and community care services, providing approximately 10 per cent of healthcare services in Australia. It has over 1700 schools enrolling more than 750,000, or about one in five Australian students.

The ACBC seeks to participate in public debate by making reasoned arguments that can be considered by all people of goodwill.

The ACBC appreciates the opportunity to make a submission to this Inquiry of the Select Committee on Same-Sex Marriage into Commonwealth Government's *Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill* (The Exposure Draft).

## Marriage and the interests of children

The ACBC argues that:

- Marriage is a unique relationship between a woman and a man
- Marriage is also 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 and religions until very recent times and is still so defined in international law and the law of most nations.
- The recognition that marriage is between a man and a woman is not the assertion of bigotry, religious dogma or irrational tradition, but a recognition of human ecology. It does not preclude persons of the same sex entering into other legal relationships.
- Marriage is an essential institution for ensuring children are brought up by their natural mother and father. Children 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, and would put the references or interests of adults before the right and interests of children.

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

To insist that marriage is a relationship between a man and a woman is not a criticism of other kinds of relationships. By recognizing this particular type of relationship our community and its marriage laws do not unjustly discriminate against other relationships: rather, our community and its 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.

The principal reason for this has been the close connection between marriage and family formation. It is within the institution of marriage that most children come to be. That the interests of children are paramount is another principle upheld by international law to which Australia is a signatory.<sup>1</sup> Children have a right to an identity and family relations, and as far as possible, the right to know and be cared for by, and maintain personal relations and direct contact with both natural parents.<sup>2</sup>

Where a child is adopted by a mother and a father, this is an attempt by the adopting parents and surrounding community to give that child the opportunity to have relationships and an upbringing as close as possible to that which the child would have were he/she being raised by the child's natural parents in marriage. The goal of adoption is therefore to serve the interests of the child in a tragic situation such as death or marital breakdown. This is different to deliberately producing a child, for example through surrogacy, with the aim of adopting the child to the commissioning parents.

Redefining marriage would give a legislative endorsement to motherless or fatherless families, and to 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 meaningful difference. The ACBC rejects that view.

The Christian tradition teaches that all people 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; violence, prejudice and unjust discrimination towards people with same-sex attraction is to be deplored. But achieving justice for people with same-sex attraction does not require the deconstruction of the institution of marriage.<sup>3</sup>

The Australian Catholic Bishops Conference acknowledges that there are different views on some of these matters. 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.

If the definition of marriage is changed to remove the significance of male and female, there will be consequences for all Australians, not just those who have a faith. Genderless marriage would have flow-on consequences, some we are already seeing, where accepted roles like motherhood and fatherhood will be challenged to the detriment of children.

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<sup>1</sup> *UN Convention on the Rights of the Child*, Article 21 [www.ohchr.org/en/professionalinterest/pages/crc.aspx](http://www.ohchr.org/en/professionalinterest/pages/crc.aspx)

<sup>2</sup> *Ibid.*, Articles 7-9.

<sup>3</sup> *Catechism of the Catholic Church*, paragraphs 2358-2359; Congregation for the Doctrine of the Faith, *Considerations regarding proposals to give recognition to unions between homosexual persons* (2003); *Compendium of the Social Doctrine of the Church*, paragraphs 228-229; Edward Pentin, "Pope Francis repeats that 'same-sex marriage' is an 'anthropological regression'," *National Catholic Register*, 3 January 2014; Australian Catholic Bishops Conference, *Don't Mess with Marriage: A Pastoral Letter from the Catholic Bishops of Australia to all Australians on the 'Same-sex Marriage' Debate* (2015).

## **Proposed exemptions in The Exposure Draft**

The ACBC appreciates that The Exposure Draft offers protections for:

- Ministers of religion, so they are not obliged to solemnise same-sex marriages (clause 47, developing the existing protection in Section 47 of the *Marriage Act 1961*)
- Marriage celebrants, so they are not forced to solemnise a same-sex marriage if they have a conscientious objection (clause 47A), and
- Religious groups so they do not have to provide facilities or services for a same-sex marriage (clause 47B).

