



02 April 2012

Senator Trish Crossin
Chair
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator Crossin

Thank you for the opportunity to make a submission to the Senate Inquiry into the Marriage Equality Amendment Bill 2010. Australian Young Labor (WA) has a long history of activism on marriage equality, particularly given its importance to young people.

While the Australian Labor Party has only recently changed its platform to be in favour of marriage equality, AYL(WA) has held a consistent view on this issue for a number of years.

It is our strongly held view that the Marriage Act should ensure equal access to marriage for all adult couples irrespective of sex who have a mutual commitment to a shared life. We therefore support the Bill.

In the submission that follows, we outline our reasons for holding this view.

If you have any questions regarding our submission, please do not hesitate to contact me.

Yours sincerely

DAVID SCAIFE
PRESIDENT

I INTRODUCTION

In 2010, AYL(WA) was one of the first significant wings of the ALP to express its support for marriage equality, passing a motion by acclamation at our AGM. As we argued then, and continue to argue now, extending marriage to same-sex couples is the only consistent, non-discriminatory option in a secular, liberal democracy like Australia. For this reason, we believe that marriage equality is necessary to fully realise the rights of same-sex attracted people in Australia.

Like many of the other submissions to this Inquiry, we regard families as important units in society. We also recognise that families come in different shapes and sizes, and that all couples, regardless of their gender or sexuality, deserve society's compassion and protection.

II THE CASE FOR

We will begin our submission by considering the arguments for marriage equality.

A Marriage is an Institution of the State

AYL(WA) does not dispute that marriage has its roots in religion. Ceremonies that recognise a shared commitment to life have been practised in a variety of forms, and under a variety of religions, for much of history.

Nonetheless, we submit that marriage, as regulated under the *Marriage Act 1961* (Cth), is separate from religious marriage. Religious marriages can occur throughout Australia without gaining any legal force precisely because they require recognition according to the laws and procedures of the state. In recognition of the secular, multicultural society that we live in, those laws are relatively non-prescriptive: they do not recognise marriages according to the religion under which they are solemnised or the contents of the wedding ceremony. That is because

marriage, insofar as it is formally recognised under the *Act*, is an institution of the state.

As such, the Australian laws that regulate marriage should be consistent with the principles of our secular, liberal democracy.

B Equality & the Principle of Non-Discrimination

It is AYL(WA)'s submission that one of those principles is the principle of non-discrimination. While that principle is not articulated in the Commonwealth Constitution, it is our view that it is fundamental to a society that believes in fairness and equality of opportunity. Moreover, we take it as a given in a country where anti-discrimination laws are the norm.

Simply put, the principle of non-discrimination states that character traits that are irrelevant to a decision should not be taken into consideration when making that decision. It follows from that principle that people who are relevantly similar should be treated equally.

In a society that holds the principle dear, it goes without saying that race cannot be a reason to bar people from marriage or that gender cannot be a reason for lesser pay. These traits are not relevant to marriage or work, and therefore, should not be considered. Thankfully, Australia recognises that this is the case in both these examples.

With regards to marriage, however, Australia is not in conformity with the principle. It is clearly the case that same-sex attracted people are as capable of loving relationships as their heterosexual peers. Why, then, do we continue to deny their relationships equal recognition? The answer is not clear, and while we consider several possible arguments below, AYL(WA) does not find any of them convincing. It therefore seems that Australian law is mandating different treatment for relevantly similar people – a clear case of discrimination.

This is what people mean when they argue that current marriage laws breach the human rights of GLBTIQ people. They are not arguing that marriage is a human right, but that people do have the right to be treated equally, failing any legitimate reason for discrimination. While same-sex couples are not treated equally with other couples under the *Act*, they are the subjects of discrimination.

It is also along these lines that civil unions are not an appropriate compromise. Legislating for civil unions sends the explicit message that same-sex couples are not deserving of the same treatment as heterosexual couples. In effect, proponents of civil unions argue that there would be no discrimination because same-sex couples *can always have something other than marriage*. That is coming very close to an endorsement of the antiquated 'equal but separate'¹ arrangement of racial segregation, which is clearly unjust. Thus, in our view, the argument for civil unions is a specious one.

