MARRIAGE REDEFINITION EFFORT.

Marriage and Australian Society:

It seems clear that one of the reasons the idea of homosexual marriage has got political traction is because many if not most in our culture no longer view marriage as a lifelong commitment. This is primarily the result of the introduction of the 1975 no-fault divorce laws. Today, over one-third of all marriages ends in divorce. Intentionally or otherwise, we have severed the link between marriage and permanence.

Another reason is that marriage is often viewed as a romantic, intimate and loving relationship. Having children is no longer fundamentally connected to marriage. Tragically, in denying the innate heterosexual nature of marriage, any redefinition of the Marriage Act to include homosexual relationships will also diminish the fundamental link between marriage and children. Once marriage has been disconnected from the idea of permanence and children, the heterosexual nature of marriage no longer sounds compelling. Indeed, it almost sounds homophobic.

Marriage and the 2013 GAA:

With this lack of societal clarity surrounding the nature of marriage the 2013 GAA articulated and affirmed the biblical definition of marriage as a "lifelong union of one man with one woman, voluntarily entered into, excluding all others…" And that "same-sex marriage will not contribute to the good of society but will reduce the respect in which marriage is held and further legitimise the production of children for same-sex couples when a child should as far as possible have a mother and father."

Marriage Redefinition and Politics:

The political landscape is somewhat fluid. At the time of writing a double dissolution election is possible on July 2. The outcome of that election will be known by the time the GAA meets. The ALP policy is to legislate homosexual marriage within the first 100 days of government (around or just after the time the GAA meets). The Coalition policy is to hold a post-election plebiscite. At this stage we still do not know the nature of the question, and if legislation will be drawn up in advance of the plebiscite.

Marriage Redefinition and the Church and Nation Committee:

It is hard to overstate the significance of any redefinition of the Marriage Act (1961). The Committee, therefore, takes the view that it is our responsibility to offer some guidance to the Assembly on how it might navigate any such changes. The committee has been debating this issue for nearly four years. In addition to our own discussions, State assemblies have also been wrestling with this issue. Last year we received correspondence from NSW and Victorian state assemblies asking our committee to consider the option of withdrawing as a recognised denomination if the Marriage Act (1961) was redefined to include homosexual unions. The Qld state Assembly has indicated it would prefer to maintain the status quo. WA has sent a paper down to their presbyteries, but will not form an opinion before the 2016 GAA at the time of writing Tasmania has not yet formally discussed the issue.

It is clear that both our committee and the wider denomination has been rightly engaged on this issue. Our GAA Moderator, David Cook, wrote earlier last year, "The question that Presbyterian ministers must face is, as registered marriage celebrants, are we prepared to continue to operate under an Act which unacceptably redefines marriage?" Therefore, it is prudent that our committee formulates a way forward to the GAA in response to any redefinition of the Marriage Act (1961).

Marriage Redefinition and Arguments to No Longer Solemnise Marriage:

It is important to stress that we are not proposing to withdraw from an amended Marriage Act as a political protest nor for self-protection. If we decide to withdraw, we will do so with sorrow since we will be losing a connection with the wider community which we have valued. We should not imagine the making such a decision will have any impact on the view of Federal Parliament or Australian society.

It is very unlikely that the Church will need to act to protect clergy and churches from prosecution if they refuse to marry same-sex couples. It is almost certain that if the Marriage Act is amended it will include protections of freedom for ministers whose refuse on religious grounds to solemnise a marriage between a same-sex couple. (New Zealand and UK legislation provide for this).

The primary reason for the church to withdraw is that what the Act would call marriage would no longer be identifiable with the institution established by God in creation and described in the Bible. The Doctrine Commission of the Sydney Diocese of the Anglican Church (Oct, 2014) comes to the same conclusion, "Changing the Federal Marriage Act to allow for 'gay marriage' will, in fact, turn marriage into a government and societal register of sexual friendships. This will necessarily change what marriage is, not simply add to it."

It is true that Christian marriage would still be included within the redefinition; it would still be possible to enter a life-long monogamous heterosexual union under the redefined Act. However, the meaning of marriage in a society is primarily found in the way it is practiced, rather than in legislation. The law will reflect a social understanding and will also reinforce an understanding. So we need to consider not simply the definitions and regulations of the Marriage Act, but also the social reality which the law will create and sustain.

Institutional Argument. The inclusion of same-sex couples in marriage will be a further and decisive step in moving marriage in Australia away from a Christian understanding. Over the last two generations, each of the elements of the Christian view of marriage has disappeared from the social consensus and has been removed from legislation.

