

Shop, Distributive & Allied Employees' Association



NATIONAL PRESIDENT
Gerard Dwyer

NATIONAL SECRETARY
Joe de Bruyn

Jdb/cr
Monday 2nd April, 2012

The Secretary,
Legal & Constitutional Affairs Committee
The Senate
Parliament House
Canberra, ACT 2600

Dear Secretary,

Please find attached a Submission from the Union on the Gay Marriage Bill which is under consideration by the Senate Legal & Constitutional Affairs Committee.

Yours faithfully,

JOE DE BRUYN
National Secretary-Treasurer

Encl: as above

SUBMISSION TO SENATE
LEGAL AND CONSTITUTIONAL COMMITTEE
INQUIRY
MARRIAGE EQUALITY AMENDMENT BILL 2010
BY
SHOP, DISTRIBUTIVE & ALLIED EMPLOYEES' ASSOCIATION

The Shop, Distributive and Allied Employees' Association (the SDA) welcomes the opportunity to make this submission on the Inquiry.

The SDA respectfully advises the Senate Committee that it has in excess of 210,000 members, is represented in each state and territory of Australia, and is the largest union affiliated with the Australian Council of Trade Unions, is represented at and holds senior office in Regional and International Trade Union Associations.

The membership of the SDA is culturally diverse and representative of many racial and ethnic backgrounds. In addition, the SDA has the largest proportion of youth membership and arguable the largest number of females in its membership of any union in Australia.

INTRODUCTION:

Supporters of marriage equality rest their case on three generally agreed grounds:

1. That fundamental human rights of homosexual persons who wish to marry is violated by denying them marriage; and
2. That denial of marriage rights to homosexual couples who wish to marry, while at the same time allowing heterosexual couples the right to marry, is discrimination; and
3. That denial of marriage rights to homosexual couples wishing to marry is unfair and treats such couples as second class citizens and therefore violates the principle of equal treatment with heterosexual couples who are free to marry should they so choose.

Marriage equality, that is changing the Marriage Act ¹ to allow same-sex couples to marry, as well as opposite sex, is commonly referred to as same sex marriage. In referring to marriage equality, this submission will call it by its more commonly understood descriptor, same-sex marriage.

The arguments in support of same-sex marriage are predicated on a contradictory premise that homosexual couples are simultaneously the same as but also different to heterosexual couples.

This submission will address each of the arguments advanced in support of same-sex marriage. It will also address the contradictory premise of “same” and “different” claim made by the homosexual community.

UNION’S POLICY

The SDA has a long standing policy in support of marriage being a union between a man and a woman. Marriage has long being regarded as the entry point for the procreation of children. Societies and communities well before the advent of political states believed that the union of a man and woman gave rise to child bearing.

Furthermore, the SDA has maintained a consistent policy that a child is better served within a household where both biological parents attend to their needs, welfare, and development and impart the moral laws. This becomes an essential preparation for the child in becoming a future participant in his/her community.

It is not by coincidence that the family is commonly referred to as the basic unit on which society is organised. It is at the point of the family that children are provided with the core values on which they shape their lives.

The whole construction of the regeneration of society has at its foundational level the family based on marriage between a man and a woman.

¹ (1961) ss 5, 46.

An attempt to change the essence of what is in fact the basic unit of society is ill-conceived and derives from a motivation alien to the best interests of the child and the common good of society.

HUMAN RIGHTS

The argument for same-sex marriage based on a recognition that human rights is in play is false and is merely a propaganda aid. Human rights attach to the individual and do not apply to a couple as if that is a single unit. There is no human rights instrument which proclaims a right for same-sex marriage.

Those reverting to human rights in support of same-sex marriage are elitist. These people are generally in well paid and secure jobs, removed from the daily travails of working families. These are the same people, in the main, who act censoriously and throw barbs at those who see no sense in same-sex marriage.

No person of homosexual orientation suffers a denial of human rights on the ground that marriage is an institution for opposite sex couples. No person with homosexual orientation is a lesser person because of that orientation. No person with a homosexual orientation is treated differently before the law than is a heterosexual person.

The issue of sexuality has never defined the boundaries for the application of human rights. To do so would institutionalise prejudice and inequality.

There is no case for same-sex marriage when assessing human rights.

DISCRIMINATION

The introduction of discrimination into the public debate is designed to suggest that same-sex couples are getting a raw deal in respect to marriage laws. Again, it is unfortunate that the public debate on same-sex marriage is not conducted on matters of fact and reality. The public debate on same-sex marriage is not about homosexuality it is about the meaning of marriage; that is, as to its purpose and functionality.

The concept of discrimination law in modern society has its roots in the United States Civil Rights Act 1964, and principles developed in cases before the US Supreme Court of the 1960's².

One of the US cases which helped in developing the principles surrounding discrimination was *Teamsters v United States*³ argued before the Supreme Court.

