

INQUIRY INTO SAME SEX MARRIAGE LAW IN NSW

Organisation: Paddington Uniting Church

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PADDINGTON UNITING CHURCH

Committee Secretary
Social Issues Committee
Parliament of NSW
Macquarie Street
Sydney NSW 2000

26 February 2013

Dear Honourable Members of the Committee,

We write to indicate the support of Paddington Uniting Church for legislation that allows same-sex couples to be married.

Paddington Uniting supports Marriage Equality

Paddington Uniting Church has a long and proud history of inclusion of the GLBTI community. We have been an 'open and affirming' church for many years, sponsored the first Uniting Church float in the Sydney Gay & Lesbian Mardi Gras Parade in 1998, led discussions within the church and with the wider public about celebrating sexual diversity while also acting responsibly and with care for self and others, and recently appointed an openly gay minister (a joint-first for a major denominational congregation in Sydney).

The church congregation spent considerable time in 2011 researching the issues and discerning a position on marriage equality. We considered both secular and theological arguments in favour and against marriage equality.

On 27 November 2011 the Congregation unanimously passed a resolution to support marriage equality.

Members of the Congregation were aware of a number of matters:

1. The importance of distinguishing between 'public policy' arguments about marriage equality and religious or theological arguments relevant only to religious organisations,
2. The overwhelming public policy arguments in favour of changing the law to allow marriage equality, and
3. The strong theological arguments in favour of marriage equality within the church, while noting the existing Uniting Church in Australia definition of marriage excludes same-sex couples.

We are conscious that many other organisations with relevant expertise and evidence will be providing significant evidence regarding the second point, and thus there is no need to do so here. Furthermore, while we hold our theological convictions dear, we are aware that theological arguments should have no claim on the NSW Parliament (as noted in point 1) so we do not propose to give detailed commentary on them in this submission.



Responding to Constitutional Concerns

We are aware that the Committee will be closely looking at the question of the legality of state-based marriage legislation. We are not legal experts and thus do not presume to advise the Committee on this matter, except to say we understand the issue is tightly contested within the legal fraternity. In that case we propose the proper action of the NSW Parliament is to pass the laws it thinks are in the state's interest, and allow the High Court to make a ruling on the Constitutional matters. To shy away from legislation on the grounds that it *might* be struck down by the High Court would simply be to presume to know what its answer will be. Testing the law in the way we propose is common practice, and we see no valid reason why it would be inappropriate in this case.

Responding to Religious Concerns about Marriage Equality

We would like to take this opportunity to respond to three common concerns raised, particularly by other church groups, about the effects of legalisation same-sex marriage:

1. that marriage has an "inherent procreative dimension",
2. that children raised by lesbian or gay parents suffer from a "social deficit", and
3. that changing the definition of marriage to remove the procreative dimension would cause confusion to those already married.

To answer each argument we begin by quoting excerpts from submissions provided to the Senate Legal and Constitutional Affairs Committee when it was considering similar legislation (the *Marriage Equality Amendment Bill 2010*) in 2012, in expectation that similar arguments will be presented to this inquiry; we then provide our response.

1. That marriage has an inherent procreative dimension

"Marriage is not simply a living, committed relationship between two people, but a unique kind of physical and emotional union which is open to the possibility of new life ... The definition of marriage as an inherently procreative community does not exclude heterosexual married couples who cannot have children for reasons of age or infertility. They are still married, because their sexual union is naturally designed to give life, even if it cannot give life at a particular point in time or ever. Marriage between a man and a woman always has an inherent capacity for, and orientation towards, the generation of children, whether that capacity is actualized or not."

Response

With all due respect to Cardinal Pell, we consider his argument is illogical. It is simply meaningless to describe a sexual union between two people who are infertile due to age or other causes as possessing "an inherent capacity for, and orientation towards, the generation of children". Nor can it be said that they are "naturally designed to give life". Indeed, our biological makeup "naturally designs" us to be infertile after a certain age. It is the combination of (functioning) sperm and eggs that enables procreation, not a penis and a vagina.

¹ Cardinal George Pell, submission 113 to the Senate Inquiry into the *Marriage Equality Amendment Bill 2010*.

It is also true that many non-marriage heterosexual relationships are "open to new life", and many also lead to procreation unintentionally. The converse is also true: many married couples today are simply choosing not to have children, for a range of reasons.

Lastly, thanks to modern technology same-sex couples are now able to have children through IVF or surrogacy, and this is legal in most states and territories in Australia. Others are adopting children. In other words, many same-sex couples are *already* "open to new life" and having children. Marriage would provide a mechanism for this family unit to be publicly marked and supported.

It may be helpful to consider the Catholic argument in its own context. Under Catholic doctrine, marriage is the only legitimate place for sexual activity, and all sexual activity must remain open to procreation. Indeed, the latter value is so strong that it leads to problematic outcomes, such as the Vatican's strong opposition to the use of condoms by married couples even when one partner has HIV/AIDS. It also explains (in part) their opposition to IVF, even for heterosexual married couples. Within a Catholic worldview, these views perhaps make sense, and certainly form a consistent whole. However we submit that neither of these views are held by the vast majority of Australian citizens, and indeed it would appear by most faithful Catholics. Certainly they are not supported by existing Commonwealth and State legislation and policies concerning relationships or sexual activity.

Perhaps more pertinently to the Committee, marriage under civil law does not contain an 'inherent procreative dimension'. Nowhere in the legal prescriptions about vows and statements of intent are children mentioned. Under civil law, marriage is simply "the union of a man and a woman to the exclusion of all others, voluntarily entered into for life."