The sexual revolution of the 1960's was fueled to some extent by the introduction of the contraceptive pill. It was first introduced in US market on May, 1960, and it arrived in Australia nine months later (ironically). Contraception for better or worse separated sexual activity from the covenant of marriage. No longer was sex seen as something to be kept for marriage, but something to be enjoyed, experimented and celebrated external to the marriage covenant. The introduction of 'no fault divorce' in 1975 then separated the idea of permanence to the marriage bond. The institution of marriage was no longer a definitive institution with a raison d'etre. Increasingly, it was viewed as a socially subjective construct, not a definitive institution that existed to bring together a man and a woman in a biological, social and legal covenant, with a purpose to provide for and protect any children they may have, in a life-long commitment.

All of this means that marriage, as it is understood and practised in Australia, is already very different from the Christian view of marriage. The removal of gender differentiation from the definition of marriage collapses the very biological foundation and structure of the institution. At the very least, with redefinition, the positive rationale for our involvement in the Marriage Acts will have been removed.

Church and state have co-operated in relation to the regulation of marriage on the basis of a shared understanding. Marriage was a social practice which the Church sought to regulate. It was not till 1563 the Council of Trent declared that marriage could not be sacramentally valid unless declared by the priest. In time, the government also sought to regulate marriage as well.

In English law, the crucial change came with the Marriage Act of 1753 which for the first time made a valid marriage dependent on its valid solemnsiation. Before the 1753 Act, marriage was created by the consent of the parties and consummation of the marriage in sexual intercourse. This allowed a very wide range of marriage practices to establish valid marriages. Many couples were married in secret or had no formal wedding at all. Others had a religious ceremony, though this may have taken place well after the couple were living as husband and wife.

Under the Act only marriages which took place in a Church of England with the declaration of banns and a marriage licences were recognised as valid. That is, the state regulated marriage by determining that only marriages established by a church ceremony in the established church were valid marriages. Explicitly, the state shared the church's understanding of marriage by only recognising church marriages. The shared understanding of marriage and therefore the rationale for the ministers and churches having a role in the state's regulation of marriage has now disappeared.

There are various other arguments that could be briefly described as:

The moral/conscience argument. Marriage is a basic part of Christian moral teaching; we have a clear and consistent moral conviction, based in Scripture, about what constitutes marriage and about the foundational importance of marriage.

The general common good argument. Our view about the importance to marriage includes the conviction that society is built on marriage and family, and that marriage secures family life. Redefining marriage will harm society.

The protection of children argument. The Biblical view relates marriage and the raising of children. A Christian understanding of marriage, family and children recognises that God's plan is that a child should be raised, where possible, by their father and mother. This has been commonly accepted in the Western legal tradition. This is not to say that all same-sex couples harm their children, nor to ignore the problems in families of heterosexual couples. The point is not about particular families, but how to frame public policy for the welfare of children.

Although the findings are disputed, social science research broadly supports the conclusion that the best possible setting for children is when they are raised in a stable married family with a husband and wife who are their biological parents. Further, some same-sex couples will want to have children and already seek access to commercial surrogacy, introducing the danger of the commodification of children. The introduction of same-sex marriage is likely to lead to pressure for commercial surrogacy or other innovative technologies to the same end.

This conclusion then leads to the question of how that could be effected. Before taking that up, there are some other issues and objections which require comment.

Should Christian couples cease being married under the Act?

If clergy, acting on behalf of the church, should no longer participate in the Marriage Act, does that mean that no Christian couple should be married under the Act?

The Committee does not believe this is required. The difference between acting as celebrants and having a marriage recognised under that Act can be stated in terms of agency. Marriage celebrants act as agents for the state, conducting ceremonies under its legislation. In contrast, a couple are accessing a service are not active in providing the service. More importantly, Christian couples may well take advantage of the fact that the government will still recognise their marriages as valid marriages, even if it is operating with distorted definition of marriage. There are benefits, though relatively limited, which come from this recognition. (Even if the government offered only a relationship register with no reference to marriage, Christian couples could make use of this).

Christian couples may well feel that for the sake of their own conscience, or that of others, they should be married under the Act. So while we do not consider that a couple must be married under the Act, we can recognise reasons why they may wish to do so.

Are we encouraging couples to enter de facto marriages?

Given a covenantal view, a marriage is properly created by promises given by the couple with witnesses. So the church should teach that couples should have a wedding before they consider themselves married and live together and begin a sexual relationship. The wedding could take two forms — it could be conducted by a celebrant recognised under the Marriage Act or it could be one conducted by a Christian minister who is not recognised under the Marriage Act. It is not proposed to should private marriages which are not solemnised in one of these ways.

