This topic – whether it’s a good idea to redefine marriage – is a topic that can be approached from a lot of different angles. So just at the outset I want to set the parameters for what I’ll be talking about.

Number one, when I talk about “marriage” tonight, I’m talking almost exclusively about the public, legal institution of marriage. I’m talking about what our laws say about marriage, and what they should say about marriage and I’m asking why they have anything to say about marriage at all. I’m not really going to touch on what the Church says about marriage, or about private marriage—customs or rituals—or cultural perspectives on marriage.

And the reason I’m limiting my focus to the legal institution of marriage is that this is primarily what I’ve dealt with over the last few years, and it’s also the issue that our parliament is currently grappling with—our politicians are currently being asked ‘what kinds of relationships should we, as a community, be legally recognising as marriage?’

So we’re talking about the legal institution of marriage.

The second thing I want to clarify is that tonight I’m going to be talking primarily about how we can engage with our friends, colleagues and peers, particularly the ones who quite frankly couldn’t care less what the Church teaches about marriage, and who think redefining marriage really does seem like the right thing to do. We all have an opportunity to talk to the people around us about this issue, and it’s very important that we do so.

I’m aiming to provide a little bit of food for thought, so that hopefully everyone here will be able to make a constructive, rational, positive contribution to the debate, so that hopefully we can demonstrate to our friends and colleagues and acquaintances that there is in fact a whole raft of good, sensible reasons for keeping the definition of marriage limited to the union of a man and a woman, to the exclusion of all others voluntarily entered into for life.

1. The definition of marriage in Australia

Where does marriage fit in Australian law?

Section 51, sub-section 21 of our Constitution tells us that making laws about marriage is something that the Federal government can do, which is why this debate plays out primarily in the Federal Parliament. The states can’t really make laws about marriage, because anything the states say about marriage is essentially overruled by any Federal marriage laws.

So marriage is governed at the Federal level, through the Marriage Act 1961. The
*Marriage Act* defines marriage as the union of a man and a woman to the exclusion of all others, voluntarily entered into for life. So there are four basic elements to marriage in Australian law:

1. The union of a man and a woman
2. To the exclusion of all others
3. Voluntarily entered into
4. For life

Now you’ve probably heard that this definition of marriage was inserted into the legislation by John Howard in 2004. And it’s true—Howard’s government *did* insert this definition into the *Marriage Act*. But the same definition of marriage dates all the way back to an English court case from 1866, which Australian courts have repeatedly endorsed, including the High Court, which endorsed that same definition in 1991. So this has been the explicit common-law definition of Marriage, basically since 1866.

But not only have our courts defined marriage in this way for almost one and a half centuries, this very same definition of marriage was already in the *Marriage Act* before the Howard government’s amendments. It just wasn’t in the official “definitions” section—it was hidden away in section 46.

So just to be absolutely clear, John Howard didn’t invent this definition—all he and his government did in 2004 was to take a long-standing common-law definition of marriage—a definition that already appeared in the *Marriage Act*—and place it into the definitions section of the same Act. So it’s not a definition that John Howard came up with suddenly in 2004; the Australian courts had already formulated this definition well before that, and it was also already *in* the *Marriage Act*, but just in another part.

So that’s how marriage is defined in Australian law, but there is a strong push to change this definition.

There are currently three bills before the Federal parliament—one bill in the Senate and two in the House of Representatives—each of which aims to redefine marriage so that it would not be “the union of a man and a woman”, but rather “the union of two people, regardless of their sex”.

Whatever your personal perspective on whether the definition should be changed or not, my aim is to give you food for thought, and get you thinking about some of the issues.

**2. “Marriage Equality” and Discrimination**

Let’s begin with a look at the campaign in favour of same-sex marriage. This campaign is very much framed around ideas of ‘marriage equality’ and ‘discrimination’. What we’re hearing from those who are pushing to redefine marriage is that the current law discriminates unfairly against same-sex couples by not allowing them to marry. And we’re hearing that the principle of equality—that we are all equal before the law—
demands that same-sex relationships be given the same recognition as opposite-sex relationships. And on the face of it, it’s quite a convincing argument.

The first problem with this argument however—and I think this is really important—is the failure to distinguish people or individuals from their relationships. So while there is absolutely no question that every single one of us, regardless of our sexual orientation, is equal in dignity, and we ought to be equal before the law, it doesn’t necessarily follow that every kind of relationship is equal.

How do you evaluate the relative value or dignity of different kinds of relationships? Are friendships equal to family ties? Are business relationships equal to acquaintance-ships? All of these relationships are valuable in their own way, but should they each be treated exactly the same way in law, just to make sure that the individuals in them aren’t discriminated against or treated unequally? I don’t think so.

The plain fact of the matter is that different kinds of relationships have their own, unique characteristics, and it makes perfect sense that we, as a community, treat different kinds of relationships differently. So rather than simply succumbing to this argument that the current definition of marriage is discriminatory, the question we should be asking is: are the heterosexual relationship and the homosexual relationship sufficiently different from one another to justify treating them differently in law?

If there are significant differences between these different kinds of relationships, then treating them differently isn’t discrimination—it’s just common sense.

So let’s ask the question: are there significant differences between the heterosexual relationship and the homosexual relationship? The short answer is yes. The nature of human reproduction between a man and woman is the most obvious. There’s quite a huge difference right there—the heterosexual union is the one that keeps the species in existence. That’s a significant difference.

