

Tying the knot



The quest for same-sex marriage in Australia

CLARRIE BURKE

Same-sex couples seek marriage equality

The quest for same-sex marriage in Australia today is about equality, legitimacy and recognition, based on an entitlement to natural justice, procedural fairness and human rights. At the same time it is important to note that the cause of same-sex couples has received growing public support in recent years.

We should also be mindful at the outset that same-sex marriage is not something new.

Same-sex marriage goes a long way back

Same-sex marriage is not a phenomenon of modern society. Nor is the kind of debate which has flared up recently following President Obama's public statement in support of this social reform, and the Vatican's recent call on Roman Catholics to work against any proposed or existing same-sex marriage legislation.

At this point it behoves us to recognise two integral parts of the mosaic that is Marriage:

- Marriage has been a continually changing institution.
- Same-sex marriage dates back to antiquity.

Marriage as a changing institution:

Marriage is an evolving institution whose social meaning has undergone considerable re-definition over time, in response to shifts in power and cultural variations in society. As Professor Allan Tulchin of Shippensburg, University of Pennsylvania, writes in the *Journal of Modern History* (Sept. 06):

Western family structures have been much more varied than many people today seem to realize. ... And Western legal systems have in the past made provisions for a variety of household structures.

The origins of modern marriage in Australia can be traced back to 11th Century Europe, during which time the Roman Catholic Church used its authority to impose its meaning of marriage. A major shift in the social meaning of marriage took place in Medieval times when a wife, as the subordinate partner, could be divorced if she was not bearing children – overlooking the possibility that it could have been the husband who was infertile. Later, believing that the marriage union was performed with the sanction of God, and remained valid for life, early Christians changed the social meaning of marriage so that the union could not be dissolved because of a married couple's inability to have children. As a result the procreative function waned as a determining factor in marriage.

During this early period, the lived experience of marriage for most people was a private matter, arranged virtually as a business transaction between men of the two families concerned, with no religious or other ceremony required to "legitimize" the union. In 14th

Century European feudal times, there were instances of Lords assuming the power to choose spouses for all unmarried tenants. There were also instances where Lords demanded a fee from peasants wishing to choose a spouse. By the 16th Century Christian marriages permitted mutual consent, at which time the couple would make a verbal promise to marry. From the Middle Ages the Church could register marriages, but it was not required to do so. At this time the State took no part in marriage.

Following the Counter-Reformation in the 16th Century, the Roman Catholic Church decreed marriage to be, “The conjugal union of man and woman, contracted between two qualified persons, which obliges them to live together throughout life.” And to be recognized, the marriage ceremony had to be officiated by a priest. However, during the 18th Century an Act of the British Parliament made necessary the performance of a formal religious ceremony, officiated by a Church of England priest, followed by registration. In the 19th Century, following another Act of Parliament, civil marriages were permitted as a legal alternative to church marriages. In both civil and religious marriages couples agreed to abide by the legal “contract”, moral obligations and commitment to marital status in society at that time.

Up to this time in most of the Western World, marriage had been accepted as an unequal partnership in which the wife was property – destined to dutifully “honour and **obey**” her husband and agree to give up her family name for his. Traditionally this bestowed upon men headship of the family – superior authority and possessive rights as “lord and master of the household”. Up to this time **love** was generally not a consideration before or during marriage. In fact marriage in earlier times was commonly not a matter of love at all. It was instilled in people that too much affection in a marriage was a distraction from God.

In the early 1900s, mutual love, sexual satisfaction and devotedness became stronger considerations for entering into and maintaining marriage. Then, in the 1960s and 1970s, the youth-driven sexual revolution and the women’s equal rights movement, actively challenged the laws and traditions that perpetuated sexism and patriarchy in modern society. Nowadays marriage in mainstream culture is commonly viewed as a partnership of equals. Rising from this challenge was another shift in the social meaning of marriage. It became a shared partnership between two people whose roles were less prescribed by tradition.

Thus for opponents of same-sex marriage to defend their present “Christian” idea of marriage with a fortress mentality, as though that’s the only way marriage ever was – etched on tablets issued by God – is fallacious and has an element of social prejudice about it. Marriage has undergone considerable evolution, and on occasion, convulsion, depending largely on who was ruling at the time. (Think of Henry VIII) What stood for legitimate marriage in the social circumstances of Puritan and Victorian eras in England would not be tolerated by couples contemplating marriage today.

