

## **TASMANIA:**

### **Labor/Greens push for same-sex marriage**

**by Terri M. Kelleher**

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Tasmanian Labor Premier, Lara Giddings, is reported on August 6 to have told a state Labor Party conference that she will move to legislate for same-sex marriage by the end of this year.

Greens' federal leader Christine Milne sought to claim credit for this political development. She said: "The Greens have been driving this agenda nationally and in Tasmania for a long time."

The two other state "marriage equality" bills have also been moved by Greens MPs. South Australian upper house Greens member Tammy Franks moved a bill on March 28, 2012, and Victorian upper house Greens member Sue Pennicuick moved a similar bill in June.

It is by no means certain, however, that any of these bills will be passed.

The Tasmanian bill would be likely to pass the lower house with all Labor members (except for the parliamentary Speaker, Michael Polley) and all the Greens likely to vote for it. However, it could run into opposition in the state's upper house where the President of chamber, independent member Sue Smith, has declared her personal opposition to same-sex marriage although without presuming to predict how her colleagues would vote.

South Australia at this stage is unlikely to pass a same-sex marriage bill, as is Victoria where Liberal Premier Ted Baillieu reportedly opposes same-sex marriage. The Liberal-Nationals Victorian government is said to regard marriage as a matter for the Commonwealth.

So it is the Labor/Green alliance in Tasmania that has the best chance of getting a state same-sex marriage bill passed this year.

This whole saga, however, is really an exercise in political posturing. A same-sex marriage bill in Tasmania was mooted last year before the Labor Party's national conference.

It was aimed at influencing the conference vote on changing the party's marriage policy from marriage being the union of one man and one woman to marriage being the union of any two people regardless of sex.

In the event, a resolution was passed urging the federal parliament to pass a same-sex marriage bill; but it was a non-binding resolution which allowed Labor members to vote according to their conscience.

The Tasmanian premier's present move would seem directed to influencing the vote on the bills now before the federal House of Representatives.

It is noteworthy that Lara Giddings has declared she is "proud to be a founding member of Emily's List", Labor's radical feminist network which raises funds to support "progressive" (i.e., pro-abortion) female Labor candidates. (*News Weekly*, February 5, 2011).

On same-sex marriage she is reported to have said that "the time has come to act decisively on this issue".

However, all political players know that a state attempt to legislate same-sex marriage raises serious constitutional issues and that there would almost certainly be a High Court challenge were such a bill to be passed.

The federal Attorney-General Nicola Roxon has refused to comment directly on the issue, and Prime Minister Julia Gillard has said there is a bill presently before the federal parliament and there are no details as yet of any Tasmanian bill. Federal Treasurer Wayne Swan is reported to have said that he couldn't say what legal status any Tasmanian legislation would have.

Section 51 (xxi) of the Australian Constitution provides that the federal parliament has the power to make laws with respect to marriage. This means that any state law with respect to marriage which was inconsistent with any federal marriage law would be overridden by federal law.

It comes down to whether "marriage" is, of its very meaning, the union of a man and a woman, or is only a social construct that can be changed by law to be the union of any two people. If it is the latter, then a state could, arguably, enact a law that provided for same-sex marriage on the basis that it would not be inconsistent with the federal exercise of the marriage power in the federal Marriage Act which only deals with marriage between a man and a woman.

The federal and the state laws, it could be argued, deal with different types of marriages. This result would be most unsatisfactory with one type of marriage being dealt with under federal law and another type of marriage under state law.

Even same-sex marriage proponents would scarcely find it satisfactory for heterosexual marriage to be dealt with under federal law and homosexual marriage to be dealt with under state law. They argue that both relationships must be the same.

It still remains to be seen whether the Tasmanian premier's sabre-rattling on same-sex marriage will amount to anything. But for the moment it has kept the issue in the public eye and brought more pressure to bear on federal politicians to redefine marriage.

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