



Julie McCrossin

Photo - David Karonidis

Best known for her part on Australia's popular comedy show *Good News Week* - originally with ABC TV, now with Channel 10 - Julie McCrossin is also a campaigner for better community services and law reform, particularly laws relating to same sex relationships. Julie McCrossin spoke for the Sydney Institute on Tuesday 13 July 1999.

“ALWAYS A BRIDESMAID, NEVER A BRIDE” - RECOGNISING SAME SEX RELATIONSHIPS

Julie McCrossin

I'm going to say a few things that I've never heard anybody else say publicly. When I was asked to speak, which was before the recent law reform in NSW in relation to the recognition of same sex relationships, I was asked to talk on anything I cared to. Now, I consider myself an eclectic person with a wide range of passions. But I discovered that, hitting bedrock, the topic I really cared about was access to the institution of marriage.

It's a topic very few people in the gay or lesbian, transgender or transsexual communities are willing to openly discuss. Many people are still inhibited about speaking openly on these issues for family reasons. So I thought I should take an opportunity, in an environment that I haven't been in before, to talk about same-sex relationship issues.

Equality be the law

What I want to talk about is equality before the law. Until we're able to get married, gay and lesbian couples don't have equality before the law. I have become fascinated by the political, social and legal barriers to "actual" marriage. I think it's fair to say many people, including human rights advocates that I greatly respect, would say that "real" marriage is an unachievable goal for same-sex couples. I'd have to agree that there is plenty of evidence to support the view that it is an unrealistic goal and I do feel utterly unrepresentative when I speak in favour of equality on this issue.

What is the core barrier? Why is this an idea that's considered unachievable, and even unacceptable? We rarely hear advocates for gay rights support access to the institution of marriage. If we believe in fighting for equality before the law, why not seek to achieve genuine equality in the legal recognition of same sex relationships? The magazine *Who Weekly* has a Wedding Special out right now packed with photographs of celebrity weddings. Why do we think that all those young gay and lesbian readers don't feel painfully and unjustly excluded as they look at those images and realise that they will never be able to have a wedding themselves?

Why is it okay for Mikey Robins, the incredibly funny radio broadcaster who I now work with on Channel 10's *Good News Week*, to get married to his partner, Laura, but I can't marry my partner, Melissa, the mother of two young kids?

A personal perspective

Over the years I've done a lot of work in the area of child protection in the welfare sector running panel discussions with foster carers. In fact, I've run 22 workshops around the state in the last couple of years, trying to help foster carers develop a better working relationship with staff from the Department of Community Services and some non-government fostering agencies. I've got to know a lot of good Christian couples who foster children.

A couple of years ago, two of these foster mums asked me to be the MC at the wedding receptions for their adult children. I hadn't been to a wedding for a while, so I took home a tape of a wedding reception. I studied it dutifully, taking notes about all the things that happened. One of the women was a devout and active member of the Salvation Army. I knew the guests would be a religious group and I wanted to capture the spirit, and yet bring some fun and energy to the occasion. It was to be held out in a far western suburb of Sydney. As I prepared for the jobs, I was sitting there watching this video with Melissa's two kids, a little eight year old boy, Luke and a little six year old girl, Amelia. And while I was writing down the various reception activities, one of the kids asked me, "Why don't you and Mum get married?" It was one of those moments when a question from a child's mouth means you hear it in a fresh way.

Now I won't go too much into the personal side of our lives. I'll just say I'm lucky enough to be part of a family situation where Melissa and her former partner, Michael share the care of their children in an amicable fashion and I'm made to feel like a welcome part of the equation. Luke and Amelia live a suburban life style that is amazingly similar to my own childhood in the 1950s and 60s - its just that their Mum has a female partner. They haven't yet experienced any gross discrimination. So as they watch a video of a wedding, it simply doesn't occur to them that it is something Mum and Julie aren't allowed to do.

Up in the Blue Mountains, west of Sydney, we go along to the local school events and soccer. The kids see their Dad and I cheering together when Luke manages to stop a ball as goalie, or clapping when Amelia dances with the other fairies at ballet. Michael, Melissa and I are there with all the other parents and for these young kids it's what they know and it all seems normal to them. So when they see a wedding, where two people who really love each other make a public commitment within their communities, with family support, they want their family to be part of it all too.

Plain discrimination

Originally, when I decided to speak on this topic, I thought it would be a bit of fun to do this talk dressed as a bride. But I gradually realised I didn't feel funny about it. I had to face up to the fact that I feel angry about what is plain discrimination.

To top it all off, I went to a Leichhardt affirmation ceremony. For the uninitiated, if you read the gay press, the papers are full of people either having babies or having affirmation ceremonies.

