Attention: Government Administration Select Committee

Submission on The Marriage (Definition of Marriage) Amendment Bill

by

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1. The Marriage (Definition of Marriage) Amendment Bill ("the Bill") commences in its Explanatory Note by stating its two purposes for amending the Marriage Act 1955 (the principal Act):

   (i) "…to ensure that its provisions are not applied in a *discriminatory manner*". [Emphasis added]

   (ii) to "… ensure that there is *equality* for people wishing to marry regardless of their sex, sexual orientation, or gender identity and will be in accordance with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993." [Emphasis added].

2. Proponents of the bill argue that the prohibition on same-sex marriage under the principal Act constitutes a breach of s. 19 ("Freedom from discrimination") of the New Zealand Bill of Rights Act 1990 [BORA] – (in conjunction with s. 6 of BORA), as it relates to one of the "Prohibited Grounds of Discrimination" referred to in s. 19(1) of BORA, as set out in s. 21 of the Human Rights Act 1993 [HRA] – namely s. 21(m) - "sexual orientation which means a heterosexual, homosexual. lesbian or bisexual orientation."

3. Section 19(1) of BORA states that "Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993" [HRA]. The Explanatory Note to the Bill implies that the provisions of the principal Act are not in accord with BORA and HRA by asserting that the proposed amendment (see point 1(ii) above) "… *will be in accordance* with" BORA and HRA. Furthermore, the Explanatory Note implies that the Act is deficient (lacking clarity) in its treatment of marriage when it asserts: "This Bill *will make it clear* that marriage is a union of 2 people regardless of their sex, sexual orientation, or gender identity." [Emphasis added]

4. This submission seeks to demonstrate that the provisions of the principal Act are not in any way deficient, as implied in the Bill – in the sense that they are allegedly open to abuse and can be readily applied "*in a discriminatory manner*". This flawed argument was central to the Court of Appeal case brought by the appellants – three same-sex couples in long-term relationships (lesbians) – in *Quilter v Attorney-General* [1998] 1 NZLR 523, and was rejected in the majority decision pf the Court.[1]

[1] In *Quilter v Attorney General* [1998] 1 NZLR 523 the Court of Appeal held that the Marriage Act 1955 applies to marriage between a man and a woman only and that this does not constitute discrimination. http://www.courts.govt.nz/publications/global-publications/c/civil-union-bill-relationships-statutory-references-bill/civil-union-bill

5. The majority of the Court agreed with the opinion and conclusions delivered by Tipping J, including:

   "The meaning of marriage referred to in the Marriage Act permits of *no other interpretation* than that of a marriage between *a man and a woman* who are not restricted from marrying one another for reasons listed therein [see Schedule 2 of Act for list]." [Emphasis added]

6. In a separate opinion Thomas J concluded that no other interpretation of the meaning is possible without "usurping Parliament's legislative supremacy" (p. 542). Indeed it was parliament's clear intentions – as set out under Schedule 2 – that marriage be understood as involving a man and a woman. The appellants themselves agreed that the principal Act could only be interpreted correctly in this way.

7. Throughout history and in virtually all human societies, marriage has always been considered a union between men and women. That was clearly understood by the New Zealand parliament when the Civil Union Bill was passed in 2004 to satisfy largely the demands of a tiny segment of New Zealand society - the GLBT (Gay, Lesbian, Bisexual and Transgender) community. The State should not now presume to re-engineer a natural human institution (by trying to legislate for a change in the definition of marriage) which the vast majority of New Zealanders do not want changed. (Most New Zealanders want government to focus on the major issues in its legislative programme, such as unemployment, law and order, the economy, education, health etc. and not be side-tracked by issues that amount to nothing more than social engineering).

8. Tipping J concluded in *Quilter v Attorney-General*, that Parliament's continuing recognition of traditional marriage is justified under s. 5 of BORA ("Justified limitations"), which retains the explanation for restrictions necessary in a democratic society. S 151(1) of the HRA safeguards the principal Act from having to be amended in terms of the definition of marriage - even if a degree of claimed "discrimination" could be demonstrated in the application of its provisions (which is not the case). Without such a court ruling establishing that the provisions of the principal Act are indeed deficient, no government should support a radical redefinition of the Marriage Act as proposed in the Bill.

9. Tipping J stated that the broad purpose of anti-discrimination laws is "to give substance to the principle of equality". This principle is not breached when the provisions of the principal Act do not allow a Registrar to issue a marriage licence to a same-sex couple, thereby preventing them from getting "married". Marriage between a man and a woman is recognised implicitly in the principal Act as a fundamentally different relationship to that involving a same-sex couple (see later discussion).

