

# **Briefing Paper**

on the

## **Proposal for a Relationships Register for New South Wales**

by

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# 1. Introduction

On 23 February 2010 the NSW Attorney General, John Hatzistergos, announced that the Government of New South Wales was intending to introduce legislation to create a Relationships Register to be modelled on key aspects of registers already in place in the ACT, Victoria and Tasmania.<sup>1</sup>

To be eligible to register a relationship in the Relationships Register:

- Couples must be in a committed, exclusive relationship;
- Couples must not be married or in another relationship that is registered or registrable;
- Couples must be 18 years of age or older; and
- One person must be a resident of NSW.

The NSW register would not extend to ‘caring’ relationships, unlike the registers in Victoria and Tasmania.

The Register would be managed by the NSW Registry of Births Deaths & Marriages.

Mr Hatzistergos explained that the purpose of the proposed legislation is to “reflect the serious commitment made by couples who choose to register their relationship” and to “contribute to the goal of a unified system of registration across Australia” and to “simplify processes for unmarried couples.”

## 2. Is a relationships register needed?

Unmarried couples in New South Wales do not need a relationships register to exercise their rights. Every person in New South Wales, whether in a relationship or not, is free to arrange their personal affairs as they wish by making powers of attorney, powers of guardianship, wills and deeds. Through a power of attorney a person can appoint any other person to manage their financial affairs. Through a power of guardianship they can 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. Deeds are flexible legal instruments which can provide for anything else.

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 media release from Mr Hatzistergos suggests that one goal of the proposed Relationships Register is to lessen, for unmarried couples, the “the frustration of constantly having to supply agencies with copious amounts of paperwork”. However, a single page statutory declaration that a person is in a de facto relationship should suffice for most purposes. In any case, a reduction of paperwork is hardly a sufficient reason for such a significant legal and social change.

### 3. Impact on marriage and children

The proposal is for a Relationships Register for unmarried couples – both male-female couples and same-sex couples to be managed by the Registrar of Births, Deaths and Marriages.

It may be claimed that registration will not equate to marriage. Certainly, the Australian Constitution gives the power to legislate with respect to *marriage* to the Commonwealth Parliament.<sup>2</sup> However, the legal significance of marriage is that it is a legally recognised relationship between a man and a woman, entered by a formal legal procedure, which creates a legally recognised status for the purpose of granting certain rights and benefits. The proposed Relationships Register would create a similar legally recognised relationship, - registered relationship - in direct competition with *marriage* as defined under Commonwealth law.

Furthermore, provision for the registration of unmarried couple relationships by the Registrar of Births Deaths and Marriage would create an expectation that such registered relationships would be given all the legal rights and benefits of marriage, including those affecting children such as access to adoption and reproductive technology including surrogacy.

#### 3.1 Impact on marriage

Legislation to provide for legal registration of non-marital couple or domestic relationships for the purpose of granting them marital rights and benefits is not justice; it is injustice. The concepts of equality and justice are often confused. Only the similar treatment of similar situations promotes justice, and it is this principle that created the common law.<sup>3</sup> Insistence on treating different situations equally does not promote justice.

##### 3.1.1 Marriage 'lite'

Provision for unmarried male-female couples to register their relationships would introduce a legally recognised "marriage lite" – granting the benefits of marriage without the obligations.

Marriage celebrants are required, under the Marriage Act 1961, to remind a man and woman about to be married that the relationship they are about to enter is "to the exclusion of all others".<sup>4</sup> This exclusive nature of marriage originally derives from the biblical commandment: "You shall not commit adultery."<sup>5</sup> Adultery represents a fundamental breach of marital vows.

Most Australian married couples expect faithfulness from each other.

The Australian Marriage Act 1961 also requires a civil celebrant at a wedding to say: "I am to remind you of the solemn and binding nature of the relationship into which you are now about to enter ... for life."<sup>6</sup> This is an enduring promise - for life. Not all marriages endure, but most first marriages do last until the death of one party.<sup>7</sup>

In contrast, registered relationships would not require any enduring commitment. It is proposed that it be a condition for registering a relationship that couples "must be in a committed, exclusive relationship" and "must not be married or in another relationship that is registered or registrable" However, none of the other jurisdictions (Victoria, ACT, Tasmania) on which the proposed register is to be modelled require couples to promise exclusivity after the registration of the relationship.

