

# Consequences:

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Foreword by Damian Wyld, CEO of Marriage Alliance



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# Foreword

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In 2004, an amendment to the *Marriage Act* passed the Federal Parliament with barely a whisper of opposition. This amendment merely confirmed what common law and near-universal understanding had long known: that marriage is the union of one man and one woman.

Today, even daring to voice that view quickly leads to cries of “bigot”, “hater” or “homophobe”.

But what is the truth beneath this thin veneer, under the surface of a stifled debate?

The attitudes of many (parliamentarians, swathes of the media, corporate interests – in short, the “elites”) may have shifted with the prevailing winds, but what of the Australian public at large?

We are reminded again and again that “polling” shows how much the public wants “marriage equality”, yet the prospect of the only conclusive poll – a full, compulsory plebiscite – has twice been rejected by a hostile Senate.

Why are they so fearful? Why has the Federal Government felt compelled to resort to a voluntary postal plebiscite in order to give the public their say?

Perhaps those who want to redefine marriage are not so sure that trite slogans such as “love is love” would hold any water against a well-argued case on what we stand to lose.

To be concerned about freedom of speech or freedom of religion does not make you a “bigot”. To worry about programs like the so-called “Safe Schools” curriculum or the spread of radical gender ideology does not make you a “hater”.

This book sets out, in a clear and well-referenced manner, ten

consequences of changing the *Marriage Act*, responses to ten common arguments from same-sex marriage activists, and some key ways you can help the campaign to preserve marriage.

We hope this book will help you, whether you are seeking assistance to discuss the issue with others or remain undecided yourself.

**Damian WYLD, CEO of Marriage Alliance**

# Introduction

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At the time of the publication of this book, Australians are preparing to express their views on the redefinition of marriage through a voluntary, postal vote. The present moment has made it necessary, indeed urgent, to ensure that all Australians are aware of the consequences of the redefinition of marriage for them and their families.

Proponents of same-sex marriage are trying to narrow the scope of the public conversation which will occur on this critical issue. Whether it is through attempts to force legislation through federal Parliament without consulting the Australian people<sup>1</sup>, a High Court challenge to thwart the Government's attempt at letting the people having a say,<sup>2</sup> the threat of using anti-discrimination laws to punish the pro-marriage viewpoint,<sup>3</sup> the refusal of advertising agencies to provide services to,<sup>4</sup> or news outlets to publish arguments<sup>5</sup> from the "no" campaign, or the use of bullying tactics to intimidate people into silence,<sup>6</sup> attempts to ensure the Australian people are fully informed and able to speak up are being stifled at every turn.

Those seeking to change the definition of marriage know, as we do, that making a drastic change to a fundamental institution will have consequences for everyone. As former Deputy Prime Minister, John Anderson AO, said recently:

*"The reality is you've got a substantial group of Australians at both ends of the spectrum, strongly in support, strongly against, the redefinition of marriage. They do agree on one thing which I would say the middle needs to recognise and that is that these changes are actually very profound.*

*"It's a bit glib to say, as some do, all that will happen is that 23,000 Australians, that's the rough estimate made, will have a new-found freedom, that it won't affect anyone else. In fact, people at both ends of the spectrum,*

*if you listen carefully to what they're saying, are saying that profound changes are much further reaching than you might realise.”<sup>7</sup>*

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This book aims to break through these restrictions on free speech and provide the Australian people with information about how the redefinition of marriage will affect them.

The plebiscite is not only about whether two people of the same sex should be allowed to get married. It is about how such a change would affect the freedom of speech ordinary Australians, the rights of parents to have a say in what their kids learn at school and whether they will be able to shield them from extreme LGBTI sex education, and the restrictions which will be placed on the religious and conscientious beliefs of the Australian people.

**Put simply, this plebiscite is a referendum on marriage, on free speech, on freedom of religion and on extreme LGBTI sex education.**

Using case studies and commentary from Australia and countries where marriage has been redefined, this short book invites the reader to consider the broader implications of amending the Marriage Act. The book also provides short responses to common arguments put forward by same-sex marriage advocates in support of their position, and provides ways for the reader to get involved in the campaign to preserve marriage.

## T f a a

Most people agree that there are limits to what the law should recognise as ‘marriage’ because marriage is not an invention of the State, and so not merely defined by parliamentary whim from time to time. This is because marriage pre-existed the State.

In the last two decades, a phenomenon has arisen where the very nature of marriage is being questioned, and two common – and conflicting – responses to this question are offered.

The first view is that marriage is the union of a man and a woman, voluntarily entered into for life, and that the State becomes involved in this otherwise personal relationship because of its link to children. According to this view, laws about marriage do not exist to provide public recognition or honour to certain types of romantic relationships, but because the *personal* decision to marry has *public* consequences through the bearing of children. Absent the procreation of children, the State would not make laws about marriage. As Bertrand Russell explains: “It is through children alone that sexual relations become of importance to society, and worthy to be taken cognisance of by a legal institution.”<sup>8</sup>

The reason for specific laws about marriage in Australia was articulated well by Jacobs J in the High Court case of *Russell v Russell*<sup>9</sup>, and his reasoning is worth quoting at length:

*[A]lthough marriage and the dissolution thereof are in many ways a personal matter for the parties, social history tells us that the state has always regarded them as matters of public concern... It is true that marriage can be regarded as a social relationship for the mutual society help and comfort of the spouses but it cannot be simply so regarded. The primary reason for its evolution as a social institution, at least in Western society, is in order that children begotten of the husband and born of the wife will be recognized by society as the family of that husband and wife... The recognition by society of rights and duties of husband and wife in respect of the children of their marriage and of the relationship of the children of that marriage to their parents springing from their status as children of the marriage lies not on the periphery but at the centre of the social institution of marriage.*

The second view of marriage, the one which would see it extended to include same-sex couples, would reject this conception of marriage

and the reason for the State's involvement in it as being archaic, based on religious ideology and/or homophobic. Those who hold this view are campaigning for the *Marriage Act 1961* (Cth) to be amended to allow same-sex marriage.

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In Australia, marriage is defined as “the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.”<sup>10</sup> This indicates that there are four key elements to marriage under Australian law:

- Marriage is **heterosexual**, because it is the union of a man and a woman;
- Marriage is **monogamous**, because it is to the exclusion of all others;
- Marriage is **relationship freely chosen**, because it is voluntarily entered into; and
- Marriage is **permanent**, because it is described as being “for life.”

These four elements support the view articulated by Jacobs J that State recognition of the rights and duties of husband and wife in respect of their children sits at the centre of the social institution of marriage. If children were not a product of marriage, there would be no reason for the State to require – at least as an aspirational goal – that marriage is both permanent and monogamous.

The notion that marriage is linked to children is supported not only by legislation and case law, but also by social trends. While around 80% of Australian couples live together before they get married, close to two-thirds of all children are still born within marriage<sup>11</sup>, and it has been suggested that cohabiting couples enter into a legal marriage when they are ready to have children.<sup>12</sup>

While this conception of marriage was inserted into section 5 of the *Marriage Act* in 2004,<sup>13</sup> the exact same wording had always been

present in section 46(1) of the *Marriage Act* in the “monitum,” which are the words required to be said by an authorised celebrant who is not a minister of religion of a denomination recognised under the *Marriage Act*. Since it was passed in 1961, the *Marriage Act* has always required a celebrant to state that “marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.”

Relationships which do not fit within this definition of marriage, including traditional Aboriginal marriages and polygamous marriages entered into according to various cultural or religious traditions, are not recognised as marriages according to Australian law. There is no equivalent popular movement, backed by the majority of celebrities, corporations and media commentators, pushing for “marriage equality” for Indigenous Australians, despite them being Australia’s first peoples, nor is there a campaign for “marriage equality” for polygamous marriages, even though these forms of marriage have a much longer history in cultures around the world.

## **Sa - a A a a**

According to the most recent census figures, there are 46,800 same-sex couples in Australia, who comprise just under 0.4% of the population,<sup>14</sup> and a survey of LGBTI Australians indicated that only 54% of same-sex couples would get married if the definition was changed.<sup>15</sup> Of the same-sex couples in Australia, 25% of female same-sex couples – approximately 5,733 couples – have children and 4.5% of male same-sex couples – approximately 1,074 couples – have children.

In 2006, in order to address inequality between the legal rights and responsibilities of same-sex and opposite sex couples, the Australian Human Rights Commission (**Commission**) launched an inquiry aimed at identifying federal laws which discriminated against same-sex couples and their children, and produced a report which included

recommendations to address these inequalities.<sup>16</sup> As a result of the recommendations, 84 federal laws were amended to ensure that equality of treatment was achieved.

Importantly, the Commission addressed the question of whether the legalisation of same-sex marriage was needed to ensure equal rights. In relation to this question, the final report reads:

*However, the focus of this Inquiry has been to make sure that all couples in Australia have the same access to basic entitlements like tax concessions, superannuation death benefits, carer's leave, workers' compensation, veterans' entitlements and aged care. An opposite-sex couple does not have to marry to get those entitlements; nor should a same-sex couple have to marry. So, while same-sex marriage or civil unions could assist those couples who choose to formalise their relationship in that way, this Inquiry has focussed on ensuring that all couples have all the same rights whether or not they are married.<sup>17</sup>*

The report confirms that the redefinition of marriage is not required to ensure equal treatment at law, asserting further that the rights of couples should not be dependent on marital status.

