

Dear Senators,

THE EIGHT FLAWED ARGUMENTS AGAINST MARRIAGE EQUALITY

I was the Australian Democrats senator who had responsibility for responding to the Howard Government's ban on same-sex marriage in 2004 on behalf of my party.

As the former Democrats spokesperson for Law and Justice, I was in the chamber when the anti-homosexual clause was added to the Marriage Act of 1961 and when that Amendment Bill was rushed through the senate under a gag order in the last few sitting days before an election was expected to be called.

It was a shameful moment in Australian political history and I said so at the time. It was cruel, cynical and unnecessary. It was simply a political ploy to pander to religious conservatives in the community by stirring homophobia in the 2004 federal election campaign. It positioned the Australian parliament on the wrong side of history. It's time to right that wrong.

I have followed this debate nationally and internationally now for ten years, following the passage of equal marriage earlier this century in South Africa and Canada respectively.

It's worth noting that in all of the arguments against same-sex marriage, there are just eight common themes that emerge. They are repeated ad nauseam by opponents of reform. Yet all of them, when placed under scrutiny, are found to be false.

I propose to go over these eight claims briefly here, because I have no doubt that these recurring themes will present themselves, yet again, in the many submissions this committee receives.

I respectfully ask senators to become acquainted with the eight arguments against equality, and to challenge anyone who raises them by insisting on evidence for such claims.

Opponents of same-sex marriage will argue the following eight points:

1. Marriage is between a man and a woman.

Actually, that's a slogan not an argument. The parliament will define what constitutes marriage and has always done so. Parliament has changed the definition of marriage many times in accordance with changing social attitudes and the advance of civil and human rights. Many jurisdictions overseas now recognise marriage between same-sex couples.

To claim that "marriage is between a man a woman", as if that somehow ends the debate is both factually wrong and ignores the evolutionally process of social legislation. Our parliament determines the definition of legislation. Definitions are not immutable.

2. Marriage is a religious institution sanctioned by God.

Religious people are entitled to their beliefs. However, we live in a secular country and under civil law. We do not live in a theocracy. The Federal Marriage Act is Commonwealth law, not biblical lore.

A majority of Australians who marry do not do so in a Church, Synagogue or Mosque. A majority of Australians choose a secular ceremony administered by a civil celebrant. You do not have to be religious to marry. Atheists marry.

To claim that religion owns marriage and defines marriage is completely wrong. In Australia, law is determined by our elected representatives and not by self-appointed moral guardians or religious institutions.

3. Changing the definition of marriage will weaken the institution.

The definition of marriage has changed many times. It is an evolving process. Marriage used to be prohibited between people of different faiths, as was inter-racial marriage. Marriage used to relegate women to being the property of their husbands. Marriage used to be “for life”, divorce was not possible and unlawful.

Every time a change has been made to the Marriage Act, it has been to strengthen the institution, not weaken it. Changes are required over time to ensure that marriage remains relevant and accessible to those people who wish to embrace its core values and social ideals.

Most people want to marry because, broadly:

- They wish to celebrate their union with friends and family;
- They seek the acknowledgment and support of the State in making this commitment;
- They seek the legal protections and certainty it provides over property and finances;
- They seek the legal protections it provides any children within the marriage;
- They believe that the institution provides them with a sense of social inclusion, helping to integrate them with families, communities and society.

Same-sex couples are seeking to share in those protections and values, not to undermine them.

It is nonsense to argue that keeping marriage exclusively heterosexual somehow protects marriage itself. That argument was once used to prohibit marriage between black and white people.

Anyone who claims that same-sex marriages weaken the institution or causes harm to society must be made to provide evidence for their claims. Where is the evidence, for example, from Canada, South Africa, Spain or Finland, that same-sex marriage has weakened the institution of marriage or harmed society in those places? The reality of course is that there is no evidence. The claim is phony.

4. Marriage has a long tradition and should be respected.

It's true that marriage has a long tradition, but traditions change. It used to be the tradition that women could not drink in public bars or vote at elections. It used to be the tradition that black people were not paid equal wages and that children from impoverished single mothers were placed in workhouses. In the military and with apprenticeships in the trades, it was tradition to informally induct new recruits through a process of often cruel bastardisation. Bull fighting in Spain and fox hunting in the UK are also traditions, but that doesn't make it right.

Simply because an element of prejudice or cruelty has a long tradition does not make it acceptable or justified.

Tradition can never be used as an argument in favour of maintaining discrimination. Indeed, we have a long tradition in this country of righting past wrongs, whether against indigenous people, women, migrants or people with disabilities – to name a few. If tradition is any yardstick for reform, then Australian tradition calls for an end to marriage discrimination.

5. Children deserve both a mother and father.

This is one of the most common arguments thrown up to oppose same-sex marriage. It is also the most illogical.

There is no fertility test for marriage. You do not have to have children if you get married. You do not have to be married to have children. Many heterosexual people marry with the intention of not having children, either for medical reasons, age or because they simply do not wish to have a family. Married couples who choose not to have children are not required to divorce.

There is no causal link between marriage and parenting. Indeed, the controversial issue of same-sex parenting is a different debate altogether. Permitting same-sex marriage does not facilitate same-sex parenting. Gay and lesbian couples can and do have children whether they are allowed to marry or not.

However, there is plenty of research to show that marriage is often the best social and legal framework within which to raise children. As such, it applies equally to same-sex couples as it does to heterosexual couples.

Even those people opposed to same-sex parenting, or simply uncomfortable with it, would have to agree that where same-sex families exist, it is better for such children and for the relationship as a whole to be cemented by marriage. If married households are better for children as the research suggests, then it is wrong for children being raised by same-sex couples to be denied that opportunity and its professed benefits.