Conservative opponents of same-sex marriage need to come to terms with the fact that, in the 21st Century, it is necessary to (re)interpret marriage within the social realities of **today’s** society.

Same-sex marriage in history

History records that same-sex marriage dates back to the Roman Empire. Two Roman emperors were considered married: Nero and Elagabalus. Roman statesman Cicero documented the legal rights of an individual within same-sex marriage. Female same-sex marriages were rare, and this can be attributed to the fact that women were accorded less freedom, authority and responsibility in family and social life at the time.

What was considered as same-sex marriage continued in the Roman Empire until Christianity became the official religion. Later (342 AD) Christian emperors Constantius II and Constantine outlawed marriages between partners of the same-sex. Punishment for violating this law was death.

Despite the severe measures employed to eradicate same-sex marriage, as Yale History Professor John Boswell, points out, ancient Church liturgical documents record ceremonies called “Office of Same-Sex Union” (10th and 11th Centuries) and “Order for Uniting Two Men” (11th and 12th Centuries) strongly suggest same-sex marriages.

In late medieval France, the dominance of Christianity was responsible for the suppression of same-sex relationships, and of course, marriage. Yet there is evidence that same-sex marriage existed during the early Middle Ages. For instance, the legal contract of “brotherment” (a pledge to live together sharing “one bread, one wine and one purse [joint property]”) was an early form of sanctioned same-sex marital unions. Like marriage contracts, the “brotherments” had to be sworn before a notary and witnesses.

By the 19th Century, heterosexuality was decreed the standard sexual orientation. Homosexuality was considered a diseased state which, if not treated, had to be suppressed. For this reason same-sex marriage was largely prohibited throughout the West at the time.

In the 20th Century, as marriage became a shared lifelong partnership of love, sexual satisfaction and equality, differentiated gender roles within marriage began to wane. Historian, Stephanie Coontz, author of *Marriage: A History*, argues that, “... it was heterosexuals who revolutionized marriage to the point where gays and lesbians began to say, ‘Oh, this applies to us now,’ ... First love, then sexual satisfaction, and then, finally and not until the 1970s, the idea that marriage could be gender-neutral.”

This change in the lived experience of marriage has brought about a levelling of the playing field. People are increasingly looking to justice now to determine the rules and impartially oversee the game, as the quest to legitimize same-sex marriage is being played out. As Professor of Philosophy at University of Southern California, Ralph Wedgewood explains, an extension of this change in the social meaning of marriage provides the basis for legitimizing same-sex marriage:

In general, the social meaning of marriage must change whenever such changes are necessary to avoid injustice. The social meaning must now be changed so that it no longer excludes the participation of same-sex couples.

The changing attitude towards normalizing same-sex marriage

Writing for *The Punch* (Aug. 09) Tony Pitman highlights the key issue at hand here – marriage is not devalued by allowing same-sex marriage:

... to all those who think that allowing same-sex couples to marry somehow devalues the institution of marriage; it doesn't. Marriage remains the same legal institution with all the same rights and responsibilities attached. Nothing changes except that a sector of the population that has traditionally been discriminated against is now allowed to marry. ... To future generations the prohibition on same-sex marriage will seem as unfathomable as the prohibition on interracial marriage seems today.

On ABC television programme, Q & A (9/7/12), presenter, Virginia Trioli, reflected a *live and let live* attitude in a question to Malcolm Turnbull (Former Opposition Leader, currently Shadow Minister for Communications and Broadband): “I’ve often wondered why it matters so much to you people what one couple down the road might do if they shack up together; why you think that this will somehow unpick the entire institution of marriage? I know gay couples together; they have nothing to do with my marriage whatsoever.” Turnbull focussed his response on “commitment:”

When people say that two gay people together will undermine your marriage or Lucy and mine, that is just absurd. The truth is that the threat to marriage is lack of commitment. That people are leaving each other is the real threat to marriage.

When gay people want to make a serious commitment to each other, in a way they're holding up a mirror to the heterosexual couples whose commitment has been lacking.

