

SUBMISSION TO SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

REGARDING PROPOSED LEGISLATION FOR SAME-SEX MARRIAGE.

Dear Senators,

In considering the legislation before Parliament to change the Marriage Act to include same-sex marriage, I respectfully ask you to give serious consideration to the following FACTS concerning the changed status of homosexuals in society, the changed understanding of the causes of homosexuality, changes in the definition and role of marriage in society, and changes in the authority of the churches viz-a-viz marriage, which, taken together, I submit, will lead you to recommending the proposed legislation.

1.CHANGES TO THE STATUS OF HOMOSEXUALS IN SOCIETY: My partner, Arthur Cheeseman and I are both over 80 and have lived together as a same-sex couple for 45 years. In that time we have seen a remarkable change in the attitude of our fellow Australians to homosexuals, who were previously stereotyped as a frivolous, irresponsible and narcissistic sub group, often employed as hairdressers, interior decorators and Qantas stewards, and in other self-indulgent occupations. Homosexuals in the learned professions, such as Michael Kirby, had to conceal their same-sex relationships for years, because it would have” a devastating effect on their careers”

Those days are gone. We now have known homosexuals in the Federal Cabinet, in government at all levels, in the High Court and throughout the legal profession, in academia, the medical profession and in the arts, the theatre,music, literature,media, sport, popular entertainment and business.

Community attitudes towards homosexuals have changed because people have seen the outstanding, selfless contributions to society of homosexual high achievers. and they have come to understand that homosexuals are part of the mainstream of society, who pull their weight in every sphere of life, and, therefore, their relationships should be respected and treated before the law in the same way that heterosexual relationships are treated.

2. CHANGES IN THE UNDERSTANDING OF THE CAUSES OF HOMOSEXUALITY: Let me quote from an article by Sydney barrister, John Zerilli entitled : “**Why Conservatives Should Support Same-Sex Marriage**” (“**QUADRANT**” MARCH 2012 P.71) :

“ Most convincingly, because *new facts are in*, and have been available from professional clinicians,psychiatrists and psychologists for decades , if not more. The facts are that people do not choose their sexual orientation any more than people choose to be left-handed or right-handed. People simply have no choice in the matter of their sexual orientation..... Thus, armed with new information, dispelling the centuries of prejudice, ignorance and superstition which have shrouded the whole issue of human sexuality, it ought to be the conservatives spear heading the debate about making prudent and long overdue changes to marriage laws..... only to a person who still thinks homosexual orientation is a choice would it occur that marriage should remain the preserve of heterosexuals”.

John Zerilli could have added that genetic research has shown that there may be a common genetic pattern shared by homosexuals, which means that, if being homosexual

has a strong genetic element, it is not the unnatural, abominable vice religious teachers like to portray it as. It is not a deliberately chosen sexual preference, but a genetic orientation for which a person is not morally culpable.

3.CHANGES TO THE DEFINITION AND ROLE OF MARRIAGE IN SOCIETY: I quote from an editorial in the Hobart "MERCURY" (a Murdoch paper) of Nov.11th. 2011 :

" Yet marriage is not what it used to be. It has been re-defined radically in the past 200 years and especially in the past half century. It is no longer exclusively religious. The state has taken over, and marriage is now a legal status..... Since the passing of no-fault divorce laws in the 1970s, it is much easier to end marriages. This is far removed from the church tradition of a virtually indissoluble union for better or for worse until parted by death. Defenders of the Christian tradition of marriage cannot reclaim exclusive rights to the word marriage. It is too late for that.

It is difficult for many people to accept and it may take time to adjust, but given that marriage is now simply a legal definition, it would be pure discrimination to say that same-sex couples are not allowed to be treated equally before the law.

The law should be changed to remove that discrimination and same-sex marriage should be recognized".

4.CHANGES IN THE AUTHORITY OF THE CHURCHES VIZ-A-VIZ MARRIAGE : In English, and derivatively, in Australian law, the authority of the church over marriage derives from the status of the Anglican Church as the established church in England. Church law regarding marriage was the law of England and its colonies. Until the Catholic Emancipation Act of 1829, the only legal marriages were those celebrated by Anglican clergy. Only after 1857 did the British parliament legislate for limited access to divorce for proven adultery, but divorcees could not remarry in the Church, faced social ostracism and exclusion from royal circles, even in my life-time. In countries where the Catholic Church was established similar strictures applied.

