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# The Reform that Shames Australia

## Both Liberal's John Howard and Labor's Mark Latham Deserve Condemnation

by Alistair Nicholson

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Both Howard and Latham deserve condemnation for the ban on same-sex marriages

**B**oth Howard and Latham deserve condemnation for the ban on same-sex marriages. The recent legislation to proscribe same-sex marriage is one of the most shameful pieces of legislation that has ever been passed by the Australian Parliament.

*One can only hope that a future Australian Parliament will approach this issue in an informed and principled way and repeal this shameful piece of legislation.*

It was clearly intended by the Howard Government to constitute a pitch to the religious right and mirrored a similar attempt in the United States introduced by President George Bush for the same purpose. Unfortunately, it was more successful here than there.

The reason for its success reflects no credit on the Latham Opposition, which abandoned principle for pragmatism rather than hand an election issue to the Government.

The definition of marriage that the bill adopts reflects that by Lord Penzance in *Hyde v Hyde and Woodmansee* in 1866: "The voluntary union for life of one man and one woman, to the exclusion of all others."

It is worth noting that Lord Penzance's definition was inaccurate at the time that he gave it and remains inaccurate today.

It is difficult to understand how, even in 1866, marriage could have been defined as a union for life after the passage of the Divorce and Matrimonial Causes Act in England in 1857. The latest divorce figures also make clear what nonsense it is to refer to marriage as a union for life today.

Similarly, since the concept of matrimonial fault has been abolished by the Family Law Act 1975 and, in particular, that adultery is no longer a ground for divorce, it is difficult to argue that a modern marriage necessarily excludes all others. All this seems to have escaped the Government and the Opposition.

None of the proponents of this legislation seem to have asked themselves if it is not a bit strange to fall back on 19th century definitions of marriage in seeking to define marriage in 2004. In 1866, homosexual acts between adult males constituted a crime, and it was not long since adultery had been also described as "criminal conversation" in the law. There have been other changes to society far too numerous to set out here but they include the emancipation of women, the widespread introduction of anti-discrimination legislation, changing attitudes to human relationships and the adoption of international standards as to human rights, to which this country has always been a party. This latest legislation ignores all of those developments and treats them as if they had not occurred.

The legislation is a dangerous step in the direction of establishing religion in this country, for we must make no mistake that the sort of marriage the Government is talking about is Christian marriage. I am concerned that the Government, with the compliance of the Opposition, is attempting to entrench Christian dogma in relation to marriage on all of us, whatever our religious persuasion or lack of it.

For a variety of reasons marriage rates have declined in the past few decades, with a concomitant increase in the numbers of defacto relationships. However, many couples still seek marriage and it behoves the law to develop in a way that gives marriage a modern contemporary meaning. Why same-sex couples should be excluded from this process is beyond me, particularly as the increasing legal recognition given to non-marital heterosexual unions from the 1980s on has more recently been extended to same-sex unions.

At least one factor seems to be an assumption that it is better for children to have a parent of both sexes than otherwise. This is a big assumption. My own experience in the Family Court suggests children need a loving and caring relationship with their parents of whatever sex. There are many cases where children may in fact be better off with one parent. The passage of time has also seen marriage become more secularised in nature, and since 1973 civil celebrants have provided a secular alternative to couples who choose not to have a religious ceremony. In 2001 more marriages (53 percent), were performed by civil celebrants than by ministers of religion.

What the Government, with the help of the Opposition, has succeeded in doing is to turn back the clock nearly 140 years. They have done so at the expense not only of the gay and lesbian community, but quite possibly the transsexual community as well. They have

passed one of the most discriminatory laws that could be imagined. They have ridden roughshod over the legitimate rights and aspirations of these citizens. Not satisfied with this they have also struck at the right of single-sex couples to marry or adopt children elsewhere.

No one seems to have asked whether the amendments were necessary given that it would have been impossible to have successfully argued that "marriage" as used in the Marriage Act 1961 contemplated same-sex marriage. One can only hope that a future Australian Parliament will approach this issue in an informed and principled way and repeal this shameful piece of legislation.

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