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*Discussion paper on Amendment Bill*  
**Election 2004: Marriage legislation: The latest 'wedge'?**

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Federal Opposition Leader Mark Latham accuses the Coalition Government of policy fatigue after eight years in office, but Prime Minister John Howard can still spring surprises. Few observers anticipated the Marriage Legislation Amendment Bill 2004, introduced to Parliament in May. While its content accords with Coalition ideology, the Government did not seek a mandate for it in 2001, so some observers regard the bill as a tactic to unsettle the Opposition, and a potential 'wedge' to divide Labor voters in the way border security did in the 2001 election campaign.

The bill seeks to amend the 1961 Marriage Act to prescribe that 'marriage means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life'. It further amends the 1975 Family Law Act by specifying that 'certain unions are not marriages. A union solemnised in a foreign country between (a) a man and another man, or (b) a woman and another woman, must not be recognised as a marriage in Australia' (Australian Parliament House 2004a). In his second reading speech, Attorney General Philip Ruddock claimed that the bill arose from 'significant community concern about the possible erosion of the institution of marriage' (Ruddock 2004). He argued that the bill did little more than formalise the words already used by marriage celebrants, and that the definition accorded with the 'understanding held by the vast majority of Australians'. However, he also admitted that the bill expressed the Government's 'fundamental opposition to same sex couples adopting children'.

Mr Ruddock's speech anticipated the divisions in the ensuing debate. Supporters of the bill assumed that the 1961 provisions should be reiterated to forestall a perceived crisis in marriage and families, while opponents seized on the Government's attitude to adoption by same sex couples as a sign of homophobia. Amongst the parliamentary opponents of the bill, some intended to vote against it on principle while others hesitated about the bill's potential to create tactical disadvantage for them.

Although the Attorney General cited public concern about the institution of marriage, he did not establish that there was a popular demand for legislation. The definition of marriage as a voluntary lifelong union between a male and a female, reflects Coalition ideology around the 'importance of the family' (Liberal Party of Australia 2004). The bill also specifies that same sex unions formed overseas will not be recognised at Australian law, and so it will prevent such couples from claiming the right to parenthood by using their marital status, either gained overseas now, or possibly gained in Australia in the future. To assuage critics, the Government proposed to guarantee reciprocal property rights for partners in same sex unions (Wilkins 2004).

Liberal leaders traditionally attack Labor for favouring socialist, 'cradle to grave' planning that excessively controls citizens' lives and institutes a 'nanny state' (see for example, Howard 2004). While Liberals advocate individual freedom, and argue that good legislation maximises opportunity, the practical record is more complex. Prime Minister Howard won power in 1996 as the nemesis of a mythical political correctness. Supposedly, Labor had endorsed orthodox positions on matters that should be outside government purview and the reach of discrimination laws, such as relations between people of different races and sexes. Yet this current bill constructs a politically correct form of marriage, and by promoting one sexuality as orthodox, discourages forms of behaviour that are currently understood to be a matter of individual right. As the bill expresses a particular world view, it is reminiscent of the Prime Minister's unsuccessful attempt to define Australian-ness via a Constitutional Preamble in 1999.

Government spokespersons insist that the legislation is not about same-sex couples and that they are

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not homophobic. This claim is akin to One Nation followers claiming that they are not racists, because just as Hansonism is anti-Aboriginal and anti-Asian, this legislation is anti-homosexual. As Mungo MacCallum observes, it matters less whether politicians are racist, than whether their actions give racism 'free rein' and make it 'respectable' (2002, p. 65). Later commentators could make similar charges about homophobia in the 2004 campaign.

## SEXUALITY

Both sides in this debate argue that marriage officially sanctions the love between two people. The details of one's sexuality seem irrelevant to the public witnessing of a commitment, but by discouraging same-sex marriages, this bill implies that some expressions of love are preferable.

Prime Minister Howard has argued that children need mothers and fathers, but he has offered no evidence for this assertion apart from personal preference. While the Prime Minister was overseas, some Cabinet Ministers revealed their attitudes by commenting on the ABC television program *Playschool*. In one brief segment, a small girl explained that she was going to the park with her 'two mums'. Conservative commentators accused the ABC of trying to normalise aberrant lifestyles. Their only argument was that lesbian couples were not the 'norm' (see for example, Australian Broadcasting Corporation 2004). However, *Playschool* has also depicted single parents, inter-racial marriages and step families, none of which is statistically dominant.

While the bill does not prescribe forms of loving union, its supporters have cited a 'Christian' tradition to justify their narrow understanding of marriage. The opponents, while admitting similar upbringing, argue that Australia is a secular, humanist state (see also Irving 2004). If the bill passes, then the fundamentalist motivation of the legislators could well be invoked in the future, either by an executive government creating regulations, or in court cases over the meaning of 'union'. Such discussions could affect the behaviour of heterosexual couples. The Government seems to think that too few people care about gays to bother making a fuss. The mainstream might nod in agreement with the Government, and mouth platitudes about the mythical 'family', but this is not an option for anyone who regards civil liberties as a cornerstone of democracy.

## FAMILIES

Perhaps its supporters hope that this bill will address a crisis in families. However, evidence from the community welfare sector shows that many families, regardless of structure, experience crisis because of poverty. The Australian Council of Social Services released a plan for family income support that would require government expenditure of \$2.5 billion, suggesting that current funding is inadequate (Council of Social Services 2004). Many families in crisis and children at risk endure dysfunctional situations.