## **Sa - a a a**

The overwhelming majority of countries around the world retain the definition of marriage as being between a man and a woman. Of the 193 countries which comprise the United Nations, only 24 of these have changed the definition of marriage to include couples of the same sex. In real numbers, around one billion of the world's population of approximately 7.5 billion live in jurisdictions which allow marriage between people of the same sex. Australia's current law defining marriage as being between a man and a woman is in keeping with worldwide trends.

There have only been four countries (Bermuda, Croatia, Ireland and Slovenia) which have put the matter of same-sex marriage to

a public vote. Only in Ireland has a public vote in favour of change been successful. In other countries, the law has been changed either through an act of parliament or an exercise of judicial activism.

Same-sex marriage was first legalised in Norway in 2001, so it is a relatively new social phenomenon. Because there is less than a single generation of experience anywhere in the world which has lived with the results of redefining a fundamental societal institution, the long-term effects of such a social change remain unknown. Even so, the experience of countries where the law has been changed is already providing some insights into the consequences of changing the definition of marriage for citizens of those countries.

This book will now explore a number of these consequences.



# Ten consequences of changing the *Marriage Act*

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“Changing the definition of marriage affects every Australian. It affects not just LGBTI Australians, it affects everybody.”

*Prime Minister Malcolm Turnbull<sup>18</sup>*

Changing any law has consequences, both intended and unintended and changing the definition of marriage is no different. This section outlines ten key consequences of changing the definition of marriage that will affect all Australians.

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Kirsten Lawson, *Canberra Times*<sup>19</sup>

The *Marriage Act 1961* (Cth) is the last piece of legislation in Australia where sex is treated as binary. If the *Marriage Act* is changed to allow “any two persons” to marry, the result will be the removal of any concept of the binary nature of gender from Australian law.

Laws have a formative and educative effect on our culture. The redefinition of marriage would enshrine in law the gender ideology that asserts there is no difference between male and female, or between a mother and a father.

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In December 2016, the *All Families Are Equal Act 2016* became law in Ontario, Canada. Under the legislation, registries of birth no longer refer to “mother” or “father,” but the generic term “parent” and up to four “parents” are eligible to be listed on a child’s birth certificate. Same-sex marriage has been legal in Ontario since 2003.

In Australia, the consequences of the removal of gender from legislation are already beginning to show. In New South Wales and the Australian Capital Territory, a birth certificate may use a combination of mothers, fathers and non-gender specific “parents” to record the parentage of a child<sup>20</sup>.

At this stage, there is still a maximum of two parents on an Australian birth certificate, however this could change as the legal and societal understanding of family is deconstructed and more than two parties are involved in the conception and birth of a child through the use of gamete donation and surrogacy. The push for the inclusion of more than two parents on a birth certificate is one of the consequences of the introduction of same-sex marriage, because a homosexual couple cannot conceive a child without the assistance of at least one additional “parent” who may then request formal acknowledgment of their relationship with the child.

The result of these changes is that birth certificates are no longer an identity document for the child, but rather a document which reflects the social ambition of the “parents.” This document, once a child’s primary form of identification, is now able to be changed on the basis of the emotional and contractual relationship of those adults responsible for their care.

The legislation also removes the words “mother” and “father” from all other pieces of Ontario legislation, thus removing the concept of mothers and fathers from the law altogether.

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In the United Kingdom, proposals are being considered to “de-medicalise” the process of gender transition. These proposals would dispense with the need for a diagnosis of gender dysphoria, or with any other psychological, hormonal or surgical requirement before a person becomes eligible to legally change their gender. Instead, the process would simply be an administrative one. At the time the proposals were announced, a joint media release from the UK Government Equalities Office and the Right Honourable Justine Greening MP, Minister for Women and Equalities, made it clear that the ability to change gender

with the filing of a form was an extension of the progress made with legalisation of same-sex marriage:

*Since Parliament voted for the partial decriminalisation of homosexuality in 1967, there has been significant progress on LGBT equality. In 2013 the law was changed to allow same-sex couples to marry. Earlier this year, Turing's Law was passed, posthumously pardoning men who had sex with men for these now abolished offences. And the recent election saw the highest number of openly lesbian, gay and bisexual MPs voted into Parliament. Today's announcement looks to build on this progress.<sup>21</sup>*

Similar initiatives are already being seen in Australia, and their progress would only be accelerated with the introduction of same-sex marriage.

Prior to 2016, each state and territory in Australia required a person to have undergone sex reassignment surgery before being permitted to alter their sex on their birth certificate. In December 2016, a law was passed in South Australia to permit a change of a person's sex on official records without any surgical intervention,<sup>22</sup> and similar legislation was narrowly defeated in Victoria.<sup>23</sup>

The position of the Australian Government on the recording of gender in any federal records is:

*Sex reassignment surgery and/or hormone therapy are not pre-requisites for the recognition of a change of gender in Australian Government records.<sup>24</sup>*

This followed a 2011 change in Department of Foreign Affairs and Trade guidelines that removed the necessity for sex reassignment surgery to occur in order for a person to change the gender recorded on their passport, with a statement of a medical practitioner being sufficient.<sup>25</sup> In a world where airport security is being increasingly tightened due to threats of terrorism, the ability to change gender on a passport, which is the primary identity document for so many people, has the potential to undermine the safety of all passengers in the name of "political correctness."

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Less than six months after marriage was redefined in the United States, the New York City Commission on Human Rights amended its legal guidance on gender identity discrimination to make it an offence – punishable by up to a fine of \$250,000 – for an employer to refuse to refer to a person by their preferred gender pronoun, to disallow them from using single-sex facilities for their chosen gender, or to request that male employees refrain from wearing make-up to work.<sup>26</sup>

Signs of similar policies are emerging in Australia. A recent “inclusive language guide” issued by the Victorian Government<sup>27</sup> discusses the importance of “thinking beyond the binary constructs of male and female” and proposes the gender-neutral pronouns “zie” and “hir” as being non-offensive, and HSBC bank will train its employees to use 10 different gender pronouns when referring to customers.<sup>28</sup>

Policies such as these will only become more commonplace if the definition of marriage, the only part of Australian law that identifies the meaningful difference between male and female persons, is changed.

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*Masha Gessen, Sydney Writers Festival*<sup>29</sup>

A common misconception is that the push for same-sex marriage is simply about including same-sex couples in the institution of marriage, but this is not the case. One consequence of changing the definition of marriage is that the institution itself will change to encompass the type of relationships which are normative for (or at least common within) the homosexual community.

Research shows that the majority of same-sex attracted males in Australia do not enter into monogamous relationships. A study conducted annually by the Centre for Social Research in Health at the University of New South Wales consistently finds that less than a third of homosexual males are in exclusive relationships, while more than half engage in either casual sex only, or engage in casual sex in addition to having a regular male sexual partner.

The 2016 study<sup>30</sup> found that 30.6% are in “traditionally” monogamous relationships. 23.3% are engaging in casual sex only, while an additional 31.5% of men reported simultaneously having a regular partner *and* casual sexual partners.

While people are free to engage in legal, sexual activity as they choose, the fact that monogamous relationships are the exception, and not the rule, for same-sex males is relevant when considering how the institution of marriage might change with a change in the law. If the lack of monogamy in the homosexual community did not

change, questions arise as to how this would affect the societal understanding of marriage more broadly.

Lawyer and columnist Dr Jay Michaelson wrote about the distinction between *marriage equality* and *marriage redefinition*:

*[T]here is some truth to the conservative claim that gay marriage is changing, not just expanding, marriage. According to a 2013 study, about half of gay marriages surveyed (admittedly, the study was conducted in San Francisco) were not strictly monogamous. This fact is well-known in the gay community—indeed, we assume it's more like three-quarters. But it's been fascinating to see how my straight friends react to it. Some feel they've been duped: They were fighting for marriage equality, not marriage redefinition<sup>31</sup>.*

While not all heterosexual relationships are monogamous, monogamy has been an element of legal marriage so that a presumption can be made in relation to the biological parentage of any children born. A presumption of biological parentage is not necessary for homosexual couples, because the conception of children occurs intentionally and in a doctor's office, rather than in a bedroom. There is no legal imperative need for a homosexual relationships to be monogamous and, at present, there does not seem to be a cultural one either.

Rather than changing the multi-partner nature of relationships within the homosexual community, the more likely consequence of marriage redefinition would be that the societal understanding of marriage would be forced to adjust.

Some, like Dr Michaelson, consider this reshaping of marriage to be a foreseeable, if not directly intended, consequence of the redefinition of marriage. He writes:

*Maybe gays will preserve marriage precisely by redefining, expanding, and reforming it—and maybe then it can be palatable to progressives, as one of a multitude of options.*<sup>32</sup>

So too did political journalist, Professor Ellen Willis. Writing for *The Nation* in 2004, she said that “conferring the legitimacy of marriage

on homosexual relations will introduce an implicit revolt against the institution into its very heart, further promoting the democratization and secularization of personal and sexual life.”<sup>33</sup>

Others, however, have the destruction of marriage firmly within their sights. Sally Rugg, the same-sex marriage campaign director for *GetUp!* boldly tweeted: “I will destroy marriage.”

