



13 January 2017

SUBMISSION TO THE SENATE ENQUIRY

Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill

Introduction

As a Christian minister, I welcome the opportunity to comment on the Exposure Draft of the Marriage Amendment Bill.

Along with my congregation, Pitt Street Uniting Church, Sydney, I support changes to the Marriage Act 1961 to allow two persons to marry regardless of sex, gender, or sexual orientation. We hold this position because of our faith and the call of the gospel to radical hospitality and social justice.

Pitt Street Uniting Church has a long history of support for LGBTI (lesbian, gay, bisexual, transgender and intersex) persons and their relationships. Since 2010, and reaffirmed in 2014, the congregation supports both civil and religious marriage equality. When the law changes, the congregation will support its minister(s) to offer marriages to couples regardless of sex, gender identity or sexual orientation. The congregation is also working with the Uniting Church LGBTI Network in the process of consultation on marriage within the Uniting Church in Australia to allow churches that so wish to celebrate marriages for same gender couples.

While this submission is offered in general support of a change to the Marriage Act 1961, I do not support all the suggested exemptions in this draft bill believing some to be unnecessary and/or likely to impinge on the rights of LGBTI persons who may seek to marry.

This submission primarily addresses Term (a.) of the Committee's Terms of Reference.

1. Marriage Equality in Australia to be achieved by a parliamentary vote

I support the intention of this Bill to achieve marriage equality for all Australian citizens by parliamentary vote rather than by plebiscite. It is the duty of elected representatives to enact the proposed changes to the Marriage Act and to protect the rights of minorities. I support the draft Bill's implicit recognition of this.

I support the reference to '2 people' as opposed to a man and a woman (and the use of '2 siblings' and 'spouse').

However, I am concerned that the nomenclature of the Bill (Same-Sex Marriage) is unnecessarily restrictive. Though the detail makes it clear that it addresses marriage between two persons, I would suggest that definitions be included to make clear the inclusion of transgender and intersex persons in "same-sex" or preferably that a more accurate alternative such as 'marriage equality' be used.

2. Section 47 of the Marriage Act 1961

While I agree with the right of ministers of religion to discriminate against same sex couples because of their religious belief, I do not think this needs to be explicitly noted in the legislative change to allow marriage between two persons. The 1961 Marriage Act already provides ministers of religion with very wide latitude to refuse to officiate at a marriage. The proposed change that legislates refusal because the couple is not a man and a woman is therefore unnecessary and discriminatory towards LGBTI persons. There are many grounds that a minister might use to decide not to marry a couple and there is no need to enshrine in legislation a particular objection. As a minister, I would not agree to marry a couple where there was domestic violence or abuse of one partner. If my right not to marry such a couple because of my conscience in this matter does not need to be included in legislation, neither does the right of a minister who does not support same gender marriage. The general notion of "religious liberty" is sufficient to protect freedom of the practice of religion.

2. Proposal for Section 47A

I do not support the exemption proposed that would allow civil celebrants to discriminate against LGBTI couples. Civil celebrants are authorised by the state to carry out a government service. The role of civil celebrant was established to provide an alternative to religious celebration of marriage and civil celebrants now officiate at the majority of Australian marriages (74.9% in 2015). Their duties do not involve or require adherence to a religious or conscientious belief. The proposed change would establish a dangerous precedent in discrimination against LGBTI persons. I understand that the organisation representing most civil celebrants does not seek such an exemption.

3. Proposal for Section 47B

The proposed provision for religious bodies and organisations to refuse to make their facilities available or to provide goods and services for a) the solemnisation of marriage, and b) purposes reasonably incidental to the solemnisation of a marriage, presents a serious undermining of equal protection of LGBTI people under the law.

The lack of definition of 'religious bodies and organisations' is problematic as it would seem to apply to a much wider group of potential providers of facilities and services than churches, synagogues, temples, mosques, etc. In Australia, religious organisations are

involved in a broad range of service provision in areas such as education, child care, health care, aged care, counselling, residential and community-based aged care, crisis support and more.

