

Chapter 5

Conclusions and Recommendations

5.1 The committee is pleased that legislation legalising same-sex marriage has now passed the parliament. The committee is deeply disappointed, however, in the process that led to this.

5.2 The government's approach suggested that it was more concerned in resolving its own internal political problems than it was in delivering a good policy result for any of the affected groups, or indeed for the Australian community as a whole.

5.3 Statistical surveys serve a fundamentally different purpose with fundamentally different processes from an election. A survey is not a substitute for an electoral process. The events leading up to the announcement of the postal survey suggest that the government was not genuinely interested in obtaining statistical information – it was trying to conduct a public vote by another means. This was reflected in the terms of the directions given to the ABS, and placed the ABS in the difficult position of having to deliver what was functionally a national vote without any of the experience, practices or institutions that would ordinarily be available.

5.4 Masking a vote as a survey devalues the ABS as an institution, and heightens the risks to the integrity of the process.

5.5 There was considerable public criticism of the proposal for a public vote on same-sex marriage since it was first proposed by the government. The criticism spanned a gamut of concerns – from constitutional conservatives worried about the erosion of parliamentary democracy, to advocates concerned about an intolerant campaign, and ordinary Australians who just wanted politicians to do their job. The government never properly addressed any of these concerns either in its initial proposal for a plebiscite, or its subsequent proposal for a postal survey.

5.6 These concerns were valid. A non-compulsory, non-binding postal survey has never been used previously to inform parliamentary processes on a matter of human rights for a minority group. It is the committee's view that it should not be used in this way in the future.

Recommendation 1

5.7 The committee recommends that questions of human rights for minority groups should not be resolved by a public vote.

5.8 The government was warned by mental health experts and same-sex marriage advocates that a public vote on same sex marriage could have deleterious effects on the LGBTIQ community. It is now clear that those warnings were well founded.

5.9 This committee has received evidence from a large number of submitters about offensive and misleading behaviour and material that has been deeply distressing to the LGBTIQ community and highly divisive within the community more broadly. It is the committee's view that this behaviour and material is a direct

result of the postal survey process and would not have occurred had the parliament simply debated and voted on legislation to legalise same-sex marriage.

5.10 The passage of the Marriage Law Survey (Additional Safeguards) Bill 2017 provided a mechanism for individuals to make complaints about material they perceived to be offensive, which contributed to a relatively civil debate within the traditional media landscape. However, ultimately this legislation proved insufficient to curb much of the offensive material distributed by mail and throughout social media.

5.11 The committee believes that much of this material was offensive not by accident but by design. It doubts that the authors intended to contribute constructively to the public debate, and instead aimed to cause offence and hurt to others. It is disappointing that the government gave them an excuse to do so by pursuing a public vote on the question of same sex marriage.

5.12 The committee recognises the hurt and distress experienced by much of the LGBTIQ community during the course of the postal survey.

Recommendation 2

5.13 The committee recommends that the Australian Government consider how further funding and support could be offered to mental health and LGBTIQ organisations to help address the consequences of the postal survey.

5.14 Having announced the postal survey on 9 August 2017, the committee considers it to be unreasonable of the government to require the Australian Bureau of Statistics (ABS) and other government departments and agencies to undertake the postal survey with deployment of postal forms little more than a month later. In the face of such a challenge, the committee commends the ABS and other government departments and agencies on their professional approach to undertaking and delivering the postal survey. The committee is satisfied that the high participation rate of 79.5 per cent validates the resounding yes vote of 61.6 per cent.

5.15 The committee were troubled to hear about alleged instances of postal survey form theft and of postal forms being despatched to incorrect addresses, however, the committee is satisfied that these appear to be isolated cases.

5.16 The committee were concerned to hear about the low participation rates amongst remote and predominantly Indigenous electorates such as Lingiari in the postal survey. Taking into account Lingiari's voter turnout at the last six federal elections suggests a trend of voter disengagement. The committee considers that there needs to be an increased participation of eligible unenrolled and enrolled people in remote locations to ensure they can participate in the democratic process more broadly.

Recommendation 3

5.17 The committee recommends that the Australian Electoral Commission actively engage with remote communities and Indigenous peak bodies to increase the number of enrolled people in remote electorates and to increase the participation of enrolled people in local, state and federal elections.

Senator Jenny McAllister
Chair

