

Inquiry into the Marriage Equality Amendment Bill 2009

Thank you for the opportunity to comment on this bill.

Whilst the presenting motivation for the bill is to remove discrimination from The Marriage Act 1961, it seems to me to do so by presenting a quite different view of marriage than that accepted by the bill.

True, only a few words are changed, affecting only a few clauses, however, the nature of marriage is changed dramatically by such small differences.

Furthermore, it may be that genuine, and to some – desirable - differences between such relationships and traditional marriage relationships would be dissolved.

Previous views of marriage.

The view of marriage assumed by the proposer of the bill are markedly different to that of those who framed previous acts and amendments and indeed inquiries related to marriage. Very clearly, marriage was deemed to be between a man and a woman. This was made explicit in the 2004 amendments, not to make marriage discriminatory, but to respond to the particular contemporary situation.

Marriage as defined in the Act, has been consistently recognised as marriage throughout the vast majority of societies and places in the world. Of course that in itself doesn't make the Act in its current form right, but it ought to give caution to those who would seek to change it. This is not an insignificant change that is being proposed.

In the light of the enormity of such a change to the nature of marriage, a far more comprehensive review would seem to be in order.

Is the issue discrimination?

Discrimination can occur with respect to marriage for reasons other than those of sexuality. Some people are discriminated against because they are single – not married, others who are cohabiting but not yet de facto, still others for being separated or divorced or widowed or in polyamorous relationships. Other people have long term, non sexual relationships of companionship.

The situation with people in such relationships or none is that put simply, they are not in a marriage relationship. This is the reality with significant numbers of people in our society. We are not being discriminated against just because we choose to live a particular way.

Redefining marriage to include same sex or differently gender identified relationships doesn't remove discrimination against other people who do not have marriage relationships.

So part of the issue, it seems to me, comes down not to discrimination but the question 'what is marriage?'

If this is the case, we need to ask the question why redefine marriage? If those proposing the bill have any reason to believe that law can effect a more just society, then it seems reasonable to ask why redefine marriage to effect the proposed ends?

The need to protect us from each other.

Nevertheless I do support some significant law reform in the area of same sex relationships. But not in order to remove discrimination.

Marriage is a particular form of contract. As such, it affords protection to weaker members of society, ensuring that all other things being equal, all people have equal access to legal remedies to redress loss.

If as a society we are to fully accept same sex or differently gendered identities, as

fundamental rights, then we need to accept that people with such sexuality or identities are just as capable as any other person of committing breaches of trust. Likewise there are people in and around such breaches of trust who would likely as not benefit from protection under the law.

One way of addressing such injustice, without changing the nature of marriage, is to enact specific, marriage like legislation, for relationships which fall outside the traditional model of marriage, yet are deemed as requiring protection under law.

Some have suggested that specific legislation would provide inadequate protection, whereas redefining marriage would effect the desired legal and social changes. This claim requires substantiation, in my view.

Lessons from the history of ideas.

Discrimination, in its broadest sense, requires some malicious intent or deleterious outcome. It is not mere differentiation between people. Or to put it another way, not all difference under law is discrimination. The law rightly recognises differences in the way it ought to treat people. This bill invites comment on why this particular aspect of human identity requires action.

The view taken by the proposers of the bill shows an undeserved faith in merely removing discrimination to effect justice. But justice requires more than just regarding everyone as identical.

It is broadly accepted that feminist thought has provided a framework for significant changes to Australian society. However, it is also instructive that not all feminists agree about all feminism. For example, there are discernible currents within the history of feminism. Broadly speaking, at different times, feminism has emphasised sameness and difference. That is, in terms of sexuality, feminist thought has asserted at one time that there are no differences between men and women, and at another time that there are significant differences between men and women.

The desire of the proposers of the bill want to make all same and differently gender identified relationships the same as a traditional male-female marriage. However, if the bill is viewed from such the above (history of ideas) perspective, it may help us to see that just calling things the same doesn't make them the same.

Likewise, it may be that upon mature reflection, the differences between these different kinds of relationship might want to be celebrated in the future.

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