However, most by far of the members of Australia's faiths and religious organisations are not ministers of religion. The Exposure Draft provides little comfort for them. The ACBC argues that, in addition to the protections presently provided in The Exposure Draft, an adequate recognition of religious freedom in these circumstances would require minimum protections for people and groups including that:

- People of faith will have the right to decline to be involved in activities or ceremonies that are contrary to their beliefs regarding marriage
- Religious organisations or agencies will continue to be free to employ staff who hold to or will abide by the ethos of those organisations regarding marriage
- Religious organisations or agencies will continue to be free to bid for government contracts or to receive government or other funding to provide services to the community, without being forced to endorse or support 'same-sex marriage'
- Faith-based Schools, in particular, which are responsible for passing on the faith to children placed in their care by parents, will continue to be free to teach that marriage according to their religion is only between a woman and a man and to employ staff who support those teachings.

## **Religious freedom**

The exemptions proposed in The Exposure Draft presume a particular view of religious freedom according to which religious groups and individuals with faith are given narrow concessions from the general law. A better view of religious freedom is that these are entitlements of all individuals and groups in a pluralist society and should be recognised positively in the general law rather than treated as 'exceptions'.

Religion is a natural human good which contributes to and fosters the flourishing of the human person and their physical, social, emotional and spiritual wellbeing. The value of religion arises from the sincere consideration of truth, meaning and value which is

intrinsic to the human condition; and in particular the consideration of whether there is some ultimate, greater-than-human source for them.<sup>4</sup>

Freedom of religion is a fundamental human right. Its existence and importance is acknowledged in the Australian Constitution, in the common law, and in international covenants to which Australia is a signatory. It is a freedom which arises from a fundamental and constitutive attribute of being human: the search for a truth and meaning greater than ourselves, which shows us how to live good and fulfilling lives.<sup>5</sup>

For these reasons, freedom of religion must not be ignored, treated with embarrassment or suspicion by policy and decision makers, or read down and so narrowly interpreted that it is reduced to mean nothing more than freedom of worship within the confines of places of worship. While ensuring that the rights and freedoms of others are protected, Governments are also obliged to ensure that freedom of religion and the freedom to manifest religious beliefs in public is recognised and protected by law. It applies equally to participation in 'private' religious observances and to the delivery of 'public' services by religious people and agencies, to religious organisations and to individual believers.

Most people who adhere to a religious belief exercise their religious freedom in the service of the common good. Overwhelmingly they do so in a spirit which respects the rights and liberties of others, and as Australian citizens, they expect in fairness that they will be accorded equal respect in the exercise of their rights to practice and manifest their religious beliefs.

Section 116 of the Australian Constitution states: "The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth."

The right of religious freedom is also captured in the *Universal Declaration of Human Rights* (UDHR) and the *International Covenant on Civil and Political Rights* (ICCPR):

- "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (UDHR, Article 2)
- "The States Parties to the present Covenant undertake to respect and to ensure all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind such as race, colour, sex, language, religion, and political or other opinion, national or social origin, property, birth or other status." (ICCPR, Article 2(1))

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<sup>4</sup> E.g. Beth Azar, "A reason to believe", *Monitor on Psychology* (American Psychological Association), 2010, 41:11 (2010), 52-54; Justin L. Barrett, *Cognitive Science, Religion and Theology* (Templeton Press, 2011); Robert P. George, *Making Men Moral: Civil Liberties and Public Morality* (Oxford University Press, 1995).

<sup>5</sup> John M. Finnis, *Natural Law and Natural Rights* (2<sup>nd</sup> ed, Oxford University Press, 2011).

- “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” (UDHR, Article 18)
- “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” (ICCPR, Article 18(1))
- “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” (ICCPR, Article 18(2))
- “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” (ICCPR, Article 18(3))
- “The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.” (ICCPR, Article 18(4))
- “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (ICCPR, Article 26)
- The right to religious freedom (ICCPR, Article 18) is a “non-derogable” right under Article 4(2), meaning that governments may not act to restrict or suspend this right even in times of public emergency.
- The right to religious freedom is not an absolute or unlimited right. Like many other rights – including the right to be free of unjust discrimination – it must be balanced against the fundamental rights and freedoms of others (ICCPR, Article 18(3)).

### **Conflicting rights**

How are lawmakers and interpreters to respond when rights – such as rights to religious freedom and rights to equal treatment – seem to conflict? Both the United Nations

Human Rights Committee<sup>6</sup> and the European Court of Human Rights<sup>7</sup> have both ruled that a country is not in breach of human rights if it does not recognise 'same-sex marriage'. Thus any attempt to prioritise the non-existent 'right' to 'same-sex marriage' over the recognised fundamental rights to freedom of thought, conscience and religion would be a rejection of Australia's obligations under international human rights instruments.