10. According to its sponsor, Labour MP Louisa Wall, the bill "seeks to define marriage as between two people *regardless of their sex, sexual orientation or gender identity*"[2]. It would thereby establish same sex marriage as lawful for the first time in New Zealand, should it be enacted into law. Wall claims it is "generally known as the bill that will enable marriage equality between consenting adults…"[3] by seeking to have the state sanction same-sex marriage as having the same status as heterosexual marriage. [Emphasis added]

[2] Louisa Wall. First Reading 29/09/12. Hansard. Vol. 683, p. 4913
[3] Ibid

11. As Stanley N. Kurtz has argued, this approach exhibits a fundamental "misunderstanding of the democratic ideal of equality"[4] and runs counter to the true nature of the real world where real distinctions do exist. Citing a number of academic "queer theorists" and radical gays he notes that they have long argued that "homosexuality is by its very nature incompatible with the norms of a traditional monogamous marriage".[5] He has challenged the central contention advanced by Andrew Sullivan – a self-described "gay conservative" that marriage would do for gay men what it does for straight – i.e. "domesticate" their natural male impulse to promiscuity. Even if it did serve this role, that is irrelevant, as same-sex marriage remains fundamentally different from marriage in that it does not involve a woman and a man and cannot result in children from an act of sexual union involving both biological parents. Furthermore, the same-sex couple can never function as both a mother and a father to any child conceived (or adopted).

12. Acknowledging, in law, the distinctions between different kinds of human relationships and using and applying different legal nomenclature (e.g. civil union, marriage, de facto) does not constitute "unjustified discrimination", nor does it necessarily nullify the principle of equality embodied in "anti-discrimination laws" [BORA and HRA] when persons with different relationship status are treated differently in law.

13. The current Marriage Act 1955 deals with the particular form of personal alliance between males and females that society has decided needs and deserves special public endorsement – to serve "the public good". It makes no such provision for same-sex couples to marry, but does not specifically prohibit them from doing so. (Neither does it specifically exclude a man from marrying a family pet . Its 'failure' to do so does not point to a deficiency in the law !).

14. In *Quilter v Attorney-General* the Court of Appeal held that the principal Act applies to a marriage between a man and a woman and that this does not constitute discrimination. It is unlawful for a Registrar to issue a marriage license authorizing a same-sex marriage or solemnizes such a relationship as a marriage, based on this ruling.

15. Section 15 of the Marriage Act – "Marriages of persons within prohibited degrees of relationship void" - refers to Schedule 2 of the Act setting out "Forbidden marriages" as involving (section 1) a man in a relationship with any person belonging to 20 classes of person (e.g. [his]: grandmother, mother, sister, or daughter's sister), <u>all of whom are female persons.</u>

16. In the case of a woman (section 2), she cannot marry any of 20 classes of persons (e.g. [her]: grandfather, father, brother, or son's son), <u>all of who are male persons.</u> Sections 4 to 8 involve 12 male/female "forbidden" pairings, four involving civil union partners.

17. Restrictions on marriage based on age are set out in section 17 and 18 of the Act. No person under the age of 16 can get married and minors under 18 must first gain consent from their respective parent(s) or guardian(s); or from a District Court Judge, before they can marry. The law against bigamy (feigned marriage) contained in s. 205 of the Crimes Act 1961, prevents a married person marrying or entering a civil union with any other person.

18. All of these justified prohibitions are supported by <u>reasonable grounds in law</u> and prevent a significant number of New Zealand citizens being able to marry certain persons, should they wish to for whatever reason. For example, a man may dearly love his civil union partner's

[4] Stanley Kurt, What is wrong with gay marriage. www.orthodoxytoday.org/articles/KurGayM.php
[5] Ibid

daughter but he cannot lawfully marry or form a civil union with her, even if his civil union or married partner dies. And yet, despite these well-known facts, the Bill's sponsor, Louisa Walls, stated in parliament:

"There is no reasonable ground on which the state should deny *any citizen* the right to enter the institution of marriage if he or she chooses. *That is not the process of inclusion*…"[6] [Emphasis added]

19. Ms Wall demonstrated here to all New Zealanders her fundamental misunderstanding of the principal Act which, as an instrument of the State, does not allow "any citizen" to get married. Contrary to Wall's assertions, its prohibitions are based on "reasonable grounds" set out in law. Her apparent belief that "the process of inclusion" must trump or 'laud' it over all forms of lawful discrimination is at complete odds with the law, which allows for "justified discrimination" and even "indirect discrimination" in certain circumstances.

20. A supporter of the Bill at its 1st Reading, National MP for Auckland Central, Nikki Kaye, sought to justify the need for same-sex marriage based on the claimed failure of the Civil Union Act because it "did not guarantee every New Zealander the ability to marry the person they love. It did not guarantee an equality of status relationship". Here again New Zealanders witnessed the same logically flawed reasoning demonstrated by Ms Wall.

21. It is noteworthy that the sponsor of the Civil Union Bill, "gay" Labour MP Tim Barnett, stated at its 1st Reading: "The Civil Union Bill is an acceptable alternative, marriage can remain untouched." The Prime Minister at the time, Rt Hon, Helen Clark (Labour) stated: "Marriage is only for heterosexuals. The Government is not – underline – not, changing the Marriage Act. That will remain as an option only for heterosexual couples." (NZ Herald June 23, 2004).

