

DISSENTING REPORT BY AUSTRALIAN GREENS

Introduction

1.1 The aim of the Marriage Equality Amendment Bill 2009 (to be referred to as 'the bill' from here on after) is to remove all discrimination from the Marriage Act 1961 on the basis of sexuality and gender identity, and to permit marriage regardless of sex, sexuality and gender identity.

1.2 On the recommendation of the Selection of Bills Committee, the bill was referred to the Legal and Constitutional Affairs Committee for further examination into the need to expand the current definition of marriage, as defined within the Marriage Act.

1.3 The sheer number of submissions received by the committee, in excess of 25 000, the most ever received by a Senate Committee, highlighted the need for acceptance and the celebration of sexual orientation and gender diversity, as an essential component for genuine social justice and equality.

1.4 This bill is about removing discrimination. It is not a religious issue, nor should it be viewed or debated as one.

1.5 In a recent survey, commissioned by the Australian Marriage Equality, three in five Australians identified support for the right of same-sex couples to marry, with 60 per cent arguing that Australian law should recognise same-sex marriages that are legal in other countries.¹

1.6 The question of marriage is one between two people who love one another, and it should not be left to the Government of the day to determine whether or not a relationship is 'worthy' of a legally binding commitment.

1.7 The Greens believe that discrimination such as that espoused by the current Marriage Act 1961 must be overturned to ensure that freedom of sexuality and gender identity are recognised as fundamental human rights, and that acceptance and celebration of diversity are essential components for genuine social justice and equality to exist.

1 Same-Sex Marriage Report – June 2009
<http://www.australianmarriageequality.com/Galaxy200906.pdf>

Need for the Bill

1.8 While in the past year there have been some historic leaps forward in terms of removing discrimination against same-sex couples in Australian law, there remains one glaring omission from those advances – marriage.

1.9 In June 2009 the Greens introduced the Marriage Equality Amendment Bill 2009 as a private member's bill to legislate for marriage rights for same-sex couples," to recognise that freedom of sexuality and gender identity are fundamental human rights..."²

1.10 In fact, under Article 26 of the International Covenant on Civil and Political Rights (to which Australia is a signatory) "all persons are to be considered equal before the law and entitled without any discrimination to the equal protection of the law."

1.11 This bill recognises the increasing support for same-sex marriage in Australia, with opinion polls over the years showing a steady rise in support for marriage equality.

1.12 In evidence provided to the Committee, Dr Gerber from the Castan Centre for Human Rights and Law stated "we know from the experience of other countries that the sky does not fall in when same-sex couples are allowed to marry. We only have to look at Spain. It legalised same-sex marriage in 2005. Since then, the average number of same-sex couples entering into the institution of marriage is less than two per cent. So 98 per cent of marriages are still heterosexual couples. Same-sex couples are only ever going to constitute a very small minority of marriages, but, in a democratic country that respects human rights, the majority cannot be allowed to trample on the rights of the minority. All people should be able to enter into the institution of marriage regardless of their sexual orientation."³

1.13 The Public Interest Law Clearing House, in their submission to the Inquiry, included cases studies of why the legalisation of same-sex marriage is important. M. Kerr, 35, from Melbourne said "Without the possibility of indicating, in equal measure with our friends, our commitment to each other, we continue to feel that our government and country fails to recognise or accord the same level of respect for ourselves as individuals and our relationship as that accorded our family and friends."⁴

2 Senator Sarah Hanson-Young, Second Reading Speech, Marriage Equality Amendment Bill 2009, *Senate Hansard*, 24 June 2009.

3 *Committee Hansard*, 9 November 2009, p. 2.

4 PILCH
http://www.aph.gov.au/senate/committee/legcon_ctte/marriage_equality/submissions/sublist1/Sub_m61.pdf

1.14 Under our international and domestic human rights law, Australia is obligated to respect, protect and fulfil the rights to non-discrimination on the grounds of sexual orientation and gender identity. Preventing a group of people from entering into a legally binding union, just because they may be in the minority, is discrimination, and it should be viewed as such.

