

**Day Two of Public Hearings**  
**Session: The Hot Button Issue**

**Presentation from Rodney Croome AM, campaign Coordinator, Australian Marriage Equality.**

The question before us today is not whether same-sex marriage should be allowed. It is whether our current democratic system is adequate for maturely debating and resolving the issue, and whether a human rights charter might help.

But before addressing that issue, it is important to establish a critical point about marriage equality.

The right to marry one's chosen partner is one of the most important rights conferred by our society.

It recognises that the partners concerned are equal before the law and enjoy freedom of choice, that they belong in, and are embraced by, their families and their communities.

Given the decision to marry is arguably the most important most of us are ever called on to make, the right to marry our partner is a potent symbol that we are considered fully adult, fully citizens, fully human.

As one of the couples who made a submission to this inquiry wrote,

“marriage ‘says’ to a couple, your family, your community, and the law of the land all acknowledge you. To exclude a couple from marriage on the basis of sexuality sends just the opposite message.”

I make this point because too often we hear that the same-sex marriage is trivial or selfish compared to other human rights issues. No-one says this now about the demand by women to decide who of if they should marry, or the struggle of mixed-faith and mixed-race couples for their right to marry. The same gravity applies to the issue of same-sex marriage.

Marriage equality has been an issue of public debate in Australia for at least since the Marriage Act was amended to preclude same-sex marriage in 2004.

In that time:

- thousands of same-sex couples have travelled overseas to marry only to see the legal consequences of their solemn vows evaporate the moment they walk back through Australian customs.
- the extension of defacto protections to same-sex couples – many of which become effective today - has highlighted outstanding discrimination in marriage
- and public opinion has shifted towards majority support for marriage equality, from 38% in 2004 to 60% in a national poll released just two weeks ago.

But despite all these changes our national leaders are still loath to address, or even talk about, marriage equality.

Their justification for ongoing discrimination seems to amount to little more than quips like “that’s our policy”, or “that’s the way it’s always been”.

A national charter of rights would provide a way for this impasse to be resolved.

It would allow supporters and opponents for reform to put their case to a court. It would focus the attention of the nation on the issue.

The human rights frame in which such a case would occur would not necessarily advantage to supporters of reform. The legal question would be, is the failure to allow same-sex marriage reasonable, and on this point - reasonableness - opponents of reform would be on equal terms with supporters.

I am reminded of the debate last decade on the decriminalisation of homosexuality in Tasmania.

That was also a hotly contested issue that dragged on for many years and was seemingly irresolvable within existing democratic structures.

What changed was a decision by the Federal Government in 1991 to allow individual Australians to allege violations of the International Covenant on Civil and Political Rights (ICCPR) to the UN Human Rights Committee.

That avenue of appeal allowed supporters of reform, and the Tasmanian Government, to put their cases to an independent umpire.

Although it was anything but a foregone conclusion, the result was a decision in favour of reform. This gave rise to a spirited national debate, and gave the Federal Government and the High Court a mandate to intervene, which they subsequently did. The laws were finally repealed in 1997, to the satisfaction of an overwhelming majority of Tasmanians and other Australians.

I see an Australian charter of rights playing a similar adjudicatory role on the issues we’re dealing with today.

Having a charter of rights would, if you like, be a way of “repatriating” the International Covenant; to have Australian human rights claims adjudicated in Australian courts, with Australian standards of evidence, according to provisions to which the Australian people have assented.

Having an Australian charter would also be an opportunity to build and improve on the ICCPR.

An Australian charter should make it clear that sexual orientation is a grounds upon which unreasonable discrimination ought not occur.

The right to equality should extend to equal treatment by existing laws.

The right to marry should not, alone among all human rights, be expressed in gender-specific terms.

Most importantly, our elected officials should be made to heed whatever decisions are made.

Currently, Australian Governments can ignore decisions of the UN Human Rights Committee, effectively politicising human rights.

We endorse a proposal by the Tasmanian Law Reform Institute that parliament be compelled to periodically review laws which have been found to breach human rights, and publicly justify any failure on its part to remedy such breaches.

To sum up, if a charter can't deal effectively with the hard issues what's the point?

My final point is in regard to freedom of religion which we will hear more about in a moment.

It is often assumed that same-sex marriage must somehow breach religious freedom, simply because so much of the opposition to it is religious based.

But wherever same-sex marriage has been allowed churches are exempted from celebrating such marriages if it is against their doctrine. The same will occur in Australia.

At the same time, ahead of this hearing I have been contacted by several churches and religious celebrants who would celebrate same-sex marriages if the law allowed.

It seems to us that it is these people and institutions whose religious freedom is currently being breached by the failure to allow same-sex marriage.