22. S. 65 of BORA dealing with "indirect discrimination" was appealed to by the appellants in *Quilter v. Attorney-General* and Tipping J. dealt with it. It is one thing, he noted, to identify such (alleged) discrimination, but quite a different matter to establish that it constitutes unlawful *discrimination* – the appellants failed to establish the latter. Indirect discrimination he noted is defined as conduct and other actions having the "effect of treating a person or persons differently on one of the prohibited grounds of discrimination". [Emphasis added]

23. Tipping J wrote: "The essence of discrimination lies in differences of treatment *in comparable circumstances.* For discrimination to occur one group of persons must be treated differently from another person or group of persons" (p. 573). [Emphasis added].

24. This means that there are lawful grounds for treating a person differently (discriminating) based on for example sex (a prohibited ground under s. 21 of HRA), but not if the circumstances involve comparable circumstances. It is absurd to even suggest that withholding a marriage licence from a same-sex couple, under the provisions of the principal Act, but issuing one to a man and a woman who wish to marry, and who qualify, constitutes "comparable circumstances".

25. As noted, the Marriage Act that Ms Wall's bill seeks to radically alter is based on the universal view accepted throughout history and in virtually all human societies, that marriage has always been a union between men and women. As Green MP Metiria Turei stated at the 1st Reading of

[6] Louisa Wall. First Reading 29/09/12. Hansard.

the Civil Union Bill: "Marriage as understood in our society, and as formalised in law, is a specific culturally and historically bound institution."

26. Every man in New Zealand has a right to marry a woman in New Zealand if they are both legally entitled to do so and both agree of their own free wills to be a party to this life-long commitment and to solemnise it in the manner as set out in law. Likewise, any legally eligible woman has the corresponding right with respect to any legally eligible male partner.

27. To reiterate, neither a male nor female has any legal right in New Zealand to marry a same sex partner under New Zealand law at present and the Marriage Act has been ruled by the Court of Appeal as not involving any discrimination (against the three lesbian couples who had been denied marriage licences). It can be stated categorically and unequivocally that the Act does not discriminate against the LGBT community. There is no justification in law to have it amended.

28. When The Relationships (Statutory References) Act was passed on 15 March 2005 to remove discriminatory provisions on the basis of relationship status from a range of statutes and regulations, no changes were made to the Marriage Act 1955 to make it possible for same-sex couples to gain a marriage licence. The Relationships Act was a companion piece of legislation to the Civil Union Act 2004, and the New Zealand public was assured that it would ensure that the GLBT community gained all the rights and obligations possessed by those with (heterosexual) marriage status, by way of their chosen "gay" alternative to marriage – the civil union.[7]

29. The Human Rights Amendment Act 2000 requires that government activities be subject to the anti-discrimination standards set out in s. 19 of BORA and s. 21 of HRA. Prohibited grounds of discrimination include sexual orientation, as noted. The Court of Appeal took full account of the claims of discrimination voiced by the lesbian couples based on "sexual orientation" and rejected them. Until this Court judgment regarding alleged discrimination against same-sex couples is overruled in the courts there can be no case for parliament to enact any change to the Marriage Act 1955 based on the claimed "rights" of the GLBT community and/or their supporters.

30. The notion of "same-sex marriage" is an oxymoron. Marriage by its very definition must involve the union of a male and a female, two opposite and complementary genders that together constitute the full and only complete definition of our true humanity – in that through that unique natural (heterosexual) union, offspring can potentially be produced who can benefit in the nurturing/maturation process offered from their two loving biological parents (male and female).

31. This biological reality – that is in part the basis for defining a particular relationship as marriage - based on the gender differences of the two persons - does not demean, degrade, or dehumanise loving relationships, between any two other persons, irrespective of sex, sexual orientation of gender identity.

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[7] The provisions in the Bill are based on the provisions for marriage but have been modernised to reflect current law, policy, and practice. The Bill sets out the requirements for civil union in the form of a stand-alone Act to reinforce Parliament's intention that marriage is available solely to a man and a woman.

http://www.courts.govt.nz/publications/global-publications/c/civil-union-bill-relationships-statutory-references-bill/civil-union-bill

32. Same-sex couples in New Zealand obtained the means to have their relationships protected in law after the Civil Unions Act 2004 was passed that made civil unions legal on 26 April 2005. The GLBT community recognized it as granting them essentially the same rights and obligations as heterosexuals who chose to get married. Over the seven years since the Act took effect (2005-2011) only 696 homosexual couples and 989 lesbian couples have entered civil unions, clear evidence that this relationship status is not high on the popularity stakes.

33. Preserving and upholding the true concept of marriage as involving one man and one woman - affirms and celebrates diversity of human relationships in the sense that it does not affirm or attempt to enshrine or capture a principle or principles which are fundamentally opposed to its true nature and which are instead fundamental to and descriptive of other types of human relationships. For example, from an anatomical/biological aspect, the sexual activity engaged in by a same sex couple, regardless of their level of commitment to one another etc, can never be the same as that engaged in by a heterosexual married couple. Same-sex couples cannot contribute to procreation involving offspring sharing both married partners as biological parents. Such a relationship is fundamentally different to marriage.