An even stronger position was taken by the UN Commission on Human Rights in 1984 when it asserted that "even in time of emergency threatening the life of the nation," the right to freedom of thought, conscience and religion are guaranteed, and cannot be derogated from "even for the asserted purpose of preserving the life of the nation".<sup>8</sup> On this view freedom of religion would seem to trump LGBT rights every time.

Some authorities have taken a different view. Justices of the U.S. Supreme Court, in a case which extended marriage to same-sex couples in the US, acknowledged that they were effectively giving LGBT rights trumping power over religious freedom and rights.<sup>9</sup> Chai Feldblum, law professor and member of US Equal Employment Opportunity Commission, asserted that the exercise of such rights is a "zero-sum game" and that society should prefer the rights of LGBT people over people of faith.<sup>10</sup> Discussing legislation earlier this year, the Attorney-General of the state of Victoria agreed, commenting: "We respect people's right to religious expression, but not at the cost of equality."<sup>11</sup>

The ACBC contends that, rather than privileging one group over another, adopting binary mindsets or seeking a victory in a zero-sum game, the focus of lawmakers and the general community should be on the common good. This requires recognition that the assertion of any particular right will sometimes in practice conflict with respect for other rights. The objective of the law in such circumstances should be to take into account the interests of all and strike our fair balance between competing rights, so that, for example, the right to be protected from unjust discrimination is not pursued in a way which undermines religious freedom or vice versa.

Governments must recognise that when talking about people of faith, they are talking about their own citizens, whether from a Christian, Jewish, Muslim or other faith tradition. Far from being 'exceptional', religious believers are in fact the great majority of Australians. Likewise, when talking of the aspirations of some same-sex couples, they are talking about Australian citizens and people dear to us all.

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<sup>6</sup> See *Ms. Juliet Joslin et al. v New Zealand*, Communication No. 902/1999, U.N. Doc. A/57/40 at 214 (2002). In that case, two lesbian couples argued that the reservation of marriage to heterosexual couples discriminated against them on the basis of sex and on the basis of sexual orientation, but the Commission ruled that it could not find that "by mere refusal to provide for marriage between homosexual couples, the State party has violated the rights" of the petitioning parties.

<sup>7</sup> See *Schalk and Kopf v Austria* (no. 30141/04) and *Chapin and Charpentier v. France* (no. 40183/07), in each of which the Court ruled that the right to marry when taken together with the prohibition against discrimination did not impose an obligation on a State party to recognise same-sex marriage.

<sup>8</sup> UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* (1984), E/CN.4/1985/4, available at: <http://www.refworld.org/docid/4672bc122.html>

<sup>9</sup> On which see: Archbishop Anthony Fisher, "Should bakers be required to bake gay wedding cakes? The state of our democracy and of religious liberty in contemporary Australia," *Acton Lecture on Religion and Freedom* (Centre for Independent Studies, 2015).

<sup>10</sup> C.R. Feldblum, "Moral Conflict and Liberty: Gay Rights and Religion," *Brooklyn Law Review* 72, no. 1 (Fall 2006): 119

<sup>11</sup> H. Cook and T. Jacks, "Discrimination in religious schools faces crackdown," *The Age*, 31 August 2016.

In recognition of the need to balance religious freedom against other rights like freedom from unjust discrimination, anti-discrimination law allows some *exemptions*. The language of exemptions is misleading and fails to recognise that religious freedom is not a special permission to discriminate granted by government in contradiction to the general law, but a fundamental human right that government is obliged to protect and which helps to define what kinds of discrimination are in fact unjust. To make this clear and to remove the potential for misunderstanding, the language of exemptions and exceptions should be replaced in legislation with language that recognises and accommodates the overlapping rights and freedoms that co-exist in a pluralist society such as Australia, without devaluing them or establishing an indefensible hierarchy of rights.

### **Implications for people of faith**

As argued above, “freedom of thought, conscience and religion” is not just freedom to worship (important as that is) and not just about protecting the rights of ministers of religion or places of worship (important as that also is). Rather, freedoms of thought, conscience and religion, and consequent freedoms of speech, worship and religious practice, 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 beyond the church, synagogue, mosque or temple into the choices of their daily lives.