These models also provide for inherently temporary relationships which can be terminated at will by either party through simply serving a termination notice on the other party and waiting 90 days.<sup>8</sup> Consequently, registered relationships do not foster endurance. Instead they cultivate a culture of transience that would undermine the ideal of lifelong commitment in marriage.

### **3.1.2 Same-sex unions**

Provision for same-sex couples to register their relationships would mimic marriage by granting them the benefits of marriage – but without the obligations.

Registration of same-sex partners, like the registration of unmarried male-female partners, involves no commitment for the relationship to be either exclusive or enduring. While some homosexual partners remain together for lengthy periods, most are relatively brief. Dr James Dobson, of Focus on the Family, has said: “Studies show that homosexual men in particular have a difficult time honouring even the most basic commitments of ‘marriage’. A recent study conducted in the Netherlands ... found that the average homosexual relationship lasts only 1.5 years and that gay men have an average of eight sexual partners per year outside of their “primary” relationship...”<sup>9</sup>

Men in same-sex registered partnerships have a very high suicide rate. A recent study in Denmark has found that the estimated age-adjusted suicide mortality risk for men in same-sex registered domestic partnerships was nearly eight times greater than for men in a heterosexual marriage and nearly twice as high as for men who had never married or registered a domestic relationship.<sup>10</sup>

Registration of same-sex relationships would strike at the foundations of society by ignoring the most fundamental reason for marriage: to safeguard our future as a nation. Every society which wants to continue - whether secular or religious - must encourage the bearing and raising of children as good future citizens. Every society therefore has a vital interest in protecting the family as the basic social unit of society and marriage as the heart of the family. Relationship registers undermine the special status of marriage and the natural family and thereby place at risk the future of the society.

Research shows that marriage is the most enduring of human sexual relationships - more stable than male-female cohabitation and far more stable than homosexual cohabitation. Children raised by their married parents do better than those raised by cohabiting parents, who do better than children raised by same-sex partners. Children brought up in non-marriage contexts have higher rates of physical and mental health problems, child abuse, criminality, drug abuse and poor academic performance.

### **3.1.3 Registration and legal status**

The proposal is for Registered Relationships to be recorded a register to be managed by the Registrar of Births, Deaths and Marriages. This would occur in a similar way to the registration of a birth, death or marriage.

The purpose of registering a couple relationship other than marriage on a register at the Registry of Births, Deaths and Marriages is to be able to prove the existence of the relationship by a legal document – a registration certificate – rather than by factual evidence as to the actual nature of the relationship as is currently required under New South Wales law for all couple relationships other than marriage.

This proposal would undermine the unique status of marriage by treating unmarried relationships as having equivalent legal and social significance.

## **3.2 Impact on families**

There are two key reasons for distinguishing marriage from other relationships and granting it a privileged status in comparison to other relationships. Firstly, marriage provides the best environment for raising children. Secondly, marriage regulates the relationships between men and women in a way that benefits both men and women and society itself. Additionally *same-sex* relationships in particular differ from marriage in important ways which justify public policy which favours marriage over such relationships.

### **3.2.1 Marriage best for raising children**

A large body of social science research confirms the near universal belief, across times and cultures, that marriage is the best environment for raising children.

Children flourish best on a range of indicators (including educational outcomes, school misbehaviour, smoking, illegal drugs, and alcohol consumption, sexual activity and teen pregnancy, illegal activities and psychological outcomes) when they are raised by a mother and a father in a publicly committed, lifelong relationship.<sup>11</sup>

A few examples of particular research findings illustrate this general conclusion.

Three- and four-year-old children with two biological parents are three times less likely than those in any other type of family to have emotional or behavioural problems such as attention deficit disorder or autism.<sup>12</sup>

Girls whose fathers left the family early (before age 5) were five times more likely in the US and three times more likely in New Zealand to become pregnant as a teenager compared to girls from traditional families.<sup>13</sup>

Male adolescents in all types of families without a biological father (mother only, mother and stepfather, and other) were more likely to be incarcerated than teens from two-parent homes, even when demographic information was taken into consideration in analyses. Youths who had never lived with their father had the highest odds of being arrested.<sup>14</sup>

Children's well-being is adversely affected by being deprived of either a mother or a father. Fathers and mothers make different contributions to a child's upbringing. Neither can adequately substitute for the other.<sup>15</sup>

### **3.2.2 Marriage benefits both men and women**

In marriage, a man and woman complete and complement each other in unique ways, which cannot be achieved by two men or two women in a couple relationship.