34. Andrew Sullivan, a self-described "gay conservative" writing in a New Republic editorial says that gay men have no interest in marriage if it carries the expectation of fidelity. William Bennett in a Newsweek editorial argues that same-sex marriage would fatally undermine the already weakened institution of marriage by breaking the bond between marriage and the principle of monogamy.

35. Heterosexual marriage sanctions loyalty, unselfishness, and sexual fidelity and rejects promiscuous, self-serving transitory relationships. While those seeking civil validation of a same-sex "marriage" may claim to seek to uphold sexual fidelity etc, it is not the upholding of these ideals that constitute it a marriage. Same-sex relationships always fall short of the one criterion that defines a marriage – it always involves one man and one woman.

36. Proponents of the Bill claim that there exists some universal "human right" that:

    (i) entitles any eligible person who is in love with any other eligible person, "*regardless of their sex, sexual orientation or gender identity*", to marry them with State approval, and

    (ii) entitles any couple, "*regardless of sex, sexual orientation or gender identity*" to found and form a family. However, no such "rights" are found in the Universal Declaration of Human Rights 1948 or any other such international declarations.

37. If marriage were really a universal legal right of all who sought it, then it would have to be redesigned in the form of a contract, which any group of parties could form whatever sort of alliance they chose. Many critics of traditional marriage would applaud this approach because for them marriage is a vessel with no particular content, one of a menu of sexual lifestyles, of no fundamental importance to anyone outside the given relationship.

38. Same-sex marriage has enormous subversive potential to destroy the fabric of society in which traditional marriage is a cornerstone. Gay activists are already arguing for an experimentation with "novel family configurations" involving sperm donation, open marriage, group marriage and polygamous marriage. Websites have been set up by polygamists' rights organizations, polyandry and polyamorism advocates, all poised to exploit any State approval of same-sex marriage. Other groups with dossiers of victimisation and claims to stigmatization are bound to

seek law changes on the back of any redefinition of marriage and approval of same-sex "marriage".

39. If in the application of the provisions of the law any male who fulfils all the legal requirements to enter into a marriage with a woman, cannot obtain a marriage licence *because he is a male*, then unlawful discrimination has indeed occurred. Likewise, if the application of the law any female is prevented from getting married to a male, *because she is a female*, then unlawful discrimination has occurred.

40. However, despite claims to the contrary from the sponsor the Bill, a woman who is a lesbian who is prevented under the Marriage Act 1955 from marrying a female (lesbian) is NOT unjustly discriminated against *because she is a woman or because she is lesbian*. No woman is entitled to marry women, so she (the lesbian) is being treated no differently than any other woman. Likewise, a man who is a homosexual and who is prevented under the Marriage Act 1955 from marrying a man, is likewise, not unjustly discriminated against *because he is a man or because he is homosexual*. No man is entitled to marry a man, so he (the homosexual) is treated no differently than any other man.

41. In *Ministry of Health v* Atkinson [2012] NZCA 184, the Court ruled: "In determining whether there was a breach of s. 19 [of HRA] … the "essence" of discrimination lay in treating persons *in comparable circumstances differently*."[8] [Emphasis added]

42. To illustrate the point of logical fallacy underlying the spurious claims of "unjustified discrimination" in the provisions of the Marriage Act advanced by the proponents of the Bill, consider the following hypothetical example. A well-known Maori activist files a complaint with the Humans Rights Commission (HRC) over a perceived unjustified discrimination he experienced when he sought to hire a publicly available wooden hall to stage a seminar on ancestral Maori fire-making techniques involving live demonstrations. His application was rejected he claims, based *solely* on the fact that he is a Maori. He appeals to the HRC based on the fact that "race" is one of the "prohibited grounds of discrimination" under s. 21(1)(f) of the HRA. He gains huge public support for the perceived "injustice", "lack of equality" and "lack of inclusion", after taking the matter to the media, but when finally the HRC Tribunal examines the case, it turns out that he failed to read the conditions for the hall hire and the rejection notice carefully. His application was actually rejected because of legitimate safety concerns. However, he argues in his appeal against the HRCT that his planned activity was not *specifically* noted in the list of 20 prohibited activities (e.g. others such as use of fire works) listed on the policy. The HRCT dismiss his appeal on the basis that their records show that all applicants planning to engage in risk constitute "comparable circumstances", including the Maori activist's, and demonstrate that all have been treated the same – ALL applications involving "comparable circumstances" had been rejected. The Maori activist's case for unjustified discrimination fails.

43. Proponents of the Bill state that the final barrier before full LGBT formal and substantive equality in New Zealand can be achieved only when: (i) Same-sex couples have a right to adopt children as a couple, and (ii) Same-sex couples have a right to marry.