It is also worth noting here that neither the Biblical understanding of marriage nor the written history found in the Hebrew Scriptures suggest a marriage must or even should be about children. Indeed, marriages that prove infertile are never considered somehow void, even as the pain of infertility is emphasised repeatedly. In other words, the idea that marriage even within the Judaic-Christian worldview holds to the primacy of procreation is erroneous.

Our understanding of marriage has changed over time, even within Judaism and Christianity. The Bible mentions polygamous marriages, the purchase (through labour) of wives, widows becoming wives to their brothers-in-law, and other practices we no longer consider acceptable. There is also no evidence of Christian marriage rites until the 9th Century CE, which means that an articulated theology and practice had not developed. After Christian rites of marriage were developed, changes continued, including the Elizabethan shift from marriage as a property transaction to one of mutual affection. None of these frames mention the primacy of children, but all have the sense of shared property and what we know as family, embodied in the bonds of love and commitment, and hopefully then a safe place for any dependants to grow up in.

In some parts of Christendom, inter-racial marriage was banned for a long time because it "offended natural law". Some Christian denominations in various parts of the world now celebrate same-sex marriages. In short, the Christian 'theology of marriage' is not fixed, and not universally agreed.

2. That children raised by lesbian or gay parents have a "social deficit"

The importance of being raised in a loving family with a mother and a father cannot be underestimated. Divorce, death and single parenthood all create a deficit for children in this regard. When these unfortunate situations arise, families and welfare workers do everything

in their power to provide role models to ameliorate the loss. Therefore, it is incredible, and potentially very damaging to the wellbeing of children, that Federal Parliament is seriously considering to legislate a form of 'marriage' that, by definition, begins with what otherwise is regarded in our society as a profound social deficit.²

Response

The comparison made between gay and lesbian parenting and the forced removal of children for racist or other reasons is presumably predicated on their common absence of one or both biological parents, but it is completely unfounded. Indeed we were quite distressed to hear the comparison being made; such suggestions are not simply ignorant, they are deeply hurtful to the thousands of loving, caring, same-sex couples raising children.

Rather than respond in detail, we point the Committee to the powerful evidence provided by the Australian Psychological Society in their submission and verbal evidence to the Senate Inquiry in 2012, to the clear effect that children's outcomes in families parented by lesbian and gay parents "are at least as favourable as those in families of heterosexual parents."³

3. that changing the definition of marriage to remove the procreative dimension would cause 'confusion' to those already married

... if marriage as traditionally understood is essentially a procreative union, the notion of sexual intimacy is foundational for it. But if we strip marriage of the procreative dimension we make the whole understanding of marriage very difficult to discern, increasingly so in the wider community ... Certainly any change to the understanding of marriage would undermine a person's own marriage in terms of what they had signed up to originally within the community and all that that meant. It would lead to some level of confusion as to how people interpreted various sorts of relationships and marriage situations.⁴

Response

It is not clear why some people think heterosexual married couples will become confused about their own relationships if same-sex couples are allowed to marry. We are not aware of any evidence that this is occurring in those jurisdictions that do allow same-sex couples to marry; certainly none was presented to the Senate. The straight married couples in Paddington Uniting Church have expressed the view that the loving commitment demonstrated by their gay and lesbian coupled friends is actually a positive model for themselves. Healthy relationships support other healthy relationships, regardless of sexual orientation.

If married people are confused about the meaning of their marriage today, we suggest it is more likely because of the celebration of consumptive relationships, absurdly short-lived celebrity marriages and a culture that values excitement over fidelity in all areas of life.

² Dr Max Champion, Assembly of Confessing Congregations in the Uniting Church in Australia, submission 144 to the Senate Inquiry into the *Marriage Equality Amendment Bill 2010*.

³ The literature review from 2008 to which they referred for the above statement, but do not appear to have provided in their submission, is available online at <http://www.psychology.org.au/Assets/Files/LGBT-Families-Lit-Review.pdf>

⁴ Mr Chris Meney, Hansard transcript of oral evidence to Senate Inquiry into the *Marriage Equality Amendment Bill 2012*, given on 3 May 2012.

Concluding Comments

Paddington Uniting Church remains committed to supporting people of all sexual orientations and their efforts to maintain healthy, respectful and life-giving relationships. We strongly believe on both theological and public policy grounds that marriage equality is a social good and worthy of the Parliament's support.

After carefully considering the arguments put by our brothers and sisters in the Church, we find them illogical and lacking in evidence.

We hope the Committee is clear that not all religious organisations and people in Australia oppose marriage equality. Attempts by anyone to suggest otherwise should be disregarded. Indeed, published polling data suggests a majority of Christian believers support marriage equality. Internationally, an ever-increasing number of prominent conservative Christian leaders are also 'coming out' in support.

While appreciating that our view is not that of the current policy of the Uniting Church in Australia, we are aware of a very strong and increasing tide of support within our denomination for a change in policy. Indeed our denomination is now actively considering the place of same-sex relationships in its understanding of marriage and the possibility of blessing such unions.⁵

We have been heartened by the support we have received from other members of the Uniting Church and other denominations indicating that we are not a lone voice but instead represent a significant group of people within the Christian community.

We would be happy to attend a hearing of the Committee to discuss our position, should this be of assistance.

Yours faithfully,

Reverend Benjamin Gilmour
Minister of the Word

Justin Whelan
Mission Development Manager

⁵ Resolution 12.31, 13th Assembly of the Uniting Church in Australia. Minutes available at http://assembly.uca.org.au/images/assemblies/MINUTES_OF_THE_THIRTEENTH_ASSEMBLY.pdf