The Status of Marital Status

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Introduction

When the Civil Unions Bill 2006 was introduced into the ACT Legislative Assembly on 28 March 2006 it constituted a direct challenge to marriage. Section 5(2) of the Bill asserted that "A civil union is different to a marriage but is to be treated for all purposes under territory law in the same way as a marriage." ACT Chief Minister Jon Stanhope said he would establish separate celebrants for civil unions to overcome Commonwealth objections to using marriage celebrants.

The federal Attorney-General, Philip Ruddock, responded saying that Commonwealth law dictates that a marriage can only take place between a man and a woman. Furthermore he said that the ACT Civil Unions Bill sought to portray the unions as marriage in every way but name, including the use of civil marriage celebrants.

"We've made it very clear to Mr Stanhope that if he persists with the legislation that he has in its present form, that he seeks to portray civil unions as marriages, then we will use the powers we have in relation to marriage and the powers we have in relation to territories to ensure that is undone," Mr Ruddock said.[1]

The Civil Unions Bill 2006 was passed by the ACT Legislative Assembly on 11 May 2006. On 13 June 2006 the Governor-General in Council exercised his power under the Australian Capital Territory (Self-Government) Act 1988 to disallow by instrument the Civil Unions Act 2006. On 15 June 2006 a motion to disallow this instrument was defeated in the Senate by 32-30. This action stopped a second Australian jurisdiction from introducing legal registration of a same-sex relationship.

The first Australian legislation to provide for legal registration of a same-sex relationship was the Tasmanian Relationships Act passed in 2003.

These Tasmanian and ACT laws raise many questions:

- What is marriage?
- What is happening to marital status?
- What aspect of civil unions or registered relationships challenges marriage?
- What are the similarities and differences between marriage, civil unions and registered relationships?
- How do civil unions or registered relationships threaten marriage?
- How do social justice considerations apply to homosexuals?

This paper addresses these and related issues from a Christian perspective.

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What makes a marriage?

When my wife and I were married in 1965 the church service included a musical item sung by the choir while the bridal party withdrew to another room for the "signing of the register". This phrase is a reminder of an earlier era when the primary records of baptisms, marriages and burials were held in parish registers – as anyone who has tried to trace their family tree may have discovered. For example, in NSW from 1788 to 1855 the primary source of information on baptisms, marriages and burials is early church records now held by the NSW Registry of Births, Deaths and Marriages.[2]

From 1856 the official responsibility for recording such life events in NSW was assumed by the Colonial parliament with the formation of the Registry of Births, Deaths and Marriages. When the Commonwealth of Australia came into being on 1 January 1901, the constitutional authority for marriage was transferred to the Commonwealth.[3] This constitutional authority was first exercised with the passage by the Commonwealth Parliament of the Marriage Act 1961, which included provision for the States and Territories to continue their registries of births, deaths and marriages.[4]

Thus when our bridal party withdrew for the "signing of the register", what we actually did was sign the documents necessary for registration of the marriage under Australian law. One document was a Certificate of Marriage headed by the Australian Coat of Arms and the words: "Commonwealth of Australia – Marriage Act 1961". The certificate reads:

I, … having authority under the Marriage Act 1961 to solemnize marriages, hereby certify that I have this day at … duly solemnized marriage in accordance with the provisions of that Act and according to the rites of … between … and … in the presence of the undersigned witnesses.

Had the wedding service concluded without signing these documents, we might have been considered married by the church but we would not have been considered married under Australian law.

A few years after my wife and I were married, I attended the wedding of a Jewish friend. In his case, the marriage documents were signed and witnessed before the synagogue service commenced – so there was no withdrawal of the bridal party during the religious ceremony. They did not want any secular distraction from their wedding under the traditional Jewish canopy (or *chuppah*).[5]

In both these examples, the weddings conflated two distinct elements: a religious ceremony and secular documentation. When considering the status of marriage in Australia today we must focus not on the religious ceremony but on the secular process for solemnising and registering marriages, because they determine the implications of marriage under Australian law.

The legal effect of marriage

What kind of a legal entity is marriage? The primary effect of marriage is to confer on the couple a status that attracts certain responsibilities, rights and benefits.

The term "status" means "social position, relation to others or position of affairs"[6] and is often associated with rights and privileges. For example, a student who is granted "status" in a subject of a course of study is assumed to have passed that subject and to be eligible to proceed to the next level in the course.