Only tonight Lucy and I were at an event and a gay guy we'd known for a very long time came up and said to me, 'I'd really love it if my partner and I could get married. We've been together for twenty-eight years.'

Just think about this.

How many straight couples do you know that have been together for twenty-eight year? You'd certainly know a lot that haven't lasted that long.

*So we should be focussing on **commitment**.* (Emphasis added)

Some clear benefits of marriage flow for same-sex couples and their families. Landmark research conducted by Professor Lee Badgett, University of Massachusetts, shows that marriage had increased their commitment and their sense of responsibility, and had generally strengthened their relationships. Couples considered that:

- their children were better (and “legitimate”) after their marriage. They showed signs of enhanced feelings of security, stability and acceptance.
- participation and acceptance in their extended families and communities had increased because of their marriage.

We should not lose sight of the very basic fact that same-sex couples are real people just like the rest of us. Rob Mills reminds us of the human dimension in this conversation in an article in *The Punch* (July 09), entitled: *It's time to allow gay marriage in Australia*:

... my gay friends aren't stereotypes. They're real people with real hearts and their love for their partners is just as precious as the love between a man and a woman. And they want to get married for exactly the same reasons as everyone else does. They're in love. ...

I don't see how allowing same-sex couples to get married hurts anyone else. ...

And what about the kids raised by gay people? They deserve the stability that comes with marriage. ...

In the same vein as Malcolm Turnbull's earlier comments on commitment as the basis of marriage, Mills advocates:

Bottom line, marriage is about love and commitment – a big commitment. If someone is willing to make that kind of commitment we shouldn't be stopping them.

For those who hold that we **should be stopping them** before it is too late, consider a message which Canadian, Adam Snider, conveyed on his blog – that Canadian society, as we know it, has not unraveled since the legalization of gay marriage in Canada some years ago:

As I was driving to work this morning, the subject of gay marriage suddenly popped into my head. I'm not sure why, exactly, but as I manoeuvred my car down Gateway Boulevard, I found myself thinking, 'Huh ... gay marriage has been legal in Canada for several years now; no one really bitches about it anymore and life has continued like normal for most people.'

Given the way marriage has evolved, there are now many good reasons to allow same-sex couples to claim their entitlement to civil marriage equality, and to end the prejudiced discrimination against them in today's secular liberal–democratic society:

- The social and religious meaning of marriage has undergone dramatic change with shifting beliefs, morals, values and life styles throughout history, and marriage should reflect the diverse liberal democratic society we currently live in.
- Same-sex marriage is not something that has just broken out in modern society. (History records that same-sex marriage dates back to antiquity.)
- Religious arguments and Christian lobbyists should be set aside in civil same-sex marriage in secular society.
- Expectation and responsibility to procreate is no longer a prior condition. (Many same-sex couples are devoted, responsible parents – think of Penny Wong.)

- ❑ Deciding on a marriage partner is now a matter of personal choice, mutual consent and equality.
- ❑ Enduring love, sexual satisfaction, devotedness and commitment in a monogamous relationship constitutes the basis for modern marriage.
- ❑ In marriage, couples agree to abide by the legal “contract” and moral obligations and the responsibilities of marital status in society.
- ❑ Marriage provides benefits for gay couples and their children – enhanced feelings of security, stability and acceptance that comes with “legitimacy”.
- ❑ The idea that modern marriage can be gender-neutral is backed by modern trends and public opinion polls – with clear majority support by the younger generation (70% between the ages of 18-34) who do not wish to be trapped in the past in a rapidly evolving globalised world.
- ❑ Many countries, after deliberating on this matter, have adopted same-sex marriage laws – placing them on the right side of history.
- ❑ For those countries which have legalised same-sex marriage, there is no clear indication that the institution of marriage has been corrupted or devalued since, and in general, married life has continued as normal.

Same-sex marriage ticks all the boxes.

World leaders support same-sex marriage

Democrat US President Barack Obama and Conservative UK Prime Minister David Cameron represent contrasting political philosophies. However, they are both referred to as “non-ideological moderates” with liberal views on social issues. This is reflected in their support for same-sex marriage. Their public statements regarding same-sex equality in marriage were acts of political bravery in their societies at this time – given the risk of triggering an unholy war with other politicians, dominant Christian churches and opposed members of the public.

