

## Hearing of Senate Legal and Constitutional Affairs Committee into the Recognition of Foreign marriages Bill 2014 Melbourne, 21 August, 2014

**Australian Family Association, Terri M Kelleher**

### **1. It's argued that if same-sex marriages occur overseas, why shouldn't they be recognised in Australia also?**

Well, some countries allow polygamy. Some tribal societies allow polygamy. Indonesia allows polygamy in limited circumstances, if a judge determines that all parties are agreed to the arrangement and that the husband can provide for all the wives and family. There is a push from women in Indonesia to abolish polygamy.

Some countries allow child marriages.

Just because these forms of marriages are recognised overseas, does that mean we should automatically recognise foreign polygamous marriages, child marriages or same-sex marriages here in Australia?

### **2. Recognition of same-sex marriage is nothing more than the first legislative step towards recognition of same-sex marriages performed in Australia. And will lead to the prosecution of businesses and churches that refuse to participate in such marriages.**

After all, won't it be a contradiction to recognise foreign same-sex marriages but not legalise for same-sex marriages in Australia?

Same-sex marriage will be used as a legal means to force businesses and churches to either service such marriages or be prosecuted under with marriage or anti-discrimination law.

In the United States, 21 states and the District of Columbia bar businesses from discriminating on the basis of sexual orientation, according to the Human Rights Campaign, which advocates for gay rights. Here are just a few of the prosecutions arising from these laws:

- **Colorado:** the Civil Rights Commission has ruled that Jack Phillips, a Denver baker, had to make wedding cakes for same-sex couples. Phillips is appealing.
- **Washington:** florist, Barronelle Stutzman is being sued by the state under its anti-discrimination law for declining a request to provide flowers for a same-sex wedding.
- **Iowa:** Betty and Richard Odgaard are Mennonites who say they shouldn't be forced to hold same-sex weddings in their Gortz Haus Gallery in Grimes.
- **New Mexico:** the Human Rights Commission concluded that a wedding photographer, Elaine Huguenin, violated a state anti-discrimination law by refusing to take pictures of a same-sex couple's commitment ceremony. Last April, the Supreme Court turned away the

photographer's appeal without a hearing. Huguenin has since stopped taking wedding photographs.

You don't have to go to America to see demands for these denials of freedom to not be involved in same-sex weddings.

**The ACT attorney general, Simon Corbell**, said in a letter to the Australian Christian Lobby last year that his ACT same-sex marriage law, which was struck down by the High Court, would be reinforced by the *Discrimination Act 1991*, making it "unlawful for those who provide goods, services and facilities in the wedding industry to discriminate against another person on the basis of their sexuality or their relationship status. This includes discrimination by refusing to provide or make available those goods, services or facilities."

**Australia's GLBT, legal and human rights groups** have openly called for denying businesses and churches the freedom not to participate in same-sex marriages.

When former federal Attorney General Nicola Roxon held an inquiry into consolidating the Commonwealth's four separate anti-discrimination laws, 31 GLBT, legal and human rights groups made submissions arguing that:

- there must be no exemptions for the churches;
- or, if exemptions are granted, they be severely restrictive;
- or that organisations seeking exemptions be subject to onerous application provisions and conditions;
- or a combination of the above proposals.

**The groups arguing for these restrictions on the freedoms of Australians included:**

**Australian Lawyers for Human Rights:** "Religious exemptions should only apply to the core functions and beliefs of religious institutions...."

**Legal Aid Queensland** "... argues for the removal of those (i.e., religious) exemptions".

**Legal Aid NSW** "... does not support the retention of any exemption on religious grounds".

**Public Interest Law Clearing House (Vic) Inc:** "The Consolidated Law should include no exemptions for religious organisations in relation to the protected attributes of sexual orientation and gender identity."

**Discrimination Law Experts Group:** "We recommend that the religious exceptions be repealed."

**ANU College of Law "Equality Project".** It "rejects permanent exemptions on religious grounds for institutions or individuals".

**Human Rights Law Centre:** "These exemptions are manifestly inappropriate and inconsistent with Australia's human rights obligations and international best-practice."

**The South Australia Equal Opportunity Commission:** "Any religious exemption should be strictly restricted to the inherent requirements of the religious belief or activities rather than apply more broadly to employment-related conduct."



**The Law Institute of Victoria:** "religious exceptions ... should be precise, public, and subject to sunset provisions...."

**South Australian Bar Association:** "If exemptions are retained, then they should not ... be available where functions are being carried out by an organisation pursuant to a Commonwealth government contract or for activities conducted using public funds."