In the second case, the couple will have a de facto marriage according to the Australian Marriage Act. From a theological viewpoint, however, it is not equivalent to 'living together'. It will be very clear, in church communities, when people are married. There will be no extra confusion added.

Won't the church have to have to provide a divorce court?

While we need to have regulations to deal with marriage, we will not need to have regulations to deal with divorce. All couples who separate will be able to access the provisions of the Family Law Act. If the status of a relationship is unclear under the Act, then the proceedings may be more painful, but the Family Court will still have jurisdiction. Once a relationship has been ended, a church will face the range of questions, but these are questions which we already face routinely. At present we answer these questions with pastoral discernment exercised by the Session and minister. Again, we propose some simple regulations to help deal with these issues more consistently.

Won't couples who marry outside the Act face difficulties?

While it is important to stress the Committee is not in a position to give legal advice, we can report the following taken from the Family Law Act SECT 4AA:

Working out if persons have a relationship as a (de facto) couple:

(2) Those circumstances may include any or all of the following:

(a) the duration of the relationship;

(b) the nature and extent of their common residence;

(c) whether a sexual relationship exists;

(d) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;

(e) the ownership, use and acquisition of their property;

(f) the degree of mutual commitment to a shared life;

(g) whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship;

(h) the care and support of children;

(i) the reputation and public aspects of the relationship.

(3) No particular finding in relation to any circumstance is to be regarded as necessary in deciding whether the persons have a de facto relationship.

(4) A court determining whether a de facto relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

Family Law Act SECT 90SB:

When this Division applies--length of relationship etc.

A court may make an order under section 90SE, 90SG or 90SM, or a declaration under section 90SL, in relation to a de facto relationship only if the court is satisfied:

(a) that the period, or the total of the periods, of the de facto relationship is at least 2 years; or

(b) that there is a child of the de facto relationship; or

(c) that:

(i) the party to the de facto relationship who applies for the order or declaration made substantial contributions of a kind mentioned in paragraph 90SM(4)(a), (b) or (c); and

(ii) a failure to make the order or declaration would result in serious injustice to the

applicant; or

(d) that the relationship is or was registered under a prescribed law of a State or Territory.

Potential problems could be avoided by counselling all couples to seek legal advice to ensure that they have the necessary legal arrangements in place, such as Wills, Powers of Attorney, Appointments of Enduring Guardian and provision that each spouse is the declared beneficiary of the other for superannuation. Similarly, a legal change of name, if that is desired, can be organised quite easily. (Many people use a name different to their legal name in social settings, and that may be a simpler solution). If a couple were to move to another country, they may find that a marriage under the Marriage Act was required to establish their marital status. For these reasons, it may be worth considering having a civil ceremony first.

Why not act with other denominations?

There is no other significant national denomination which is likely to be able to make this step as easily as the PCA. We have a theological unity which makes the discussion possible and a polity which allows us to make a national decision. If we think that withdrawal is the right thing to do, then we can give a lead for other churches.

Do we lose a contact with the community?

If the church were to withdraw from the Act, no doubt there would be fewer non-Christian couples who sought a church wedding. It should be remembered that the number of couples seeking church weddings is declining quickly. Between 1990 and 2010 the marriage rate dropped by about 20% but the number of couples having a religious wedding dropped by almost 60%.

Churches would still be able to conduct a church wedding for any couple which sought one, since membership of the church and profession of faith would not be conditions for having a church wedding.

Are we 'leaving marriage'?

One argument against the proposal to withdraw is that if we do so we are "leaving marriage". Proponents of the proposal vigorously reject this characterisation. We are not recommending that the Presbyterian Church no longer conduct marriage services, nor are we recommending that church members no longer be married. We are simply arguing that we receive no benefit from acting as agents under the Marriage Act, and that we have a clearer witness to Christian marriage by standing outside the Act.

Consequently, the Committee is persuaded that if the Marriage Act is redefined to include homosexual unions then we should no longer conduct marriages under such an Act.

MARRIAGE REDEFINITION AND HOW TO GIVE EFFECT TO ANY DECISION TO NO LONGER SOLEMNISE MARRIAGE.

Once the Committee formed an opinion we should no longer conduct marriages under a redefined Marriage Act (1961) our mind then turned on how best that is achieved. Two options were considered.

