

**MARRIAGE EQUALITY BILL 2012**

*Introduction*

Bill introduced by **Hon Lynn MacLaren**.

*Point of Order*

**Hon NICK GOIRAN:** Mr President, I seek your ruling on whether the motion moved by the honourable member contravenes section 51 of the Constitution when read with section 109 of the Constitution and sections 5, 6 and 46 of the Marriage Act.

In brief, I just draw to your attention that section 51(xxi) of the Constitution confers the issue of legislating in terms of marriage specifically to the federal Parliament. I also draw to your attention, Mr President, that section 109 of the Constitution provides that where there is going to be an inconsistency between a commonwealth law and a state law, it will be found to be invalid. I also draw to your attention, Mr President, that section 6 of the Marriage Act, which is of course a commonwealth act which this motion would seek to contravene—as you would be aware, Mr President, the honourable member seeks to include the registration of same-sex marriages—explicitly preserves the validity of state and territories relating only to the registration of marriage. Mr President, in my view it is important for you to take into account the current definition of marriage, as found in section 5 of that same commonwealth act.

Mr President, you would be aware that “marriage” has been defined by the commonwealth in section 5(1) of that commonwealth act, and I draw to your attention that it defines marriage as —

... the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

So, in my view it would be improper for this house to consider a motion that would clearly be in contravention to that commonwealth law.

Lastly, Mr President, I draw to your attention the paraphrase of that same definition in section 46(1) of the Marriage Act, and in essence this would mean that the attempt to register same-sex marriages in this state via a state act would be invalid on the grounds of it violating sections 5 and 46(1) of the Marriage Act 1961, which is the commonwealth act. Mr President, I seek your ruling on this matter, and I ask that the matter be stood down so that a ruling can be provided in due course.

**The PRESIDENT:** Members, in terms of the point of order there are several matters that require some consideration there, and I am not in a position to rule on that point of order right here and now. But two things: I will allow the matter to proceed at this stage to the first reading question to be asked, and it is then up to the house to make a decision at that stage; and, if and when that is decided, I will inform the house of a further course of action and rule on the point of order as soon as practicable.

**Hon LYNN MacLAREN:** Mr President —

**The PRESIDENT:** On the same point of order?

**Hon LYNN MacLAREN:** Yes. May I speak to the point of order; is it appropriate at this time to speak to the point of order?

**The PRESIDENT:** I do not want a full debate, but as the mover of the motion I will give you the opportunity to make a small contribution on the point of order if you wish.

**Hon LYNN MacLAREN:** Thank you, Mr President. The bill before us is, on our advice from the eminent George Williams, not in breach of the Constitution in that it is related to same-sex marriage, and the federal Marriage Act is related to marriage between a man and a woman. This bill and similar bills have been read in other jurisdictions; I know that is not the most important thing, but other states in Australia have also heard this bill and it has not been ruled out of order on that basis. But, of course, we would be very keen to hear your ruling at some point.

**The PRESIDENT:** As indicated, I am not going to entertain a debate on the point of order. If the member who has made the point of order wants to make a short point in response to the mover, I will give him the opportunity.

**Hon NICK GOIRAN:** Mr President, I just raise as a further point of order, in terms of the timing of your ruling, that as a member of this place I am, in a moment, going to be asked whether to vote for or against the first reading of this bill. I do not feel I am in a proper position to make a determination on that until I have heard your ruling on this matter.

**The PRESIDENT:** Okay. In that context I may not be in a proper position to make a ruling if I have not heard a bit more information as well. So, at this stage I will allow the question to go to the first reading, and I will put the question that the bill be agreed to for the first time.

*First Reading*

Bill read a first time, on motion by **Hon Lynn MacLaren**.

**The PRESIDENT:** I have noted the point of order that has been taken, and I will certainly give that consideration and report back to the house as soon as I can. But in the interim I will allow the second reading to be read into the house, because that may well throw some further light on the point of order I have been asked to rule on at some stage. I will now give the call to Hon Lynn MacLaren.

*Second Reading*

**HON LYNN MacLAREN (South Metropolitan)** [10.29 am]: I move —

That the bill be now read a second time.

Pursuant to standing order 126(1), I advise that the Marriage Equality Bill is not a uniform legislation bill.