**Australian Council of Human Rights Agencies:** "There should be no religious exemptions where:

"(a) The institution is carrying out functions contracted by government in relation to the employment; or where

"(b) The institution is accessing public funds to fund the employment."

**HIV/AIDS Legal Centre:** "Remove entirely any religious exemption to discrimination on the grounds of sexual orientation or gender identity."

**Public Interest Advocacy Centre:** "There should be no permanent exemptions for religious organisations in respect of any protected attributes." However, if there are exemptions, they should be limited to "the ordination, appointment, training or education of priests, ministers of religion or members of any religious orders" and to institutions involved in the "employment of staff in the provision of religious education and training".

**The National Association of Community Legal Centres:** "The consolidation bill should not provide for religious exemptions in relation to the protected attributes of sexual orientation or gender identity." However, if there are exemptions, they "should not be applicable to organisations or services in receipt of public funding".

**Young Workers' Legal Service [SA unions]:** "... religious institutions would be required to 'opt-in' for exemption under federal anti-discrimination laws".

**Australian Lesbian Health Coalition:** "There should exist no blanket exceptions or exemptions for religious bodies."

**National LGBTI Health Alliance:** "Religious bodies should not be granted exemptions from anti-discrimination legislation for their activities in the provision of services, such as aged care, health services and education."

**The Diversity Council of Australia** "... does not support general exemptions for religious bodies for any acts and practices".

**Lesbian and Gay Solidarity (Melbourne)** says that the federal government must "withdraw its religious exemptions from all its anti-discrimination laws".

**Equality Rights Alliance:** "... exceptions for religious organisation ... should not be included in the consolidated Act."

**Australian Federation of AIDS Organisations (AFAO)** says there should "be no religious exemptions in the new consolidated anti-discrimination law".

**ACT Human Rights Commission:** It looked favourably on exemptions, but argued that "it is essential that any remaining stand-alone exceptions are reviewed regularly and rigorously to determine whether they should be retained, amended or repealed...".



**The Coalition of Activist Lesbians Australia Inc.** recommended “the complete removal of exemptions for religious organisations with regards to sexual orientation”.

**Tasmanian Gay and Lesbian Rights Group** said that it “does not support any legislative exemptions or exceptions that are specific to sexual orientation of gender identity and presentation”.

**Liberty Victoria, Victorian Council for Civil Liberties Inc.** said that religious bodies and educational institutions should be required to have a “licence to discriminate, time-limited but renewable, conditional on ... specific ‘doctrines, tenets, beliefs or teachings’ (that) necessitate it”.

**The Equal Rights Trust, UK**, said that Australia’s new consolidated act “should expressly recognise that direct discrimination may be permitted only very exceptionally, and only when it can be justified against strictly defined criteria”.

**Victorian Gay and Lesbian Rights Lobby** said that it “opposes any exemption granted to religious bodies that would permit discrimination on the basis of sexual orientation or gender identity”.

**Women’s Electoral Lobby Australia** said: “Legislation should remove automatic exceptions for religious and other bodies from all anti-discrimination legislation, and that if any exceptions are made that they be limited to a two-year period, with no automatic extension of exemptions.”

**Gay and Lesbian Rights Lobby, Embracing Equality:** “Excluding special measures, there should be no religious exemptions or exceptions to Commonwealth anti-discrimination laws.”

**The Australian Sex Party:** “The Consolidated Act should not include religious exceptions that apply to discrimination on the grounds of sexual orientation or gender identity.... If the Act does include religious exceptions, they should apply only to the ordination or appointment of priests, ministers of religion or members of a religious order.”

**ACON (formerly known as the AIDS Council of NSW)** said:

“That no exemptions to the consolidated anti-discrimination legislation are available for any organisation receiving government funding when performing those government functions.

“That if exemptions do exist they should be narrow, temporary and made public by organisations utilising them, including when advertising for jobs or the provision of services.”

### **3. It’s time to listen the demands of donor-conceived children who have been denied their birth right to know their biological identity and their biological family.**

It is time to stop amending Federal and state laws to grant more groups access to donor conception and surrogacy, and instead change the law to give back to children their right to know their identity, their biological parent(s), brothers sisters, grandparents and family medical history. This is the birth right of every child and is recognised in the UN Convention on the Rights of the Child (see Articles 7.1, 8.1 and 9.1) and the UN Declaration on the Rights of the Child (see Principle 6).