This isn’t some kind of bigoted conspiracy. This is just biology plain and simple, and it doesn’t matter what your sexual orientation is: everyone should be able to agree on this really basic point—that as a particular kind of relationship, the heterosexual union is significant in a very unique way—it is designed to create new human beings.

This inherent reproductive function differentiates it from every other kind of human relationship, including the same-sex relationship. And let me emphasise that recognising the unique significance of the heterosexual union doesn’t in any way denigrate other kinds of relationships. And it doesn’t undermine the dignity of the people in those other kinds of relationships. All we’re doing is recognising a significant biological fact. So hopefully that debunks this idea that the current definition of marriage is discriminatory.

3. Why is marriage “for life”?

When looking at the current proposals to redefine marriage, the new definitions of
marriage still insist that marriage is “for life”. Given the prevalence of divorce in contemporary Australian society, I sometimes wonder why marriage reformers still bother with this idea that marriage ought to be a life-long commitment. I’m glad they do however, as it gives us an opportunity to ask those on the other side of this debate why they think our marriage laws should require the marrying couple to make such a promise—to remain exclusively faithful to one another until one of them dies.

If you ask one of your friends why they think marriage involves this promise of lifelong fidelity, you’ll probably find most people turn into romantics, and tell you that promising someone that you’ll be faithful forever is the highest demonstration of love. And that’s all well and good. But let’s just recall that what we’re talking about here is the legal institution of marriage. We’re talking about an institution whereby two people make a public and legally binding promise of a lifelong commitment to one another.

Why would we as a community want the government sticking its nose in and solemnising legally binding promises of lifelong fidelity between two fallible human beings? If making a promise like that is just about expressing love, is government involvement really justified? Wouldn’t promises of enduring love best be kept private, rather than being placed on a government endorsed public register? Why is the government involved in these intimate relationships and commitments? Why do we have this collective interest in couples sticking it out for the long haul?

I’m going to suggest that the most obvious reason is that we, as a community, have recognised for a very long time that it is important that those babies that the heterosexual union is designed to produce—have the chance to be raised by their own biological mum and dad; to be raised in a stable family headed by the man and the woman who created them. And the simplest and best way that we, as a community, have devised to make sure this happens in as many instances as possible, is simply to encourage a man and a woman to pledge lifelong fidelity to one another in anticipation of the children that their relationship is biologically engineered to produce.

People on the other side of this debate argue that children don’t need a mum and a dad, and that children can happily be raised—and are being raised—by same sex couples. And there’s a good deal of truth in that, as well as a fair amount of unsubstantiated assertion and a dash of wishful thinking.

Technically, kids don’t need a mum and a dad. But technically kids don’t need a left leg and a right leg either. We can get on ok without one or the other or both. But really we, as a community, have an obligation to do what we can to make sure that as many children as possible do wind up with their own biological left leg and right leg and their own biological mum and dad.

Ultimately I find it’s not really that helpful to talk too much about what kids need. What I find to be more constructive is to talk about what kids are entitled to expect, and whether we really are doing all we can to prevent children from being separated from their biological parents.
We don’t have to dig too deep to find a great deal of pain and anguish in our own nation’s history where children have been separated from their biological parents. Whether we’re talking about children who have experienced family breakdown and separation from their mum or dad; or children who never knew their father at all; or Aboriginal children who were forcibly taken from their families, or children who were forcibly removed from their unwed mothers; or even the more recently emergent voices of children conceived via donated sperm or ova, some of whom have no idea who their biological parents and siblings and ancestors are—there is no shortage of people in Australia who feel a deep sense of loss and longing for their biological parents.

As a community, we know that it’s important for the biological family unit to remain united. Biological ties never go away. I know a man—with a family of his own—but this is a guy who was adopted into a beautiful family when he was very young, and he was and is the apple of his adopted parents’ eye. He’d never expressed any interest in knowing or meeting his biological parents until suddenly on his 40th birthday, he experienced an irrepressible urge to make that connection, and he did. And it was everything you would expect—it was worrying and exciting and terrifying, and it put a whole lot of relationships under quite a lot of stress. But he felt he just had to make that connection.

Our biological heritage is indelible. Our biological ties are life-long. They are "for life". And if you think about it, in any biological family unit there are those indelible biological links between all of the members except the husband and wife. So I’d suggest that the lifelong legal commitment that man and woman make in marriage is designed to mimic the lifelong biological ties that bind parents to their children, and the children to one another.

Finally, from a purely pragmatic point of view, we know that it is in the community’s collective economic interest to take steps to forestall family breakdown, and to sure up these strong biological family networks. These are the networks that, where healthy, relieve much of the burden on the welfare state. The family is the unit that provides care for children and the elderly; it is capable of looking after its members when they are sick; it’s capable of absorbing others into its safety net when the need arises; it's a unit that makes good use of economies of scale.

Now when you roll all of these factors together—the child’s basic right to know and be cared for by its own biological parents and the community’s obligation to try to make sure that happens, the widely understood importance of biological ties and connections, and the social and economic benefits of keeping the biological family unit together—when you put all of these factors together, hopefully it is becoming clear that the community, and therefore our elected representatives in government, have a unique interest—and a very strong interest—in taking steps to keep the biological family intact.

And that to me seems to be the only reasonable explanation for the state encouraging men and women to make this “outrageous” marital commitment of ‘lifelong’, exclusive fidelity. And it’s not an explanation that translates to other kinds of relationships. And if you take away any of these factors, what you are left with is a legal institution that doesn’t really make sense.

So those are a few ideas that I hope help to put the marriage debate in proper context.