

Portia DeGeneres and the fight for same-sex marriage

Written by Smh.com.au | Lucinda Schmidt
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When Australian actor Portia de Rossi married American talk-show host Ellen DeGeneres in California two years ago, their nuptials made headlines around the world.

Now, the celebrity couple are again in the news after de Rossi's request to change her surname to DeGeneres was approved by a Los Angeles court. For same-sex-marriage advocates, her name change is bitter-sweet: she's asserting the right to join many heterosexual married couples in sharing a surname, but in doing so she's embracing one of the most traditional aspects of a very traditional institution.

Is that really what the worldwide fight for equality is all about?

In Australia, of course, the couple couldn't get married at all – at least not legally. Despite opinion polls over the past three years showing that a majority of Australians support same-sex marriage, both our major political parties remain firmly against it. Early in the recent election campaign, Prime Minister Julia Gillard disappointed many by confirming her support for the ban; a week later, openly gay cabinet minister Penny Wong also toed the party line, stating that there was a “cultural, religious and historical view” against same-sex marriage.

With the August federal election delivering a radically reshaped parliament, the one thing advocates on both sides of the same-sex marriage debate agree on is that the issue is now very much back in play. Coupled with developments overseas – in July, Argentina became the 10th country to legalise same-sex marriage – there's a growing feeling that Australia's laws will change eventually. In the meantime, however, the ideological clash between those who see same-sex marriage as a straightforward issue of equal rights and those – mainly from the religious right – who argue that marriage is really about encouraging procreation is set to escalate.

The equal-rights argument is compelling. Certainly, progress has been made on removing some of the practical and financial hurdles faced by gay and lesbian couples. The Rudd government passed laws in 2009 covering superannuation, tax and Centrelink payments. And registers in

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Victoria, NSW, Tasmania and the ACT allow same-sex partners to record their relationship and receive a document acknowledging they are a couple.

But there's still an Orwellian sense of some couples being more equal than others.

As Alex Greenwich, national convener of Australian Marriage Equality, puts it: "We now have financial equality, but not the real equality and real protection of marriage.

Tens of thousands of couples are discriminated against by the Marriage Act – that shouldn't be happening in 2010. We are embarrassingly backward on the issue."

His biggest concern is the message the present legislation sends to young people, many of whom are already struggling with coming out to their families and friends. "The message is that all love isn't equal, and if you are gay you won't be able to get married," he says, recalling his own youth when then prime minister Paul Keating quipped that "two blokes and a cocker spaniel do not a family make".

The state-based registers don't cut it, in his view. "They're something completely different, for gay and lesbian couples who want something similar to the de facto system. I don't have a different driver's licence because I'm gay; why should I have a different marriage licence?" Indeed. For those who accept that same-sex couples are no better or worse than heterosexual couples, it's a no-brainer. Refusing people the right to marry because of their sexuality is akin to refusing people the right to do something because they are black or female. Of course, some same-sex couples may choose not to marry, but the tide of opinion – in the homosexual and heterosexual communities – now supports the view that they should at least have that choice.

So what's stopping us? The fundamental objection, articulated by conservative lobby groups such as the National Marriage Coalition and its founding partners, the Australian Family Association and the Australian Christian Lobby, is that same-sex unions do not produce biological children. They see the issue as part of a wider attack on the significance of marriage as "a union of a man and a woman to the exclusion of all others for life".

“You need to dig a bit deeper than saying it's about equality,” says Tim Cannon, spokesman for the Australian Family Association. “It's not to say [same-sex relationships] can't be loving relationships and it's not to say their love is any less or more equal. But same-sex marriage is obviously not centred around a natural progenitive relationship.”

Cannon argues that for the state to regulate private relationships through laws about marriage, there has to be a public policy reason to justify intervening. That reason is children. “Marriage encourages stable, progenitive male and female relationships. Society has a vested interest in encouraging progenitive relationships.

That's the story of our species.” He glosses over the issue of heterosexual married couples who choose not to have children, calling them a small minority, the exception to the rule, and doesn't even mention the rising proportion of heterosexual couples who choose not to marry, but do have children.

“From a public policy perspective, it's hard to see the benefit of encouraging same-sex couples,” Cannon says. Flipping that around, even if there's no public benefit, what's the harm in allowing a small proportion of marriages (estimates suggest about three per cent) to be between gay and lesbian couples? As one US protester proclaimed, in a banner opposing California's Proposition 8 ban on same-sex marriages: “Against gay marriage? Then don't have one.”

This is where things get a little weird. Cannon says changing the “rules” on marriage – even for a small minority – makes its status more fluid. If gay people can marry, why can't more than two people? Or siblings? (Some bloggers even extend this “where do we draw the line?” argument to people marrying animals.) “People say that raising the spectre of polygamy is scaremongering,” Cannon says. “But it's very hard to say what [in the equality argument] doesn't justify it.

Marriage is an institution that everyone is entitled to enter into, but there are rules.” Trying to get in when you don't obey the rules is, he says, like a meat-eater trying to join a vegetarian society. “It's not enough to say, 'That's discriminatory.'