[8] The established test for a breach of s. 19 is to first ask whether the claimant group has been subjected to a different treatment or effects, compared with a group in an analogous situation on the basis of a prohibited ground of discrimination. The second step is directed to whether that treatment has a discrimination impact.

44. They acknowledge that the Civil Union Act granted same-sex couples every legal privilege granted to married heterosexual married couples, with the exception of ii) and (ii) noted above. In effect they are asserting that these two claimed "rights" were deliberately denied them due to a claimed "homophobic" element – involving "unjustified discrimination" - within parliament and those who influenced MPs. And yet at the time, as noted, the GLBT community and their supporters claimed that at the Civil Union Act achieved all that they had hoped for and that the Marriage Act 1955 would not ever require amendment. It is disingenuous to complain about "rights" being taken away when "rights" never existed in the first place.

45. The first demand made by the GLBT community, often referred to as "the right to found and form a family, regardless of sexual orientation or gender identity" (as noted above), is based on a flawed view of what actually constitutes discrimination as opposed to justified discrimination under the HRA and Bill of Rights Act 1990. Section 5 of BORA recognises "justified discrimination" as not in breaching HRA.

46. Tipping J. in *R v Hansen* [2007] set out the approach to be taken in such determinations. It essentially requires a consideration of the importance of the objectives of the policy, the link between the limit imposed by the policy and the policy's purpose and overall proportionality. The questions that need to be asked in any legal determination are: (i) Is the limiting measure rationally connected with the policy's purpose? and (ii) Is a complete prohibition justifiable?

47. Dr Paul Hutchison noted in the First Reading of the Bill: "Currently a female adult in New Zealand can adopt both a boy and a girl, but a male can adopt only a boy and only in exceptional circumstances a girl." It was with deep concern that he noted that should the marriage redefinition bill become law ", that will change"

48. The 'discrimination' that exists under current law against single men adopting girls, can be well understood by mature adults. It is a justified limitation under s. 5 of BORA - "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". However, with the growing number of criminal cases highlighted in the media involving paedophiles (men) and young boys, law-makers may need to rethink adoption laws in terms of suitability criteria applied to those making applications to adopt children.

49. The current adoption law does not permit a same-sex couple adopting a child and the GLBT community claims this is discriminatory. However, there is no case law that establishes this to be the case. If parliament insists that same-sex couples are to be to legally permitted to adopt children, this must not be legislated for until the comprehensive Review of the Adoption Law has been studied and changes must be undergirded by sound research establishing that such children will not be disadvantaged by being denied parents of both genders in such arrangements. Neither the Family Commission or the Ministry of Social Development have carried out any such long-term studies and it is not acceptable for these agencies to just rely on the results of the few such studies that have been carried out overseas.

50. The marriage redefinition Bill seeks to obtain adoption "rights" for same-sex couples by stealth, by means of corrupting the plain and universally accepted definition of the terms "marriage", so that any member of a same-sex "marriage" can be redefined as "spouse". The concept of same-sex marriage as noted, is an oxymoron, given the fact that the meaning of marriage is anchored by the complementarity of the sexes. Male and female complementarity is biologically based and this is unlikely to disappear.

51. It is useful to summarise at this point the key arguments the Bill's supporters are using to have marriage redefined to include same sex couples. The first is claimed to be based on the principle of justice and fairness (civil rights argument). As explained this is flawed approach as it is seeking to achieve a fair, just and equitable outcome by means of falsely equating two fundamentally different human relationships as being of the same status and function, when clearly they are not. The second is personal and more utilitarian, emphasising the degradation and unhappiness attendant upon the denial of gay marriage and conversely, the human and social happiness that will flow from its legal establishment. Such arguments are spurious because they again ignore the real distinctions between the true nature of marriage and gay marriage.

52. Traditional marriage defines in the fullest sense the true nature of our humanity. Only the sexual union of man and woman is illustrative of the true human concept of "unity in diversity" that defines humanity and inextricably binds successive generations together …. ("And they shall become one flesh … [two shall become one] … go forth and multiply" Genesis 1:28; 2:24). As Sam Shulman states: "Marriage is how we are connected backward in time through the generations to our Creator [in whose image we are made Genesis 1:27] … and forwards to the future beyond the scope of our life-span".[9]

53. Again we must reiterate: gay marriage is an oxymoron. Neither the "union" of same-sex "marriage" partners nor their "disunion" partakes of the act of creation. When divorce takes place in a traditional marriage there is a rent in the very fabric of society. As the Talmud teaches: the Creator weeps over every marriage divorce. The vessel that had the potential to perpetuate the human species is torn asunder. Children born of such a union are denied the regular loving support of biological parents they deserve - from a mother and a father, living in the close proximity of a domestic setting.