President Obama has arrived at his position in support of same-sex marriage after considerable soul searching and “evolution”. Explaining his position in an interview on American television he said: “Over the course of several years as I have talked to friends and family and neighbours, when I think about members of my own staff who are in incredibly committed monogamous relationships – same-sex relationships – who are raising kids together, when I think about those soldiers or airmen or marines or sailors who are out there fighting on my behalf and yet feel constrained, even now that ‘don’t ask don’t tell’ is gone, because they are not able to commit themselves in a marriage, at a certain point I’ve just concluded that for me personally it is important to go ahead and affirm that I think same sex couples should be able to get married.” Furthermore, President Obama has said: “I also think that attitudes evolve, including mine. And I think this is an issue that I wrestle with and think

about because I have a whole host of friends and staff members who are in committed, monogamous gay partnerships, who are raising children, and who are wonderful parents.” In short, he advocates “... a strong civil union that provides [same-sex couples] the protections and the legal rights that married couples have.” (It is worth noting that Vice-President Joe Biden has declared that he, also, is “absolutely comfortable” with gay couples marrying.)

In his cover story for *Newsweek* (May 12) Andrew Sullivan expresses how he was personally moved when President Obama publicly declared that gay couples should be allowed to wed:

*When I watched the interview, the tears came flooding down. The moment reminded me of my own wedding day. I had figured it out in my head, but not in my heart. And I was utterly unprepared for how psychologically transformative the moment would be. **To have the President of the United States affirm my humanity – and the humanity of all gay Americans – was, unexpectedly, a watershed.*** (Emphasis added)

Prime Minister Cameron has taken a forward-thinking, politically reformist stance on the issue. His motive was to declare his support for gay marriage to signify that the Conservative Party was no longer the “nasty party” on such social issues, but a more socially inclusive, compassionate party more suited to equality in the 21st Century. To this end he announced at the Party’s Annual Conference: “Yes, it’s about equality, but it’s about something else – **commitment**. Conservatives believe in the ties that bind us. Society is stronger when we make vows to each other and we support each other. I don’t support gay marriage in spite of being a conservative. I support gay marriage because I am a conservative.” (Emphasis added) “Aye” says Malcolm Turnbull.

Other world leaders have followed the lead of President Obama and Prime Minister Cameron. French President Francois Hollande pledged to legalize same-sex marriage in France during his recent election campaign (2012). The pledge was later confirmed by the Office of Prime Minister Jean-Marc Ayrault:

The Government has made it an objective for the next few months to work on implementing its campaign commitments on the fight against discrimination on the grounds of sexual orientation and gender identity.

Less forthrightly, New Zealand Prime Minister, John Key has stated that he is “not personally opposed to gay marriage”. Meanwhile the Labour Opposition Leader, David Shearers, has declared his support “in principle” for this measure. Their views would seem to show some cognizance of public opinion, which a recent TVNZ poll showed to be 63% in favour.

Croatian Prime Minister, Zoran Milanovic, declared his Government’s support, stating that: “I think we must go forward, and be inspired by the most advanced countries in the world. Giving stronger civil legal rights to gay communities will not deprive anyone of their rights.”

Scotland’s Deputy First Minister, Nicola Sturgeon, was recently reported as saying legalizing gay marriage was the “right thing to do”. In saying this she announced the Government was planning to introduce legislation that would allow same-sex couples to marry in 2015.

Western countries have granted same-sex marriage

There is much precedent among Governments around the world which have implemented policies to do away with what they regard as unfair discrimination.

The country which led the way in legalizing same-sex marriage was **The Netherlands**, in 2000. It has created something of a domino effect.

In 2003 **Belgium** followed.

In turn, **Canada** (2005), **Spain** (2005), **South Africa** (2006), **Norway** (2008), **Sweden** (2009), **Portugal** (2010), **Iceland** (2010), and **Argentina** (2010) committed to this view.

Israel approves of same-sex marriages performed legally in other countries.

In USA some states allow and enable same-sex marriage. Those states and some others recognize same-sex marriage legally performed in other states and countries.