It is our opinion that, as a matter of fairness and equality, same-sex couples cannot be discriminated against under the *Act*. Hence, AYL(WA) supports marriage equality.

C Supporting the GLBTIQ Community

Finally, supporting marriage equality is clearly the right thing to do by our gay, lesbian, bisexual, transgender, intersex and queer (GLBTIQ) community. Members of this community have fought, and in some cases continue to fight, for equal treatment before the law and before their peers. It is time that we took another step forward in accepting and promoting our GLBTIQ friends.

It is on this point that marriage equality is particularly important to AYL(WA) and our members. It is a tragic fact that queer teenagers remain statistically more likely to experience mental health issues, and to commit suicide, than their non-

¹ *Plessy v Ferguson*, 163 US 537, 551-552.

queer peers.² In our consultations, it was consistently argued by our GLBTIQ members that state-sanctioned discrimination not only affects their sense of self-worth, but also contributes to a society where homophobia is acceptable. We cannot help but agree with that logic: that by condoning the unequal treatment of GLBTIQ people in its laws, the state legitimises discrimination in the community. We also point out that there is both scientific³ and anecdotal⁴ evidence that institutionalised homophobia has devastating consequences for GLBTIQ people, and specifically, GLBTIQ young people.

Australia cannot tolerate this state of affairs any longer.⁵ It is simply not acceptable for the state to support laws that devalue the lives of GLBTIQ people, and so manifestly affect their wellbeing. Reform costs nothing; the status quo costs lives. Even if the arguments put thus far are found to be unconvincing, it is our view that this point alone is sufficient for Parliament to support marriage equality.

III THE CASE AGAINST

Having established the positive case for marriage equality, we will now briefly respond to three arguments against it.

² However, they are more likely to be better off if they live in supportive environments. See Mark Hatzenbuehler, 'The Social Environment and Suicide Attempts in Lesbian, Gay and Bisexual Youth' 127(5) *Pediatrics* 896-903.

³ Kevin Speight, 'Homophobia is a Health Issue' (1995) 3(2) *Health Care Analysis* 143, 145; David Plummer, 'Homophobia and Health: Unjust, Anti-Social, Harmful and Endemic' (1995) 3(2) *Health Care Analysis* 150, 154-155.

⁴ See, for example, Sabrina Erdley, 'One Town's War on Gay Teens', *Rolling Stone* (online), 02 February 2012 <<http://www.rollingstone.com/politics/news/one-towns-war-on-gay-teens-20120202>>.

⁵ In fact, polling has consistently shown that Australians are overwhelmingly in favour of marriage equality. See, for example, Josephine Tovey, 'New Poll Backs Same-Sex Marriage', *Sydney Morning Herald* (online), 13 February 2012 <<http://www.smh.com.au/national/new-poll-backs-samesex-marriage-20120213-1t1h4.html>>.

A Freedom of Religion

Some commentators have argued that the legalisation of same-sex marriage would impact on the freedom of religion in Australia. It is our submission that this is plainly not the case with the Bill as it stands.

The *Act* currently provides that a minister of religion is not obliged to preside over any wedding. The Bill does not propose to amend the *Act* and, therefore, ministers will be able to refuse to solemnise marriage between same-sex people where they believe it conflicts with their religion.

In fact, several religious organisations have previously indicated their willingness to celebrate and solemnise same-sex marriages.⁶ Without a separate, good reason for banning same-sex marriage, it appears that it is actually these people who are unnecessarily being restricted in their religious practices.

B Tradition

Separately, there is a traditionalist argument against marriage equality, which states that marriage has always been between a man and a woman. It is our submission that this static definition of marriage is incorrect.

For most of history, marriage has meant different things to different cultures at different times. Marriage has variously been between a man and a woman; a man and his property; a man and a minor; and, a man and his wives. Similarly, it has not been between people of different classes; a person and a divorcee; or, people of different races.

