

## RESPONSE TO PETITION

Petition No: 010-12



**Subject: Same-Sex Marriage**

To: The Honourable the President and Members of the Legislative Council:

Tasmanian Citizens draw to the attention of the Council that your petitioners:

- support State legislation to allow same-sex couples to marry;
- not that some Legislative Councillors have expressed concern about legal and constitutional issues raised by such legislation; and
- support a Legislative Council inquiry into these concerns.

And your petitioners request that the Legislative Council will support establishment of a committee to inquire into legal and constitutional matters related to the introduction of Same-Sex Marriage legislation in Tasmania.

### **Government Response:**

- The Tasmanian Government was disappointed that the Same-Sex Marriage Bill was voted down in the Legislative Council.
- In not supporting this legislation, I believe that Tasmania has missed an opportunity to lead the nation in ending discrimination against same-sex couples.
- Ultimately, the decision of whether or not to establish a committee to inquire into the legal and constitutional matters relating to the introduction of same-sex marriage legislation in Tasmania is a matter for the Legislative Council.
- In my Second Reading Speech on the Same-Sex Marriage Bill in the House of Assembly I acknowledged that the Bill, when enacted, could be the subject of a challenge in the High Court of Australia, and this challenge may focus on the scope of the 'marriage power' specified in section 51(xxi) of

the Australian Constitution. It may also reference the meaning of 'divorce' and 'matrimonial causes' mentioned in section 51(xxii).

- Through the debate on the Bill in both houses of the Tasmanian Parliament we have seen advice provided from constitutional experts showing different opinions and interpretations. But the one thing they do tend to agree on is that this is a grey area and, unless the High Court determines otherwise, there is nothing to stop states from enacting their own laws on same-sex marriage.
- Ultimately, the question of inconsistency is one which only the High Court can answer, not the Tasmanian parliament.
- The Same-Sex Marriage Bill 2012 was been drafted with due care, taking account of the terms of the Australian Constitution and the scope of the Commonwealth's Marriage Act 1961.
- The Marriage Act 1961, by definition, is specifically about marriage between a man and a woman, thus leaving room for a state to legislate for same-sex marriage.
- There is no obligation upon the Commonwealth Parliament to exercise its legislative powers to provide for same-sex marriage (though I have and will continue to urge the members of that Parliament to do so).
- Until, if ever, the Commonwealth Parliament decides to legislate for same-sex marriage I believe state-based laws, when enacted, will be valid and provide a robust framework for same-sex marriage.
- Despite the defeat of the legislation, I believe the Tasmanian debate has helped to raise awareness of the importance of equality and has made a positive contribution to the national discussion on this issue.
- And there are positive steps towards this important reform being taken around Australia and overseas.
- In the New South Wales Parliament, the Standing Committee on Social Issues is conducting an inquiry into issues relating to a proposed same-sex marriage law in that state, and in South Australia a bill for marriage equality will be voted on this year.

- Last year in the US elections the states of Maine, Maryland and Washington all supported same-sex marriage, while voters in Minnesota rejected a proposal to alter the constitution to ban same-sex marriage.
- Overseas this year we have already seen an overwhelming number of Members of the House of Commons support a Bill for marriage equality in the Westminster Parliament.
- What is particularly encouraging about the vote in the United Kingdom is that the laws there were introduced and strongly supported by the Conservative Prime Minister, David Cameron, proving that this not a radical left reform.
- More recently the French National Assembly passed a Bill to allow same-sex couples to both marry and adopt.
- These actions across the United States, United Kingdom and France are all part of the global push to end discrimination against same-sex couples.
- The Tasmanian Government remains committed to supporting same-sex marriage legislation.



Lara Giddings  
**Premier**

Date: 28-2-13