54. The following quotes from Shulman sets out concisely the orthodox view of marriage.

> "The truth is banal, circular, but finally unavoidable; by definition the essence of marriage is to sanction and solemnize that connection of opposites which alone creates new life (Whether or not a given married couple does in fact create new life is immaterial). Men and women can marry only because they belong to different, opposite sexes. In marriage, they surrender these separate and different sexual allegiances, coming together to form a new entity. Their union is not a formalizing of romantic love but represents a certain idea – a construction, an abstract thought – about how best to formalize the human condition. This thought embodied in a promise or a contract, is what holds marriage together, and the creation of this idea of marriage marks a key moment in the history of human development, a triumph over the alternatives that is concubinage."[10]

55. "… Marriage can only concern my connection to a woman (and not to a man) because, as my reference to concubinage suggests, marriage is an institution that is built around female sexuality and female procreativity. (The very word "marriage" comes from the Latin word for mother, *mater*.) It exists for the gathering-in of a woman's sexuality under the protective net of the human or divine order, or both. This was so in the past and it is so even now, in our supposedly liberated times, when a woman who is in a sexual relationship without being married is, and is perceived to be, in a different state of being (not just a different legal state) from a woman who is married.

[9] Sam Shulman. Gay Marriage – and Marriage. www.orthodoxytoday.org/article2/SchulmanGayMarriage.php
[10] Ibid

Gay marriage takes something that belongs essentially to women, is crucial to their very freedom, and empties it of meaning."[11]

56. Shulman addresses the question "WHY SHOULD I not be able to marry a man?"…

"The question addresses a class of human phenomena that can be described in sentences but nonetheless cannot be. However much I might wish to, I cannot be a father to a pebble--I cannot be a brother to a puppy--I cannot make my horse my consul. Just so, I cannot, and should not be able to, marry a man. If I want to be a brother to a puppy, are you abridging my rights by not permitting it? I may say what I please; saying it does not mean that it can be."[12]

57. "In a gay marriage, one of two men must play the woman, or one of two women must play the man. "Play" here means travesty--burlesque. Not that their love is a travesty; but their participation in a ceremony that apes the marriage bond, with all that goes into it, is a travesty. Their taking-over of the form of this crucial and fragile connection of opposites is a travesty of marriage's purpose of protecting, actually and symbolically, the woman who enters into marriage with a man. To burlesque that purpose weakens those protections, and is essentially and profoundly anti-female."[13]

58. To achieve a family a lesbian has the option of artificial insemination or carrying another woman's surgically implanted fertilized egg. A gay man has the option of surrogacy.

59. Gay partnerships are capable of being recognised by the law in New Zealand and yet over the last seven years only a negligible number of couples from within the GLBT community have entered into civil unions. This strongly suggests that despite all the vociferous and flamboyant claims made at that time by this community that they urgently needed to gain legal recognition of their relationships, in order to de-stigmatize their sexual lifestyle-choices in the eyes of the wider public, reduce gay suicide rates, empower their members and seize the privileges and responsibilities that accompany civil union status; their arguments appear extremely hollow, if not disingenuous.

60. In the Netherlands same-sex marriage has been legal since 2001 and yet only 4% of the Dutch homosexuals have married during the first five years of the legislation. As noted earlier, gay radicals and academic "queer theorists" argue that "homosexuality by its very nature is incompatible with the norms of traditional monogamous marriage" [fidelity], and this undoubtedly explains in part the low take-up rate of "marriage" among homosexuals.

61. Parliament has no authority to redefine the meaning of marriage to include same-sex "marriage". Those heterosexuals who have entered the state of marriage have rights not to have this institution tampered with by those who have only been temporarily empowered to be lawmakers – as representatives of all New Zealand's citizens. A redefinition of marriage will have far-reaching implications for generations to come and yet no evidence has been put forward by proponents of this flawed private member's Bill that any costings projections have been determined to fund the huge array of amendments that will need to be made to existing laws to take account of the redefinition of marriage.

[11] Ibid
[12] Ibid
[13] Ibid

62. The State has no legitimate interests in noting who is in a committed relationship. It does not need to distinguish between those sharing accommodation as mere flatmates and those who have amalgamated their interests for the foreseeable future. The State does however, allocate rights and responsibilities on the basis of amalgamations such as welfare entitlements and tax credits.

63. Every culture has recognised the unique nature of the amalgamation we call marriage as being associated with procreation and therefore has a vital and ongoing interest in the well being of this human institution – civil marriage. By conferring on marriage partners certain benefits – for example the right to adopt children – the State cannot be accused of treating such relationships as more "worthy" than others. It merely recognises the rights of children to be brought up by a mother and a father, (if at all possible).

64. The Adoption Act 1955 allows "two spouses" or any individual, male or female, irrespective of sexual orientation, to adopt a child, but does not allow a gay couple to adopt a child as a couple. Same-sex couples can share the parenting of a child as legal guardians, but if one is the biological parent (by means of IVF for example), the other non-biological parent cannot be a legal parent.

65. Proponents of the marriage redefinition Bill claim that restricting the right to adopt to couples who are married or to opposite sex de facto couples amounts to "discrimination" under HRA and BORA. However, parliament is entitled, as noted, under s. 5 of BORA to engage in "justified discrimination" if it can adequately justify this restriction. It is universally accepted that primary consideration must be given by the State to the best interests of the adopted children who are will benefit best if they are placed with a domiciled adopted mother and father.

