

DISSENTING REPORT BY SENATOR BARNETT

1.1 I agree with recommendation 3 of the majority report, that the Bill not be passed. I also consider that Chapter 4 of the majority report provides a fair assessment of the benefits of maintaining the definition of marriage as currently contained within the Marriage Act.

1.2 However, I do not agree with recommendations 1 and 2, which, in my view, give succour to those groups within the community that seek to erode and re-define the institution of marriage. I also disassociate myself from the bulk of the discussion in Chapter 5, entitled 'Discussion and Conclusion' which supports recommendations 1 and 2.

1.3 Given the general tone of Chapter 5, which is clearly sympathetic to those who seek to allow same-sex marriage or a form of formal recognition of such relationships by the State that mimics marriage and thus undermines it by stealth, I am somewhat surprised at the inclusion of recommendation 3.

1.4 Recommendation 3 is supported in the conclusions chapter by a single sentence which reads that 'the committee considers that the current definition is a clear and well-recognised legal term which should be preserved'. In relying on this argument as the sole reason for not supporting the bill, the majority have ignored the bulk of the strong arguments put by the very large number of submitters and witnesses at the public hearing. In putting up such a half-hearted argument, the majority are essentially setting it up to be dismissed, thus leaving the way open to same-sex marriage in the future.

1.5 In so doing, the majority have chosen to ignore the very persuasive evidence presented that the only credible reason for the State to formally recognise what is essentially a private relationship between two individuals by privileging marriage is because marriage between a man and a woman has particular benefits to society that warrant recognition and protection. As adequately explained in the evidence, for example in the submission of the Catholic Archdiocese of Sydney, but also by a broad range of other submitters:

It is a union that is publicly recognised and treated as special, distinguished from other types of relationships because of its unique capacity to generate children and to meet children's deepest needs for the love and attachment of both their father and mother.¹

1.6 The majority have also apparently chosen to ignore the evidence put to the committee that the best outcomes for children are where there is a positive male and female role model guiding their development towards adulthood. As was put to the

1 Mr Christopher Meney, Catholic Archdiocese of Sydney, Proof Committee Hansard, 9 November 2009, p. 39.

committee in literally thousands of submissions, children need a Mum and a Dad. Every child should have a reasonable expectation, all things being equal, of a mother and a father.

1.7 Proponents of same-sex marriage have sought to underplay the importance of male and female role models in the upbringing of children, and to discount the importance of children in any consideration of whether same-sex marriage should be sanctioned. They have sought instead to argue that marriage is primarily about two people's commitment to each other, and ignore children's rights. While I recognise that commitment is essential in a marriage relationship, the raising of children in the best possible environment can never be taken out of the equation. Accordingly, I find myself in broad agreement with the view strongly put by the Australian Christian Lobby, which was that:

Reducing marriage to a simple contract of consent and love between two people is a revisionist approach that has neither context nor legitimacy. It is a selfish, adult-centred approach that rejects the broader cultural significance of marriage and its centrality to children and society. It discards the significance of marriage as an important social good held by a shared community as a public commitment to family and the raising of children.²

1.8 The majority report also apparently ignores the strongly put arguments that children have a right to know who their biological parents are, and to be raised by them, or by extended family. Roots are important, as the recent lessons of the 'Stolen Generations' and 'Forgotten Generations' have reminded us with painful clarity.

1.9 The importance of the law as a symbol, and the messages that changes to this law would send to society at large were also ignored by the majority report. By reducing marriage's significance to that of little more than a generic, non-gender specific relationship register, as this Bill would do if supported, would send a clear message that there is nothing special about the unique roles of motherhood and fatherhood, or families built round these concepts. This would further undermine a long-standing institution that is already being undermined by family breakdown and apathy. The consequences of this undermining are clear in the outcomes for the many of the casualties of this process, both adults and children: educational failure, poverty, serious personal debt, crime and welfare dependency.

1.10 There is a clear public good associated with the marriage status-quo. I am of the view that this public good should be recognised and strongly supported, and governments should do much more to uphold and sustain it, for example through education programs and counselling for people seeking to marry, and those already married, designed to help them build and maintain their relationships.