The Government is reluctant to accept that its own policies could create such poverty, and is unable to see the inadequacy of a bandaid approach to assisting victims. The Health Minister's suggestion that denying young women access to the 'morning after pill' would heal the problems that lead to teenage pregnancies is a perfect example. Such suggestions are usually made by maverick backbenchers, not by Ministers responsible for delivering well planned policy. The Minister withdrew the suggestion following criticism. Dr Mal Washer, a GP for twenty six years before entering parliament, said that he would cross the floor to oppose such a bill, as it might lead girls to suicide (Maiden 2004).

## HASTENING MARRIAGE'S DECLINE

In 1950, most Australians probably assumed that marriage occurred only between heterosexual couples and that it was permanent. Today, however, marriage is regarded differently, with Census data showing a complex situation (Australian Bureau of Statistics 2003). First, there are fewer marriages today than two decades ago. De facto relationships are recognised as valid in both social attitudes and law. Second,

there are now more civil ceremonies than religious. Church weddings are declining. Third, the divorce rate is high. Many marriages do not last for life as the bill pretends.

Same-sex couples form valid de facto relationships. If they are indefinitely excluded from the hope that society will one day recognise their unions, they will find ways of uniting without offending the provisions of this bill. Should they do this, many of their hetero friends might choose a similar ceremony. The institution of marriage itself could be threatened by this bill. Already, some fifty-five per cent of ceremonies are conducted by civil celebrants and many young people either live in de facto relationships or make non-religious commitments. As some MPs have argued, it seems bizarre that MPs, whose own marriage relationships are statistically less successful than those in the general community, should be defining marriage for everyone. Should this bill succeed, then it is likely that the statistics on de facto relationships will rise.

### THE LATEST 'WEDGE'

While Labor expressed support for the bill, several MPs, including left faction members, Carmen Lawrence, Tanya Plibersek and Anthony Albanese, criticised the bill severely during the second reading debate. Of 19,594 same-sex couples identified in the 2001 Census, eighteen per cent of these live in the electorates of Sydney, held by Plibersek, and Grayndler, held by Albanese (Newman 2004). The Greens MP Michael Organ foreshadowed strong resistance to the bill from the minor parties in the Senate. Peter King, who lost Liberal preselection in Wentworth, NSW, expressed disappointment that the matter would not be treated as a conscience vote. Another Liberal MP, Pat Farmer, noted that Opposition MPs were inclined to speak against bills and then pass them to the Senate. He accused them of evading responsibility. Three Labor amendments to the bill were defeated on party lines and the second and third readings passed without divisions (Albanese 2004, Australian Parliament House, 2004b). The Senate referred the bill to its Legal and Constitutional Legislation Committee to report by October.

The tactical manoeuvres around this bill are probably more politically significant than the outcome. Several MPs criticised the bill as an attempt by the Government to drive a 'wedge' into the community, just as it did over border protection at the 2001 election. Rightly or wrongly the idea of wedge politics is now firmly associated with criticisms of the Howard political style (see, for example, Marr & Wilkinson 2003). In 2001, the Liberals had an election poster headed, 'We decide who comes to this country and the circumstances in which they come', and profited from subsequently discredited claims that asylum seekers had thrown children overboard. If the Government fears that many religious people are considering voting Labor to register a protest against the treatment of asylum seekers and deceit over the justification for military action against Iraq, it might well see the marriage bill as a means of deterring them. It is not difficult to envisage the kind of poster the Coalition parties might produce in 2004, or to imagine the kind of misinformation that might vilify same-sex couples.

In a parallel development, in response to decisions by individual state jurisdictions and the courts, the Bush Administration has sponsored moves to tighten the definition of marriage in the United States. The US Senate rejected a constitutional amendment proposed by Republicans to define as lawful only those marriages involving a man and a woman (Broffman & Henry 2004). While the Australian situation is different in some respects, the coincidence in timing is interesting. American conservatives see the family as a bulwark of western society against external threats, and the Australian Government has supported the US 'war on terror' enthusiastically.

As the election approaches, the Government would no doubt appreciate the opportunity during the coming campaign to criticise a combination of Labor confusion and Senate obstruction over the marriage legislation. That is the kind of union that the Government could enthusiastically endorse.

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Marriage - We won!

On Friday August 13, the federal senate passed into law the Marriage Amendment Bill 2004. Now our courts cannot change the definition of marriage away from "a man and a woman". We have been looking forward to this day.

.12, 500 or more submissions were received by the senate inquiry into the slightly longer, slightly older Marriage Legislation Amendment Bill 2004, most submissions for the heterosexual definition of marriage.

Well over a thousand people attended a National Forum in Canberra on August 4, visibly moving John Howard and Labor's Nicola Roxon.

PM announced at the National Marriage Forum that he intended to re-introduce the shorter marriage bill within two weeks and opposition attorney general Nicola Roxon stated that Labor would support it.

"Twenty-one Reasons Why Marriage Matters" booklet was launched.

Our efforts to get a marriage bill introduced and passed began last year with great insights and thoughtful negotiations, particularly by Richard Egan, Western Australian President of the NCC. The pace over June and July, the letters, phone calls, submissions and the National Marriage Forum, the refusal to accept politicians' promises, only delivered results, has paid off.

On the forecast are a possible High Court challenge and moves to legislatively create "civil unions" to give homosexual unions the analogous recognition of marriage.

Legislatively creating "civil unions" is one step short of changing the definition of marriage, and would achieve much of the same damage.

Socially, Australia is seeing a process of making homosexuality acceptable and glamorized in the media.

However, as with the Northern Territory euthanasia victory, our political success puts us in a place where we can, much, much better combat moves to pull down marriage legally and socially.

<http://www.family.org.au/>  
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