Another example of status is that acquired with a driver's licence. Public roads are available for use by all members of the public but only people having the status of being licensed drivers may legally drive a car on public roads. The status of being a licensed driver is achieved by demonstrating competence in handling a vehicle and knowledge of road laws. A man may claim to be a "de facto driver", having the relevant competence and knowledge of road laws, but who declines to obtain a driver's licence. He may soon find that he is denied the privilege of driving on public roads if caught by the police.

Likewise, a person may acquire the status of being a licensed tradesman or registered doctor by satisfying the relevant conditions and undertaking to adhere to requirements of the trade or profession. Again, achieving that status entitles the person to privileges not available to other members of the public. A licensed tradesman or registered doctor is legally eligible for related employment, possibly at a higher salary than an unqualified person. It is in the public interest for tradesmen and doctors to be licensed or registered so that high standards of service are maintained.

Like these examples, the status of being married may be achieved by satisfying the relevant conditions – including being a man and a woman, neither of whom is already married, and pledging themselves to each other. The status of being married has many legal implications. For example, historically at common law a spouse could not give evidence against his or her spouse at a criminal trial, as explained by Wendy Harris of the Faculty of Law at the Queensland University of Technology:[7]

It has been long undisputed that at common law a spouse was incompetent to give evidence at a criminal trial against his or her spouse. The various authorities supporting that proposition are detailed in the judgement of Lord Wilberforce in R v Hoskyn[8] where it was noted that it was well established by the time of Coke in 1628. Those authorities based the incompetence on the doctrine of unity of husband and wife coupled with the privilege against self-incrimination, the danger of perjury and the repugnance likely to be felt by the public seeing one spouse testifying against the other.[9] Coke further suggested 'it might be a cause of implacable discord and dissention between the husband and the wife, and a means of great inconvenience'.[10]

Law reform has modified this common law doctrine so that today in Australia the competence and compellability of spousal witnesses seeks a balance between the desirability of having all relevant evidence available to the courts and undesirability of excessive disruption to marital and family relationships.[11]

Since marital status has many other legal implications it is important for marital status to be legally certain, which is why marriage is carefully defined in Australian law.

Marriage under Australian law

The Marriage Act prescribes several important requirements for how marriages are to be solemnised in Australia: celebrants, formalities, certificates and registration.

Celebrants

Since over 100,000 marriages are registered in Australia each year, ensuring that they all comply with the law is a major task. The Marriage Act addresses compliance by requiring that all marriages be solemnised by an authorised celebrant.[12]

Couples wishing to marry generally have three options for choosing a celebrant: ministers of religion, State or Territory registrars, or civil celebrants.[13] Ministers of religion of recognised denominations are entitled to seek registration as authorised marriage celebrants.[14] State and Territory registrars of marriages, for example in registries of births, deaths and marriages, are authorised marriage celebrants.[15] In addition, the Marriage Act provides for other "fit and proper persons" to be registered as marriage celebrants, sometimes called civil marriage celebrants.[16]

Formalities

Authorised marriage celebrants are required to ensure that the legal requirements for couples seeking marriage are met. The primary requirements are that advance notice is given, that the couple understand the nature of marriage and pledge themselves to each other in the presence of witnesses, that a Certificate of Marriage is signed and witnessed, and that the marriage is registered.

Advance notice of an intended marriage must be given at least one month before the wedding date. That advance notice must establish the identity of each party and the absence of any impediment to the intended marriage, such as prohibited consanguinity or an existing marriage.[17]

A celebrant, other than a minister of religion who may use the form of service authorised by his denomination, is required to ensure that the couple understand the nature of marriage by saying to them in the presence of witnesses, words such as: *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.*[18] Then the couple must pledge themselves to each other in the presence of witnesses.[19]

Finally, the celebrant must ensure that a Certificate of Marriage is signed and witnessed and that the marriage is registered with the State or Territory registrar of births, deaths and marriages.[20]

Certificates and registration

Once completed, marriage certificates become important legal documents for such purposes as applying for an Australian passport or establishing an entitlement to a superannuation benefit or a deceased estate. The Marriage Act affirms that: "Where a marriage has been solemnized by or in the presence of an authorized celebrant, a certificate of the marriage prepared and signed in accordance with section 50 is conclusive evidence that the marriage was solemnized in accordance with this section."[21]

The celebrant is required to submit both the advance notice and other official documentation of the marriage to the applicable State or Territory registrar of births, deaths and marriages.[22] Registration of the marriage is of primary importance. One reason is that a marriage certificate issued by an authorised marriage celebrant may be lost or destroyed. In such cases, a replacement marriage certificate can be issued by the registrar of births, deaths and marriages.