Yes, marriage is discriminatory, but in a positive way.”

Agree or disagree with Cannon's analysis, the anti-same-sex-marriage lobby has had plenty of traction in Canberra. In 2004, the Howard government, with the support of the Labor opposition, changed the Marriage Act to clarify that marriage was only between "a man and a woman". (The date that legislation passed, August 13, has since been celebrated as "National Marriage Day" by the National Marriage Coalition.) And it's in Canberra that the only hope for change lies.

Australia does not have a US-style bill of rights that allows judges to strike down discriminatory legislation. Instead, the laws can be changed only by Federal Parliament – and that means a majority of members in both houses. Even with the Greens holding the balance of power in the Senate from July next year and independents doing the same in the House of Representatives now, it has no hope of passing without a change of heart from one of the major parties.

"Without Labor getting behind same-sex-marriage rights, it's hard to see how legislation will get through parliament," says Louise O'Shea, acting convener of Equal Love, a protest group that organises rallies and petitions aimed at changing the marriage laws. Equal Love declared 2010 "the year of action" and organised national rallies a week before the August 21 federal election to highlight how out of step politicians are with public opinion. That people such as Julia Gillard and Penny Wong stuck, somewhat uncomfortably, to their guns during the campaign does not surprise O'Shea. "It's pretty characteristic of the Labor Party. They're not prepared to challenge prejudice, they're not prepared to stand up for issues, they don't want to rock the boat."

In the new political landscape, however, the Labor Party may well have its boat rocked by others, especially the resurgent Greens, for whom same-sex marriage is a core issue. "I suspect that with the Greens now much closer to the centre of power, we're going to see direct actions to keep this issue going, to embarrass the government," says John Keane, professor of politics at Sydney University. He says the element of surprise – a clever stunt or a scandal perhaps – can be very powerful in forcing issues onto the political agenda. Keane also expects a greater use of conscience voting, where politicians are free to vote on a bill according to their personal views rather than party policy. "The numbers at present look against it, but it's a very heartfelt issue," he says.

"The current laws smack of hypocrisy and lingering prejudice. And there is a sea change going on – in the European Union, in the US, in Canada – a rising tide of support for same-sex marriage."

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Meanwhile, observers expect more debate within the gay community on just how far they should take on the traditions of heterosexual marriage. In Britain, where civil partnership laws, which vary slightly from the laws regulating heterosexual unions, came into force in late 2005, a burgeoning gay wedding industry has emerged, as has pressure from some newly-weds for their partner to adopt their surname.

One writer in UK newspaper The Guardian described how some friends disapproved of her same-sex civil partnership because they saw it as selling out to an oppressive, patriarchal institution. No doubt Portia de Rossi's petition to take on Ellen DeGeneres's surname would completely flip them out.

Alex Greenwich says same-sex couples should have the same choices as heterosexual couples, whether that be a lavish white wedding complete with name change, a low-key registry-office ceremony, or no nuptials at all. "Traditional marriage has changed over time; it's up to every couple – straight or gay – how they interpret it."

The state of play

- Marriage in Australia is regulated by federal laws. In 2004, the Howard government, with the support of the Labor opposition, passed the Marriage Amendment Act to specifically define marriage as "a union between a man and a woman". Australia does not recognise same-sex marriages from overseas and will not grant a "certificate of non-impediment" to its citizens to allow them to marry a same-sex partner overseas.

- A survey in 2007 found that 57 per cent of Australians supported same-sex marriage. A similar survey in 2009 found 60 per cent in favour.

- Over the past decade, 10 countries have legalised same-sex marriage: the Netherlands, Belgium, Canada, Norway, Spain, Portugal, South Africa, Sweden, Iceland and Argentina. Others, including Britain and New Zealand, allow a watereddown form of marriage for gay and lesbian couples. Mexico City, Washington, DC and five US states have also passed legislation permitting same-sex unions.

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- One of the longest battles has been fought in California, which enacted Proposition 8 in 2008 to overturn previous court rulings allowing same-sex marriage. In August this year, a Federal Court judge in San Francisco invalidated Proposition 8, stating, "A private moral view that same-sex couples are inferior to opposite-sex couples is not a proper basis for legislation." That decision is being appealed.
- In 2009, Greens Senator Sarah Hanson-Young introduced a private member's bill into the Senate to allow same-sex marriage. It was referred to a senate committee, which received 11,000 submissions in favour and 13,000 against – the most submissions ever received by a Senate inquiry. In February 2010, the Senate formally rejected the bill 45 to five, with 26 senators absent. Hanson-Young plans to reintroduce the bill into the Senate, and Greens MP Adam Bandt will introduce the same bill into the House of Representatives.
- The Labor Party and the Liberal Party do not support same-sex marriage.
- Independent Andrew Wilkie does. His fellow independents Tony Windsor and Rob Oakeshott have not publicly stated a position.
- Alex Greenwich, from Australian Marriage Equity, is keen to force a conscience vote on the issue to ensure a full debate, even though the law will not change without support from at least one of the major political parties.

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