This period of church power over marriage has passed. In a secular democracy such as Australia, with separation of church and state, marriage is primarily a secular relationship contract, and as such should be equally available to all citizens, heterosexual or homosexual

In contrast to the English system, the Napoleonic Code, reflecting the principles of separation of church and state established by the French revolution, distinguished between civil marriage and religious marriage. All French citizens to this day are required to have a civil marriage before the local mayor, and then, if they choose, have a religious ceremony before a priest, usually the following day. Civil unions (or marriages) in France, are available for homosexual couples and heterosexual couples, and almost 30% of heterosexual marriages are now civil unions.

By including same sex couples in the legal definition of marriage, and exempting religious celebrants from marrying same sex couples if they conscientiously object, Australian marriage law would begin to copy the Napoleonic Code and move towards the complete separation of secular and religious marriage, which is highly desirable.

4a.THE CATHOLIC BISHOP'S CASE AGAINST SAME SEX MARRIAGE : Apart from an emotional and unsupported claim that same sex marriage will undermine the stability and dignity of marriage and the family, the main argument of Australian Catholic bishops is that the definition of marriage has always been a union of two people who are capable of

a sexual act which is “open to the procreation of children”, namely a male and a female. The Catholic bishop’s teaching means that there is no marriage between a couple who have the intention from the outset of their marriage of using condoms (regarded as unnatural and immoral by the Church) to prevent the conception of children. Such an intention provides grounds for the canonical annulment of a marriage.

Australian law rejects this definition of marriage and recognizes the relationships of childless couples, even infertile couples, and physically handicapped couples, as legal marriages. The law should also reject the use of this physiological definition of marriage to exclude same sex couples. There is evidence that a large percentage of the Catholic laity do not share the views of their bishops and are in favour of legalizing same sex marriage.

Australian law permits the adoption of children by homosexual couples(again in opposition to the catholic Church) and homosexual parents have already established a reputation for skilled parenting . Should not the law now give homosexual families the added dignity and stability of being legally recognized as marriages.

Far from undermining the stability and dignity of marriage, the opposite is the case. Long lasting homosexual relationships, such as that between my partner and I, and those of many of our friends, are an example to heterosexual couples, and the desire of same sex couples for the dignity and public commitment implied by marriage gives witness to the importance of marriage as an institution in society.

5. CONSCIENCE VOTE : the Labor Party is to be commended for allowing a conscience vote to its MPs on this issue. By contrast, in refusing to allow Coalition MPs a conscience vote, Tony Abbott is in effect imposing his Catholic informed conscientious objection to same sex marriage on the rest of his party.

His colleagues should strenuously remind him of the advice of former Liberal Attorney-General, Tom Hughes, speaking in Parliament in favour of the decriminalization of homosexuality :

“In a pluralist society it is no part of the function of the law to uphold or preserve the Judeo-Christian tradition, simply because it exists”

6. PERSONAL CONSEQUENCES : As founder of the Comsuper Action Committee I appeared before the Senate Legal and Constitutional Affairs Committee to argue for the recognition of same sex couples as de facto couples for superannuation and other social security benefits. Your Committee supported these reforms and they were enacted by the Rudd Government in 2008.

Being recognized as a de facto couple has been of enormous financial benefit to my partner, Arthur Cheeseman and I, because Arthur’s financial future has been secured by his entitlement to the reversionary Comsuper pension should I predecease him. However, I remain concerned that, should I predecease him, Arthur, who has macula degeneration and is almost blind, will still have to go through demanding bureaucratic processes, such as providing 3 statutory declarations and proof of financial dependency, in order to satisfy Comsuper of the existence of our de facto relationship. By contrast, a heterosexual spouse only has to produce a copy of the marriage certificate. Why should Arthur be put to such additional trauma at a time of bereavement ?

Finally, Arthur and I feel that being recognized as a de facto couple still carries a stigma and is looked down on as a second rate relationship. I suspect that much of the

disgraceful sexual denigration of the Prime Minister, Julia Gillard, is linked with this community attitude towards de facto relationships.

We hope that, as a result of your deliberations and recommendations, the Parliament will remove this devaluation of our 45 year relationship by passing legislation to amend the Marriage Act to include same sex relationships.

John Challis & Arthur Cheeseman,

April 2nd, 2012.