The Christian faith, like many other faiths, is not just a private spirituality, restricted to rituals in churches and prayers behind closed doors. Our faith is something to be lived in our lives, both with our family and friends and in the broader community. Communities are strengthened when people come together in various projects around shared beliefs, as well as when they respect a similar freedom for others. Limiting respect for religion and for religious freedom to ministers of religion or places of worship is radically to fail to understand the meaning and good of religion.

Changing the definition of marriage would have an impact on all the members of the Catholic Church, but perhaps the most significant impact would be on ordinary parishioners trying to live their Catholic faith in their daily lives. So while the ACBC appreciates the basic protections offered by clauses 47, 47A and 47B in The Exposure Draft, it must acknowledge that there are no protections in The Exposure Draft for the vast majority of the faithful who wish to continue to practice their beliefs.

Why did we worry about protecting the rights of people of faith in these circumstances? Can't we just rely on commonsense and the Australian inclination to give everyone 'a fair go' to 'live-and-let-live'? Perhaps in the past that would have been enough; even today that may often be enough. But in the face of an increasingly militant secularism, of growing intolerance of religious or other conscientious beliefs in some institutions as well as among some individuals, and of 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.



People should be free to decline to endorse by participation, activities or ceremonies that are contrary to their beliefs. For example, people may decline to involve their businesses in activities that they consider may be harmful to the community or which may be harmful to the environment. Likewise, in the case of same-sex marriage, people with a conscientious objection should be free to decline to be involved, including where their business is approached to provide services.

The point at issue when services are declined is not the sexual orientation of the person involved: Christians and their businesses serve people of all backgrounds without question every day. The issue is whether they wish to endorse someone else's activity or belief by providing marriage counselling and preparation, a wedding reception venue, or some other support for a 'same-sex wedding' ceremony or celebration.

Concern in this area is prompted by the experience of people who do not support same-sex marriage in jurisdictions where marriage has changed. For example:

- New Mexico photographer, Elaine Huguenin, was sued when she declined to photograph a same-sex commitment ceremony. The photographer does not take pictures that would give messages that are against her religious beliefs. This includes photos that show violence, nude maternity pictures and same-sex weddings.<sup>12</sup>
- Belfast owners of Ashers Bakery were found to have acted unlawfully when they refused to make a cake with a pro-gay marriage slogan. The owners disagreed with the slogan but did not know the person who ordered the cake. They have the support of gay activist Peter Tatchell because of what he said was the importance of "freedom of conscience, expression and religion."<sup>13</sup>
- Washington state florist Barronelle Stutzman declined to provide flowers for the wedding of her long-term clients, because she disagrees with same-sex marriage. She was sued and the case is being considered by the Washington state supreme court.<sup>14</sup>

Many similar examples could be given.<sup>15</sup>

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<sup>12</sup> C. Friedersdorf, "Refusing to photograph a gay wedding isn't hateful," *The Atlantic*, 5 March 2014.

<sup>13</sup> P. Tatchell, "Asher's Bakery defeat is no win for the LGBT community – it sets as dangerous and authoritarian precedent," *The Independent*, 24 October 2016.

<sup>14</sup> "State Supreme Court hears case of florist who refused gay couple," *The Seattle Times*, 15 November 2016.

<sup>15</sup> See Australian Catholic Bishops Conference, *Don't Mess with Marriage: A Pastoral Letter from the Catholic Bishops of Australia to all Australians on the 'Same-sex Marriage' Debate* (2015).

## **Implications for faith-based agencies**

Just as many individuals of faith are likely to be adversely affected by mooted changes to the marriage laws, so our faith-based organisations. In particular, the redefinition of marriage is likely to impact upon employment policies, expectations of conduct, and government or other contracts.

Catholic health and welfare services serve all people without discrimination, although there are some services not provided because they are not compatible with our beliefs. In delivering these services the Church employs many people who are passionate about the Church's faith and mission and others who may not share our faith but who recognise the value of our mission to serve others and are willing to abide by our ethos and teachings. In practice the Church employs a number of people with same-sex attraction who are happy join us in our work on those terms.

What person wants to work for a Catholic organisation, perhaps in a senior leadership role, while publicly advocating positions contrary to those of the Catholic Church with respect to same-sex marriage or sexuality more generally? Would a political party employ staff who publicly disagree with the direction of the party or who advocate publicly against the party's platform? Would a secular business employ staff who publicly promote their competitors' products? Would we regard employers who took such matters of 'employment fit' into account as responsible employers or as discriminatory ones?