Furthermore, a marriage certificate issued by a religious or civil celebrant is not sufficient for some purposes, for example when the risk of forgery is too great. When applying for a passport in a married name that is different from that on a birth certificate, a marriage certificate issued by a registrar of births, deaths and marriages is required, not one issued by a religious or civil celebrant.[23]

Thus the primary legal evidence of the existence of a marriage is its registration with a State or Territory registry of births, deaths and marriages.

Civil unions and registered relationships

The earliest international moves for legal recognition of couple relationships other than marriage was in Sweden with the Cohabitees (Joint Homes) and Homosexual Cohabitees Acts in 1987 and the Registered Partnership Act 1994. An Australian Senate committee report in 2000 on superannuation entitlements noted:[24]

In 1987 Sweden enacted legislation which provided that stable unmarried cohabitation would have certain legal consequences for the parties. Those consequences were uniformly applied to both homosexual and heterosexual couples.[25] *In particular, the legislation provided for additional property rights. In 1994 Sweden adopted partnership registration legislation.*[26]

In Australia the first legislation to provide for official registration of a same-sex relationship was the Tasmanian Relationships Act 2003. This Act provides for both *significant* relationships - defined as "a relationship between two adult persons having a relationship to each other as a couple"[27] - and *caring* relationships - defined as "a relationship between two adult persons" not in a couple relationship but "one or each of whom provides the other with domestic support and personal care."[28]

The difference between *significant* and *caring* relationships is that a *significant* relationship cannot be between people "related by family",[29] whereas no such limitation applies to caring relationships.[30] And "related by family" is defined as ancestor, descendent or sibling.[31] In other words, a *significant* relationship cannot be incestuous, thereby indicating that a *sexual* relationship is in view.

The Tasmanian Act also provides for the recognition of unregistered significant or caring relationships by considering certain "circumstances of the relationship". The list of circumstances to be considered includes "whether or not a sexual relationship exists" for identifying a *significant* relationship[32] but not for identifying a *caring* relationship.[33] Again, a *significant* relationship potentially involves a *sexual* relationship.

The Tasmanian action was followed in the Australian Capital Territory when, on 11 May 2006, the Legislative Assembly passed the Civil Unions Act 2006. This Act states that a civil union is "a legally recognised relationship that, subject to this Act, may be entered into by any 2 people, regardless of their sex."[34] Thus the definitions of a *civil union* under the ACT Act and a *significant relationship* under the Tasmanian Act are essentially the same, in that they both provide for a legally registered couple relationship other than marriage.

ACT Civil Unions Act 2006 was repealed on 13 June 2006 when the Governor-General in Council exercised his power under the Australian Capital Territory (Self-Government) Act 1988 to disallow by instrument the ACT Civil Unions Act 2006.

On 13 August 2006 the Hon Andrew Olexander MLC announced that he would introduce a Civil Unions Bill, modelled on the ACT Civil Unions Act, into the Parliament of Victoria.[35]

Like the Commonwealth Marriage Act, both the Tasmanian and ACT Acts provide for celebrants, formalities and registration.

Registrars and celebrants

In Tasmania, responsibility for ensuring that an application to register a relationship complies with the Relationships Act is given to the Tasmanian Registrar of Births, Deaths and Marriages.[36] This is similar to the provision in the Marriage Act giving responsibility to the Registrar of Births, Deaths and Marriages for ensuring that a couple wishing to marry in a Registry Office comply with the Marriage Act.[37]

The ACT legislation would have given responsibility for ensuring that a civil union complied with the Civil Unions Act to either the Registrar-General[38] or to a person registered under the Act as a Civil Union Celebrant.[39] Other legislation gives the Registrar-General responsibility for registering births, deaths and marriages in the ACT.[40] The option to register a civil union before the Registrar-General would have been similar to the Tasmanian procedure and to a Registry Office marriage under the Commonwealth Marriage Act. The option to register a civil union before a Civil Union Celebrant would have been similar to a marriage before a Civil Marriage Celebrant under the Commonwealth Marriage Act.[41]

Thus both the Tasmanian and ACT provisions for celebrants are similar to provisions for marriage celebrants under Commonwealth law. The difference between the Tasmanian and ACT provisions is that the Tasmanian law provides only one option – that of a registrar – whereas the ACT legislation would have provided two options – either a registrar or a civil union celebrant.