1.15 We know that not all same-sex couples wish to marry, but this truth is also of heterosexual couples. The difference is, heterosexual couples actually have the opportunity to choose whether or not they wish to marry, this choice is not extended to same-sex couples, and this needs to change.

1.16 Forward-thinking countries including Canada, the Netherlands, Sweden, Belgium, Norway, Spain, South Africa, and many states in the United States have already legislated for same-sex marriage. Australia needs to catch up with this global movement by ensuring that marriage is available to all – regardless of one's sexuality.

1.17 While in the past year there have been some historic leaps forward in terms of removing discrimination against same-sex couples in Australian law, the fact that successive governments continue to deny the right of same-sex attracted people from entering into marriage, shows we still have a way to go before true equality is realised.

1.18 As I said in my second reading speech, "it is outrageous to think that someone who was legally married in Canada can step off the plane at Sydney International Airport and no longer be considered married under Australian law."

1.19 This was highlighted during the committee hearings in Melbourne, whereby one of the witnesses told of the absurdity of being able to marry legally overseas, only to find upon return to Australia that the marriage was no longer legal.

1.20 Mr J Tuazon-McCheyne told the Committee "We have been together for over 11 years. We met in 1998 and married non-legally here in Melbourne in 2000 in front of 90 of our family and friends, and then we were legally married in Toronto, Canada, in 2004. Shortly afterwards, in 2006, we had a son, through a surrogacy arrangement in California, who is almost four now. We also registered our relationship in December last year here in Victoria. We are still not sure what all of that means, but we are kind of hoping that we are getting to closer to feeling like we are married at the end of all of that. The reasons for us marrying are the same as anybody else. We wanted to provide a stable environment for our son in particular. Most people nowadays do get married before they have kids, even though they have bought houses and have lived together for a long time."⁵

Marriage and religion

1.21 It should be noted that while there is some opposition within the ranks of various religious organisations when it comes to same-sex marriage, many Christians,

5 *Committee Hansard*, 9 November 2009, p. 21.

some in same-sex relationships, some not, who respect the human rights of all Australians, see marriage equality as being fundamental to the Christian philosophy of human rights.

1.22 In fact the Committee received many submissions from individuals who identified themselves as Christian.

1.23 Rev. Nettleton, an ordained minister of the Baptist Church of Victoria told the committee, "Marriage equality is often portrayed as an agenda of those who oppose the Christian faith and who despise heterosexual marriage, so I am grateful for the opportunity to appear before you today as a married heterosexual evangelical Christian pastor and theologian who supports the legislative amendment to allow same-sex couples the right to formalise their commitments in the legally recognised covenant of marriage."⁶

1.24 It is clear that while there are diverse views within the community, when it comes to the issue of same-sex rights, pitting non-religious individuals against religious individuals is clearly no longer a valid argument.

1.25 This is not a religious issue. This is not a gay issue. This is a human rights issue and it is time for the Federal Government to take a stand, and show leadership, on what clearly has community support.

Conclusion

1.26 The Marriage Equality Amendment Bill 2009 is an important step in the fight for equality for same-sex couples. We have seen some great reforms implemented over past year that removed much of the discrimination that same-sex couples were faced with. It is now time for the Government to start sending the message that all Australians are to be treated fairly and equally, regardless of their sexual orientation.

1.27 The community are streets ahead of the legislature in recognising the rights of same-sex couples to marry, and it is time for the major parties to listen to the voters of Australia, and finally extend the legal right to marry to all.

Recommendations

Recommendation 1

1.28 The Greens recommend that the Marriage Equality Amendment Bill 2009 be debated and passed into law.

Recommendation 2

1.29 The Greens further recommend that both major parties allow their members a conscious vote on this matter.

6 *Committee Hansard*, 9 November 2009, p. 55.

Recommendation 3

1.30 The Greens fully endorse recommendation No.2 of the Committee's report "that the Department of Foreign Affairs and Trade issue Certificates of Non-Impediment to couples of the same-sex on the same basis as they are issues for couples of different sexes."

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Greens' Spokesperson on LGBTI**