Additionally, same-sex marriage advocate Simon Copland has said:

*“Conservatives want us all to accept monogamous marriage as the only acceptable form of relationship, abandoning our ideas of sexual freedom in the meantime... The real marriage fight was never about homosexuality, but instead over the lifestyles conservatives find abhorrent... Marriage equality is now inevitable. But the fight has only really just begun.”*<sup>34</sup>

Irrespective of whether they consider it to be an intended or unintended consequence of the redefinition of marriage, same-sex marriage activists seem to agree that if marriage is redefined to include same-sex couples, marriage will indeed change for everyone.

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*Paul Kelly<sup>35</sup>*

Despite the push for marriage redefinition being framed in the language of “tolerance,” it is apparent that those seeking this change will not “tolerate” differing beliefs for very long. Commentator Paul Kelly observed that the comparison by advocates of same-sex marriage to the elimination of racial discrimination indicated that there would eventually be no “halfway house” permitted when it comes to acceptance of same-sex marriage<sup>36</sup> - despite assurances that accommodations will be made for freedom of belief.

A similar sentiment was expressed in a submission made by the NSW Gay and Lesbian Rights Lobby to a 2017 Senate Select Committee hearing into religious freedom protections contained within proposed anti-discrimination laws. Quoting one of their supporters, the lobby group’s submission read:

*“If we can get legalisation of same-sex marriage as soon (sic) as possible once it’s in place it will be easier to get rid of discriminatory exemptions.”<sup>37</sup>*

In addition to this and similar comments expressed, there have already been attempts to use anti-discrimination laws to restrict the freedom of belief, including but not limited to the freedom of religion.

In June 2015, the Australian Catholic Bishops’ Conference issued a pastoral letter entitled: *Don’t Mess with Marriage*. The booklet urged compassion, respect, sensitivity and love for those experiencing same-sex attraction before going on to outline Catholic teaching about marriage. It was distributed in parishes and to parents whose children attend Catholic schools. Same-sex marriage lobby group, Australian

Marriage Equality issued a media release in which its national director at the time, Rodney Croome, urged complaints to be made to the Tasmanian Anti-Discrimination Commission. Mr Croome said:

*“I urge everyone who finds it offensive and inappropriate, including teachers, parents and students, to complain to the Anti-Discrimination Commissioner, Robin Banks.”<sup>38</sup>*

Transgender activist and Greens candidate Martine Delaney made a complaint to the Anti-Discrimination Commission, arguing that religious freedom is not absolute in a secular society. Ms Delaney sought a public apology from the Australian Catholic Bishops and a re-education program implemented for staff and students at Catholic schools, and Commissioner Robin Banks agreed that there was a case to answer.<sup>39</sup> The complaint was eventually withdrawn, but the anti-discrimination law still remains.<sup>40</sup> At a Senate Select Committee hearing, Ms Banks expressed concern that any protections for religious freedoms in federal same-sex marriage legislation would override state anti-discrimination laws, such as those in Tasmania which allowed the Archbishop Porteous case to occur.<sup>41</sup>

This case illustrated that some activists, whether of their own initiative or encouraged by LGBTI advocacy groups, will not even tolerate faith groups expressing their beliefs to those who voluntarily attend their churches or schools, even at a time when Australian law defines marriage as being between a man and a woman. This type of activism will only increase if same-sex marriage was to become legal.

It's not only happening in Australia.

Students and staff of Trinity Western University, a Christian college in Canada, are asked to consent to a set of standards of behaviour, including abstaining from “sexual intimacy that violates the sacredness of marriage between a man and a woman.”<sup>42</sup>

After Trinity Western added its law faculty in 2013, three of Canada's nine Provincial Law Societies, those for Nova Scotia, Ontario and

British Columbia, declined to accredit Trinity Western law graduates because of the community covenant. The objection of the law societies did not relate to the quality of the degree or graduates, but rather it was based on the personal decision of the individual students to refrain from sexual activity outside of heterosexual marriage. The decision of the law societies of Nova Scotia and British Columbia were overturned after lengthy court proceedings; however, the Ontario decision was upheld, meaning that Trinity Western graduates are not permitted to practise law in Ontario<sup>43</sup>.

The idea that the push for the redefinition of marriage is based on a “live and let live” attitude is unfounded and unfortunately naïve. As Paul Kelly said: ideology does not tolerate dissent.

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*John Anderson, Deputy Prime Minister of Australia, 1999 to 2005<sup>44</sup>*

There is a common misconception that Australians enjoy the freedom of speech. There is no such right in Australian law. The High Court has only found an implied right to freedom of political communication to the extent necessary for the effective operation of responsible and representative government.<sup>45</sup> Outside of this, there is no right to free speech in Australia.

While the debate about the redefinition of marriage is occurring in Australia, the ability of a person to voice an opinion on the push to change the *Marriage Act 1961* should fall within “political communication” and thus be protected by law. But it is arguable that this protection would disappear if the law was changed because the debate – and thus the “political communication” – would cease. It has also been foreshadowed that a future Labor government would seek to expand anti-discrimination laws in a way which would prohibit offending or insulting a person on the basis of their sexual orientation.<sup>46</sup>

It appears that any protection offered for freedom of speech would not include a protection of the right of individuals to express their views without being subject to anti-discrimination claims. In response to the Archbishop Porteous matter outlined in the previous chapter, the Tasmanian government is proposing to amend existing anti-discrimination laws to provide an additional “exemption” for a public act done reasonably and in good faith for religious purposes; meaning

that only religious preachers – and not ordinary Australians – would be protected under the revised laws.

The risks to freedom of speech are not limited to the threat of anti-discrimination laws being used to silence discussion, but are also found in the use of boycotts to coerce compliance with the same-sex marriage agenda.

In March 2017, the Bible Society of Australia released the first video in its *Keeping It Light series*. The video series sought to feature respectful discussions between people holding opposing views on key issues in an attempt to demonstrate that a ‘light’ conversation could be had even over serious topics. The first video featured two members of federal parliament, Andrew Hastie and Tim Wilson, discussing same-sex marriage over a Coopers beer. The Coopers Brewery also printed commemorative beer cans for the Bible Society’s 200th anniversary. A social media storm ensued, with LGBTI activists calling for a boycott of Coopers Brewery for its association with the Bible Society. A number of bars responded, announcing that they would no longer stock the Coopers brand. The boycott came despite previous support from Coopers for events such as Adelaide’s annual Feast Festival, a fortnight-long LGBTI-pride festival.<sup>47</sup> The pressure was too much for Coopers. Its owners asked the Bible Society to take the video down, released a video of apology, withdrew the commemorative beer cans from circulation, and signed up as corporate supporters of Australian Marriage Equality.<sup>48</sup>

It’s not only large-scale operations which are affected. In July 2015, Ruth Trinkle wrote a letter to her local newspaper objecting to what she believed to be the newspaper’s “active promotion” of homosexuality. A copy of her letter was posted on Facebook, and people were urged to boycott the bakery at which she was working.<sup>49</sup>

Those who support one man-one woman marriage are also subject to the denial of services.

In 2016, Dr David van Gend wrote a book entitled: *Stealing from a Child: The Injustice of 'Marriage Equality'*, which provided a child-centred discussion of the consequences of redefining marriage. Just days prior to the scheduled book launch, the contracted printer declined to print the book “due to the subject matter and content.”<sup>50</sup>

This was not the first time Dr van Gend had been refused services at the last minute. In 2015, Australian Marriage Forum, the organisation of which he is President, booked and paid for a pro-traditional marriage advertisement to be screened on SBS. However, SBS pulled out of the arrangement at the last minute, citing its “right” to determine what advertisements it broadcasts.<sup>51</sup>

A similar experience relating to the denial of services occurred when Marriage Alliance sought to have advertisements aired on mainstream broadcast media, but were refused by Channel Seven, Channel Ten, the Australian Radio Network and Nova.<sup>52</sup> More recently, within a week of the postal plebiscite was announced, hundreds of printers and advertising agencies declared that they would not produce any materials for the “no” campaign.<sup>53</sup>

Why would many who would support the “right” of a printer or a commercial television or radio network to refuse to broadcast a message with which they did not agree would not afford the same “right” to wedding service providers who choose not to participate in a same-sex wedding?

What is especially troubling is that individual employees are also affected.

Melbourne IT specialist Lee Jones was general manager of a company which was contracted to work on the Safe Schools program. Asked his opinion of the program in a staff meeting, Jones said that while he was happy to work on the program, he wouldn’t want his own children exposed to some of its more explicit material. His comments were

reported to the company owners and he was dismissed for creating an “unsafe work environment.”<sup>54</sup>

Even those who themselves identify as LGBTI are not immune from pressure from the LGBTI lobby. Transgender Defence Force captain Catherine McGregor was sacked from advocacy group Kaleidoscope Australia for expressing concerns about extreme LGBTI sex education and gender theory in a News Limited publication.<sup>55</sup>

In other countries where same-sex marriage has been legalised, people have been kicked out of university courses,<sup>56</sup> fired,<sup>57</sup> denied business<sup>58</sup> or employment<sup>59</sup> or forced to resign<sup>60</sup> for expressing an opinion on marriage.

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The redefinition of marriage also poses threats to freedom of association.

In September 2016, representatives of Marriage Alliance, in conjunction with a number of other groups, planned a briefing session in Sydney. The aim of the event was to provide other interested parties with information about the campaign to defend marriage in Australia.