The lack of definition of 'purposes reasonably incidental to the solemnisation of a marriage' is similarly problematic. The solemnisation of marriage creates public recognition of a couple's status which continues for years or decades after the event of solemnisation. Many people access services as couples (eg. housing, counselling) and as written the proposal would allow providers with religious associations (many of whom are recipients of public funding) to discriminate against LGBTI couples and entrench a culture where discrimination against LGBTI persons is legitimised. In rural and remote parts of Australia, religious organisations may be the sole provider of services and so LGBTI couples and their children may not just be excluded from choice but from any provision of social services.

I would support clarification of the right of religious groups to place restrictions on the use of their buildings when they make these facilities available for commercial hire. Allowing a church or similar not to make their facilities available for solemnisation or celebration of a marriage of LGBTI persons does seem compatible with the freedoms of religious organisations. However, one would expect that they would be consistent in discriminating not just against LGBTI marriages but against any marriages that contravene the doctrines of their religion (eg. remarriage of divorced persons).

4. Religious Freedom

Religious bodies should make their own decisions about whom they will marry. They should not determine whom the state will allow to marry.

a. Religious communities who seek to marry LGBTI couples

Arguments for religious freedom in relation to marriage are usually framed in terms of the right of religious organisations to discriminate against LGBTI couples. I would argue that the change to the Marriage Act in 2004 in fact limited the freedom of churches to determine their understanding of marriage. The Society of Friends (Quakers) and the Metropolitan Community Church support religious marriage for LGBTI persons. The Uniting Church in Australia has advocated for civil marriage equality for LGBTI persons (Senate submission by Uniting Justice, 2012). Some Uniting and some Baptist ministers and congregations, and some Jewish synagogues and rabbis, celebrate marriage/blessing services for LGBTI couples. Polling of Christians in Australia consistently establishes significant support for marriage equality among church members.

In my own congregation, there are couples who would likely choose to marry in the church if a change was made to the Marriage Act. Currently the law is preventing us from exercising the fullness of Christian ministry to these couples.

b. Unintended consequences of extending religious rights to discrimination

Professor Carol Johnson of the University of Adelaide has pointed out the unintended consequences of using religious freedom arguments to justify the inclusion of exemptions to the provision of facilities, goods and services for LGBTI couples. It opens the door to the unprecedented use of religious beliefs to discriminate against other groups. She gives examples comparing a restaurateur refusing to provide a wedding reception for a gay male couple because of Leviticus 18:22 with the logical extension that the restaurateur could refuse to seat a menstruating woman on the basis of Leviticus 15.19-22, or refuse to provide a wedding reception for a divorced heterosexual woman who has remarried, on the basis of Romans 7.2. Johnson asks, "Why are religious justifications being claimed in order to justify discrimination against married same-sex couples in the provision of services but other biblical injunctions are being completely ignored?"¹

While the current proposals being considered by the Senate do not extend the right to discriminate to an individual on the basis of religious belief (other than the proposed exemption for civil celebrants), they are still far too broad and as such risk the principle of the separation of church and state which is essential to religious freedom.

Additionally, legislating to allow religious groups to further discriminate may have negative consequences for the attitudes towards religious Australians by non-religious Australians, and may in time lead to support for undermining freedoms currently enjoyed by religious organisations.

4. Overseas Marriages and Marriages in Consulates and Embassies in Australia

One of the reasons that marriage is important to LGBTI people is that it is recognised internationally (unlike civil unions, civil partnerships, or relationship registration). I fully support the intent of the draft legislation to recognise marriages that take place in other jurisdictions and marriages that took place in consulates or embassies in Australia prior to a change in the Marriage Act.

5. Conclusion

In summary, I strongly support changes to the Marriage Act that will allow couples, regardless of sex, gender identity, intersex status, or sexual orientation, to express love and commitment to one another publicly in marriage and to have their relationship recognised legally. No further religious exemptions are required. In a modern democracy, all couples and their families are deserving of legal protection and social respect and recognition.

¹ Professor Carol Johnson, Church and State: The Politics of Same Sex Marriage, audio transcript available at <https://www.pilgrim.org.au/symposium/2015.php>.