The point of this list is not to cheapen the institution of marriage, but rather to point out that marriage has always evolved with social norms. It is, therefore, entirely appropriate for Parliament to ensure that the legislative definition of

⁶ Canberra Quakers, Submission No m22 to Senate Standing Committee on Legal & Constitutional Affairs, Parliament of Australia, *Inquiry into the Marriage Equality Bill 2009*, 25 August 2009.

marriage is in line with the public's acceptance of same-sex attracted people and their relationships. Given that the overwhelming majority of the public now recognise that sexuality is irrelevant to commitment to a shared life, we submit that the traditionalist argument is disingenuous.

C 'Best Interests of the Child'

The final argument that we will consider states that marriage equality would result in children being without a mother and a father, which is not in their best interests. This point, we believe, is not supported by the bulk of credible evidence. To demonstrate this, we will consider the debate over the provision of adoption services for same-sex couples.

Admittedly, the answers in the literature are varied, and there is a distinct lack of data. However, in reviewing the literature, Biblarz and Stacey conclude that

[b]ecause every relevant study to date shows that parental sexual orientation per se has no measurable effect on the quality of parent-child relationships or on the children's mental health or social adjustment, there is no evidentiary basis for considering parental sexual orientation in decisions about children's "best interest".⁷

In further support of this, the Tasmanian Law Reform Institute found that the growing body of credible research was in favour of same-sex parenting.⁸ Only three jurisdictions (Western Australia,⁹ the ACT¹⁰ and New South Wales¹¹; Tasmania provides for adoption by homosexual step-parents¹²) currently allow adoption by same-sex couples. However, despite denying same-sex couples the right to adopt, almost all jurisdictions extend to them eligibility for assisted reproductive

⁷ T Biblarz and J Stacey, '(How) Does the Sexual Orientation of Parents Matter?' (2001) 66 *American Sociological Review* 159, 176.

⁸ Tasmanian Law Reform Institute, *Adoption by Same Sex Couples*, Final Report No 2 (2003) 37-42.

⁹ *Adoption Act 1994* (WA) s 39.

¹⁰ *Adoption Act 1993* (ACT) s 18.

¹¹ *Adoption Act 2000* (NSW) s 28.

¹² *Adoption Act 1988* (Tas) s 20(2A).

technology and foster caring.¹³ Furthermore, in those jurisdictions that allow adoption by single adults,¹⁴ none specify sexuality as a factor that must be taken into account.¹⁵ Taken together, we submit that there is no evidence in either scientific research or Australian laws that sexuality is considered relevant to parenting.

Finally, we know that same-sex couples in Australia are already raising children (either through adoption or assisted reproductive technology, as discussed above). Given that marriage is regarded as a positive influence on children, we submit that, if anything, it is actually in the best interests of children to legislate *for* marriage equality.

IV CONCLUSION

AYL(WA) submits that the case for marriage equality is too compelling to ignore any longer. Denying people the right to marry purely because of their sexuality is clearly discriminatory; it is a status quo that we abhor. To AYL(WA), GLBTIQ people are members, siblings, parents and friends. They are our mentors, bosses, colleagues and protégées. They are loving people who we cherish. They are people for whom we want the best.

AYL(WA) believes that our elected representatives also want what's best for our GLBTIQ citizens; that they envision an Australia in which sexuality is not a reason for discrimination. In light of this, and the arguments advanced above, AYL(WA) submits that the Parliament of Australia must support the Bill and legislate for marriage equality.

¹³ Paula Gerber and Adiva Sifris, 'Jack & Jill or Jack & Bill: The Case for Same-Sex Adoption' (2009) 34(3) *Alternative Law Journal* 168, 169.

¹⁴ South Australia being the exception. See *Adoption Act 1988* (SA) s 12.

¹⁵ *Adoption of Children Act 1964* (Qld) s 12(3); *Adoption of Children Act* (NT) s 14; *Adoption Act 1984* (Vic) ss 11(3)-(4).