The gathering of around 100 people was due to be held at the Mercure Hotel, Sydney Airport, but was moved to a secret location after details of the event were leaked on LGBTI website [SameSame.com.au](http://SameSame.com.au) and threats were made to hotel staff. Activists also left negative reviews on the hotel's Facebook page, which was eventually disabled.<sup>62</sup>

This was not the first attempt to shut down a gathering such as this. The Hyatt Hotel in Canberra faced similar pressure when it accepted a booking to host the annual Australian Christian Lobby conference in 2014.<sup>63</sup>

There has also been pressure placed on individuals within companies for having associations unrelated to their employment outside of working hours. Former PricewaterhouseCoopers (PwC) executive Mark Allaby was forced to step down from the board of the Australian Christian Lobby after activists suggested that this did not accord with the firm's pro-LGBTI stance. A PwC spokesperson was quoted as saying:

*“When it comes to employee participation on external boards, if a conflict arises between an employee’s board role and the best interests of PwC, we would request that they step down from that board.”<sup>64</sup>*

Allaby subsequently left PwC and began employment with IBM. In similar circumstances, he was also pressured to step down from the board of directors of the Lachlan Macquarie Institute (LMI), an organisation which offers internships to Christians considering careers in areas related to public policy. At the time, IBM refused to respond to questions about whether staff were free to engage with religious groups outside of their employment.<sup>65</sup>

Promptly following the Allaby incident, activists turned their attention to Macquarie University professor and fellow LMI director, Dr Steven Chavura.<sup>66</sup> Chavura refused to resign from either position, but both the ACL and the LMI were forced to apply for permission to keep the composition of their respective boards private to avoid any further employment pressure. The Australian Charities and Not-For-Profits Commission granted their request on public safety grounds – a move generally reserved for domestic violence shelters.<sup>67</sup>

The LGBTI lobby do not only try to restrict freedom of association for those connected with faith-based groups. In May 2017, Shannon Molloy, a News Limited journalist was pressured to resign his post as a board member of the NSW Gay and Lesbian Rights Lobby because some LGBTI activists considered his position at News Limited to be incompatible with LGBTI activism.<sup>68</sup>

The push to redefine marriage threatens more than just religious freedom. The most far-reaching threat is to the freedom of individuals to voice their opinion in this debate, and to associate with others who do the same.

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*Michael Safi, The Guardian*<sup>69</sup>

One of the most tangible consequences of changing the definition of marriage is seen in the impact on bakers, photographers, florists, printers and others who are in the business of providing services to weddings.

Numerous cases from jurisdictions where same-sex marriage has been legalised demonstrate the use of anti-discrimination laws to force individuals to provide services for same-sex weddings or face significant fines or other consequences. It was anticipated in a recent federal Senate Inquiry that, in some instances, activists will seek out businesses run by those who, as a matter of conscience, do not wish to participate in same-sex weddings, in order to mount an anti-discrimination case against them.<sup>70</sup>

The service providers in each case do not refuse service on the basis of a person's sexual orientation or gender identity; they regularly serve customers irrespective of their identity. Instead, the objection is the specific request to provide services for a same-sex wedding, because they consider it to be a participation in an activity, or communication of a message, with which they disagree.

The quintessential example of this is the case of Barronelle Stutzman, a Washington State florist. Robert Ingersoll had been a friend and regular customer at her florist for around a decade, and she served him without incident. When he asked her to arrange the flowers for his wedding to another man, Mrs Stutzman sat down with him, told him

that she loved him, and explained that her Christian beliefs meant that she could not participate in the wedding. She referred him to three nearby florists who would be able to assist. Mrs Stutzman was sued by the Washington State Attorney-General and Mr Ingersoll for discrimination. She lost the case at first instance, and is, at the date of publication, having her appeal heard in the Washington State Supreme Court.

Other examples of people being penalised for declining to participate in same-sex weddings include:

- Cake shop owners Aaron and Melissa Klein, who were ordered to pay US\$135,000 for their refusal to provide a cake for a same-sex wedding.<sup>71</sup> They eventually had to shut down their business.
- Jack Philips, who was required to provide “comprehensive staff training,” alter company policies and file quarterly compliance reports after declining to bake a cake for a same-sex wedding.<sup>72</sup>
- Daniel McArthur, owner of Ashers Bakery in Belfast, who was found to have committed “sexual orientation discrimination” for declining to produce a cake which read: “Support Gay Marriage.” Counsel for Mr McArthur argued that it was the message, and not the person, which was problematic for Mr McArthur, and he would have similarly refused the same request from a heterosexual person. He was ordered to pay £500 in damages.<sup>73</sup> Following this, Ashers Bakery was targeted again, this time by an LGBTI activist from London who ordered an engagement cake for a same-sex engagement party online.<sup>74</sup>

The Commonwealth Government’s Exposure Draft of the *Marriage Amendment (Same-Sex Marriage) Bill*, which was released in anticipation of a plebiscite, offered no protections for the conscience of people in similar situations to those mentioned above. Evidence before a Senate Committee looking into the Exposure Draft demonstrated that the LGBTI community overwhelmingly supports the denial of any

such protections being included in legislation to redefine marriage.<sup>75</sup> Additionally, Labor has indicated that not only would any conscience protections contained in any marriage amendment legislation be repealed under a future Labor government,<sup>76</sup> but it would also appoint a dedicated LGBTI Anti-Discrimination Commissioner to specifically deal with cases of alleged discrimination against LGBTI persons.<sup>77</sup>

# S a f

There are differing views amongst people of faith and others about whether baking cakes, taking photographs or providing other services are “morally neutral” actions when it comes to same-sex weddings<sup>78</sup>, but the decision about the bounds of conscience in such cases must be made by the individual and not dictated by the State. Any attempt from a legislative body, an anti-discrimination tribunal or a court to make decisions about individual matters of conscience is a drastic overreach.

The right to live free from discrimination is a recognised human right, as is freedom of conscience.<sup>79</sup> So what happens when two human rights conflict? The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant for Civil and Political Rights<sup>80</sup> were adopted by the UN Economic and Social Council in 1984 to provide guidelines for consistent interpretation and application of the principles contained in the ICCPR. Article 36 of the Siracusa Principles reads:

*When a conflict exists between a right protected in the Covenant and one which is not, recognition and consideration should be given to the fact that the Covenant seeks to protect the most fundamental rights and freedoms. In this context especial weight should be afforded to the rights from which no derogation may be made under article 4 of the Covenant.*

While freedom of conscience and the right to live free from discrimination are both contained in the ICCPR, in determining a priority, it is instructive to note that only freedom of conscience is a right from which no derogation may be made under article 4 of the Covenant. This is why it is important to protect the conscience rights of individuals.

The Siracusa Principles indicate that when rights conflict, the right to the free exercise of conscience should be prioritised. However, in countries where same-sex marriage has been legalised, anti-discrimination laws are being used to give precedence to the right to live free from discrimination. The same could happen in Australia if same-sex marriage is legalised. As a comprehensive report from the Australian Law Reform Commission on rights and freedoms notes:<sup>81</sup>

*It is not clear that freedom to manifest religion or belief should extend to refusing to provide, for example, a wedding cake for a same-sex couple. Protecting individuals from discrimination in ordinary trade and commerce seems a proportionate limitation on freedom of religion.*

These comments foreshadowed that the Australian Law Reform Commission would support an overriding and undermining of freedom of conscience should same-sex marriage be legalised in Australia.

For these reasons, Australians can be certain that a redefinition of marriage to accommodate the rights of some will threaten the freedoms of all.

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*Sally Rugg, same-sex marriage campaign director, GetUp!*<sup>82</sup>

If the law is to declare that there is no difference between marriage between two people of the opposite sex and marriage between two people of the same sex, then sex education will be amended to teach that all forms of sexual activity are equal. This will result in sex education becoming more complex and detailed, and not simply an explanation of “the birds and the bees.”

The expansion of sex education following the legalisation of same-sex marriage can be seen most clearly in Canada. An early decision of the Canadian Supreme Court related to the introduction of books in the kindergarten – year one curriculum portraying same-sex couples.<sup>83</sup> The Supreme Court ruled that it was in the interest of same-sex parented families and the children who belong to them to receive “equal recognition and respect” in the school system. When parents objected on the basis that the material was not age-appropriate, the Court responded that “tolerance is always age appropriate.”

Just over 10 years later, the required education was expanded from family structure to sexual activity. All schools – including religious schools – are now forced to teach year three students a sex education curriculum introducing homosexuality, and year seven students the specifics of homosexual sex.<sup>84</sup>

Same-sex marriage was legalised in the United Kingdom much later than in Canada, but the education system is already seeing a push to include LGBTI themes into classrooms. Following the passing of a

law which would require compulsory sex and relationships education in council-controlled schools, the National Union of Teachers voted to “campaign to ensure a comprehensive age-appropriate content including promotion of LGBT+ matters for all schools from nursery throughout all phases of state education.” Its Vice President, Kiri Tunks, called an exemption for faith-based schools a “dangerous loophole.”<sup>85</sup>

There are already examples of expanded LGBTI sex education in Australian schools already, most notably from the Safe Schools Coalition program. “Safe Schools” operates under the guise of an anti-bullying program aimed at creating “safer and more inclusive educational environments for same sex attracted, intersex and gender diverse students, staff and families,”<sup>86</sup> but its creators have admitted that “it’s not about stopping bullying, it’s about gender and sexual diversity.”<sup>87</sup>

Resources endorsed by the program tell students that they have two virginities, one each for male and female partners,<sup>88</sup> and encourage them to consider gender as existing across a spectrum.<sup>89</sup>

A similar program introduced into NSW schools included an activity where students are asked to determine the sexuality of various characters based on graphic detail about their sexual activity and fantasies, and invited to think of sexuality as existing on a continuum, like temperature.<sup>90</sup>

The Safe Schools website encourages a “whole school” approach to the promotion of sexual and gender diversity, and suggests ways to include gender diversity in maths, legal studies, history, economics and more.