Formalities

In Tasmania, the Registrar is required to ensure that the legal requirements for registering a significant relationship or a caring relationship are met by the applicants. A relationship cannot be registered until after a waiting period of 28 days – like the one month or longer advance notice of intent to marry.[42] Registration of such a relationship involves applying to register a deed of relationship, the

contents of which are at the discretion of the parties involved[43] – unlike marriage which is defined in legislation.

The ACT Civil Unions Act (now repealed) required a notice of intention to be submitted to a civil union celebrant between 1 and 18 months, together with statutory declarations of consent and absence of impediment, before a civil union can be formalised.[44] After this waiting period, the two people who had given notice of their intention could have then entered a civil union by a declaration before a civil union celebrant.[45] The civil union celebrant would then have been obliged to register the civil union with the ACT registrar of births, deaths and marriages.

Registration

In Tasmania, registration of a significant relationship or a caring relationship is achieved by submitting a deed of relationship to the Registrar of Births, Deaths and Marriages and this provides proof of the existence of such a relationship.[46] The existence of a significant relationship or a caring relationship may also be established by a court after investigation of the "circumstances of the relationship".[47] A deed of relationship is revoked by the death or marriage of one party and may be revoked by a court order or an application to the registrar by either or both parties.[48] In the latter case, the registrar must revoke the deed of relationship after 90 days.

The ACT Civil Unions Act would have required a civil union celebrant to notify the registrar so that the civil union will be registered.[49] A civil union would have been terminated by the death or marriage of one party and could have been terminated by a court order or an application to the registrar by either or both parties.[50] In the latter case, the civil union is terminated 12 months after the termination notice is lodged.[51]

With both the Tasmanian and repealed ACT laws, it is the registration of a relationship that provides the legal proof of the existence of the relationship for establishing an entitlement to marital benefits – that is the registration achieves the equivalent of marital status.

Comparisons

Several *similarities* between marriage and both significant relationships under the Tasmanian law and civil unions under the now repealed ACT law are evident. Firstly, registrars or celebrants are responsible for ensuring compliance with the respective laws in all cases. Secondly, formalities involve a waiting period, and proof of identity and absence of impediments in all cases. Thirdly, registration with the respective registrars of births, deaths and marriages is required in all cases.

Several *differences* between marriage and both Tasmanian significant relationships and the envisaged ACT civil unions are also evident. Firstly, unlike marriage no commitment for relationships or unions to be either faithful or permanent is required. Secondly, unlike marriage the relationships or unions are open to same-sex partners. Thirdly, unlike marriage the relationships or unions can be ended by a simple deregistration procedure.

Some differences are evident between the Tasmanian significant relationships and the envisaged ACT civil unions. Firstly, Tasmanian significant relationships can be formalised only by registrars whereas ACT civil unions were intended to offer a choice for formalisation between registrars and celebrants. Secondly, the Tasmanian law additionally provides for non-couple caring relationships whereas the repealed ACT law provided for couple relationships only. Thirdly, the required declarations are made with written deeds in Tasmania but were intended to be partly written and partly verbal in ACT.

The overall effect of both Tasmanian significant relationships and the envisaged ACT civil unions is to weaken marriage by providing options that undermine the main essential elements of marriage: male-female, exclusive and enduring.

The threat to marriage

Moves to give legal recognition to couple relationships other than marriage are happening not just in Australia but in overseas countries too. In all cases the pressure for these changes is coming from the homosexual lobby. Different countries have used different terms to describe such relationships. For example:[52]

- civil partnership (UK),
- civil solidarity pact (France),
- civil union (Canada: Quebec, New Zealand, USA: Connecticut, Vermont),
- confirmed cohabitation (Iceland),
- domestic partnership (Canada: Nova Scotia, USA: California, Maine, New Jersey),
- life partnership (Germany),
- registered partnership (Czech Republic, Denmark, Finland, Luxembourg, Netherlands, Norway, Sweden),
- significant relationship (Australia: Tasmania),
- stable unions of couples (Andorra)
- statutory cohabitation (Belgium).

