

Toward a diocesan policy on same-sex relationships

(A report from the Social Issues Executive.)

Contents	Item
Introduction	1
Four “channel markers” for policy development	2-11
Three suggestions for our ongoing mission	12-18
Recent developments in Australian legislatures	19-31
Conclusion	32

Introduction

1. The Social Issues Executive (SIE) has brought together this brief paper to assist the Standing Committee to discuss policy responses to various legal initiatives in relation to same-sex relationships. We thank the Standing Committee for the opportunity to contribute, and as always, will be glad to supply further detail where necessary. We will assume an agreed Christian theology of sexual ethics.

Four “channel markers” for policy development

2. We propose that any responses to proposed changes in law and Government policy should proceed within the following parameters.

We support and encourage people to care for each other

3. It is not part of our mission to oppose care and support between people. For the purposes of civic order, we are not interested in sexual expression at that point. We support all changes to the law that promote and support relationships of care. Where relationship registers recognise such care, they are welcomed. Of course it follows that we would oppose any changes to the law that privileged same sex relationships over other caring relationships (eg for elderly siblings or disabled family members etc).

The needs of children take priority over the wants of adults

4. On the one hand, to the extent that same-sex couples have taken up roles as main carers of children, we support them in that role (just as we support single parents). We do so without prejudice to the children concerned. We realise that our opposition to homosexual lifestyle should never take the form of challenging or compromising the security of children for whom these carers are the most significant adults they know.

5. On the other hand, where children are in need of care and the State must decide the child’s care arrangements, the State must observe the most conservative possible estimate of best care. This

judgment is to be made in the interests of each child, not each applicant. The State's most conservative best estimate should be that a stable, loving, harmonious married couple offer the best conditions for a child's care. (The position of the SIE in relations to adoption law in NSW is explained in its Submission to the NSW Department of Community Services Review of the *Adoption Act 2000*, June 2006.)

Marriage is not "reinventable"

6. The question of who may be "married" "cannot be reduced to whether another extension of individual rights is merited in this case. Rather, participants in the debate must confront the question whether marriage, and family, have an enduring structural character that must be reckoned with before courts or legislators rush to judgement on the so-called 'rights' question" (J Chaplin).

7. If the state chooses to "reinvent" marriage for the sake of an individual's rights, then there is no real limit to what may be called "marriage". Supposed expansions of the class "married" will simply cheapen the currency of the term – and the law will eventually have to find another way to recognise lifetime male-female couples who welcome children.

8. The Archbishop has already publicly argued this point.

We seek a society that graciously allows cultural space for marriage

9. A "good" society must accept, support and care for families without a "nuclear" core, but something seems to have gone wrong in a society that does not naturally produce and keep a large proportion of such families. A society needs to do all it can to produce and keep a large proportion of families where stable, loving, harmonious married couples are open to bearing and raising children.

10. "Marriage" names men and women who give themselves to this excellent task. Use of the term reflects a form "positive discrimination", which has traditionally been accorded to those who embark upon that task. We ask all in our society to continue to honour marriage in this way. Daily realities of gay liberty and equity would not be compromised by conceding this cultural space to marriage. Hence marriage ceremonies and registration should remain for the married.

11. We note in this respect the legally expedient redefinition of "spouse" to include members of same sex and de facto couples. We recognised that this expediency has been used to encompass a variety of care relationships within existing legislation. However we remain concerned that this solution compromises and confuses the proper privilege that society has traditionally accorded to marriage.

Three suggestions for our ongoing mission

12. The previous four “channel markers” concern our public response to various proposals. The next three suggestions concern our wider mission over the next decades.

Christians seek to love homosexuals meaningfully

13. In a politicised environment where the stakes seem high, we can easily seem to despise homosexuals. But to the contrary –

- We stand with them against the kinds of hatred and violence that is reported by their community.
- As people who bear God's image, their networks of relationships – particularly where real care is given and received – deserve our respect.
- We may need to find new ways to “connect” with homosexuals, if Christ's loving offer of forgiveness is to be real and tangible for them.

14. We could ask God to lead us in his own love toward those who self-identify as gay. We might ask God how to love in a way that touches their hearts while we follow Christ faithfully.

We call everyone to faithful marriage or chaste singleness

15. We are **for** a vision of community life where sexual expression is not always necessary for contented lives together. Our sexual ethic is not intended to single out gay people, or divorced and remarried people, or people in defacto heterosexual relationships. We simply believe that faithful marriage and chaste singleness are the way we may find joy together. Our churches are an ongoing “experiment” in living out these complementary styles of life together.

16. We need to address corrupted views of marriage, such as that it need not be lifelong, or that sexual exclusivity is only for those couples who choose it, or that openness to receiving children is an optional extra for the married. Such ethically “voluntarist” views, where marriage is only what we choose it to be, have set the cultural conditions under which same sex “marriage” now seems reasonable and appropriate.