Parental consent or even notification is not required for a school to implement extreme LGBTI sex education programs. The Department of Education in Queensland has refused to provide a list of the schools that have signed up to Safe Schools, meaning that parents are unaware of whether it is being taught to their children. In NSW, two extreme

LGBTI sex education programs were introduced without the knowledge or approval of the Education Minister.<sup>91</sup>

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One of the most dangerous aspects of extreme LGBTI sex education programs is the teaching of gender as merely a social construct.

Extreme LGBTI sex education programs encourage the use of a picture book called *The Gender Fairy* for children aged four and up. This book tells children that only they know if they are a boy or a girl; no one can tell them. Extreme LGBTI sex education programs also encourage the use of gender-neutral language. The program's key resource tells teachers to avoid language which refers to differences between genders, or which affirms gender as a binary concept:

*Phrases like 'ladies and gentlemen' or 'boys and girls' should be avoided.*<sup>92</sup>

The program instead offers 13 different "gender identities" with which students might like to identify.

The removal of gender also occurs within school uniform policies, with LGBTI programs encouraging schools to let students wear the uniform of their choice, and to have rules relating to hair length and the wearing of jewellery and make up to apply equally to all students.<sup>93</sup> Victorian mother Cella White removed her son from a "safe" school after he was told in science class that the boys could start wearing dresses the following year.<sup>94</sup>

Safe Schools co-creator Roz Ward has also advised the Victorian Department of Education to have schools construct "non-gendered" toilet blocks,<sup>95</sup> and a recent mandatory policy for all South Australian public schools requires schools to allow students to choose which bathrooms, uniforms, sporting teams and even sleeping quarters they like, based on their chosen gender.<sup>96</sup>

The introduction of confusing gender ideology at such a young age is having a measurable effect on children, as statistics from before and after the program's introduction demonstrate.

In 2009, the year prior to the introduction of Safe Schools, the Royal Children's Hospital treated six children for gender dysphoria in Victoria. In 2016, the Royal Children's Hospital estimated that it would treat 250 children in its gender clinic.<sup>97</sup> Significant increases have been seen in states like New South Wales<sup>98</sup> since its schools started teaching the Safe Schools material, with one family lawyer linking the rise in applications to the Family Court for child gender transition specifically to the Safe Schools program.<sup>99</sup>

Current Australian laws allow children to take hormones to stop the onset of puberty with the consent of their parents and a doctor, but Family Court consent is required for any surgical treatment. Part of the push to remove the importance of gender in children includes removing any legal requirements for obtaining treatment such as gender reassignment surgery.<sup>100</sup> Despite Australian law preventing children from voting or entering into most contracts because it is broadly understood that they are easily influenced, the push for a society where gender is deemed meaningless both within marriage and for the individual, ignores the safeguards usually provided for children and instead sweeps them up into an ideological campaign.

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*Dame Louise Casey, Integration Adviser, UK Government<sup>101</sup>*

Signatories to the International Covenant on Civil and Political Rights, including Australia, have undertaken 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.”<sup>102</sup> However, in countries where same-sex marriage has been legalised, these rights are being taken away.

Following the introduction of extreme LGBTI content into Canadian schools, father of primary school kids, Steve Tourloukis, asked the school to exclude his students from classes that would present homosexuality as normal, because it was in conflict with his family’s Greek Orthodox faith. The school rejected his request because LGBTI ideas were embedded throughout the curriculum, not just in particular classes, and also because school administrators considered it to be a form of bullying of LGBTI students to have kids opt-out of LGBTI-related content. Mr Tourloukis sought assistance from the courts and, at the end of 2016, despite recognising that Mr Tourloukis’ rights were being infringed upon, and that the infringement was a significant one, the Ontario Supreme Court sided with the school and the Board of Education and rejected Mr Tourloukis’ request.<sup>103</sup>

Schools in the United Kingdom are beginning to trend the same way, with the UK Government’s top integration advisor recently warning that the insistence of faith-based schools to teach that

marriage is between a man and a woman was an unacceptable form of “extremism.”<sup>104</sup>

Similar patterns are also beginning to emerge in Australian schools. A 2016 policy mandates all South Australian public schools to allow students to choose which bathrooms, uniforms, sporting teams and even sleeping quarters they like, based on their chosen gender and without parental consent or even consultation.<sup>105</sup> Policies such as these not only introduce a measure of confusion into children of an impressionable age, but also undermine the rights of parents by creating an alternate “authority” for the child when it comes to matters of their identity and development.

Parental rights are not only being undermined in schools, but the State is now beginning to control what children are taught at home. A law passed in Ontario in mid-2017 handed the government the right to remove children from families that do not accept their child’s “gender identity” or “gender expression.” The *Supporting Children, Youth and Families Act of 2017* compels judges and child services personnel to consider a child’s “race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression” in a determination of the best interests of the child. Prior to this law being introduced, courts were required to consider the way in which parents wished to direct the child’s education and religious upbringing, but this has been removed from the list of items a court must take into account when determining a child’s best interests.

To avoid any doubt of the intention behind the new law, Minister of Child and Family Services Michael Coteau, who introduced the bill, said that a parent who did not affirm a child’s choice of gender would be considered to be an “abusive” parent: “I would consider that a form of abuse, when a child identifies one way and a caregiver is saying no, you need to do this differently... If it’s abuse, and if it’s within

the definition, a child can be removed from that environment and placed into protection where the abuse stops.”<sup>106</sup> This is a very clear indication that a parent who did not support a child’s exploration of their sexual or gender identity would have their child removed from their care and placed into a more “supportive” environment.

Parental rights in the education and upbringing of their children have been eroded in countries where marriage has been redefined. The same is certain to happen in Australia if the *Marriage Act 1961* is changed.

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Dr Samit Sekhar<sup>107</sup>

International human rights instruments which acknowledge the right to marry list the right as a compound one: it is the right to marry and found a family.<sup>108</sup>

According to the 2016 Census, only 25% of lesbian couples and 4.5% of same-sex male couples are currently raising children.<sup>109</sup> It is reasonable to expect that a change in marriage law will lead to an increased desire for same-sex couples to raise children, and consequently increased pressure for the legalisation of commercial surrogacy, paid gamete donation and other mechanisms to facilitate them in exercising this compound right.

Fertility agencies have acknowledged the increasing demand for surrogacy services following the legalisation of same-sex marriage. US agency Extraordinary Conceptions boasts on its website:

Although gay individuals and couples were already pursuing surrogacy as a way to build their families, it's evident that the Supreme Court ruling embraced a level of acceptance for the LGBT community... With gay marriage being legal in the United States of America, surrogacy among same-sex couples will likely increase.<sup>110</sup>

Laws have also been changed in the United States to require health insurers to cover fertility procedures for same-sex couples.<sup>111</sup>

In Australia, same-sex couples have already begun lobbying for the legalisation of commercial surrogacy<sup>112</sup> and the National Health and Medical Research Council recently considered following the UK's

decision to allow payments for the “donation” of gametes over and above out-of-pocket expenses, another practice which is currently prohibited under Australian law.<sup>113</sup>

These practices each have considerable consequences, not the least of which is the exploitation of financially vulnerable women, who are usually the most affected by these arrangements. There have been numerous cases in both developing and developed countries where women have been taken advantage of in commercial arrangements<sup>114</sup>.

In addition to the surrogate mothers and gamete donors who would be impacted by the legalisation of commercial surrogacy and paid gamete “donation,” there will also be consequences for children conceived by such practices.

A number of children conceived through donor procedures and raised by same-sex parents are beginning to tell their stories about their desire for a connection to their biological parents. Melbourne woman Millie Fontana, who was raised by two women, gave an address at Parliament House in September 2015,<sup>115</sup> where she said the suggestion that “love is love” and that children do not need access to their biological roots to be happy were incorrect for herself and many others:

*“[W]hen it comes to donor conception and the forced removal of a biological parent, that is a deliberate choice to deprive us of something that we innately crave. And there is not a moment where I have looked back and thought that I did not crave that male stability and that father in my life. When I was at age 11, I was finally able to meet my father, and it was one of the happiest days of my life. I felt stable and at peace for what was probably the first time in my childhood, I saw my future, I saw my heritage, I saw my other family. And there was something that I am so grateful to have been given at such a critical time in my development.”*

Proponents of same-sex marriage often argue that this matter is distinct from the marriage question. But once the law is changed to

give same-sex couples a “right” to marry, it would be discriminatory to not also allow the same familial rights afforded to opposite sex couples.

This has been furthered in Canada, where Ontario’s *All Families Are Equal Act* now allows up to four parents to be listed on a child’s birth certificate. In a situation of family breakdown, there will now be up to four adults with a legal ‘claim’ on custody of, or visitation with, the child, creating the potential for even greater instability for a child in such a situation.

Changing the definition of marriage has consequences for a number of people who do not yet have a voice in this debate, especially the children who would be born into a family that, by design, deprives them of either a mother or father. Those involved in this discussion need to consider the interests of this future generation in any proposed change of law.