To state clearly what recognition of overseas same-sex marriage means – it means recognising that same-sex couples have a *compound right*: the right to marry and the right to have children,

but since of their nature such marriages cannot have children naturally, they must have the right to have children by means other than natural reproduction.

This means widening access to donor IVF and surrogacy in a manner that offers no guarantee that the birth right of such children will be respected. Indeed, Australia's GLBT groups are pushing to have the biological parents of their children removed from the child's birth certificate and be replaced by the gay/lesbian social parents. (Attachment 1)

Wikipedia's GLBT Rights in Australia provides a check list of the demands of the GLBT lobby, and this includes adoption of children, access to donor IVF and surrogacy and removal of biological parents from a custodial child's birth certificate.

Marriage, whether opposite-sex or same-sex, involves children and it's the duty of the state to protect these children by legally supporting their right to their biological identity and biological heritage.

Today there is strong resistance from the children of donor conception to the fact that many have been denied their birth rights. Indeed, many have become campaigners against donor conception, saying that this is no way to bring children into the world.

After numerous public scandals regarding donor conception and surrogacy, there are moves in various countries to limit access to these means of reproduction.

There have been three inquiries in recent years into the failure to respect the birth rights of donor conception – by the Senate, the NSW and Victorian Parliaments.

The 2011 Senate Legal and Standing committee inquiry into *Donor Conception Practices in Australia*, made 32 recommendations strongly arguing for children of donor conception to have the right to know their biological identity and heritage. Agreement was unanimous on the committee. Members and participating members of the committee included: Liberals Guy Barnett, Stephen Parry and Russell Trood; ALP Senators Patricia Crossin, Mark Furner and Senator Louise Pratt; Greens Senators Scott Ludlam and Rachel Siewert.

Rather than the Senate arguing for legal recognition of same-sex marriage and expanding access to donor conception and surrogacy, the Senate should be putting forward overarching legislation to protect the birth right of all children.

Appendix 2 provides the results of a Galaxy Poll conducted by the AFA which shows that 89% of Australians support children of donor conception and surrogacy having the right to know their biological heritage. Among 18-24 year olds, 95% supported this right.



### **Recommendations:**

- 1. That the Senate oppose the recognition of overseas same-sex marriages and protect the freedom of Australian businesses and churches not to be forced to provide services that would be against their ethical beliefs.**
- 2. That, in order to protect the birth right of children to their identity and biological heritage, the Senate prepare a bill requiring that birth certificates of all children born from donor conception or surrogacy contain identifying information so that these children can easily find their biological mother and father, and therefore know their identity, their biological brothers, sisters, grandparents and family medical history.**

**Appendix 1: LGBT Rights in Australia, Summary table, [http://en.wikipedia.org/wiki/LGBT\\_rights\\_in\\_Australia](http://en.wikipedia.org/wiki/LGBT_rights_in_Australia)**

State/Territory	Same-sex marriage	De facto relationships status	Registered relationships status	Equal age of consent	Anti-discrimination legislation	Adoption and foster parenting	Recognition of parents on birth certificate	Access to fertility (such as ART, IVF, surrogacy, AI, etc.)	Right to change legal gender
ACT	<del>X</del> (High Court asks for federal parliament review)	✓	✓	✓	✓	✓	✓	✓	✓
Commonwealth of Australia	<del>X</del> (Marriage Amendment Act 2004)	✓ (family law)	✓ (family law)	✓ (covered by state/territory law)	✓ (Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013[115])	✓ (family law)	✓ (family law)	✓ (family law)	✓ (covered by state/territory law)
New South Wales	<del>X</del> (Voted down in 2013)	✓	✓	✓	✓	✓	✓	✓	✓
Northern Territory	<del>X</del>	✓	<del>X</del>	✓	✓	<del>X</del>	✓	✓	✓
Queensland	<del>X</del>	✓	✓	<del>X</del> (18 for anal sex)	✓	<del>X</del> (foster parents only)	✓	✓	✓
South Australia	<del>X</del> (Voted down in 2013)	✓	✓ (domestic partnership agreement)	✓	✓	<del>X</del> (under review)	✓	<del>X</del> (ART & surrogacy banned)	✓
Tasmania	<del>X</del> (Voted down in 2012)	✓	✓	✓	✓	✓	✓	✓	✓
Victoria	<del>X</del> (proposed)	✓	✓	✓	✓	<del>X</del>	✓	✓	✓
Western Australia	<del>X</del> (proposed)	✓	<del>X</del>	✓	✓	✓	✓	<del>X</del> (ART and IVF legal, Surrogacy illegal)	✓

