
■ D A V I D ■ B ■ A L L A N ■

My ref: DBA05FE

05 February 2012

By facsimile: (02) 6277 8453
(Original mailed)

Mrs Kelly O'Dwyer, MP
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Madam,

Subject: **Marriage Equality**

Thank you for your letter dated 23 December 2011 and accompanying copy of your "Constituency Statement – Same-sex Marriage" dated 24 August 2011.

If I may briefly critique your Constituency Statement, it seems more intent on criticising the Greens - discussing election platforms and the issue of carbon tax - than on whether or not Australians in general and those in your electorate in particular are for or against marriage equality.

Whilst I was not aware of it, you say your website survey included the "issue" of marriage equality as one of 15 issues, and in effect asked folks to indicate the top 4 issues of concern. This methodology was almost certain to result in marriage equality being ranked less important than other issues.

In fact, marriage equality should be a non-issue, a no-brainer, and it seems clear that most Australians would certainly agree to marriage equality if that was the only question they were asked.

Galaxy Research (2009-2011) reportedly indicated that 62% of Australians support marriage equality, a majority of Christians (53%) and 80% of young people (18-24 years)¹

As an aside, for me, the single most important issue confronting Australia and the world is the continuing growth of the human population at an unsustainable rate, with all the associated problems of food security, clean water security, depletion of finite resources *et al.*

Sadly, no politician or political party seems to rate this issue of any great importance however the future of humanity and the quality of life is at stake.

The ascertaining of the sustainable human carrying capacity of Australia is in urgent need of determination and policies in regard to all other issues flow from this determination – water security, food security and use of arable land, housing, hospitals, education and infrastructure needs, migration and refugee intake, extractive industry regulation and etcetera. My mantra is “All elemental things are finite, everything is connected”.

Now, back to the present issue of marriage equality.

You have put forward the view “that the people who want change bear the onus and responsibility for making the argument for that change.”

I disagree with that suggested “onus” in this instance as it is my fundamental view that no law on any matter should discriminate as between individuals or groups of individuals and if a law does so, or seeks to discriminate, it should be repealed or not enacted or there must be very clear and compelling reasons for doing so.

That said I have endeavoured to assemble and address the arguments and issues surrounding marriage equality and the two aspects you refer to, as succinctly as I am able.

In the present context, the *Marriage Act* is clearly discriminatory.

Section 5: "*marriage*" means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

This definition of “marriage” restricts access to that recognised legal status to a man and a woman.

So, are there clear and compelling reasons for doing so?

1. There are of course other discriminatory elements in the Act. The requirement for both partners to be 18 years of age - this presumably to ensure the ability to enter into a marriage with “informed consent”.

Then there is the requirement that both parties be unmarried - presumably to prevent bigamy or polygamy, though some would argue that this latter limitation should be eliminated.

There appears to be no compelling reason to restrict marriage between two persons to those of the opposite sex.

2. The principles for heterosexual marriage are the same for same-sex marriage – love, commitment, faithfulness, loyalty, honour and respect. How can we deny that to anyone? (Johnson)².

“Strong and stable relationships” are indeed a great foundation for an enduring, peaceful society and formally recognised same-sex relationships can only have a reinforcing effect.

Even without more, it seems entirely rational to “recognise a union between two loving adults of the same sex.”

3. If same-sex unions are legalized, neither existing straight marriages nor future straight marriages will be affected by the legal changes. The rules governing how a man marries a woman, and the legal terms of that marriage, will be unchanged in civil marriages. The religious sacrament of marriage will be unchanged too - and since religious authorities have long distinguished between civil and sacramental marriage among their flocks, doing so is clearly possible. (Friedersdorf)³
4. Although gay couples won't be able to conceive children together - something traditionalists regard as a core purpose of marriage - even the current legal regime permits marriages among people who cannot conceive children. Sterile people and folks who marry past childbearing age are two examples. (That there is no interest in prohibiting such unions makes gay-marriage proponents suspicious that inability to conceive in fact drives the controversy) (Ibid).

Some argue that same-sex marriage is not “natural”.

Same sex partnerships in today's society already and increasingly play a part in the formation and nurturance of children via adoption, surrogacy, and foster parenting. Who ... [would] suggest that their unions are not suitable for creating a loving family because they are not “natural”? (McGuier)⁴

Couples marry for many reasons. Those in their golden years who marry out of pure love, devotion and companionship. Those who marry in a hospice, knowing their time is short. Those of childbearing age who simply want to remain that ... a couple.

How arrogant to assert that the primary purpose of marriage and heterosexual union is to procreate (Ibid).

"Families" are formed by many circumstances: step-parenting, grand-parenting, foster-parenting, legal guardianship, and adoption to name a few. None of these situations fits ... [a] narrow definition of "family" ... [or] ... that they are [to be considered] second best (Ibid).

The studies that same-sex marriage opponents often cite do not include gay and lesbian parents at all.

Many studies that do include gay and lesbian parents show that their children do just as well as other children on all measures. See, for example, "How Does the Gender of Parents Matter?" *Journal of Marriage and Family*, February 2010⁵ (Powell)⁶.

The literature strongly suggests that there are no adverse effects on children brought into or brought up by parents in same-sex relationships. Indeed, formally recognising same-sex relationships through marriage equality would bring about all the legal protections necessary to safeguard the interests of children already living in same-sex families and those that will do so in the future.

The question of whether single women should have access to IVF was addressed 12 years ago in *John McBain v. The State of Victoria & Ors* FCA [2000] 1009 (28 July 00)⁷. There really is no rational basis for arguing that a woman should be denied access to IVF if they are in a same-sex relationship.