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*American College of Pediatricians, Family Watch International,  
Loren D. Marks, Mark D. Regnerus and Donald Paul Sullins<sup>116</sup>*

The Convention on the Rights of the Child states that a child has, as far as possible, “the right to know and be cared for by his or her parents.”<sup>117</sup> The redefinition of marriage would, from the very beginning, deliberately deprive a child of this right.

This consequence of the redefinition of marriage is often countered by the claim that the outcomes for children raised by same-sex couples are equivalent or even superior to those for children raised by married, biological parents. For example, a “fact sheet” produced by the Australian Institute of Family Studies cited two literature reviews that claimed “children in same-sex parented families do as well emotionally, socially and educationally as those in opposite-sex parented families.”<sup>118</sup>

Such a claim is misleading for a number of reasons.

Firstly, the “no difference” studies that are relied upon to make such claims often fail to satisfy one or both of the requirements necessary for the studies to hold any statistical significance, being random sampling and adequate sample size:<sup>119</sup>

- **The lack of random sampling.** “Many of the comparative studies conducted to date on children or young adults raised in the same-sex parented families are based on volunteer samples of participants rather than random samples... many researchers

in this field note that their participants were mostly white and well educated, which does not reflect the likely socio-economic, ethnic and racial diversity of the same-sex parenting population.”<sup>120</sup>

- **Small sample sizes mean that the studies lack statistical significance.** “The universally small sample sizes in the existing literature has left room for several critiques, including the argument that small sample sizes would not have the statistical power to identify the effects of homosexual parents on childhood outcomes even if such effects did exist.”<sup>121</sup>  
In addition to these threshold failures, the studies contain other methodological flaws:
- **The potential for bias in self-reporting.** “Parental self-report, of course, may be biased. It is plausible that, in a prejudiced social climate, lesbian and gay parents may have more at stake in presenting a positive picture.”<sup>122</sup>
- **The subjective and vague criteria used for assessing child wellbeing.** One study that claimed “no difference” used subjectively assessed factors such as “warmth” and “security of attachment to parents” in assessing the wellbeing of children.<sup>123</sup> This can be contrasted with a study showing superior outcomes for children raised by biological parents, which used objective criteria such as “drug and alcohol use,” “criminal activity,” “employment” and similar objectively measurable factors to assess wellbeing.<sup>124</sup>
- **Contentious criteria used for assessing child wellbeing.** A similar flaw in “no difference” studies is that measures of wellbeing can legitimately be disputed as being indicators of positive outcomes. For example, one study listed “gender flexibility displayed by children” as being a positive outcome,

but this could easily be argued to be an indicator of negative outcomes.<sup>125</sup>

- **Non-longitudinal design.** While parenting by same-sex couples is not a new phenomenon, its prevalence has only increased in recent years, meaning that there has not been sufficient time to conduct a long-term study on the effects of same-sex parenting on children. Most of the studies asserting “no difference” have not studied their subjects over a long enough period of time.<sup>126</sup>
- **Lack of control group.** Studies seeking to compare same-sex parented families with other outcomes do not include a proper “control” group, and rather use a mix of single, step-parented and biological parents as the comparative group, meaning that the studies lack proper controls.<sup>127</sup>

Secondly, there is a large body of research unrelated to the specific question of same-sex parenting which demonstrates that children have the best outcomes when raised by their married, biological parents.<sup>128</sup>

The largest longitudinal study on happiness – the Grant study of Adult Development, which was conducted over a period of 75 years – demonstrated that mothers and fathers contributed in different ways to their child’s development. The study found that the closeness of a child’s relationship with their mother was linked to their success in work, income and study in their adult life, whereas a child’s relationship with their father influenced their long-term mental health outcomes, their ability to play and enjoy vacations, and their coping skills.

The study did not seek to compare the outcomes for children raised by same-sex and opposite sex parents, but simply to evaluate the various influences on a child’s development. In so doing, it made plain that mothers and fathers provide different contributions to their

child's life, refuting the claim that there is no difference between the presence of mothers and fathers.<sup>129</sup>

The legalisation of same-sex marriage will have the effect of depriving children raised within these marriages of their right to be raised by their biological parents. Those who claim that there is no consequence for children of such deprivation base their assertions on studies lacking the scientific rigour required to make that claim.



# Responses to ten common arguments from same-sex marriage advocates

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“It is better to debate a question without settling it  
than to settle a question without debating it.”

*Joseph Joubert*

Those who advocate for the redefinition of marriage often present their argument in very short and appealing assertions, which can sometimes appear difficult to refute. This section provides short responses to some of the most common arguments made by same-sex marriage advocates.

## Ma a a a .

Marriage is indeed a human right according to Article 23(2) of the International Covenant on Civil and Political Rights (ICCPR), which reads: “The right of men and women of marriageable age to marry and to found a family shall be recognized.” Australia is a party to the ICCPR and it is considered to be binding upon the State parties.<sup>130</sup>

A similar provision is contained in Article 16(1) of the Universal Declaration on Human Rights (UDHR): “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.”<sup>131</sup> The UDHR is not binding but it is a significant document because it preceded the ICCPR and was the first time that countries had agreed on a comprehensive statement of human rights.

Both of these instruments phrase the right to marriage as being the right of *men and women* to marry, which is notable because all other rights in the documents are granted to “everyone.” This specific reference to “men and women” in the right to marry has been taken to be deliberate and necessary to enliven the right, so that the relevant human right is the right to marry a person of the opposite sex.<sup>132</sup>

In multiple cases involving same-sex couples arguing that same-sex marriage was a human right being denied to them, both the United Nations Human Rights Committee (UNHRC) and the European Court of Human Rights (ECHR) have ruled that a country is not in breach of human rights if it does not recognise same-sex marriage.

The *Joslin*<sup>133</sup> case involved two lesbian couples who argued that the reservation of marriage to heterosexual couples discriminated against them on the basis of sex and on the basis of sexual orientation. The UNHRC 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.

In the *Schalk*<sup>134</sup> case, the ECHR ruled that neither the right to marry contained in the European Convention on Human Rights<sup>135</sup> nor the right to respect for private and family life when taken together with the prohibition of discrimination imposed an obligation on a State to recognise same-sex marriage. The more recent case of *Chapin and Charpentier*<sup>136</sup> confirmed the same, adding that the right to marry when taken together with the prohibition of discrimination similarly does not require the legalisation of same-sex marriage.

Therefore, the oft-cited claim that same-sex marriage is a human right is not supported by of the international bodies responsible for interpreting and enforcing such rights.

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The frequent claim by same-sex marriage advocates that marriage has evolved over time, and that same-sex marriage is just another such evolution is put forward concisely by Professor Steven Hintz:

*Marriage is not an institution that's etched in stone... Whenever people talk about traditional marriage or traditional families, historians throw up their hands, because we say: 'When and where?'<sup>137</sup>*

To demonstrate the “evolution” of marriage over time, activists point to historical notions of women being seen as the “property” of their husbands or not being permitted by law to own property themselves, to polygamous marriage in Biblical times or in other cultures and to bans on interracial marriages and the marriages of prisoners or those who were behind in child support payments.

But in none of these examples used by activists was the foundation of marriage anything other than a relationship between a man and a woman. Women being wrongly treated as unequal partners in marriage did not change that their marriage was formed by their union with a man. Polygamous marriages were not considered a union of three or more persons, but rather as separate and distinct marriages between one person and numerous spouses. Moreover, interracial marriages or those of prisoners or debtors were still understood as “marriages” because the relevant unions possessed all of the necessary criteria for marriage; it was just that they were prohibited by law because of some factor which was viewed as limiting the “freedom” to marry.

Those who supported the prohibition of interracial marriage did not claim that two people of different races could not form a legitimate marriage. Rather, they opposed these unions because they were seeking segregation and the promotion of “white supremacy,” and interracial marriage was a threat to this particular ideology.

The objection to and prohibition of same-sex marriage is different. The law operates not to prevent two people of the same sex forming a valid marriage; rather is a confirmation that a same-sex relationship, however meaningful and committed, *cannot* be recognised as a marriage because it lacks its key element: the union of two people of the opposite sex.

The heterosexual nature of marriage is not arbitrary. Marriage exists in order to tie men and women to each other and to the children they create, making gender difference an essential feature of marriage. Even societies that historically embraced same-sex relationships treated them as distinct from marriage.

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It is often argued that the definition of marriage as the union of a man and a woman was a concept only introduced into Australian law under a 2004 amendment to the *Marriage Act* made by the Howard Government, which added the following definition into section 5 of that Act:

*‘Marriage’ means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.”*

Labor Senator Penny Wong articulated this frequently-made claim by saying that “the path to full equality was blocked in 2004 when the Howard government amended the *Marriage Act* to insert a specific reference to marriage being “the union of a man and a woman.””<sup>138</sup>

Proponents of same-sex marriage have argued for the abandonment of the promised plebiscite on same-sex marriage because this change was made with a parliamentary vote.

These statements misrepresent the status of the law in 2004, the views of politicians at the time, and the level of public consultation which occurred prior to the law being passed.

