

Deception on freedom of religion key to SSM Yes case

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With the Yes case positioned to win the postal plebiscite, it is more important than ever the misleading and false claims of its advocates — that there is no religious issue at stake — be confronted and the ramifications put on the table.

These claims are made by senior Coalition and Labor politicians. Indeed, it seems they think rejection of the religious argument is fundamental to the success of their campaign. This is alarming because it implies the Yes case depends on persuading the public of a false proposition.

The government and parliament, despite years of emotional debate, declined to address the wider religious freedom question. The political class engaged instead in a great pretence: that the only such issue concerned the wedding ceremony and protections in the Marriage Act for clergy and celebrants, an extremely narrow view of religious freedom.

Given legalisation of same-sex marriage means the laws of the state and laws of most religions will be brought into direct conflict over society's most essential institution, the one certainty is ongoing legal and political trench warfare over the balance between acceptance of the same-sex marriage norm and the scope for freedom of belief and religion.

There is a litany of examples from the overseas experience. Fatuous remarks that “the world hasn't come to an end” in countries that have legislated same-sex marriage are just that — and designed to deceive.

Having refused to confront the issue the advocates of the Yes case now get agitated and self-righteous when it has become an issue in the plebiscite. This was inevitable. While some aspects of the No case are obnoxious, its warnings about religious freedoms risks are entirely valid. What matters is that the many highly intelligent political champions of the Yes case are trapped: they are selling a shoddy intellectual bill of goods and many of them know it.

The first point is that religious freedom guarantees in this country are inadequate. This was agreed and documented in February's Senate select committee report. Unlike many Western nations, Australia has no statutory expression of a stand-alone right to religious

freedom. There are far greater legal protections in relation to sexual orientation than in relation to religious belief.

This is an anomaly given that under the International Covenant on Civil and Political Rights freedom of religion is an inviolable right. The risk now is our parliament undermining Australia's commitment to the ICCPR.

Evidence presented to the Senate committee shows that statutory protection of religious belief is weak both in federal law and a number of states. It mainly exists as "exemptions" from anti-discrimination law. The Anglican Diocese of Sydney made the obvious point to the committee that this failed to treat freedom of belief and religion as a fundamental human right. Marriage Alliance said: "We submit that religious freedom is a fundamental human right (and) that framing a debate in terms of exemptions misunderstands this fact."

There was strong support in submissions for parliament to legislate to enshrine religious guarantees as a protected attribute in federal anti-discrimination law. This is the pivotal point. The committee unanimously agreed there was a "need to enhance current protections for religious freedom". The Human Rights Law Centre said: "Religious freedom should be protected in law. Indeed, we are on record in a number of inquiries supporting the addition of religious belief to protections under federal anti-discrimination law."

Committee chairman Liberal David Fawcett warned that "if Australia is to remain a plural, tolerant society where different views are valued and legal" then such action on religious freedom is essential. What was the reaction of the Turnbull government and Labor to the Senate report?

It varied between disregard and contempt. The reason is apparent — politics. Labor has abandoned any interest in addressing the inadequacy of religious protection laws with its embrace of the LGBTI cause. As for the Coalition, the story is the weakness of its conservative caucus. The deeper point is the churches are vulnerable and the politicians know it.

The lamentable situation was summarised by the University of Sydney's Patrick Parkinson: "There have been numerous bills introduced into parliament to enact same-sex marriage over the last few years and what has been common to most of them has been a minimalist protection for freedom of conscience."

The second core conclusion is that this battle over rights will continue after same-sex marriage is legislated. In Denmark the Lutheran Church has had its rights restricted. The Swedish PM has said priests should no more be allowed to refuse to marry same-sex couples than medical professionals should be exempt from abortion procedures. The Speaker of the British House of Commons says "proper equal marriage" won't happen until the churches are compelled to obey by law. Australian Greens formally say they want the religious exemptions in anti-discrimination law to be wound back. Many in the ALP left have the same view.

We are being put on notice. You would have to be politically blind to deny the reality (an option many politicians have deliberately chosen). The post-same-sex marriage battle is already under way. This is because while many people genuinely see same-sex marriage as an issue of non-discrimination, this was never its essence. It is an ideological cause seeking fundamental changes in Western society, laws and norms. It will continue apace after the law is changed.

Marriage equality is an ideology and ideologies, by nature, do not settle for compromise victories. As Benjamin Law says in *Quarterly Essay: Moral Panic 101*: “It might be stating the obvious but same-sex marriage is far from the final frontier in the battle against homophobia.” The struggle will continue — in schools and in institutions. Law says the two biggest LGBTI issues are Safe Schools and same-sex marriage.

He says Safe Schools is “supposed to discomfort people” by up-ending how we see gender and sexuality. He talks about exploding accepted norms with queer theory, inviting “people to reconsider why anyone should be obliged to identify as female or male at all”. The aim is to introduce Safe Schools across the country and make it compulsory.

The pretence by Yes case politicians that the plebiscite has no consequences for the Safe Schools program treats us like fools. Legislation of same-sex marriage will tilt the scales decisively in this struggle between sexual rights and religious freedom. This legal and cultural change will influence decision-makers everywhere — public servants, corporates, media and educational institutions.

The churches will remain a prime target and the fact their protections are weak makes them highly vulnerable once the assault gains momentum.

The Yes case bases its campaign on human rights but misses the exquisite irony that you cannot cherry-pick human rights and keep your integrity. As Parkinson said, consistency of principle means those who justify their campaign on human rights need to give proper consideration to how rights can be balanced.

That hasn’t happened in Australia, not even remotely. Every sign is Australia will legalise same-sex marriage devoid of any serious attention to religious freedom issues and, as a result, religious protections will be exposed and sacrificed.

The politicians are doing this because they think they can get away with it. They are entitled to that judgment. What they are not entitled to is a gross deception. The assurances they give on religious protection are worthless — their inaction proves that. People, regardless of how it affects their vote, need to know the reality.

<http://www.theaustralian.com.au/opinion/columnists/paul-kelly/deception-on-freedom-of-religion-key-to-ssm-yes-case/news-story/ade3fcd41eda3a05478dee1d7d03e8e>