The first option was to withdraw as a 'recognised religious denomination'. If the GAA made a decision not to solemnise marriages as a celebrant of the state, it would need to give a written request (to no longer be a recognised denomination for the purpose of marriage) with an appropriate minute to either the Attorney General or his department. As a consequence, the Attorney General would prepare the papers for the Governor General's consideration at the next Federal Executive Council.

The second option is for the GAA to make a declaration that no minister should solemnise marriage under a redefined Marriage Act (1961). Such a decision is provided for under the existing provisions of Section

47(a) of the Marriage Act (1961) which states nothing in the Marriage Act "…imposes an obligation on an authorised celebrant, being a minister of religion, to solemnise any marriage…"

This Committee considered the latter approach as the preferred option as it is simple, clear and avoids any unintended consequences of giving up our status as a 'recognised religious denomination'.

MARRIAGE REDEFINITION AND LEGAL ADVICE SOUGHT.

We sought advice from Prof. Patrick Parkinson, who advised us to speak to the Attorney General's department. Kimberly Williams, Principal Legal Officer of the Marriage Law and Celebrants section, gave us advice on how to give effect to any GAA decision on this matter. It was his opinion that it would be easier for the GAA to make a declaration regarding its Ministers making use of the existing provisions under Section 47(a) of the Marriage Act (1961) stating nothing in the Marriage Act "…imposes an obligation on an authorised celebrant, being a minister of religion, to solemnise any marriage…"

PREPARING FOR A POTENTIAL PLEBISCITE.

If the Coalition maintains government after the next election, Australians will head to the polls shortly after to vote on whether we should change the Marriage Act to include homosexual unions. It is the expectation of this committee that in the event of a plebiscite the PCA would urge all Presbyterians, indeed, all Christians to support 'traditional marriage' and in doing so oppose any redefinition of the Marriage Act to include homosexual unions.

Previously, the 2013 GAA articulated and affirmed the biblical definition of marriage as a "lifelong union of one man with one woman, voluntarily entered into, excluding all others…" And that "same-sex marriage will not contribute to the good of society but will reduce the respect in which marriage is held and further legitimise the production of children for same-sex couples when a child should as far as possible have a mother and father." That is, all things being equal, biological parents are better than adoptive parents. And two parents are better than one parent. And a mother and father are better than the lack of one or the other.

Given the strong biblical position of the PCA, the Committee will continue to work with Church leaders and state committees, as well as building alliances with other Christian Churches and organisations. There has already been significant thought given to this at the state level. The Committee hopes to work with and encourage the Church by providing leadership and materials in support of traditional marriage.

Most importantly we need Ministers and Sessions to educate their congregations in the biblical teaching concerning marriage, emboldening them to speak out as they seek the common good. However, it is also important that we engage in the public debate in a way that minimises offence. While we must speak truth, we must do it in love. Many in the LGBTQI and the wider community have come to believe that behaviour is identity. The distinction between being and doing has almost been erased. Consequently, there is very little space left in which to love the sinner and hate the sin. To hate the sin, is to hate the sinner. We need to understand this, even if we reject genetic determinism as unbiblical and unhelpful.

It is incumbent upon us all to be careful not just what we say, but how we say it. At some point after the vote, we'll need to live and work together again. Our kids will have play dates; we'll attend the same rugby or AFL games, see the same doctor and maybe even live in the same neighbourhood. All the more reason to ensure we speak the truth in love. The Committee anticipates further deliverances closer to the time of the Assembly when the outcome of the Federal election is known.

Proposed Deliverance:

(6) Declare, if the Marriage Act (1961) is redefined to allow for homosexual unions to be recognised as marriages under the Marriage Act (1961) that no PCA Minister should solemnise marriage under a redefined Marriage Act (1961).

(7) Declare, that only two forms of marriage are recognised as valid Christian marriage — marriage under the Marriage Act (or the equivalent in another country) and marriage under the forms of the Presbyterian Church of Australia apart from the Marriage Act (or marriage by some other church with a similar arrangement approved by the GAA).