The *Marriage Act* has always included a reference to marriage being between a man and a woman. The definition of marriage which was inserted into section 5 of the *Marriage Act* by the 2004 amendment with bi-partisan support in the parliament had been present in section 46(1) from the beginning. Both at the time the *Marriage Act* was passed, and also as it stands today, section 46(1) reads:

*Subject to subsection (2), before a marriage is solemnised by or in the presence of an authorised celebrant, not being a minister of religion of a recognised denomination, the authorised celebrant shall say to the parties, in the presence of the witnesses, the words:*

*“I am duly authorised by law to solemnise marriages according to law.*

*“Before you are joined in marriage in my presence and in the presence of these witnesses, I am to remind you of the solemn and binding nature of the relationship into which you are now about to enter.*

*“Marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.”;* or words to that effect.

The longstanding presence of this definition in the *Marriage Act* and the common law understanding of marriage which preceded it, shows that marriage was always understood to be between a man and a woman. In 2004, in response to an objection to Labor’s support of the amendment, Tanya Plibersek MP wrote:

*“The reason I think it’s clear that this is just dirty politics is firstly, no Australian couples currently have access to same sex marriage. The change to the Marriage Act is not necessary to prevent same sex marriage in Australia – this is just gratuitous. The marriage act and common law make clear that marriage is between a man and a woman to the exclusion of all others. The reason this is being brought up now is to distract from the polls, the prisoner abuse scandal in Iraq, the destruction of our health and education systems, the re-emergence of leadership tensions in the Liberal party – and the Trish Draper scandal.<sup>139</sup>”* [Emphasis added.]

Ms Plibersek also commented on the broad public consultation which occurred at the time. In the same piece, she wrote:

*“The proposed changes do not take existing rights away, so we will not oppose it in the House of Representatives but we will send the legislation to a Senate inquiry for thorough examination before voting in the Senate. This will give all community members who are interested the chance to make a submission to the inquiry, and put on the public record their thoughts about relationship recognition. The reference to a Senate committee was one of the major requests made by people who contacted me about this legislation, and it has been delivered.”* [Emphasis added.]

The suggestion that same-sex marriages could have been recognised prior to 2004 is not borne out by the history of the law, or by the comments of politicians who now advocate for the redefinition of marriage.

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The 2016 Australian Census revealed that there are 46,800 same-sex couples in Australia, which represents less than 0.4% of the population.<sup>140</sup> A survey funded by Parents and Friends of Lesbians and Gays revealed that only 54% of same-sex couples would get married if given the choice.<sup>141</sup> This means that a change in law to redefine marriage to include same-sex couples would be for the supposed benefit of some 25,000 couples, or around 0.2% of Australia's population. Same-sex marriage activists try to convince us that the effect of such a change would only impact this very small group.

Tiernan Brady, the man who, after leading the campaign to redefine marriage in Ireland came to Australia to attempt to do the same here, said of the change to the Irish law:

*All that happened was that nobody lost anything, and one small group in society, our lesbian and gay friends and family members, were allowed to get married.*<sup>142</sup>

Despite the assurances from Mr Brady and others, a change to the marriage law will affect all Australians, and not just the 0.2% of people who would like to get married as a result of the change.

In the countries where same-sex marriage was debated and ultimately legalised, individuals have been fined,<sup>143</sup> fired,<sup>144</sup> denied business<sup>145</sup> or employment,<sup>146</sup> forced to resign<sup>147</sup> and even prosecuted<sup>148</sup> for not cooperating with the new definition of marriage. There is a university whose qualifications are not recognised by professional bodies simply because of their private position on marriage,<sup>149</sup> and a student who was kicked out of university altogether for the same reason.<sup>150</sup>

The changes also impact children. In Canada, where same-sex marriage has been legal for more than a decade, Catholic schools have been forced to amend sex education to fit in with the new definition of marriage,<sup>151</sup> and courts have ruled that parents are not permitted to have their children excused from these classes because it would show a lack of tolerance.<sup>152</sup>

In Australia, marriage supporters were forced to relocate a planned gathering and meet in secret after staff at the proposed venue were threatened,<sup>153</sup> activists organised a boycott of an Adelaide family bakery because one of the family members wrote a letter to the editor of her local newspaper objecting to the paper's seeming promotion of 'gays and lesbians',<sup>154</sup> and the Catholic Bishops of Australia were told they had a case to answer to Tasmania's Anti-Discrimination Commission for distributing a booklet in parishes and schools stating the Church's teaching on marriage.<sup>155</sup>

Opposition Leader Bill Shorten has said that a future Labor government would repeal any protection for the freedom of conscience of wedding service providers who do not want to participate in same-sex weddings.<sup>156</sup> Labor also promised a dedicated anti-discrimination commissioner for LGBTI issues,<sup>157</sup> and the Australian Law Reform Commission has agreed that the denial of freedom of conscience protections would be "a proportionate limitation."<sup>158</sup>

Stories like those mentioned here are being repeated around the world in countries where same-sex marriage has been legalised, and the common theme in each of them is that the changes in law impact people other than those same-sex couples who got married under the new law. The idea that advocates want nothing more than to "live and let live" is not borne out by the evidence.

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Wanting a “fair go” for everyone is part of Australian culture, because Australians are by nature egalitarian. We believe people are equal before the law, and should be treated equally.

To ensure that same-sex couples received equal protection of the law, the Australian Human Rights Commission (which was, at the time, known as the Human Rights and Equal Opportunity Commission) (**Commission**) launched the *Same-Sex: Same Entitlements Inquiry (Inquiry)* in April 2006. The Inquiry aimed to identify the federal laws which discriminated against same-sex couples, and the children in their care, describe the impact of those laws and make recommendations for all such discrimination to be removed.

Information was gathered through submissions from the general public, research done by the Commission and through public hearings and community forums held around Australia.

Following recommendations made by the Commission, 84 federal laws were amended to ensure same-sex couples were treated equally in areas of life such as family law, superannuation, taxation, social security, employment, Medicare, veterans’ affairs and workers’ compensation.

Deputy Opposition Leader Tanya Plibersek confirmed the achievement, saying that the Rudd Government “removed every piece of legal discrimination against gay men, lesbians and same-sex couples on the statute books.”<sup>159</sup>

Importantly, the question of same-sex marriage was considered as part of the Commission’s Inquiry, but the Commission determined that equality is more holistically achieved if all couples, regardless of marital status, are treated equally. The report said:

*The Inquiry recommends that the federal Parliament amend federal law to ensure equal access to financial entitlements and benefits for all couples – be they married or unmarried, opposite-sex or same-sex.<sup>160</sup>*

The process undertaken by the Commission through the Inquiry demonstrates that inequality, if any still exists, can be remedied through specific amendments to the laws governing the area in question. The differential treatment between opposite-sex couples and same-sex couples when it came to superannuation was appropriately addressed with an amendment to superannuation laws, not the marriage law. There is no need to change the marriage law to achieve equality for all Australian couples, irrespective of marital status.

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Whenever a person defends marriage as the union between a man and a woman because of the inherent link between marriage and children, advocates for same-sex marriage contend that the logical extension of this argument would require infertile couples to be excluded from the definition of marriage.

However, there are a number of reasons why the marriage of infertile heterosexual couples still accords with good public policy, despite their infertility.

Importantly, the marriage of an infertile couple does not oppose the State's primary purpose in legislating marriage, which is to promote the family structure that provides children with the optimal environment for their development: being raised by their biological, married parents. The focus is not on whether every married couple has children, but whether the legal definition of marriage reinforces the human right of every child "to know and be cared for by his or her parents."<sup>161</sup>

While existing laws envisage situations where children are not raised by their married, biological parents, the *Marriage Act* still points towards this as the preferred outcome. Changing the definition of marriage to include same-sex couples would see the State – for the first time – create an institution that, by design, deprives any potential child of the right to be cared for by his or her mother and father.

Recognising the marriage of infertile couples does not alter the definition of marriage in a way which removes its evident connection to children. In this way, it is not comparable to changing the definition of marriage to include same-sex couples.

In analysing the right to marry and found a family as provided for in various human rights instruments, the European Court of Human Rights ruled that:

*The second aspect [the right to found a family] is not however a condition of the first [the right to marry] and the inability of any couple to conceive or parent a child cannot be regarded as per se removing their right to enjoy the first limb of this provision.*<sup>162</sup>

The ECHR subsequently ruled (on multiple occasions) that the same provision – the right to marry and found a family – does not require a State to legalise same-sex marriage.<sup>163</sup>

Additionally, requiring tests for fertility would make it necessary for a person to subject themselves to medical testing and for the results to be provided to a government bureaucracy. Such a physical imposition on the individual person, and the invasion of privacy it would require, transgress other fundamental rights of the person.

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Undoubtedly, there are some people whose beliefs about marriage are faith-based. This is to be expected, given that approximately 70% of the Australian population profess some religious belief.<sup>164</sup> Many of our laws – including those prohibiting theft and murder – accord with Judeo-Christian beliefs so there is no requirement, and no reason, to oppose a law just because it is based on a religious worldview. However, in a pluralist society like Australia, laws that might have their origins in religious teachings need to be assessed on their merits.

Dismissing the concerns of people who do not want to change the definition of marriage as being based solely on religious belief ignores the evidence of the impact of same-sex marriage on society more broadly, including the consequences outlined in earlier sections of this book. Australians of all faiths and none can and do hold legitimate concerns about these consequences without reference to religious beliefs. Such an attempt also means the voices of those within the LGBTI community<sup>165</sup> and those who have been raised by same-sex parents<sup>166</sup> who oppose the redefinition of marriage are not acknowledged.