The feminine influence in marriage socialises men in important ways. Societies with significant numbers of unmarried men often have significant social problems.

“Married men drink less, fight less, and are less likely to engage in criminal activity than their single peers. Married husbands and fathers are significantly more involved and affectionate with their wives and children than men in cohabiting relationships (with and without children). The norms, status rewards, and social support offered to men by marriage all combine to help men walk down the path to adult responsibility.”<sup>16</sup>

Women also benefit significantly from marriage, including having better mental health outcomes.

“When a range of types of mental disorders are considered, marriage reduces the risk of mental disorders for both men and women.”<sup>17</sup>

These social benefits for children, men and women are sufficient grounds for society and governments to encourage marriage by granting it a unique legal status and bestowing particular benefits only on married couples.

### **3.2.3 Same-sex relationships not comparable**

No matter how intense they may appear to be, same-sex relationships cannot be considered the equivalent of marriage. They confer none of the unique benefits of marriage and family on Australian society.

In contrast with marriages, same-sex relationships, particularly among men, are highly unstable and rarely monogamous.<sup>18</sup> Lesbian relationships are significantly more unstable than marriage, breaking up within the first 8 years at *over three times* the rate of marriages.<sup>19</sup>

Same-sex relationships are naturally sterile. Society has no valid interest in encouraging those in such relationships to procure children through either adoption or reproductive technologies, because these processes necessarily involve a third party biological parent. Whatever means are used to procure a child, the child is intentionally deprived of a genuine parental relationship with either a father or a mother.

A key Australian study has shown significant detrimental outcomes from homosexual parenting. Dr Sotirios Sarantakos, when Associate Professor of Sociology at Charles Sturt University, Wagga Wagga, NSW, undertook a number of studies on heterosexual and homosexual couples. In 1996 he published a paper, *Children in three contexts*, where he explored the relationship between family environment and behaviour of primary school children living in three family contexts - married heterosexual couples, cohabiting heterosexual couples and homosexual partners.<sup>20</sup>

The major finding of the study was that family type did make a significant difference to the children's school achievements. Children in families where their biological parents were married to each other scored best of the three groups in language ability (7.7), mathematics (7.9) and sport (8.9). Children of cohabiting heterosexual couple families generally did next best in these areas (6.8, 7.0 and 8.3), while children of homosexual partners scored lowest (5.5, 5.5, 5.9). In class behaviour more children of homosexual partners were reported to be timid and reserved, unwilling to work in a team or talk about family life and holidays. In general they felt "uncomfortable when having to work with students of a sex different from the parent they lived with". Sex identity was reported by teachers to be a problem area for some children of homosexual families. Sarantakos cautiously concludes that "married couples seem to offer the best environment for a child's social and educational development".

Advocates of parenting by homosexual partners frequently claim that about 50 studies have been done "proving" no difference in outcome between children raised by married couples or by homosexual partners. Any social science study depends for its validity on following rigorous statistical and research procedures. Dr Robert Lerner and Dr Althea Nagai, experts in quantitative analysis, after dissecting each of 49 of such studies found at least one fatal research flaw in each study.<sup>21</sup> These studies are therefore no basis for good science or good public policy.

In her book *Children as Trophies?*<sup>22</sup> British sociologist Patricia Morgan reviews 144 published studies on same-sex parenting and concludes that it fosters homosexual behaviour, confused gender roles, and increased likelihood of serious psychological problems later in life.

Professor Lynn D Wardle shows, even from those studies which conclude in favour of homosexual parenting, that there is data showing that homosexual parenting may be harmful.<sup>23</sup> Children raised by homosexual partners have a greater incidence of homosexual orientation, with resulting problems including suicidal behaviour, promiscuity, etc. There is also a greater incidence of anxiety, sadness, hostility, defensiveness and inhibitions (some of these especially among boys of lesbian mothers).

