

Dissenting Report from the Australian Greens

Foreign Marriages Bill 2014

Introduction

1.1 The inquiry into the *Recognition of Foreign Marriages Bill 2014* generated a large amount of community interest. Evidence provided to the committee made it clear that with an increasing number of same-sex couples in Australia marrying overseas the need for formally recognising their relationship was essential.

1.2 The majority committee report fails to acknowledge the submissions provided by thousands of Australians and the evidence from legal experts who have supported the intention of this Bill.

1.3 Throughout the inquiry the committee heard from a number of witnesses and experts who made suggestions as to how best strengthen the Bill to ensure that equality was afforded to all LGBTI Australians.

1.4 The Australian Greens recommend that the Bill be passed as amended, subject to suggested amendments.

Reasons to support the recognition of foreign marriages

1.5 This Bill enables same-sex couples who choose to marry overseas or in consulates in Australia to be recognised equally before the law. Denying same-sex couples the right to have their marriage recognised violates international and human rights law.¹

1.6 Research provided to the committee revealed that LGBTI people who were in legally recognised relationships reported less internalised homophobia, fewer depressive symptoms, less stress, and greater wellbeing in feeling that their lives had meaning.²

1.7 Similarly, as highlighted by Australian Marriage Equality in their submission, research from the Netherlands and the US shows that a) marriage strengthens same-sex relationships, b) enhances same-sex couples interactions with their families and communities, and c) the children of same-sex couples families gain when their parents can marry.³

1.8 By recognising same-sex marriages entered into overseas, as we do with all other marriages, this Bill will help gay and lesbian Australians who are in loving relationships get the recognition that they deserve and will have a positive impact on Australian society.

1 Human Rights Law Centre and the National Association of Community Legal Centres, *Submission 20*, p 2.

2 National LGBTI Healthy Alliance, *Submission 33*, p 1.

3 Australian Marriage Equality, *Submission 19*, p. 3.

Suggested amendments to the Bill

1.9 A number of submitters were concerned that the Bill in its current form is too narrow and risks excluding transgender, gender diverse or intersex and others who do not identify as purely male or female. The Australian Greens agree and thank those experts in the field for raising this through the inquiry process. In order to address the issue The Australian Greens will be recommending that the Bill be amended so as remove the gender specificity.

1.10 Further to this, the Human Rights Law Centre noted that the Bill retains s 88B(4), which provides that the meaning of marriage in s 88E is given by subsection 5(1), that is, that marriage is between a man and a woman. The Human Rights Law Centre recommended that this provision be repealed so as to address issues of inconsistency and conflict. The Australian Greens acknowledge the evidence provided and will seek to amend the Bill accordingly.

1.11 The Bill currently uses the term “solemnised in a foreign country” and “solemnised in a foreign country under a local law”. Australian Marriage Equality suggested that that the laws in question are national laws and that it should be clear that the Bill deals with these laws. Suggested amendments include “solemnised under foreign laws” and “solemnised outside Australia”. The Australian Greens acknowledge the evidence provided and will seek to amend the Bill accordingly.

Objection to recognition of foreign marriages between same-sex partners

1.12 Evidence provided to the committee by submitters who oppose the recognition of foreign same-sex marriages raised similar arguments to opponents of marriage equality. These included impingement on religious freedoms, that this was a ‘slippery slope’ to the recognition of non-conventional marriages in Australia and concerns about children and preserving the family unit.

1.13 These arguments have been comprehensively dealt with by previous inquiries, in particular the inquiry into the *Marriage Equality Amendment Bill 2010*⁴ which recommended that the Bill be passed into law. The Australian Greens will not revisit these arguments in this report and ask that those interested refer to the final report of the *Marriage Equality Amendment Bill 2010* inquiry.

1.14 Further to this there was concerns that this Bill would create a new form of inequality by restricting marriage to those same-sex partners who have the capacity to travel overseas.

1.15 This argument was challenged by a number of submitters, in particular Australian Marriage Equality, who argued that:

This objection fails to understand the reasons many same-sex couples marry overseas. Some value marriage as an institution very highly. Some have a sense of urgency...In these situations couples are willing to make the sacrifices

4 Please see:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2010-13/marriageequality2012/report/index#

necessary to marry overseas. It is a necessity for them, not a luxury. Whether or not a couple marries overseas is their decision, not the decision of those parliamentarians.

1.16 It is evident from the evidence provided to this committee that those who are opposed to this Bill are similarly opposed to marriage equality and affording same-sex couples the right to marry under the law.

Conclusion

1.17 The Australian Greens thank those who submitted to the inquiry and for evidence relating to suggested amendments to strengthen the Bill.

1.18 It is evident that the recognition of foreign marriages is necessary to address fundamental human rights issues which currently exclude LGBTI Australians. This Bill offers a modest and practical step towards marriage equality and is consistent with the foundational Australian ideal of equality before the law.

1.19 The Australian Greens recommend that the Bill be passed as amended, subject to suggested amendments.

Recommendation 1

1.20 The Australian Greens recommend that new section 88EA be amended to replace “a woman and another woman” and “a man and another man” with “two people”.

Recommendation 2

1.21 The Australian Greens recommend that the Bill be amended to repeal subsection 88B (4).

Recommendation 3

1.22 The Australian Greens recommend that the Bill be amended to replace references to “solemnised in a foreign country” and “solemnised in a foreign country under a local law” with “solemnised under foreign laws”.

Recommendation 4

1.23 The Australian Greens strongly support the Foreign Marriages Bill 2014 and recommend that it be debated and passed into law, subject to the amendments set out in recommendations, 1, 2 and 3.

**Senator Sarah Hanson-Young
Senator for South Australia**

