

INQUIRER

## Same-sex marriage: amid jubilation and history lie deep divisions



Tony Abbott speaks in the House of Representatives on an amendment on Thursday.

Paul Kelly, *The Australian*, 12:00AM December 9, 2017

Australia this week legislated same-sex marriage in a moment of jubilation and relief — yet this occurred in a divided parliament where the majority inflicted a crushing defeat on every effort to bolster individual and religious freedoms, with the Coalition sinking into an internal conflict over this historic change.

The final vote, carried with only four lonely dissidents, provoked joy, embraces, tears, flag-waving and cheering from the public galleries amid cries that “love has won”, leading to the impression that the parliament had come together. In fact, the reverse was the case. This was a winner-takes-all result. The majority prevailed and the minority was vanquished. The ramifications will last for many years. The contest, with its utterly inevitable result, was waged on the House of Representatives floor throughout Thursday.

In effect, it constituted the arrival of the new Australia and the demise of the old. The debate left no doubt what this means: the new Australia enshrines the principle of non-discrimination to guarantee diversity and will accord this priority over the principle of religious freedom, goodwill for which is eroding within progressive politics.

Bill Shorten declared it was a “time for healing”. Malcolm Turnbull said it was a triumph for love, equality and unity. The sense of personal liberation at the conclusion was euphoric and emotional. During the day, however, the story was different — there was just a punishing series of votes in which a majority of Coalition MPs were repudiated in their efforts to secure same-sex marriage with religious freedom protections.

The Prime Minister declared a historic victory. For Turnbull, it is a singular win and writes him into the pages of history — he delivered the plebiscite and legislated before Christmas, as he had pledged. Within sections of the Coalition there is sheer relief that same-sex marriage is legislated and off the agenda, which means they won’t need to discuss it any more.

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Contrary to impressions, however, there is no internal settlement, no uniting of the whole nation. Turnbull delivered same-sex marriage but failed to deliver religious freedom protections he has espoused. This was inevitable because the numbers did not exist for them. The numbers are unlikely to exist next year or the year after. The Prime Minister, however, never once during the day rose to his feet to defend these enshrined principles, while still voting for three of the many religious freedoms amendments.

For a majority of Coalition ministers and MPs, same-sex marriage is established on legislative foundations that give them grave concern. Turnbull presided but Labor and the Liberal progressives dictated the terms.

The Liberal Party engaged in a brave debate based on conscience, member speaking against member. The conservatives tried to secure changes to safeguard charities against discrimination, to guarantee parental rights over marriage values their children are taught, to protect conscience for civil marriage celebrants and military marriage celebrants, to protect individuals when expressing a view about marriage and against being discriminated against for their beliefs, and to build into our laws religious freedom principles from the International Covenant on Civil and Political Rights.

Each was defeated. Each defeat was met with applause from the public galleries filled for the day-long debate with supporters of the same-sex

marriage cause. Parliament was not just embracing a new freedom in same-sex marriage; the bell was tolling for protection of religious belief. Many politicians will deny this. But these are hollow words, given their votes and their speeches.

Devoid of a satisfactory settlement, Australia's culture war will continue. Its intensity and timing now depends on how the radical activists pursue their continuing campaign to erode further religious principles, norms and institutions.

Throughout the day the Labor Party voted as a bloc. Its discipline held on every vote. No Labor member broke ranks; none uttered a sentence of meaningful support for religious freedom. As far as can be ascertained, none even abstained from a vote. Labor said all the amendments were unnecessary or dangerous, or both. It refused to admit the slightest threat to religious freedom in Australia despite considerable evidence to the contrary. For Labor, the issue of religious freedom is a party issue and that will not change. The long struggle over same-sex marriage has witnessed a historic shift in the values, culture and character of Labor.

This is one of the greatest defeats for conservatives in many decades. It was predictable since the conservatives have long mismanaged this issue and the Turnbull government, in a position of weakness, was unable to spell out religious freedoms and protections at the start of the plebiscite. But the risk now is more fragmentation of the conservative vote.

Next year Turnbull and his cabinet face an existential decision: does the Liberal Party believe in religious freedom? Will it fight for this cause or will it abandon the position? Will it fight for religious protections for multicultural Australia, the churches, charities and institutions? To a large extent, this will determine the future of conservative politics in this country.

This decision will spring from the government's examination of the review into religious freedom being conducted by a four-member panel headed by former attorney-general Philip Ruddock that reports early next year. The answer should be a no-brainer but many cabinet ministers are weak, the proof being their refusal to participate in Thursday's debate. If they are serious, there is one obvious contingency — developing the option for a plebiscite or referendum on religious freedom to be put at the next election. If the parliament refuses to address the issue, it should be put to the public.

It would have majority support. It would wedge Labor and the Greens, who would oppose the question. It would make freedom of religion a fundamental issue of principle at the election. It would ignite not just the conservative movement and bring many alienated conservatives back to the Turnbull government but win the support of much of middle Australia. Turnbull would have a winning pitch: "I have honoured my promise to deliver same-sex marriage. This is now the law of the land forever. I now seek to unite our nation by asking the people to vote for religious freedom so it can operate in harmony with our new definition of marriage."

This is unlikely to happen. But the Liberal Party needs to beware. The consequences will be severe if it runs dead, enters the cone of silence and betrays one of the most basic principles of a liberal society and conservative order. That would further alienate conservative voters and the Catholic Church, and bring enduring discredit on itself.

The Ruddock review will lead, presumably, to a cabinet decision on legislative amendments to bolster religious freedom. This is a delicate issue going to competing rights. Labor had a valid argument this week, saying the issue of - religious freedom should be postponed to the Ruddock report. Labor was fixated on securing the same-sex marriage bill without amendment and nothing was to be allowed to hold up this imperative.