17. We also need to address the corrupted views of singleness which assume sexual expression to be central to a good human existence. Of course all are created to have sexual thoughts and feelings; but it does not follow that these must be expressed in order to live well.

We ask the homosexual community for cultural and political detente

18. We are two communities who will never agree. We are stuck with each other in Australian society. Each community battles for hearts and minds; each has its articles of faith; and we both have the

capacity to hurt each other terribly. Neither community will disappear any time soon. The tensions we experience have to be addressed the way liberal democracies traditionally navigate profound disagreements of conscience: through free speech and freedom of assembly. By all means let us continue to try persuading each other, but at the same time, let us also seek to live well alongside each other in a civil society that we can all share, in "critical tolerance", where we accept one another even while disagreeing.

Recent developments in Australian legislatures

19. The next paragraphs summarise the current "state of play" in the nation's legislatures.

Same-sex Entitlements

20. In 2007 the Human Rights and Equal Opportunity Commission (HREOC) released their report "*Same-Sex: Same Entitlements - Final Report*". The report was the result of a 2006 National Inquiry into discrimination against same-sex couples in the area of work related and financial entitlements. HREOC identified 58 federal laws which denied same-sex couples and their children basic financial and work-related entitlements available to opposite-sex couples and their children. These covered areas such as superannuation, workers' compensation, aged care, immigration and health care subsidies. The report recommended that changing the definitions describing de facto relationships in relevant federal laws could help end daily discrimination suffered by more than 20,000 same-sex couples in Australia.

21. The new Federal Attorney-General Robert McClelland, initiated his own departmental inquiry and found that there are in fact 100 laws that are discriminatory against same-sex couples. He has announced that the Government will introduce legislation in the July sitting of parliament to redress this situation. We await the details about this Bill and will need to pay particular attention to whether changing the definition gives away more entitlements than the stated intention, particularly in the area of children.

Same-sex Relationship Registers

22. Both the Liberal and Labour party supported the 2004 amendment to the Marriage Act 1961, which explicitly defined marriage as a "voluntary lifelong union of a man and a woman", also making it clear that marriages of same sex couples overseas would not be legally recognised in Australia. While remaining opposed to civil union between same-sex couples, the current Federal Attorney-General is however supportive of national consistency between state based relationship registers.

23. A key difference between a relationship register and a civil union is that a register is primarily an administrative arrangement,

whereas a civil union has features of a marriage, such as a ceremony. This is the case with the UK Civil Partnerships Act 2004. Some of the benefits of registering a relationship and having a certificate of registration, are that it enables couples to prove their legal right to make medical decisions on behalf of their partner and have access to some state based health care, superannuation schemes and other financial entitlements.

Tasmania

24. In 2003 the Tasmanian parliament passed the Tasmanian Relationships Act to allow for two types of personal relationships that can be registered. These are –

- (a) “a significant relationship” (which could include heterosexual or homosexual relationships between two adult people); and
- (b) “a caring relationship” (based on a relationship of domestic support and personal care).

25. At the end of 2007 there were approximately 100 relationships registered. All but one, were in the “significant relationship” category, a quarter were opposite-sex couples and the remainder were same-sex couples (approximately half male/male and female/female).

Victoria

26. In April 2008 the Victorian parliament voted in favour of a relationship register similar to the Tasmanian register.

ACT

27. In recognition that the Federal Government would use its powers to overturn any legislation that promoted gay marriage (as the Howard Government did in 2006 when it overturned the Civil Unions Bill), the ACT passed legislation on 8 May 2008 to provide legal recognition for same-sex couples in the form of a relationships register.

City councils

28. There are also relationship registers based in some city councils (e.g. Melbourne and Sydney).

NSW legislation

29. A recently released NSW Law Reform Commission Report (no. 113) discusses legal issues in relation to parenting and property rights of de facto and same-sex couples.

30. The NSW Attorney-General has adopted some of its recommendations, and introduced into the Legislative Council on 7 May, 2008 the *Miscellaneous Acts Amendment (Same Sex Relationships Bill) 2008*. This Bill will be debated when the NSW Parliament resumes on 3 June 2008.

Numbers of people affected

31. We note that the 2001 census recorded 20,000 same sex couples (0.5% of all couples) of whom 11,000 were gay male couples and 9,000 were lesbian couples. Twenty per cent of lesbian and five per cent of male same sex relationships were reported to have children in the household. Nearly 9,000 same-sex couples lived in New South Wales, and nearly 7,000 of them in Sydney.

Conclusion

32. Further responses will hinge upon details of the Federal Attorney-General's Bill; and scrutiny of the NSW Bill (and its intentions) will be required. We are willing to assist the Diocesan legal team as they evaluate these Bills and draft responses.

For and on behalf of Social Issues Executive

The Rev Dr Andrew Cameron

Chairman

19 May 2008