As the international trend towards legitimizing same-sex marriage grows, relatively speaking, Australia will recede further towards a solitary position in a globalized world, constantly reminded of a modern day meaning of the quotation from John Donne's *Devotions Upon Emergent Occasions*: "No man is an island, entire of itself, every man is a piece of the continent, a part of the main."

Tensions in Australian politics

There is no denying that social reform that would entitle same-sex couples to marry is a vexed question which deeply divides Australian society at present.

In this context it is informative to home in on key political leaders.

In 2004 the Howard-led Government made the Conservative position clear when it amended the 1961 Marriage Act to ensure that same-sex couples legally married overseas would not receive legal recognition here in Australia. His opposition was to ensure "survival of the species". This targeted same-sex couples as a threat to procreation. (Howard must curse Penny Wong.)

In 2011, in Federal Parliament, a conscience vote was proposed for when the proposed same-sex marriage legislation, based on marriage equality, is brought before Parliament. Parliamentarians must take into consideration their personal beliefs, their party allegiance and the constituency that elected them.

In response Opposition Liberal/National Leader, Tony Abbott – an avowed Catholic – immediately disallowed members of the Coalition a conscience vote on this issue, which has been extended to all other members of Parliament. Defiant members of the Opposition who cross the floor can expect to suffer the wrath of their stonewalling leader. Abbott's conscientious objection seems out of touch with his own (Liberal) electorate of Warringah, in

which he refuses to discuss the issue. (Unlike the Opposition Leader, the PM has at least acquiesced to latest Labor National Conference Policy to allow Labor members a conscience vote when the two proposed pieces of legislation, which would legalize same-sex marriage, are decided by Parliament.)

Behind the scenes Abbott's views are not unanimously held within his own Party. Several Coalition members are clearly known to disagree with Abbott's stand. Malcolm Turnbull, for instance, polled his Liberal electorate to gauge public opinion. A clear majority were in favour of same-sex marriage (68 %). Added to this, on many public occasions Turnbull has been forthcoming in his support of same-sex marriage and has acknowledged that community views on this issue were changing. But when it comes to changing the Marriage Act, he is not prepared to make the very big call of resigning from Shadow Cabinet which would allow him to cross the floor and follow his conscience and the clear majority view of his constituents.

Prime Minister Julia Gillard's stand is puzzling. She has repeatedly stated her opposition to same-sex marriage:

We believe the Marriage Act is appropriate in its current form, that is recognizing that marriage is between a man and a woman, but we have as a Government taken steps to equalize treatment for gay couples. (Emphasis added)

However, it is unclear just who the "we" is, because she seems unaffected by the results of a Senate inquiry which drew 75,000 submissions and which resulted in a clear majority supporting same-sex marriage (44,000 in favour and 31,000 against). She is also out of step with public opinion in her own electorate of Lalor, where many more are in favour of same-sex marriage than against (45% in favour, 34% against, and 21% don't care.).

This calls into question the coherence and integrity of the PM's personal position. Consider reported statements the PM made during a dinner held at the lodge with marriage equality advocates earlier this year. Present at the function were three same-sex couples. (One couple legally married in Canada) Australian Marriage Equality National Convenor, Alex Greenwich and the PM's partner, Tim Mathieson. During the course of the dinner the PM indicated that, in her view, marriage equality in Australia was "inevitable". She also led the group to believe that her opposition to this social reform was **not** immovable. Furthermore, the PM virtually admitted that Australia's lagging behind the increasing number of nations which have already granted same-sex marriage laws was putting increasing pressure on Australia to come on board. She pointed out that as more countries embrace this reform, it will become increasingly apparent that this is a reform whose time has come. Following the dinner, Alex Greenwich later reported that, "The Prime Minister listened carefully to the case for equality, and gave us all hope when she said the reform would happen one day."