The most significant common feature of all cases is a registration process to give legal recognition to the relationships. Some also involve a ceremony but many (including civil unions in Vermont and Connecticut and civil partnerships in the United Kingdom) only require registration.

In some cases these non-marital couple relationships are open to both male-female and same-sex partners, in other cases they are restricted to same-sex partners.

In Tasmania, although the law recognises both male-female and same-sex couples, most registrations are of same-sex partners. Of the 70 significant relationships registered by July 2006, 56 were same-sex partners but only 14 were male-female partners.

The absence of pressure from domestic co-dependents to enter registered *caring* relationships is evident from no such relationships having been registered in Tasmania after 3½ years of the law's operation. Domestic co-dependents have presumably been able to arrange their financial affairs, medical care and distribution of their estates through the available legal instruments of powers of attorney, wills and deeds. This also suggests that same-sex partners could, if they wished, make all the necessary personal arrangements using the available legal instruments.

Homosexual status

Since legal recognition of homosexual partnerships is not needed for the arrangement of their personal affairs, why the clamour for recognition?

The website of *Australian Marriage Equality* states: "For many Australians marriage is a profoundly meaningful way to demonstrate love and commitment. Denying anyone that right is simply not fair."[53] Homosexual activists are demanding access to marriage while despising its inherent values. Their ultimate goal is the deconstruction of marriage. Activist Andrew Sullivan argues that "the openness of the contract" and the "greater understanding of the need for extramarital outlets between two men than between a man and a woman" would result in a honesty, flexibility, and equality that would "undoubtedly help strengthen and inform many heterosexual bonds".[54]

Daniel Harris, reviewing Andrew Sullivan's *Same-Sex Marriage: Pro and Con*, writes: "For us, gay marriage is like a lunch counter where homosexuals aren't allowed to dine and where we therefore fully intend to stage a lengthy sit-in, to park ourselves down right beneath the noses of the exasperated

waitresses until they pull their pencils from behind their ears and take our orders. And yet please don't mistake our eagerness to sit at this counter as a sign that we like the food. Please don't insist that we see this fast-food joint as a four-star restaurant that merits our unqualified respect."[55]

Since marriage is so central to family and community life, giving such status to homosexual relationships has the potential to affect every area of life.

One example is sex education in schools. In 2003 the South Australian government began trialling a new sex education curriculum called SHARE (Sexual Health and Relationships Education) in some South Australian schools. Although the previous course included explicit instruction on contraception and promoted condoms use, SA rates of teenage abortions and sexually transmitted infections increased significantly. The new course gave much greater emphasis to homosexual relationships and was designed in part to address "homophobia".[56] The new course uses the words *vaginal intercourse* and *anal intercourse* in the same sentence as if each is equally valid and normal – without any indication of the greatly increased health risks with the latter.

A controversial teacher manual for the course entitled *Talking Sexual Health* was produced by Anne Mitchell at La Trobe University in Melbourne, who was also one of three women evaluating the SHARE course. One concerned parent and teacher reported seeing internet interviews of these women which mentioned that all three are said to be lesbians.[57] Thus the strong homosexual emphasis of *Talking Sexual Health* is unlikely to be accidental.

Currently parents have the right to withdraw children from any sex education course. However, Simon Blake, the UK keynote speaker at a sex education conference in Adelaide in July 2006, called for an end to parents' rights to withdraw their children from sex education classes. He received loud applause from almost all delegates, including representatives from education departments and Family Planning organisations around Australia.[58]

If homosexual partnerships are given a status similar to that of marriage, through registration with State and Territory registries of births, deaths and marriages, the pressure to indoctrinate school children into accepting homosexual behaviour as natural and normal will only increase.

Social justice

In a paper entitled *Same-Sex Relationships and the Law*, the Director of Public Policy of the Australian Evangelical Alliance Dr Brian Edgar develops a view representing those "who retain a strong commitment to marriage as it currently understood, *also have a real concern for justice for same-sex couples in long-term relationships* and do not automatically oppose all forms of registered relationships."[59]

The paper develops a number of ideas that deserve further consideration, including the nature of justice, the distinction between individual and couple rights, and alleged injustice and discrimination.