Australians who have a religious faith must be free to manifest that faith through work in service to the wider community. In other words, we must be free to exercise our religious freedom in the pursuit of the common good.

Sometimes this will mean that religious believers organisations privately or even publicly disagree with the state, on matters such as intake of refugees, pervasive inequality, or lack of support for families. We can contribute to the respectful debate on these issues, resisting the temptation of governments or other institutions to think they have all the wisdom on issue and should enforce conformity upon the community. Allowing for such diversity is one of the strengths of the Australian polity and our laws should not be used to reduce it.

The Catholic Church intends to continue serving people in poverty, searching for knowledge or in poor health. We want to continue to employ people who wish to join us in these worthy goals according to our values. We want to continue exercising our religious freedom for the common good. Our concern this may be increasingly at risk is prompted by recent experience, where agencies have been subject to unequal treatment because of their beliefs or assumed beliefs. For example:

- CatholicCare in Melbourne recently had to consider closing its adoption services when the Victorian government considered a new law to remove the right of faith-based agencies to prefer couples that would offer the child a stable mother and father.<sup>16</sup> Catholic agencies in other states or other countries have already been forced to close their adoption agencies rather than compromise their deeply held principles.<sup>17</sup>
- The Commonwealth Attorney-General's Department funded the drafting of new National Gender and Emergency Management Guidelines which falsely implied that faith-based groups discriminate against providing services to LGBTI persons during disasters; it suggested that faith-based charities may therefore not be suitable for public funding for disaster relief.<sup>18</sup>
- At least one human rights lobby group says that any religious group receiving government funding should be denied exceptions to anti-discrimination laws to allow it to continue to operate according to its beliefs.<sup>19</sup>
- Recognition of same-sex marriage in the United States has meant that some Catholic agencies have been forced to recognise same-sex marriages through a legal obligation to provide spousal benefits, or withdraw the benefits.<sup>20</sup>

### **Implications for schools and parents' rights**

The right of parents to send their children to the school of their choice, to be taught in accordance with their religious convictions, must be respected and protected. Parents, of all faiths and none, choose Catholic schools for their children because they expect that this education will be provided by school staff in a manner consistent with the Gospel of Jesus Christ and the teachings of the Church: this goes to the very heart of the identity and mission of the Catholic school. It is rightly expected that Catholic schools would teach and uphold the institution of marriage as being between a man and a woman.

The freedom of Catholic schools to employ staff that embrace Christianity (including Christian teaching on marriage) is essential for providing effective religious education and faith formation to their students. Staff in Catholic schools have a professional obligation to be supportive of the teachings of the Catholic Church, to act as role models to students, and to do nothing publicly that would undermine the transmission of those teachings.

Catholic schools do not impose their beliefs on anyone, nor do they compel anyone to work in Catholic education. Moreover, they employ people from religious backgrounds

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<sup>16</sup> B. Preiss and R. Willingham, "Catholic adoption agency wants exemption from same-sex laws," *The Age*, 6 October 2015.

<sup>17</sup> United States Conference of Catholic Bishops, "Religious freedom and marriage", see: <http://www.usccb.org/issues-and-action/religious-liberty/religious-freedom-and-marriage.cfm> ; M. Beckford, "Last Catholic adoption agency faces closure after Charity Commission ruling," *The Telegraph*, 19 August 2010.

<sup>18</sup> R. Urban, "Gender theory slap for charity relief," *The Australian*, 14 December 2016, p. 3.

<sup>19</sup> Castan Centre for Human Rights Law, Submission to Australian Government Attorney-General's Department, Consolidation of Anti-discrimination Laws, January 2012: #64.

<sup>20</sup> W. Wan, "Same-sex marriage leads Catholic Charities to adjust benefits," *Washington Post*, 2 March 2010; D.J. Frawley, "Spousal benefits for same-sex partners at Catholic universities and hospitals," *National Catholic Register*, 20 October 2014.

other than Catholic, provided they are enthusiastic about the mission and comfortable with the ethos and values of the Catholic school. Because this is widely understood, it seems that faith-based schools only very rarely have to rely on the religious liberty protections available to them when making employment decisions. Nonetheless, it is not unreasonable for faith-based schools and the families who choose them to continue to expect that staff support and not undermine their school's mission.