Teamsters was about providing equal treatment for minority members of the community such as "Negros [sic] and Spanish-surnamed persons".

The issue was that prejudice against colour and race could not stand in law. Colour and race, as in gender (sex) are birth marks and not matters of choice. The issue of a birth mark should not be the basis for why a person or class of persons should be treated differently to their detriment. A birth mark should never be the basis why any person should be treated before the law of the land any differently to any other.

For instance, a person born with a disability or born with dwarfism is entitled, simply because of their humanness, to equal treatment. The fact that a dwarf is unlikely to play high level basketball is not discrimination. There is no scientific, medical or psychiatric authority that claims sexual orientation to be a birth mark.

In Australia discrimination is not lawful when applied for reasons of race, colour, sex, political opinion, religious beliefs, and, in most State jurisdictions, age, disability and sexual orientation. Protection against discrimination for each of these attributes is warranted. In fact, it is the SDA long held and strong policy that we advocate and act in defence for any of our members experiencing detrimental treatment in the workplace due to prejudice against a personal attribute.

The SDA does not believe that the denial of marriage to same-sex couples is discrimination.

² For brief overview, see: *Australian anti-discrimination law, Text, Cases and Material*. Neil Rees, Katherine Lindsay Simon Rice. The Federation Press 2008, at pp 68-74.

³ 431 US 324 (1977)

As stated previously, this is not an examination of homosexuality but rather the essential attributes of marriage itself.

Same-sex couples simply do not meet the criteria of the 'comparator' test in assessing discrimination.

If marriage was open to all, then each of the applicants should be treated equally. The truth and facts of the matter is that marriage is not open to all. There are age barriers, there are blood lineal restrictions, there is restriction to only two in a marriage and marriage is restricted to opposite sex (which is what the proponents of same-sex marriage wish to change).

Marriage is purposeful and functional; it is not an open ended institution for social gratification. Its purpose, from time immemorial and across all societies is as the entry point for procreation. Emasculating the procreative purpose is not to enrich marriage but rather to abolish it as an institution. If the Marriage Act was to be amended to allow same-sex couples to marry, then marriage would be something different to how it has been traditionally and historically understood throughout the ages. It would, at law, merely recognise sexual relationships as the basis of marriage and give public endorsement for such relationships.

The essence of marriage is built on procreative capacity. It is not build on emotions or perceived rights and entitlements. We are not comparing 'same relationships' as is plainly obvious.

Denial to change the Marriage Act because it excludes same-sex couples is not discriminatory as there is no valid 'comparator' between heterosexual couples and homosexual couples. They are different, not the same.

UNFAIR TREATMENT

Unfair treatment and discrimination are two sides of the same coin.

It is our submission that discrimination is not an issue in the debate for or against same-sex marriage. The measure of unfair treatment is to be assessed on the public treatment of the couple, not the individuals who make up the couple.

A homosexual couple is not subject to unfair treatment either in terms of welfare, tax, normal laws or in any other field of social engagement. This submission has already addressed the entitlement to marriage and sees no merit in repeating the arguments again. In any event, marriage is not an entitlement per se and therefore exclusion, of itself, cannot amount to a treatment deemed unfair.

Members of the SDA do not regard homosexual couples as been treated unfairly. It is our submission that it is unsustainable to maintain that somehow a refusal to change the law on marriage constitutes an unfair treatment. There is no human suffrage, no denial of free speech, no denial of equal opportunity in all aspects of daily living and no denial to engage in the relationship of choice.

The argument of unfair treatment towards homosexual couples, when examined, falls into the propaganda basket and lacks substance.

IN CONCLUSION

It is our submission that the public debate around same-sex marriage has been grossly over represented. There is no evidence that any substantive body of public opinion is anxious for change. In the back blocks of public opinion amongst the working families, same-sex marriage doesn't rate. It is a valid criticism to say that it has already occupied too much time and effort of the Federal Parliament.

Surveys have seldom tested what importance is attached to same-sex marriage. Surveys testing support for or against same-sex marriage often report support in favour.

However, these polls seldom, if ever, ask the question "how important do you regard same-sex marriage". This is a shame as anecdotal evidence shows, apart from elitists and activists supporting same-sex marriage. This is a non-issue for the public at large.

The many issues confronting working families; job security, cost of living, attending to the needs of children, education, transport and health, are where government attention

and action should be. Same-sex marriage is not a big ticket item for members of the SDA. It just does not rate. Arguments supporting same-sex marriage may be sincere and genuine but are ill conceived. Marriage is a valuable and indispensable organising unit of society. Despite the fact that marriage has been weakened by the behaviour of heterosexuals inside marriage, changing the law to allow homosexual couples to marry neither repairs it nor strengthens it or restores its standing.

SUBMITTED BY J. deBruyn
National Secretary
Shop, Distributive & Allied
Employees' Association

2 April 2012