The nature of justice

Dr Edgar asserts that a Christian consideration of the issues involves a commitment to "*justice for all irrespective of their beliefs*." He considers that the "heart of the issue here is the definition of 'justice'."

What is justice? A dictionary definition of "justice" is "just conduct" or "fairness", the word "just" is defined as "done in accordance with what is morally right" and the word "fair" is defined as "unbiased" or "equitable". Thus the meaning of "justice" is treatment that includes the dual elements of being both equitable and morally right.[60]

There is often confusion between the concepts of equality and justice. Only the similar treatment of similar situations promotes justice, and it is this principle that created the common law.[61] Insistence on treating different situations equally does not promote justice.

A central question therefore is whether it is morally right to give official recognition and honour to relationships that breach an essential element of marriage. In Australia, relationships which cannot be legally registered as marriages include those involving:

- same-sex partners,
- a child partner,
- closely related partners, or
- a partner with an existing marriage.

If homosexual partners are to be recognised, why not recognise child brides, incestuous partners, and bigamous or polygamous partners? The assertion that Christians should uphold "*justice for all irrespective of their beliefs*" is a fatally flawed proposition because some beliefs are morally repugnant and do not deserve recognition or honour.

Individual or couple rights

The assertion by Dr Edgar of "a need to protect individuals while ensuring that their freedom does not adversely affect others" fails to distinguish between individual and couple rights.

Homosexuals in Australia already have the same individual rights as any other Australian. They are free to arrange their personal affairs as they wish by making powers of attorney, wills and deeds. Through a power of attorney a person can appoint any other person to manage their financial affairs or decide their medical treatment should they become unable to do so themselves, for example if unconscious after an accident. A will can specify funeral and burial or cremation arrangements as well as the distribution of an estate.

Homosexuals do not need additional rights to manage their personal affairs in accordance with their wishes. They can already do so by taking the initiative to implement the necessary legal instruments.

The homosexual lobby is seeking not more individual rights but presumptive couple rights. They want the registration of a same-sex partnership to confer on the partners presumptive rights to decide medical treatment, funeral and burial or cremation arrangements, and entitlements to an estate of the other partner – without having to make powers of attorney, wills or deeds.

Such presumptive couple rights may not even be appropriate. For example, a homosexual may want a same-sex partner to be able to visit in hospital and decide medical treatment if necessary. However, the homosexual may have children by a previous heterosexual relationship and want his or her estate to be distributed to these children, rather than to the same-sex partner who may already be wealthy.

Homosexuals should take responsibility for their own lives and make use of the available legal instruments to arrange their personal affairs as they wish.

Hypothetical case

Dr Edgar describes a situation which he says establishes a "justifiable need for the law to be involved":

For example, as part of a long-term, committed same-sex relationship a lesbian woman cares for her dying partner. But after the death of her partner legal action taken by the dead woman's family to contest aspects of the will succeeds because of the lack of any formal relationship between the couple.

It is not clear whether this is merely conjecture or alludes to an actual case. If conjecture, it is very flimsy since it make no reference to testamentary law. If alluding to an actual case, it is deficient in not referencing the case, since without such a reference it is impossible to obtain the judgement to see whether there were good reasons for the decision. In the absence of such information, the claim that the case justifies a change in law can only be addressed in general terms.

When a will is challenged in court the first ground for the challenge is usually that the will is invalid. Firstly, for a will to be valid a testator must have knowledge and approval of the contents of the will, which may be doubted if the person was, for example, enfeebled or blind when she executed the document. Secondly, the deceased must have had the necessary capacity to make the will, ie she must have been of sound mind, memory and understanding, at the time she made the will. Thirdly, a will may be found invalid if the deceased was subject to undue influence or fraud when the will was made.[62]

If the will was made when the deceased was close to death, she may well have lacked the sound mind, memory and understanding necessary for a valid will. A challenge to a will made in those circumstances may well succeed but have nothing whatsoever to do with her lesbian relationship. If the will was declared invalid, then an earlier will may have applied or she may have died intestate. In the latter situation, the estate would then have been subject to the applicable intestacy law. Intestacy laws and their interpretation by the courts have changed over time and it would be necessary to know the date of the alleged case, since current laws may have led to a different outcome.

The law in most States provides for a court to make an order varying a valid will to make provision for family members whom the deceased had an obligation to support such as a spouse or children. In the example quoted we are not told who made up the dead's woman's family which challenged the will.