(8) Adopt the following as the regulations which Ministers and Sessions shall follow in conducting a church marriage service.

a. A church marriage service shall be conducted by a minister of the Presbyterian Church of Australia according to the service provided by the Public Worship and Aids to Devotion Committee.

b. When parties approach a minister seeking a church marriage, he must supply to them the material prepared and approved by the Assembly and ensure, as far as possible, that both parties understand that a church marriage is not a marriage solemnised under the Marriage Act (1961).

c. The determination that a couple may be married is to be made by the Session of the congregation. Where a minister has a non-congregational ministry, he shall submit the matter to the Session, which has jurisdiction over him, or to a Session related to the couple or his field of ministry. No minister shall proceed with a church marriage which has not been approved by a Session.

d. A Session is not bound to approve any marriage, and may adopt its own policies limiting marriages, for instance that at least one party must be a member of the congregation.

e. In making a determination to allow a marriage to proceed the Session shall view the “Notice of intention to marry” completed by the couple and minister. From the Notice and a report from the minister, the Session shall assure itself that the parties intending to be married are a man and a woman; are not within the degrees of consanguinity or affinity stated in the Westminster Confession as amended by the Assembly; are not validly married; that neither party is in a sexual co-habiting relationship with another person; that they are eighteen years of age; and are entering into the marriage voluntarily. The Session or its representatives may interview the parties if necessary, in order to assure itself that these conditions are met.

f. If one or both of the parties have been previously married, the minister shall cite the proof of divorce from the Family Court of Australia and the Federal Circuit Court of Australia; or a Church certificate of divorce; or the equivalent, if the divorce took place in another jurisdiction. The minister must supply a copy of this to the Session, or, if one is not available, provide a detailed explanation to the Session of it unavailability.

g. In determining whether to approve the conduct of a marriage in which one of the parties has been divorced, the Session shall be mindful of the declaration of the Assembly (General Assembly of Australia (B.B. 1967 Min. 107(3)(a), see Ch 5, part (2) and consider “whether the person concerned is aware and repents of any part he or she may have played in the breakdown or unwarranted dissolution of the former marriage, is willing to accept and exercise forgiveness and is prepared to begin a new marriage trusting in the grace and power of God in Jesus Christ”.

h. In approving a church marriage between parties, Session should always make it clear “it is the duty of Christians to marry only in the Lord” (WCF 24.3).

i. The minister who conducts the marriage must ensure that the couple receives a copy of the Certificate, that a record of the marriage in the approved form and a copy of the Certificate is retained in the records of the Session and that the Clerk of the Assembly is informed using the approved electronic forms. The Session shall confirm that all records have been appropriately lodged.

j. A person who has been married in a church marriage by a minister of the Presbyterian Church of Australia may approach any Session for a certificate of divorce. The person must provide a copy of the marriage certificate and the Session shall verify the certificate with the Session under whose jurisdiction the marriage was conducted or with the Clerk of Assembly. The Session shall, in the first place, determine if

there is any possibility of a reconciliation. In doing so, it must seek to contact the other party to the marriage. If it is satisfied that the marriage has dissolved and that there is no possibility of a reconciliation, or that there are grounds to end the marriage, it shall provide a Certificate of Divorce. A Session has no power to determine custody of children or division of property. It must refer parties to the Family Court.

k. All documents relating to marriage shall be recorded in an electronic system whereby notice of intended marriage, marriage registers and ecclesiastical marriage certificates are recorded into a PCA database for use locally and centrally with appropriate privacy protections.

(9) Instruct the Church and Nation Committee to produce a simple leaflet which ministers are required to give to all couples who approach them about marriage. It would state:

a. The importance marriage in the Christian view of life.
b. The biblical teaching on what constitutes marriage in God's eyes, as well as the historical and ecclesiastical developments around marriage solemnisation.
c. The view that redefined marriage in the Marriage Act is so different to the biblical view that the PCA has opted to no longer solemnise marriages under the Marriage Act.
d. If you are married by a minister of the Presbyterian Church of Australia, you will not be married under the Marriage Act (1961).
e. Because the Family Law Act recognises marriages which have not been solemnised under the Marriage Act, the status of your marriage will be much the same as if you were married under the Marriage Act.
f. The PCA recommends you seek some independent legal advice to ensure that you will not be disadvantaged.
g. You may decide that you would prefer to be married under the Marriage Act, for instance at the Registry Office, and then have a church celebration.
h. Most States of Australia also provide the possibility to register a relationship with Registry of Births, Deaths and Marriages.
i. If you are likely to seek to establish your marital status outside Australia, you may be well advised to be married under the Marriage Act.
j. If you decide not to be married under the Marriage Act you should seek legal advice about wills, binding financial agreements, Powers of Attorney, Appointments of Enduring Guardian and legal change of name; and ensure that each spouse is the declared beneficiary of the other for superannuation.

(10) Set up a Commission of the GAA to deal with any matters related to the implementation of the GAA decision to declare no minister shall conduct marriage under a redefined Marriage Act, and the establishment of ecclesiastical marriage in the PCA.

(11) That the GAA fund, administer and provide ongoing administrative support for an appropriate electronic system of ecclesiastical marriage registration.