Mr President, it is my solemn and heartfelt privilege today to introduce a bill to remove discrimination in Western Australia for adult couples who love each other and want to get married. It is not often that one has an opportunity to make the world a better place. The tabling of this bill, which sets out the legislative framework for same-sex marriages, is one of those major milestones in the long journey for social justice and is an opportunity I did not want to miss, even though the thirty-eighth Parliament will shortly end, making way for a new Parliament to be elected on 9 March. It is my fervent hope and the hope of many others that the members elected to the next Parliament will think kindly on the policy objectives of this bill and act with some urgency in 2013 to make love equal.

During this term of government, we have witnessed an increasingly popular campaign for marriage equality in Australia, with similar bills and motions introduced in the Australian Capital Territory, the federal Parliament, South Australia, New South Wales, Victoria and Tasmania. From the sidelines, the Western Australian state Parliament has watched the campaign grow in strength, with the number of supporters building to now represent the majority of Australians. Australian marriage equality is marching toward a historic victory. The state of Western Australia has a proud tradition of human rights law. The 2001 election of the Gallop government, with the Greens (WA) in the balance of power in the Legislative Council, heralded major gains in removing discriminatory laws for gay, lesbian, bisexual, transgender and intersex people, their relationships and their families. It was the law reforms in 2002 and 2003 that finally expunged the anti-gay preamble from WA's law book and passed comprehensive equal opportunity laws covering sexuality. The legislative package also reformed dozens of different laws to allow same-sex couples to be treated exactly the same as de facto heterosexual couples in virtually every area of the law.

One year ago I made a member's statement expressing my support for marriage equality and urging all Western Australians to call upon the Parliament of the Commonwealth of Australia to amend the commonwealth Marriage Act 1961 to provide for marriage equality. The federal move, though unsuccessful, attracted more support than ever before, with 48 members of the House of Representatives supporting a bill to amend the Marriage Act 1961. In fact, it was due to the lobbying of my constituents in the South Metropolitan Region that the member for Brand changed his vote and supported the bill. Because the federal bills were unsuccessful, we now have an opportunity—I would say a responsibility—to legislate at a state level for same-sex marriage.

The situation in which WA finds itself parallels that of states in the United States of America. Today, in the absence of federal marriage equality laws, nine states in the United States have passed laws to extend marriage rights to same-sex couples. Those states include Connecticut, Iowa, Massachusetts, Maine, Maryland, New Hampshire, New York, Vermont and Washington. Same-sex marriage is legal in 10 countries: the Netherlands, Belgium, Spain, Canada, South Africa, Norway, Sweden, Portugal, Iceland and Argentina. Mexico City also performs same-sex marriages that are recognised in all 31 Mexican states. As momentum builds worldwide, the United Kingdom and New Zealand are predicted to adopt same-sex marriage laws next year. Other places where reform is imminent include Scotland, Finland, Slovenia, Paraguay, Nepal and France. Many Western Australians have travelled abroad to tie the knot at great expense because marriage laws here exclude them. One of my constituents wanted to share this in support of the bill, and I quote —

After having overcome obstacles of distance and bureaucracy to live together happily, in the same country, for over six years, my French partner and I are now planning to marry. France will be legalising same-sex marriage next year, however our hearts, family and home are in WA and we would love nothing more than to be married in our home town of Fremantle, surrounded by loved ones. We originally chose to live in this country because of its history of equality and forward-thinking in regards

to LGBT people, supposing that our rights would be better protected here, however we have been greatly disappointed in the last few years as slow-moving, traditionalist France overtakes us.

We would also love the right to defend ourselves against homophobia by having our relationship recognised as equal to other married couples under the law. In our eyes and the eyes of our families, we are already married and our relationship is respected, but as long as it is unprotected by law, we will always be vulnerable to derision and discrimination.

Other advocates for marriage equality agree. Pride WA co-president Paul Van Lieshout Hunt provided me with this statement for today's second reading —

Pride WA firmly hold the stance that gay marriage will aid in ending discrimination against people of diverse sexuality and gender, furthermore acceptance of gay marriage and equal marriage rights will result in lower rates of mental health disorders and general health of the LGBTIQ community. Gay marriage in the US brings a revenue worth billions of dollars, the financial gain for Australia could be astronomical.