A recent meta-analysis by two gay activists failed to support the "just like other children" myth. In 2001, Judith Stacey and Timothy Biblarz, both supporters of gay parenting, published a study entitled, "(How) Does the Sexual Orientation of Parents Matter?" In it they re-examined twenty studies of

same-sex parenting that had supposedly shown no difference, and charged their authors with ignoring the differences they had indeed found. There were differences: children raised by parents with SSA (same-sex attraction) showed empathy for "social diversity", were less confined by gender stereotypes, more likely to have confusion about gender identity, more likely to engage in sexual experimentation and promiscuity, and more likely to explore homosexual behaviour.<sup>24</sup>

Dr Trayce Hansen found that 14% of children raised by same-sex parents identified as homosexual by late adolescence or early adulthood. As the most reliable surveys place the incidence of homosexual identification at approximately 2% this means that being raised by same-sex parents makes it 7 times more likely that a child will identify as homosexual.<sup>25</sup>

Professor George Rekers' evidence as an expert witness has been instrumental in the success of several US court actions defending State laws excluding homosexual adoption or fostering as having a "rational basis". Rekers is Professor of Neuropsychiatry & Behavioral Science at the University of South Carolina School of Medicine.

Professor Rekers states that "in a household with a homosexually-behaving adult, the foster child would be exposed to additional stress with the impact of the significantly higher rates of psychological disorder (particularly affective disorders such as depression), suicidal ideation, suicide attempt, suicide completion, conduct disorder, and substance abuse in homosexually-behaving adult."<sup>26</sup>

"Homosexual partner relationships are significantly and substantially less stable and more short-lived on the average compared to a marriage of a man and a woman, thereby inevitably contributing to a substantially higher rate of household transitions in foster homes with a homosexually-behaving adult."<sup>27</sup>

"Homosexual foster-parent households lack a daily resident model of either a mother or a father, lack the unique contributions of either a mother or a father to childrearing, and lack a model of a husband/wife relationship which is significantly healthier, substantially more stable socially and psychologically, and is more widely approved compared to homosexual lifestyles. The best child adjustment results from living with a married man and woman compared to other family structures. It is clearly in the best interests of foster children to be placed with exclusively heterosexual married-couple foster families because this natural family structure inherently provides unique needed benefits and produces better child adjustment than is generally the case in households with a homosexually-behaving adult."<sup>28</sup>

Dale O'Leary in his book *One Man, One Woman* discusses "science, myths and same-sex parenting". He concludes: "As more persons with SSA [same-sex attraction] acquire children, society will increasingly be pressured to ignore the problems caused by same-sex parenting - just as it ignores the problems caused by divorce - and join in the pretence that that having two mommies is just the same as having a mommy and a daddy. But no matter how many people praise "family diversity," children being raised by parents with SSA will always know that it's not the same, and someday they will resent how their needs have been sacrificed for the sake of a social experiment. In a sad irony, the more that cultural elites insist that there is nothing wrong with their situation, the more these children will feel guilty about resenting it, and this guilt will lead them to conclude that there must be something wrong with them."<sup>29</sup>

A 30 member multi-party commission of the French National Assembly on the Family and the Rights of Children commented in its 2006 report on "research on children raised by same-sex couples" which concluded that there was an "absence of any ill effects on the children". The commission stated that the "scientific nature and the representation of the samples of the populations studied were broadly criticized and contested during the hearings... the lack of objectivity in this area was flagrant." The commission endorsed the statement of an expert witness on adoption: "inasmuch as there is absolutely no reason to doubt the educative and emotional qualities of homosexual parents, we do not yet know all the effects on the construction of the adopted child's psychological identity. As long as there is

uncertainty, however small, is it not in the best interest of the child to apply the precautionary principle, as is done in other domains?”<sup>30</sup>

## 4. Conclusion

The proposal to introduce in New South Wales a relationships register for unmarried couples irrespective of gender is both unnecessary and undesirable.

Such a relationships register would undermine the unique status of marriage by enabling male-female couples and same-sex couples to gain marital rights and benefits without the commitments and obligations of marriage.

The proposal should be opposed.

## 5. Endnotes

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