Already same-sex couples are adopting children (under the ACT *Adoption Act* 1993, the SA *Adoption Act* 1988, the NSW *Adoption Act* 2000, the Western Australia *Adoption Act* 1994 and in Victoria, a judge has allowed a gay man in a same-sex relationship to adopt his foster child).

The Victorian Law Reform Commission said in 2005 "it makes no sense that same-sex couples are able to be approved as permanent and short-term carers for children in need but not assume the full range of legal parental powers and responsibilities"⁸.

It seems that the aspect adoption you have drawn attention to has been substantially addressed in the various jurisdictions.

5. When gay-marriage proponents think about their own marriages, or the future marriages they hope to enter into, the legality or illegality of same-sex unions doesn't affect how they conceive of the institution, with the single exception of straight people who are boycotting marriage until gays can marry, a case in which legalizing gay marriage would *strengthen* it among straights (Friedersdorf).
6. One *never* encounters a gay-marriage opponent who'll consider their own marriage vows less valid, the marriages performed by their church less sanctified, or their relationship with their spouse weaker, if gays are permitted to marry (Ibid).
7. Same-sex marriage opponents can offer no specific mechanism by which permitting gays to marry will undermine civil marriage as it currently exists; and when they make vague claims about how the institution will be weakened, they often misrepresent reality - that is to say, instead of arguing that the institution of civil marriage as *it currently exists* will be weakened, they proceed with their argument as if they're protecting something that has been around for thousands of years.

But marriage as it was understood thousands of years ago and civil marriage as it is codified in law today (even before same-sex marriage) are radically different institutions. For example, a man takes one wife, not several; marriages are typically not arranged, and are often entered into by individuals rather than families; civil rather than religious officials often perform the ceremony; there is no-fault divorce; there are no longer dowries; the age of consent is different; there are spousal-rape laws on the books; and serial marriage is common. Given all these changes, permitting same-sex unions is arguably not the most significant change in the institution of marriage over the centuries, especially since it applies to a very small percentage of the population (Ibid).

8. Some have argued that separate civil unions or civil partnerships laws should be extended to same-sex couples rather than marriage. Such a move, whilst initially attractive - being better than the present Federal situation - is not the answer. Clearly, "separate" is seldom, if ever "equal" (Massachusetts Supreme Judicial Court)⁹. This inequality is demonstrable in jurisdictions that have adopted that approach and now are moving toward full marriage equality.
9. We live in a secular society and as such the separation of Church and State is fundamental to the structure of our system of government. One might be forgiven for taking the view that religious considerations are having an undue influence on the debate in Australia on this issue.

Government action must have a secular purpose and the government cannot entangle government and religion.

Of course, there should be no compulsion for religious organisations to marry same-sex couples. That should be entirely a matter for those organisations to decide.

Having regard to the foregoing, it is my submission that at the very least, all members of the Parliament should be given the opportunity for quiet, personal reflection in order that they may make a mature decision absent any influence of bigotry and exercise a conscience vote on this issue.

You are requested to raise the issue of marriage equality and that of allowing members of the Coalition a conscience vote with The Honourable Tony Abbot MP, Leader of the Opposition and in the Coalition Party Room and to discuss the issues outlined above with your Parliamentary colleagues of all persuasions as soon as practicable and before any legislation is introduced to the Parliament.

Whilst hardly "scientific", perhaps I could suggest you include a "Quick Poll" on your website "Should all members parliament be allowed to exercise a conscience vote on the question of marriage equality?"

Yours faithfully,

David B. Allan

¹ Australian Marriage Equality <http://www.australianmarriageequality.com/wp/who-supports-equality/a-majority-of-australians-support-marriage-equality/>

² Shari Johnson “My Lesbian Daughter, The Bible and Sex” 06 January 2012
<http://www.foxnews.com/opinion/2012/01/06/my-lesbian-daughter-bible-and-sex/#ixzz1iizXFQ8e>

³ Conor Friedersdorf “The Logical Fallacy Gay-Marriage Opponents Depend Upon” 17 January 2012
<http://www.theatlantic.com/politics/archive/2012/01/the-logical-fallacy-gay-marriage-opponents-depend-upon/251486/>

⁴ Maggie McGuire “Stale Argument Redux” 16 January 2012 <http://blog.thenewstribune.com/opinion/2012/01/16/stale-argument-redux/>

⁵ Journal of Marriage and Family “How Does the Gender of Parents Matter” February 2010
<http://www.apa.org/pi/lgbt/resources/biblarz-stacey.pdf>

⁶ Trevor Powell “Research doesn’t show gay parent disadvantage” 22 January 2012
http://www.nj.com/gloucester/voices/index.ssf/2012/01/research_doesnt_show_gay_paren.html

⁷ AustLII: McBain v. Victoria [2000] FCA 1009 http://www.austlii.edu.au/au/cases/cth/federal_ct/2000/1009.html

⁸ Victorian Law Reform Commission: “Assisted Reproductive Technology & Adoption: Final Report, Chapter 10 Adoption” at 107
<http://www.lawreform.vic.gov.au/resources/7/0/70e7150047410de2b09eb502d2d761c8/chapter+10+adoption.pdf>

⁹ Massachusetts Supreme Judicial Court “Opinions of the Justices” 802 N.E. 2d at 569 n.3, SJC-09163 at 9
<http://www.gaylawnet.com/laws/cases/SJC-09163.pdf>