Australian Commonwealth, State and Territory governments have traditionally recognised the right of faith-based schools to govern themselves in relation to employment, religious curriculum and other matters so as to ensure religious freedom and foster the religious purposes of the particular school. The Catholic Church intends to continue serving people through education at the preschool, primary, secondary and tertiary levels, and to employ people who wish to join us in these worthy goals according to our values. Recent experience suggests, however, that our ability to do may increasingly be put at risk. For example:

- In December 2016 a bill which would have imposed upon all Victorian schools an “inherent requirements” test for employment was only narrowly defeated. The proposed legislation would have restricted the freedom of schools to determine whom they employ and the religious culture they create. It would in fact have put in the hands of the state bureaucrats the judgement about which employees in a faith-based school need have certain beliefs or behaviours and which ones need not. This would have been particularly challenging in an environment where marriage had been redefined.<sup>21</sup>
- Last year Archbishop Julian Porteous and the entire Australian Catholic Bishops Conference was required by the Tasmanian Anti-Discrimination Commission to answer a complaint that a document expounding Church teaching on marriage and distributed to parents of Catholic school students was discriminatory. The Archbishop was threatened with serious penalties were the church teaching document not changed. While the case was eventually dropped, it was foreshadowed at the time that similar cases may be brought in the future.
- Safe Schools Coalition Australia materials are used in more than 500 government schools across Australia. Many Catholic children attend government schools and their parents probably do not know if the school is using these materials and what their content is. The ACBC has significant concerns about Safe Schools resources, particularly the *All Of Us* materials because the lessons and resources actively promote a controversial gender fluidity ideology. Such ‘gender theory’ teaches children their gender is not just what they are born with – male or female – but what they choose. The Safe Schools message can be integrated into multiple

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<sup>21</sup> Important win for religious freedom in Victoria, *Melbourne Catholic News*, 7 December 2016. See <http://melbournecatholic.org.au/News/important-win-for-religious-freedom-in-victoria>; J. Stuparich, Comments to the 23rd Annual International Law & Religion Symposium discussing Religious Rights in a Pluralistic World, *ACBC Media Blog*, 4 October 2016, <http://mediablog.catholic.org.au/23rd-annual-international-law-religion-symposium-discussing-religious-rights-in-a-pluralistic-world/>

subjects, making it difficult for students to opt out, despite their parents' conscientious objection. The pressures on faith-based schools to take part in such programs will be all the stronger if 'same-sex marriage' becomes law in Australia.<sup>22</sup>

- In Canada, which legalised 'same-sex marriage' in 2005, the Ontario Superior Court ruled in November that parents with a conscientious objection cannot take their children out of same-sex education classes.<sup>23</sup>

For the reasons outlined in this Submission, if religious liberty is not given greater support than the minimal exemptions allowed in The Exposure Draft, any redefinition of marriage in law is very likely to infringe upon the right of faith-based schools to choose staff that accord with their beliefs and mission, and upon the right of parents and families to choose a school that accords with their beliefs and best suits their child.

## Conclusion

Significant changes will flow to the understanding of marriage in Australia if the definition of marriage is changed. These changes would impact on the rights of people of faith or other Australians who do not agree with changing the institution of marriage. There is a danger that some governments would use their powers to legislate, regulate or grant funding to enforce one view of marriage, rather than allow differences of belief to persist in the community. Clauses in the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill provide some protections to limited numbers of people, but do not protect the vast majority of those who may disagree with redefining marriage.

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 on 02 6201 9863 or at [policy@catholic.org.au](mailto:policy@catholic.org.au)

Yours sincerely in Christ

(Most Rev.) Anthony Fisher OP  
DD, BA, LLB, BTheol, DPhil (Oxon)  
Archbishop of Sydney  
Chair, Bishops Commission for Family, Youth and Life

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<sup>22</sup> Safe Schools Coalition Australia, *All Of Us: Health and Physical Resources*. Understanding Gender Diversity, Sexual Diversity and Intersex Topics for Years 7 and 8, page 3, 34, 38. See: <http://safeschoolshub.edu.au/safe-schools-coalition-australia-resources>; B. Tobin, "A key issue in the current discussion of 'transgenderism'," *Bioethics Outlook*, Vol 27(2) (June 2016), 8-10.

<sup>23</sup> J. Kelly, "Same-sex education ruling an 'attack on parents' rights," *The Australian*, 30 November 2016.