On the ABC's Q & A television programme (11/6/12) the Prime Minister further undermined any confidence in her stand. On this occasion she was challenged by a member of the audience, Geoff Thomas, who asked her the question: "Prime minister, could you please explain to me that in a country that prides itself on freedom, equality and tolerance, how is it, that by denying same-sex couples the right to marry, is in any way, in any sense, fair, just or

consistent with the way Australian's think today?" In reply Prime Minister Gillard stated her opposing view: "... People know a bit about my personal life, that I, of all people, would sit before you and say I think that you can have a relationship of love and commitment and trust and understanding that doesn't need a marriage certificate associated with it. ... If you believe as I do that people can have deep and committed relationships without a marriage certificate, it becomes an issue about how we are going to deal with this cultural institution of long standing in Australian society, and are we going to try to change it to fit circumstances where people are in love and deeply committed but don't fit the current Marriage Act, or are we going to grow up new traditions and norms that embrace that? I have taken a particular view about that. It is a view that some people might look at me and think, it's an odd one for her to hold, but it is a view I hold very deeply." Unconvinced by the Prime Minister's puzzling reply, Geoff Thomas had the last word:

I've always believed you to be a compassionate person. You belong to the political party that tells us, and we believe – most people would believe – are the architects of all great social change in this country. To me you sit there as [a Labor] Prime Minister that's abandoned that basic principle of treating every Australian equally under the law. My son deserves to be treated equally under the law. John Howard changed this law eight years ago. What he did was take a group of law abiding citizens and put them outside the law. What you're doing, Prime Minister, is keeping them there.

This gives the impression that the PM has lost sight of the proactive meaning and purpose of post-war Labor Leader Ben Chifley's inspirational notion of "The light on the hill". She appears intent on dealing with this inconvenient truth by adopting a reactive, lead-from-the-rear approach, leaving Australia meandering in the slip stream of those countries who have bitten the bullet, and moved forward on this issue.

Meanwhile, Anthony Albanese – Minister for Infrastructure and Transport and Leader of the House – in contrast, is more assured than the PM on what it means to move forward on this issue. He is in synch with his conscience and his electorate of Grayndler, which topped the News.com.au survey in support of same-sex marriage. (62% in favour, 20% against, and 18% don't care) It is also apparent to him that his more inclusive perspective (cf. the more discriminatory perspective of the PM) places him on the right side of history:

I have a view that my relationship, because I happen to be heterosexual, is not undermined by someone else's relationship because it is homosexual. I have a view that history is moving forward on this issue.

I've been an advocate who has stressed the need to bring the community with us. This is about inclusion and the debate must be conducted in a socially inclusive way.

At the State level it seems principle, pragmatics and expediency come into play, as the kaleidoscopic politics in Queensland clearly shows.

During his election campaign, newly elected Premier of Queensland, Campbell Newman, announced that, if the LNP won Government, it would look at repealing the Labor legislation on civil unions – despite having previously voiced his personal support for gay marriage. In the same breath he cautioned that legislation on civil unions appears to be “roaring ahead a bit too fast for the majority of Queenslanders”. Opposed to changing the definition of marriage, his Party voted against the Labor legislation last December, on the grounds that it mimicked marriage. Thus the Premier came around to his Party’s position at the expense of his personal principles.

In Office, Mr Newman announced that Queensland’s same-sex civil unions will not be “repealed”, but “amended”. Under the proposed legislation same-sex couples would be able to register their relationship with the Government, but would no longer be able to have a State-sanctioned declaration ceremony when taking their vows. Despite the fact that **this is an issue of civil marriage in a secular State**, Newman indicated that the amendment was because the State-sanctioned ceremony offended Christian groups. They considered it mimicked marriage. The Australian Christian Lobby, Queensland State Director, Wendy Francis, responded positively to the proposed Newman amendment, saying, “... if they have taken out the celebrants and ceremonies, then they have taken out what’s mimicking marriage. ... The gay community already did have all of the rights that they needed to not be discriminated against.” This sentiment was expressed by the Premier, himself, who tried to allay fears of the Lesbian, Gay, Bisexual, Transgender (LGBT) community at a recent press conference, saying that, “They have nothing to fear from this change.” The fear the Premier and the ACL hold is that gay marriage will be seen to mimic what is recognized as marriage in the Marriage Act. But how do you mimic a concept wherein the social meaning has been continually evolving, sometimes in sudden seismic shifts?

“... nothing to fear?” the Premier insists. Is that so?