The law in some States where new provisions have been made for de facto partners in male-female and same-sex relationships now unjustly disinherits the spouse in favour of a de facto partner, including a same sex partner.

In summary, the cited "situation" is not supported by sufficient evidence to justify a change in law.

Equality

In essence, justice requires equal situations to be treated equally. However, marriage and same-sex partnerships are not equal situations. The differences are described in detail in my paper *Marriage versus Civil Unions*,[63] which concludes:

Marriage is one of the fundamental building blocks of a stable and productive nation. Since time immemorial marriage has been understood as it is now defined in the Australian Marriage Act 1961: "the union of a man and a woman to the exclusion of all others, voluntarily entered into for life".

Marriage is characterised by being between a man and a woman, exclusive, voluntary, enduring and publicly recognised. Its purpose is procreative, intimate and complementary. It contributes to the welfare of the nation by providing the best context for children to be born and raised as future responsible citizens.

In contrast, homosexual relationships are a liability to society. Unlike marriage, they are not characterised by a commitment to be exclusive and enduring. They are not naturally procreative; they do not achieve satisfying intimacy and they are not complementary. They often pose a health risk to the participants and to any associated children and impose a disproportionate burden on public health services.

Homosexual relationships should not be officially recognised by governments.

Conclusion

The Tasmanian Relationships Act 2003 and the now-repealed ACT Civil Unions Act 2006, like similar legislation is some other countries, establish a quasi-marital status for same-sex partners through registration of such relationships with registries of births, deaths and marriages. These laws provide for the registration of either same-sex or male-female partnerships without the commitment to faithfulness and permanence required for marriage. These moves are in response to pressure from the

homosexual lobby and in Tasmania those taking advantage of the registered relationships have been predominantly homosexual partners.

Different terminology is used in different countries and states for the resulting quasi-marital status, including civil partnership, civil union, registered partnership and significant relationship. All have one central element in common: they are officially registered with government agencies such as registries of births, deaths and marriages. This achieves legal certainty for the status from which a range of marital rights and benefits flow.

All such registered relationships undermine marriage because they create a quasi-marital status attracting the same rights and benefits as marital status, without satisfying the requirements of marriage. Furthermore, such registered relationships do not provide the best context for bearing and raising the next generation of Australian citizens, which marriage provides.

Homosexuals have the same individual rights as any other Australian citizen and can make arrangements for their personal affairs in accordance with their wishes through existing legal instruments, including powers of attorney, wills and deeds. Claims that these legal instruments are inadequate for this purpose are unsubstantiated. Even if inadequacies can be identified, they could be addressed directly without the need for establishing a separate quasi-marital status.

Consequently, homosexual relationships should not be officially registered by governments.

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[26] Swedish Registered Partnership Act 1994.

[27] Tasmanian Relationships Act 2003, s 4(1).

[28] Tasmanian Relationships Act 2003, s 5(1).

[29] Tasmanian Relationships Act 2003, s 4(1)(b).

[30] Tasmanian Relationships Act 2003, s 5(1).

[31] Tasmanian Relationships Act 2003, s 7.

[32] Tasmanian Relationships Act 2003, s 4(3)(c).

[33] Tasmanian Relationships Act 2003, s 5(5).

[34] ACT Civil Unions Act 2006, s 5(1).

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[36] Tasmanian Relationships Act 2003, s 3 "Registrar" and s 11.

[37] Marriage Act 1961, Part IV, Division 1, Subdivision B - State and Territory officers etc.

[38] ACT Civil Unions Act 2006, Schedule 1, Consequential amendments: Births, Deaths and Marriages Registration Act 1997, Part 5A Registration of civil unions, s 34B(1).

[39] *Ibid.*, s 34B(2).

[40] ACT Births, Deaths and Marriages Registration Act 1997, s 32.

[41] Marriage Act 1961, Part IV, Division 1, Subdivision C - Marriage celebrants.

[42] Tasmanian Relationships Act 2003, s 13(1).

[43] Tasmanian Relationships Act 2003, s 11(1).

[44] ACT Civil Unions Act 2006, s 9(2).

[45] ACT Civil Unions Act 2006, s 11.

[46] Tasmanian Relationships Act 2003, ss 4(2) & 5(4).

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