6. Churches will be forced to conduct gay weddings against their will.

It is currently the case that any church or religious organisation, or indeed any civil celebrant may lawfully refuse to marry people for any reason. For example, the Catholic Church is permitted to deny a marriage to anyone who is divorced. This discrimination is allowed in Australia.

This situation will not change when same-sex marriage becomes law. It will still be the case that church groups could refuse to marry a gay or lesbian couple if they so chose. However, if there are any lingering doubts or concerns over this, it would be possible to add an amendment to the Marriage Act to make this exemption explicit.

The fact is that no church or religion can be compelled to perform or endorse any ceremony against its tenets, and rightly so.

It should be noted however, that religious freedom cuts both ways. The current ban on same-sex marriage denies those church groups which wish to perform same-sex marriages the opportunity to do so. There are several religious groups which want to perform marriages for same-sex couples, but which are currently denied this religious freedom.

Those religious spokespeople who insist that same-sex marriage would be an affront to religious freedom are wrong. And they ignore the fact that the current prohibition on equal marriage means that some religious groups have their religious freedom taken from them. If religious freedom is a strong principle in this debate, then the religious freedom of those churches which wish to marry same-sex couples must be respected.

7. Legalising gay marriage will lead to legalising polygamy.

If legalising same-sex marriage led to polygamy, then the reverse would also be true, i.e.: polygamy would lead to same-sex marriage. Clearly this isn't the case.

The fact is that same-sex marriage is only possible in those countries and cultures where freedom and equality flourishes. Polygamy is not about freedom and equality, it's a form of discrimination. Polygamy is a sexist and patriarchal institution that gives power and privilege to men but not to women. Polygamy means a man can have several wives, but a wife cannot have more than one husband.

Polygamy only exists in very conservative religious jurisdictions and cultures which at the same time vehemently oppose same-sex marriage.

Furthermore, if same-sex marriage did lead to polygamy, there would be examples of this overseas in those places where same-sex marriage has become law. There are no examples. One does not lead to the other.

While there has been an attempt in Canada to allow polygamous marriages, the courts ruled against this change on the grounds that it was a discriminatory form of relationship recognition that was not compatible with the values of a civilised nation.

Polygamy is about inequality. Same-sex marriage is about equality. These two forms of relationship recognition cannot coexist in countries or cultures which have either.

8. Marriage is for heterosexual people, same-sex couples should have civil unions.

It is common for opponents of same-sex marriage to argue that they are not homophobic or prejudiced, and to stress that they support the legal recognition of gay relationships – but not via marriage.

Such people often propose that registered partnerships or civil unions would be an appropriate substitute.

The obvious question to ask here, is why?

The notion that people can be ‘separate but equal’ is nonsense, and history teaches us that segregation and apartheid is wrong and doomed. Gay people and straight people don’t have different driver’s licences and there is no need for different marriage licences.

Apart from the fact that civil unions have their faults, largely due to their lack of universality, common understanding and non-portability, it is unnecessary to devise a second-rate tier of partnership recognition for people based on sexuality.

In my experience, those who advocate civil unions are simply trying to ensure that gay and lesbian relationships are structured legally as ‘less than’ and second class. It’s not about finding solutions; it’s about relegating gay couples to the back of the bus. It’s about placing a social and legal distance between heterosexual and homosexual people as a means of securing privilege for the former and to pacify religious conservatives who see marriage per se, as a biblical edict.

Genuine equality for gay and lesbian people is not possible until equal marriage becomes a reality. Civil unions are not a substitute. More importantly, no substitute is required. Britain introduced civil unions several years ago, made famous by the commitment ceremony which saw Elton John and his partner David Furnish “civilly unionised” in London. However, this legislative reform has not stopped the momentum for full marriage equality and the British Parliament has indicated the likelihood of moving to legalise same-sex marriage by 2015.

SUMMARY

In summary, I have repeatedly found that all arguments put forward by opponents of same-sex marriage to be found wanting. I have no doubt that the eight key reasons used to oppose equal marriage will be found peppered throughout the many written submissions this Committee receives. They will also become apparent in any public hearings it may hold.

As such, I respectfully ask senators to question those who make such claims and to insist they provide the evidence for them. Equal marriage has now been in place in Canada for almost a decade.

I call on those opponents of equal marriage to produce the evidence from Canada to show that same-sex marriage has been harmful in any way to Canadian society or communities. Produce the evidence. Stop the conjecture and the fear-mongering and actually produce the evidence.

CONCLUSION

In conclusion, I want to end my submission on a personal note and to illustrate my own circumstances.

My partner Keith and I have been together for 26 years.

Since December 2001, we have been regarded in our home state of Western Australia as a de facto couple. As such we have all of the same rights and responsibilities as a married couple in WA. There is no distinction. We could even apply to adopt children and can utilise the state-based Family Court for any disputation arising from future separation.

Since July 2009, we have been regarded by the Commonwealth as being a de facto relationship. As such, we have all the same rights and responsibilities as a married couple under federal law, including taxation, superannuation and Commonwealth entitlements. There is no distinction.

Let's be clear about this: under both state and federal law, my same-sex partner and I are regarded as de facto. This means "living together as a couple but not married."

This recognition ensures that we have exactly the same rights and responsibilities as married couples under both state and federal law.

So here's the key question I direct to opponents of equal marriage:

- ***If my partner and I have exactly the same rights and responsibilities as married couples under both state and federal law, why can't we have a marriage license?***

Senators on this committee should ask the same question.

In the mean time, Keith and I look forward to the day when we can be included as full citizens with genuine equality and the embrace of social inclusion.

Sincerely,

BRIAN GREIG, OAM