Ask Susie O’Brien. Her article in the *Herald Sun* (6/11/10), entitled *Time for gay marriage to get the nod in Australia*, should remind the Premier and Ms Francis about the need of same-sex couples for **marriage – and nothing less**, and why limiting their partnership to registration with the Government as a civil union, falls short of their aspirations:

... as an institution, marriage is a socially elevated relationship. It has a special status in our society. And the right to that status shouldn’t be determined by whether there’s a bride and groom, a bride and bride or a groom and a groom. And don’t give the coward’s line about civil unions being the solution.

Furthermore, consider the purpose and intent of changes proposed to the Queensland Surrogacy Act. Surrogacy lawyer, Stephen Page, warns that changes to the Act proposed by Queensland Attorney General, Jarrod Bleijie, are intended to ban single people, people in de facto relationships of less than two years **and same-sex couples** having children through “altruistic surrogacy”. This move is at odds with the Commonwealth Sex Discrimination Act which overrides State legislation. In effect the proposed Queensland legislation would deny the right of surrogacy to anyone outside of married couples or those in a heterosexual de-

facto relationship of at least two years. Violation of that law would be **an offence for same-sex couples**, punishable by up to three years imprisonment.

Page predicts that, laws notwithstanding, committed same-sex couples (and de-facto heterosexual relationships of less than two years) would not stop seeking surrogacy arrangements:

The desire to have a child is an innate one. People will still engage in surrogacy even if it is a criminal offence.

In the light of the foregoing, if you were a committed same-sex couple in Queensland seeking marriage, and heard Premier Campbell say, “You have nothing to fear from this change”, how comforted and reassured would you feel?

It is well known that the Premier believes the matter of same-sex marriage should be handled by the Federal Government which administers the Marriage Act. In his heart of hearts, he would have preferred to wait until LNP MP Warren Entsch brought his bill to legalize civil unions before the Federal Parliament later this year. In this event his problem could have been deftly passed on to Canberra, in which case he would have conceivably maintained his moral principles, the backing of his Party, trust of voters in his seat of Ashgrove and placated both sides of the debate.

In actual fact it is the Tasmanian House of Assembly that has led the way towards Australian marriage equality. In September 2011, Parliament voted to formally support the reform. At the same time it sent a clear message to Canberra by passing a motion advocating that the Federal Government amend the Marriage Act. Tasmanian Premier, Lara Giddings, proudly announced that this was the next step in social reform relating to gender equality in the State:

Tasmania has come a long way since 1997 when we rectified the terrible situation of having homosexual relationships considered illegal in this State.

We’ve come a long way to show that we are in fact a tolerant and compassionate community and that this is another step in removing any form discrimination.

All going according to plan, from the beginning of November the Tasmanian Registry of Births, Deaths and Marriages will change its procedures to allow same-sex couples to bring their existing Deed of Relationship (equivalent to a civil union and also referred to as a “registered relationship” or a “civil partnership”) into effect by signing their relationship certificate in a ceremony presided over by a marriage celebrant.

NSW has joined Tasmania in calling for a change to the Federal Marriage Act. Unlike the Federal Liberal/National Party, NSW Liberals were granted a conscience vote in the Upper House on the motion to change the Federal Marriage Act. But unlike his Tasmanian counterpart, NSW Premier, Barry O’Farrell held his cards close to his chest when questioned about the motion, admitting only that if a similar motion was debated in the Lower House, would he disclose his views on this issue.

Australians must choose between being reactionary and discriminatory (part of the problem) or forward-thinking and socially inclusive (part of the solution) on the very human issue of marriage equality in modern Australian society.

Marriage equality in Australia – A work in progress.

Stop prevaricating. Just do it!

The last word goes to Liz Ann Macgregor, Director of the Museum of Contemporary Art (Sydney). Macgregor struck a chord with the diverse audience on Q & A (9/7/12) and drew much applause when, after lengthy discussion of marriage equality, she summed up the situation with an endgame scenario:

I just don't think the politicians are reflecting what the people want. Survey after survey says so [support for marriage equality]. For goodness sake let's just get on with it. It's another of these issues where we see the politicians bickering about it. It will go away. They should just pass it.

Which side of history do you want to be on – going forward?

PS The author is a member of the community who is committed to equality for fellow human beings which rests on natural justice, procedural fairness and human rights.

Clarrie Burke

PO Box 1224
Kenmore, Qld 4069

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