Where the Australian Parliament has failed, we can succeed. The time is now “to celebrate equality and diversity and demonstrate respect towards each other—no matter who we are, no matter what our religious beliefs, race, ethnicity, political beliefs or sexuality”, as Tasmanian Premier Lara Giddings recently stated in debate on that state's bill. Couples are asking for it. Their mums and dads, brothers and sisters, daughters and sons, cousins, nephews, nieces, aunts, uncles, friends, work colleagues and team mates have all supported the campaign for marriage equality. In fact, each time the pollsters go onto the streets, the numbers in support grow higher. Galaxy Research polling from 2009 to 2012 shows that 64 per cent of Australians support marriage equality; a majority of Christians, or 53 per cent, support marriage equality; 76 per cent of coalition voters want Abbott to allow a conscience vote; 75 per cent believe the reform is inevitable; and 81 per cent of young people between the ages of 18 and 24 years support marriage equality.

**The PRESIDENT:** Order! I will interrupt there to insist that you change the wording of the second reading speech to refer to a fellow parliamentarian by their proper title. I think you would have meant the commonwealth Leader of the Opposition.

**Hon LYNN MacLAREN:** Thank you, Mr President. Yes, indeed, they were the results of the Galaxy poll, but for the purpose of the second reading speech, it should be the federal opposition leader, Tony Abbott, whom 76 per cent of coalition voters want to allow a conscience vote.

Civil unions are a welcome step in the right direction, but they fall short of the marriage equality reform that the majority of Australians want. It is high time that Western Australia joined these other civilised states and nations in rejecting prejudice and embracing marriage equality. This will make an important difference in the lives of many Western Australians. There are disproportionately high rates of depression, suicide and self-harm among people of diverse sexuality and gender. From countering homophobic bullying in schools to preventing discrimination in aged care, there is much work to be done. The signal sent by removing discrimination in marriage will make a positive difference to the experiences of younger and older Australians and how others relate to them.

The Marriage Equality Bill 2012 provides for same-sex marriages between adults; the authorisation of celebrants to solemnise same-sex marriages; amendments to the Births, Deaths and Marriages Registration Act 1998 to provide for the registration of same-sex marriages; amendments to the Family Court Act 1997 to provide for the dissolution and annulment of same-sex marriages and for related financial matters; consequential amendments to other acts; and related purposes. Although this bill is a big step towards marriage equality by providing for same-sex marriage in Western Australia, it falls short by not addressing inequality for transgender, transsexual and intersex people. Parliament should also act to end discrimination against these vulnerable communities, which suffer high rates of suicide and self-harm.

While inequality exists, several organisations will continue to support and advocate on behalf of lesbian, gay, bisexual, transgender, intersex and questioning people, including the Equal Opportunity Commission, the WA Gender Project, Equal Love WA, Gay and Lesbian Community Services of WA, the Freedom Centre, Parents and Friends of Lesbians and Gays—and the list goes on.

Opponents of marriage equality argue that allowing same-sex marriage will cause potential damage to children and to the sacred institution of marriage. However, neither of these claims is borne out by the evidence. American and Australian psychological associations agree that the children raised by same-sex couples are just as well adjusted as their peers. The American association has gone further, finding that if the children of same-sex couples experience any harm, it is due to the fact that their parents cannot marry. Meanwhile, despite all the doom-mongering to the contrary, studies in North America and Europe have found that allowing same-sex couples to marry actually strengthens the institution of marriage rather than redefining or weakening it. The

leaders of both the Australian Labor Party and the federal opposition are out of step with most Australians on this. They should listen to what surveys say most voters want—marriage equality. Some day soon I hope we will look back on this whole same-sex marriage debate and wonder what the fuss was all about. We will wonder how such inequitable and prejudicial laws that could prevent someone from marrying the person they love could have been allowed to persist for so long.

I want to thank, for their presence in the public gallery, my partner Sarah Holt-Foreman and my friend Johnny Vidovich. I thank them for their support over the years and I look forward to enjoying a marriage ceremony one day with the two of them.

**The PRESIDENT:** Does the member wish to table an explanatory memorandum?

**Hon LYNN MacLAREN:** Before I table the explanatory memorandum, I should perhaps explain that I want to marry only one of them, and I want the other one in the supportive crowd watching, and perhaps as the best man!

I now table the explanatory memorandum.

[See paper 5437.]

Debate adjourned, pursuant to standing orders.