The claim that opposing same-sex marriage is homophobic also ignores the reality that there are many other relationships in Australia, including customary Aboriginal marriages, which are not recognised as marriages at law. Due to the formation of polygynous marriages, or marriages which do not meet the age or consent requirements of the *Marriage Act* within traditional Aboriginal communities, marriages formed under Aboriginal tribal law are not recognised as marriages by Australian law.<sup>167</sup>

According to the 2016 census, 649,200 Australians reported being Aboriginal or Torres Strait Islander,<sup>168</sup> and it has been estimated

that 90% of marriages amongst traditional Aboriginal people are not contracted under the *Marriage Act*.<sup>169</sup> Despite this, those campaigning for so-called "marriage equality" do not seek to allow recognition for Aboriginal customary marriages, likely because they understand that the lack of recognition is not based in anti-Indigenous sentiment or religious opposition to Aboriginal marriages, but rather an understanding that these types of marriages do not comply with the *Marriage Act*.

In a similar vein, it is wrong to impute hate-based motivations to those who seek to retain the current definition of marriage and to avoid its redefinition to include same-sex marriages.

Indeed, it is irresponsible and even dangerous for same-sex marriage advocates to tell members of the LGBTI community, many of whom have experienced unjust rejection and exclusion, that they are hated by people who simply disagree on the definition of marriage.

The labelling of legitimate concerns as "homophobic" or "hateful" should be identified and rejected for what it really is: an attempt to shut down a necessary discussion, and a refusal to engage with the substance of the deeply-held concerns of many Australians.

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Despite consistent claims declaring that Australia is “behind the rest of the world” on the issue of same-sex marriage, the overwhelming majority of the world still holds to the timeless definition of marriage as being between a man and a woman. The 24 out of 193 countries which have changed the definition of marriage are very much in the minority.

Additionally, it is not clear that the decisions in countries where marriage was redefined reflected the will of the people, because all but one of those countries changed the law through either an act of Parliament or through judicial activism. Even the Irish referendum which changed the definition of marriage was not passed by a majority of citizens because voting in the referendum was not compulsory. Low voter turnout meant that the law was changed as a result of a decision by 37.3% of registered voters.

There are more countries than not which have rejected a change to the definition of marriage when the public has been given a say. As a result of public votes in Croatia, Slovenia and Bermuda, the definition of marriage has remained unchanged in those countries. If Australians are afforded a proper debate about whether to redefine marriage, and are permitted to hear about the consequences of changing the *Marriage Act* without the discussion being silenced by cries of “homophobia,” boycott or threats of violence, it is likely that a public vote in this country would have the same result.

The idea that there is a strong, worldwide push towards the redefinition of marriage is incorrect if the whole world, and not simply more economically-developed nations are considered. Indeed, the suggestion that nations should be discounted on the basis that their inhabitants do not speak English or because of their lack of economic development is ironic for a movement supposedly based on “equality.”

The biggest risk to the preservation of marriage in Australia is that a government or would-be government so deeply entrenches the legalisation of same-sex marriage within its policy platform that it would be willing to push legislation through Parliament at any cost. But even if a party was so intractable as to bind itself to a policy position without a proper public debate, and was willing to disregard the unfolding consequences of the redefinition of marriage in other countries, the political reality remains: politicians listen to the concerns of their constituents. Even the most ardent same-sex marriage advocate – if they want to remain in office – can be swayed by the voices of those whom they are elected to represent.

Nothing is inevitable, including the redefinition of marriage.

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Proponents of same-sex marriage often point to studies which claim that there is “no difference” in outcomes for children raised by same-sex couples when compared to those for children raised by opposite sex couples. But each of these studies contains at least one fatal flaw in their design or method<sup>170</sup> that prevents it from being reliable.

These flaws include:

- a lack of random sampling, with cohorts including a high proportion of white, well-educated families not reflective of the likely socio-economic, ethnic and racial diversity of the same-sex parenting population;<sup>171</sup>
- small sample sizes, which result in the studies lacking statistical significance,<sup>172</sup>
- a potential for bias in self-reporting;<sup>173</sup>
- subjective or questionable criteria used for assessing child wellbeing, for example, a literature review published by the Australian Institute of Family Studies, noted “greater gender flexibility, particularly for sons” as an indicator of wellbeing;<sup>174</sup>
- a short time frame over which the research was conducted, meaning that the long-term effects of same-sex parenting had not yet been studied;<sup>175</sup> and
- the lack of control group, with children raised by same-sex parents compared to children raised by a mix of single, step-parented and biological parents.<sup>176</sup>

In contrast, there is a large body of research unrelated to the specific question of same-sex parenting that shows children have better outcomes when raised by their married, biological parents.<sup>177</sup>

Although laws on adoption, surrogacy and IVF differ from state to state, it is clear that homosexual couples are currently raising children,

so a change in marriage law will not affect these arrangements. However, redefining marriage to include same-sex couples would have the effect of *promoting* this as a public good and, by extension, a good for children, even though this conclusion is not supported by the research currently available.

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A recent survey described as the largest ever survey of LGBTI Australians asked about their attitudes towards protections for service providers such as bakers, florists and photographers who did not wish to participate in same-sex weddings on religious or conscientious grounds.<sup>178</sup> More than 90 per cent of participants rejected the suggestion that military chaplains, civil celebrants, employees of births, deaths and marriages and private businesses and religious organisations providing hall rental, catering and other services related to the wedding industry should be permitted to refuse to provide goods or services for a same-sex wedding.<sup>179</sup> 59 per cent of respondents were even opposed to ministers of religion being afforded such protections!<sup>180</sup>

Cases such as these have been the subject of numerous lawsuits in the United States and other places where same-sex marriage has been legalised, and it appears that the same would happen in Australia if the law was to change.

The people who argue that refusals should not be permitted at law point to the right of a person to live free from discrimination which is guaranteed under Article 26 of the ICCPR.<sup>181</sup> However, the right to freedom of thought, conscience and religion are also rights that are guaranteed under the ICCPR, and these too must be protected. These rights are not simply to hold a belief, but also to manifest it, and for a person to live their life in accordance with their beliefs. When rights conflict, competing claims to protection must be balanced, and the rights to freedom, thought and conscience are considered to take priority because they are regarded as rights from which no-derogation can be made, even in times of national emergency.<sup>182</sup>

Even without reference to principles of international human rights law, it is reasonable to assert that the law should not force a person to participate in an activity that goes against their beliefs.

This type of reasonable accommodation goes both ways, even in the marriage debate.

Channel Seven, Channel Ten, the Australian Radio Network and Nova all declined to broadcast an advertisement from Marriage Alliance, with Nova specifying that the advertisement was “significantly out of alignment with the Nova brand and audience.”<sup>183</sup> Additionally, within a week of the postal plebiscite being announced, hundreds of printers and advertising agencies declared that they would not produce any materials for the “no” campaign.<sup>184</sup>

If we look to scenarios unrelated to marriage, there were celebrities who were applauded for declining an invitation to perform at US President Donald Trump’s inauguration, as were the fashion designers who refused to dress First Lady Melania Trump.

The ability for a person to decline to use their business or their creative talents to promote a message with which they disagree makes sense in a “fair go” country like Australia. Nobody would dream of requiring an Islamic printer to print images of Mohamed, or a publication like the *Green Left Weekly* to run an advertisement for a pro-traditional marriage event. In each case, most people would consider their refusal to be reasonable.

Ordinary Australians who wish to live in accordance with their belief that marriage is between a man and a woman are only asking for equal treatment in this respect.

## How you can help

The Coalition for Marriage is a grassroots movement of individuals and organisations supporting a common cause: the preservation of the definition of marriage and through it, the protection of the individual rights and freedoms of all Australians.

We rely on the support of our partners, our volunteers and our donors in order to continue to advocate for the silent majority on marriage.

If you would like to join our efforts, there are many ways to do this.

### Tell us your story!

Coalition for Marriage is proud to be a voice for the silent majority of Australians who are being affected by proposed changes to the definition of marriage. If you have a story to share about your own experience – whether it is being under pressure to participate in LGBTI activities in your workplace, concerns about what your child is being taught in school or otherwise – let us know your story. The more information we have, the better our opportunity to inform Australians about the consequences of redefining marriage.

Email us at [info@coalitionformarriage.com.au](mailto:info@coalitionformarriage.com.au)

### Sign up to our mailing list

Go to our website, [www.coalitionformarriage.com.au](http://www.coalitionformarriage.com.au), and sign up to receive updates on the latest in the marriage campaign, and to be informed of ways you can help us.

## V

The Coalition for Marriage has a small, professional team dedicated to the cause of marriage who work alongside a team of volunteers across Australia to help get the message out. If you would like to hear more about volunteer opportunities within your local area, go to [www.coalitionformarriage.com.au/volunteer](http://www.coalitionformarriage.com.au/volunteer) to register your interest.

## D a a

Coalition for Marriage does not have the same financial backing of elite corporations backing as the LGBTI movement; we are reliant on the donations of our supporters to keep going. Please consider offering a one-off or regular contribution to help Coalition for Marriage to win this campaign. For more information, go to [www.coalitionformarriage.com.au/donate](http://www.coalitionformarriage.com.au/donate).

## S a f b a f

If you found this book helpful, don't keep it a secret! Pass it on to family and friends.

## F a a

**Facebook:** <https://www.facebook.com/CoalitionForMarriageAustralia/>

**Twitter:** <https://twitter.com/MarriageOz>

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