66. If the Bill is enacted into law "married" same-sex partners will become "spouses" in one sense of the word (i.e. spouse = "a person's partner in marriage" Collins Dictionary). However, "spouses" are either husbands or wives and it is absurd to refer to members of a same-sex "marriage" as either a husband or a wife.

67. Proponents of the Bill are aware that only "spouses" can adopt children according to s. 3 of the Adoption Act 1955. They reason that because a same-sex "marriage" is (allegedly) "equivalent" to a heterosexual marriage, then once this "fact" is enshrined in law via the marriage redefinition Bill, same-sex "married" couples will then be entitled to adopt children jointly, because they are constituted as "spouses" under the law. However, this line of reasoning is flawed because the case for "equivalence" upon which it is based is itself flawed as noted. Laws cannot be amended or created to embody that which is logically absurd!

68. The Bill deliberately divests the true meaning from the word "marriage" and "spouse", thereby achieving a perceived (and faulty) "equivalence status" between same-sex marriage and traditional marriage, and thereby supposedly strengthens the case for adoption "rights" for same-sex "married" couples based on anti-discrimination laws. In reality the Bill highlights the absurdity of efforts to incorporate an oxymoron into the fabric of New Zealand family and societal law.

69. In June 2010 the High Court ruled that the word "spouses" contained in s. 3 of the Adoption Act 1955 could include a man and a woman in an unmarried stable and committed relationship. However, one or both de facto partners would still have to be a parent of the child in the case of an adoption order. The right to adopt currently remains restricted to couples who are married, or to opposite sex de-facto couples. If the Bill became law gay-rights activists insist that it would

necessitate amendments to the Adoption Act 1955 to remove the perceived "discrimination" against gay "married" couples. This would inevitably lead to "de facto" gay-couples claiming the right to adopt children using the "equivalence" argument based on the 2010 High Court case cited.

70. The ruling of the full bench of the Court of Appeal in *Ministry of Health v Peter Atkinson* CA 205/2011 [2012] NZCA 184 and the ruling of the *Supreme Court in Air New Zealand v McAlister* SC 49/2008 [2009] NZSC 78 dealt with the proper interpretation of s 5 and s. 19 of BORA. In both cases – the question of whether there is discrimination was shown to be distinct from whether it is justified.

71. "Adoption equality" and "Marriage equality" are inextricably linked to the GLBT "rights" agenda and both demands 'ride on the backs' of accusations of "discrimination" leveled against the State in terms of its Adoption Law 1955 and Marriage Act 1955. However, these claims are spurious, logically flawed and legally incorrect. As both the Court of Appeal and Supreme Court have ruled, merely demonstrating discrimination is not the same establishing in law the fact of <u>unjustified</u> discrimination.

72. There have been no court decisions issued supporting the above accusations of unjustified discrimination of same-sex couples/individuals involving either the Marriage Act or the Adoption Act. The only "live" complaint we are aware of in this matter is a complaint lodged by Adoption Action Inc. to the Human Rights Commission that current adoption laws allegedly breach BORA and HRA. The complainant is a Society (Reg. No. 2540117) incorporated on 7 September 2010. It appears to be a tiny political lobby group with no involvement in providing adoption services.

73. Just as the biblical sign of the rainbow appears to have become a "shibboleth" to the GLBT community, the terms "equality", "discrimination", "inclusion", "diversity" and "human rights" appear to have been progressively divested of their real meaning to emerge as mere signifiers of a powerful GLBT agenda: one constantly and relentlessly agitating for 'progressive' change and driven by its politically-active members possessing a shared character: the claimed "victimization/stigmatisation syndrome".

74. The sponsor of the bill, Louisa Wall, stated in parliament at its first reading:

    "Denying same-sex marriage is "discrimination" and reinforces the power of traditional churches by endorsing their morality and by allowing them to perform the function of the state."

    Such erroneous claims are breathtaking and typical of the rhetoric used to advance the GLBT community's agenda to dismantle the traditional understanding and definition of marriage that is rooted in the Judaeo-Christian world-view that has undergirded and sustained our culture. As Hamilton West MP Tim Macindie stated in parliament on the first reading of the bill: "for many New Zealanders our attitude is also deeply embedded in our Christian belief in the sanctity of marriage."

75. The bill's supporters appear to view the function and meaning of marriage licence as no different to that of a passport, or a driver's licence or a dog licence, expressing this faulty view in parliament during the Bill's 1st Reading. They argue that just as any person who is eligible to obtain such documentation, regardless of sex, sexual orientation or gender identity, can do so; so too should any person regardless of sex, sexual orientation or gender identity, be able to obtain a

marriage licence. The line of reasoning is puerile. It is seriously flawed reasoning. Marriage by definition involves a male and a female. The Marriage Act makes no provision for same-sex marriage. It is only by changing the definition of marriage that marriage licences can be offered to same-sex couples.