If Labor is smart it will approach the Ruddock review with an open mind. But anybody who sat through this week's debate will doubt this is possible. Labor's position was that nothing must be done in the name of religious freedom to compromise or weaken anti-discrimination laws. Labor sees this as an electoral plus, despite the danger lights flashing from ethnic and faith-based communities in western Sydney.

To clarify again, Thursday's parliamentary debate was not about the principle of same-sex marriage. That was a done deal, given the postal plebiscite result. Nor was it about delaying the bill. It was entirely about extending religious freedom principles. But Labor and the bill's advocates were completely correct in saying these issues were not put to the people at the plebiscite, they were not voted on at that time, and they constituted a late-in-the-day parliamentary strategy.

The fate of the main amendments was as follows: the Andrew Hastie proposal to protect free speech and guarantee parents' rights was defeated 87-55; the

Scott Morrison amendment to protect charities and prevent them being stripped of funding for their beliefs was lost 82-59; the Alex Hawke amendment to protect rights for military celebrants was defeated 87-59; two Andrew Broad proposals to protect charities and faith-based bodies were lost 86-52 and 85-60; proposals from Michael Sukkar to extend the new definition of marriage to also include “man-woman” marriage and protect conscience for civil celebrants was defeated 97-43; and Sarah Henderson, a supporter of same-sex marriage, proposed amendments essentially to incorporate into law the religious freedom declarations from article 18 of the International Covenant on Civil and Political Rights, and was defeated 79-63, the closest that cause came to victory.

Turnbull voted for the Henderson, Hawke and Broad amendments (the Broad amendment relating to faith-based charities). These were substantial efforts to secure religious freedom. Turnbull abstained from the other votes. But the PM should have spoken.

In the end, only two cabinet ministers, Morrison and Barnaby Joyce, spoke to the amendments. Morrison and Peter Dutton, as Liberal cabinet ministers, voted for all the amendments. But a cabinet majority and a Coalition partyroom majority was conspicuous in most of the lost religious freedom votes. In short, there was no dispute about where the majority of government MPs lined up — and no dispute about their defeat.

The cabinet minister most prominent in voting against and joining with Labor was Christopher Pyne, followed by Kelly O’Dwyer, who voted against, except on the Sarah Henderson amendment. They were joined by a group of Liberals who opposed most of the religious freedom proposals: Warren Entsch, Trent Zimmerman, Tim Wilson, Trevor Evans, Sussan Ley, Julia Banks and Jane Prentice among others.

The reasons for Labor’s opposition were best articulated by its legal affairs spokesman Mark Dreyfus and assistant spokeswoman Terri Butler. They tended to fall under several headings — that some of the proposals were genuinely radical in nature; were unacceptable because they would wind back anti-discrimination laws; required much more elaborate assessment and should await the Ruddock review; addressed problems that did not exist because there was no danger to religious freedom; involved cherrypicking religious rights without full consideration of other rights; that the Dean Smith private member’s bill on same-sex marriage was not the proper vehicle for

many of these broadbased amendments; and that the immediate priority was passage of the bill without delay.

Many of these were substantial arguments. They reflected the near-impossible situation facing the conservatives, who knew they must try to exert leverage before the bill passed, since after it passed they would have virtually none. In the end, their efforts were doomed and everyone moving amendments knew that. They were smashed on the numbers.

What will be different next year is that any vote on the Ruddock report recommendations will be a vote on a government bill, not a private member's bill — whether that makes a decisive difference remains to be seen.

In speaking to the amendments, Tony Abbott laid down a serious charge: “The problem that this house is wrestling with today is the absence of detailed consideration of freedom of speech, of conscience and of religion, which both the Prime Minister and the Leader of the Opposition promised would be given to us before the bill was finalised. A promise was made by the leaders of this parliament and the promise has not adequately been delivered upon.”

The religious freedom debate has been conspicuous for the emergence of Morrison. The Treasurer stood up, spoke and voted on these issues with a commitment lacking in several of his colleagues. In speaking to his amendment on charities, Morrison went to the heart of the matter. He said his aim was to preserve the status quo — to ensure religious-based charities could continue their work without doubt or question about their status and funding. This has not happened in New Zealand and Britain.

Morrison said: “There is a clear demand for this. I fear what other members have said — that we will have to revisit this issue once the injury has happened. We could take steps now to prevent that injury. I, like other members of the government, am disappointed that the Labor Party have decided not to have a fair dinkum conscience vote on these amendments at all.”

Labor's claim that there is no need for extra protections is intellectually untenable despite being a new article of Labor faith. The Senate committee that examined this issue and reported in February this year provided a sustained exposition on the gross inadequacy surrounding religious protections in Australia. Pretending there is no problem is fraught with danger for Labor

and the core of progressive Liberals who voted against the religious freedom amendments during the debate. The religious protection laws are weak. They are going to be tested — nothing is more certain — and that test will reflect on what was said in this debate. The balance of evidence is that the terms on which same-sex marriage has been legislated leave many institutions and individuals exposed.

There is no gainsaying this was one of the most important debates in the history of the parliament. Yet the debate was barely reported. George Brandis was surely correct when he said yesterday that “this event is not owned by the Liberal Party or the Labor Party or any political party” but by the people who had voted Yes. “In reality it took 10 years to do it,” Turnbull said yesterday. “The reform process in Australia seems to take an inordinately long time. I’m the first prime minister to support same-sex marriage, and it is now law. Delivered.”

It is further confirmation of the conundrum of the Turnbull government: its policy achievements are mounting. The essential problem is politics, presentation, unity, tactics and fragmentation of the conservative vote. The question remains: Will this emerge as a political plus or negative for the government at the ballot box?