2 Australian Christian Lobby, *Submission m71*, p. 8.

1.11 However, it is clear that there are significant elements within governments and political parties who seek to advance the cause of same-sex marriage, thereby undermining the meaning of the institution. For example, in November 2009, the ALP Victoria's state conference passed a motion calling on the Rudd Government to amend the 'Marriage Act to allow for equal access to marriage', ie. in support of same-sex marriage, and called on the 'Commonwealth Government not to override the ACT' same-sex civil partnership ceremonies.³ The Tasmanian ALP Conference passed a similar motion in favour of same-sex marriage in July 2009. Finally, the Federal ALP's policy, while stating Labor's commitment to maintaining the definition of marriage as currently set out in the Marriage Act, is that:

Labor will take action to ensure the development of a nationally consistent framework that provides...the opportunity for all couples who have a mutual commitment to a shared life to have their relationship officially recognised.⁴

1.12 This clearly supports the idea of officially recognising same-sex unions, which is a further step towards same-sex marriage.

1.13 I now turn briefly to the issue that is apparently driving this Bill – the allegation that same sex couples suffer unjustified discrimination under the Marriage Act, as enacted. This issue is well covered in Chapter 4 of the majority report, but it is worth reaffirming a number of key points raised in evidence about this issue.

...there are prudent reasons why societies discriminate on the basis of good social policy.⁵

...

'Discrimination' should not be taken as a synonym for 'unfair treatment' or 'injustice', but should be understood as a valid social concept, as discrimination simply means to 'distinguish' or to 'differentiate'.⁶

...

Homosexual couples now have legal rights almost identical to those of heterosexual de facto couples... The question of 'equality' has therefore already been largely answered and homosexuals are treated fairly under Australian law in the same way that heterosexual de facto couples are.⁷

...

3 Australian Coalition for Equality Media Release, 21 November 2009.

4 ALP National Platform and Constitution, Paragraph 140, accessed at http://www.alp.org.au/platform/chapter_07.php#7removing_discrimination_against_same_sex_couples, as accessed on 25 November 2009.

5 Mr Christopher Meney, Catholic Archdiocese of Sydney, *Proof Committee Hansard*, 9 November 2009, p. 38.

6 Australian Christian Lobby, *Submission m71*, p. 10.

7 Mr R. P. Ward, Australian Christian Lobby, *Proof Committee Hansard*, 9 November 2009, p. 57.

It is not unjust discrimination against homosexual couples to uphold marriage as being between a man and a woman. Marriage and same-sex unions are essentially different realities. Justice, in fact, requires society to recognise and respect this difference.⁸

1.14 As was the subject of numerous exchanges during the committee's public hearing, the law already fairly and rightly discriminates on the basis of age, polygamy and family relationship.

1.15 Therefore I do not agree that same-sex couples suffer unjustified discrimination under the Marriage Act as enacted, and consider that this argument is essentially invalid, particularly noting legislation passed in the Australian Parliament in 2008 to remove discrimination. For this and other reasons I particularly reject the need for a further review to remove discrimination as proposed by Recommendation 1 in the majority report. I also do not support the element of Recommendation 1 which calls for further relationship recognition, which can only be seen as an incremental step to equate same-sex partnerships with marriage.

1.16 I also do not support Recommendation 2 regarding certificates of non-impediment on the basis that it is inconsistent with Recommendation 3 to reject the Bill. If the definition of marriage as currently stated in the Marriage Act is maintained as the applicable law, the proposal to allow the Department of Foreign Affairs and Trade to issue certificates of non-impediment lacks integrity and would facilitate further challenge to the current law in Australia, despite Recommendation 3.

1.17 For these reasons I submit that Recommendations 1 and 2 should not be supported and the Bill rejected resoundingly. This sentiment was well summed up in a submission to the committee as follows:

...the state cannot grant the legal status of marriage to same-sex unions without failing in its duty to promote and defend marriage as an institution essential to the public good.⁹

Recommendation 1

1.18 That the Bill be rejected.

Senator Guy Barnett
Deputy Chair

8 Cardinal G. Pell, Catholic Archbishop of Sydney, *Submission m26*, p. 2.

9 Mr Christopher Meney, Catholic Archdiocese of Sydney, *Proof Committee Hansard*, 9 November 2009, p. 37.