76. Greem MP Kevin Hague, who told parliament he had been with his same-sex partner for 28 years, while arguing in favour of the Bill at its first reading, stated:

    "All the time that heterosexual couples have access to the status of marriage and we [the GLBT community] do not, a message is sent that we are less than normal. If anyone disputes that, imagine if the situation were reversed. How would heterosexual people feel if they could not marry?"

77. This type of blatant rhetoric that is so appealing to many MPs supporting the Bill is common among those expressing GLBT "rights" arguments and who attempt to exploit the "stigmatization/victimization syndrome" for pragmatic reasons. It is logically flawed because it begs the question in favour of Hague's/GLBT view that heterosexual and homosexual marriages are in fact equivalent and should be treated as identical relationships under the law: same-sex couples deserving, as of right, in his view the identical privileges and responsibilities conferred on married couples by the State. However, Hague fails to establish that the two relationships are equivalent. If equivalence was so obvious then why has there been so much controversy over same-sex marriage and why has the "equivalence" viewpoint so rarely been accepted in societies throughout the world? Clearly this GLBT position on "equivalence" must be rejected on rational and logical grounds. This submission has demonstrated why they are not equivalent.

78. Every right and responsibility that heterosexuals enjoy in the married state, must, in the view of the Bill's supporters, as of right, be extended to those who grow up and find themselves emotionally different to heterosexuals. But what about men and women who are emotionally different to normal people and who are attracted to 15 year olds of the opposite or same sex, or women who feel they emotionally require two husbands? Do they all have a right to have their emotional needs legitimized in law? Of course not! Our laws draw a strict line of prohibition with respect to these illicit relationships.

79. It was not too long ago that New Zealand had a law that criminalised all male homosexual sexual activity – a law that sought primarily to empower the police to curtail the offensive and lewd sexual behaviour of some male homosexuals carried out largely in public toilets – the so-called "anti-sodomy laws". Now that homosexual activity has been decriminalized, it does not follow that their claimed "rights" based on their emotional sexual needs require the State to sanction such activity by allowing them to marry. A male does not have a right to marry any woman he finds he has an "emotional need" for, even if she agrees to marry him, because Schedule 2 of the principal Act lists a number of prohibitions.

80. This submission urges parliament to reject the Marriage (Definition of Marriage) Amendment Bill and instead devote it energies to strengthening traditional (heterosexual) marriage because it is, and always has been, the foundation of every civil society. It enables societies to flourish. Among the many benefits it confers on society, it encourages the raising of children by the mother and father who conceived them. Every man and woman who marries is capable of giving any child they create (or adopt) a mother and a father. This is not the case for same-sex couples.

81. If members of parliament are determined, despite massive opposition, to continue to support this flawed and subversive Bill, then they must radically amend it to safeguard the rights of Marriage celebrants and those engaged in any commercial services involving Marriage from being forced to participate in a statutory function or business role that involves them having to treat same-sex marriage as the same as traditional marriage. In particular S. 29 of the Marriage Act should be amended to safeguard in the fullest sense, the rights of marriage celebrants to NOT "marry" same-sex couples who have obtained marriage licences and have come to them to solemnise their relationship.

82. If the Bill becomes law, a prima facie case of discrimination will exist based on s. 19 of BORA and s. 21 of HRA, if celebrants refuse to marry same-sex couples. The GLBT community will no doubt lodge complaints with the Human Rights Commission over such actions by celebrants opposed to "gay marriage". A defense mounted by the celebrant based of sections. 5 and 6 of BORA would be costly, as it would inevitably involve lawyers.

83. If this Bill is passed into law as drafted it will not fully satisfy many in the GLBT community. It will be seen to fall short of the changes required to fully de-stigmatise their members and remove their feelings of vulnerability based on perceived discrimination. Just as the Civil Union Act has proved to be largely irrelevant, this Bill will not achieve any real gains for the wider "public good", but rather will open up a new cycle of "gay-rights" demands. Some countries only recognise same-sex "marriage" if one partner has had gender reassignment therapy. There are no provisions in the Bill taking specific account of the special "rights" of transgender, intersex and bisexual persons, who according to the Bill are entitled to get married to any partner of their choice.

CONCLUSION: Parliament has no authority to redefine marriage and should not presume to engineer changes to a natural institution that constitutes the very fabric of society. Marriage is foundational to understanding and expressing the true nature of our humanity comprising the complementarity of the sexes in true union and the procreation of new life issued from that true union. Same-sex couples have the freedom to form meaningful and legally recognised relationships under the Civil Union Act. The concept of same-sex marriage is an oxymoron. Marriage by definition involves a man and a woman and its unique and distinctive quality must be preserved, protected and promoted by the State. The Marriage (Definition of Marriage) Amendment Bill should be rejected. The explanations provided in the Bill for amending the principal Act are legally flawed. Amendments to the Civil Union Act rather than the Marriage Act should be the means by which the GLBT community address their issues of inequality, denial of "rights" and claimed discrimination etc.

Society for Promotion of Community Standards Inc.