This ceremony was for two young women in their twenties, one with a child from an earlier time in her life. They had an affirmation ceremony conducted by the mother of a gay man who now bolsters her income by offering this service. She has developed a ceremony that is moving and dignified. If I'm honest, I had gone there expecting something slightly pathetic - a lesbian couple engaging in an inauthentic copy of the "real thing" - the "real thing" being a legally sanctioned marriage. I was only there because my partner, Melissa had been asked to be the bridesmaid, which is amusing because she has been a bridesmaid on eight occasions - seven of them in her earlier life as a heterosexual. Now in the gay community, she is again instantly recognised as bridesmaid material. That's why I've named this speech after her - "Always a bridesmaid, never a bride".

So I found myself being moved by this affirmation ceremony. It was so obvious that these two young people had the same human yearnings and hopes as any couple. Their ceremony appeared to be fulfilling the same social function as any wedding - the public declaration of commitment; the welding together of social networks; and the affirmation of a nurturing support system for their relationship and the child. Frankly, the social and emotional landscape of this lesbian gathering looked amazingly similar to that of the Salvation Army wedding I attended in my role as reception MC. But of course, the legal landscape was quite different.

So let's turn to the law. What I'm calling for is a change to the *Commonwealth Marriage Act*. I want the definition of marriage to change to include same sex couples. The recently passed NSW legislation, the *Property (Relationships) Legislation Amendment Bill 1999*, is simply not enough. I'm going to assume most of you read the media reports and you know that it has extended the definition of a de facto relationship to include same sex couples in many of our Acts in the state of NSW. And you're probably aware that it introduced a new category called a "close personal relationship", which was described in the second reading speech by the Attorney-General, Jeff Shaw QC as something designed to capture the caring daughter with a long-term relationship with a caring parent.

It is made explicit in the second reading speech, and in many of the speeches in the associated Parliamentary debates, that this legisla-

tion is not an attempt to provide for any form of marriage for same sex couples. Of course, under the Australian Constitution, only the Commonwealth could do that. This NSW legislation, we were told, is about property, not about taking steps towards marriage. If you read the speeches, you'll see how the Labor Party, with the encouragement and support of the gay and lesbian lobby groups, was very much pushing the line that this is about individual property rights.

Gay and lesbian activists decided in the early 1990s that we would never get anything like marriage. It was decided to aim for an achievable goal, the extension of the definition within the *De Facto Relationships Act*. The fight to gather support for this proposal was based on the selling point of the validity of individual property rights and a broader, career-related definition of "close personal relationship". If you read the National Party speeches, the thrust of this strategy is very clear. They make it plain that if they thought this was in any way going towards marriage, they'd have nothing to do with it. The career definition was a stroke of genius.

I want to make myself perfectly clear. I utterly commend the passing of this legislation. It has given same sex couples a whole bundle of rights. I won't go through lists. It's all in the legislation. Let's just say, as one example, that as the result of this law reform, I would no longer be liable for the \$7000 in stamp duty that I had to pay when I bought out the 50 per cent interest in the home I had shared with a former partner of 12 years. Now, like heterosexual couples in the same circumstances, same sex couples wouldn't have to pay stamp duty. There's nothing like feeling discrimination at the hard edge when you write a cheque for \$7,000 that a straight couple would not have had to pay.

But of course, despite the many gains under the NSW's reforms, it hasn't changed a whole bundle of other things. It hasn't gone to the marital status definition of the *Anti-Discrimination Act* in NSW. There's plenty more to be done, even with regard to the de facto definition. My real point is that, while I acknowledge and commend the hard work of all those who fought for it and the hard work of submission writings, it only made me feel more discriminated against when I read Hansard. We really had to massage the message to get it through by declaring we weren't trying to touch the holy grail — we weren't trying to get closer to be being able to marry. It reminds me enormously of the way we justify the Mardi Gras by emphasising how it brings in that tourist dollar. Try telling me about the pink dollar one more time and I may vomit.

A crisis of the imagination

It is often pointed out that during the consultations carried out in the early 1990s in NSW by gay and lesbian lobby groups, very few people

spoke up in support of marriage. I've been thinking about that and this is my untested hypothesis which I throw into the ether.

Firstly, it must be said, that the sophisticated political activists within the gay and lesbian community, made an assessment about what was a realistic goal and they supported that rather than waste time on what they knew would arouse strong opposition, particularly from some church groups. However, I also feel the rare mention of marriage as a legal option involves a crisis of the imagination. I've stolen that phrase from Susan Sontag, who said that when people try to imagine a beautiful old woman, most people experience a crisis of the imagination. They simply can't imagine it.

Many gay and lesbian people feel so permanently "outside" how could we be allowed "inside" a core institution like marriage. The other thing is that many of the gay and lesbian lobby in my age group are refugees from the 1970s when marriage was seen as a patriarchal institution. We didn't support it on feminist grounds. Back then, when people wanted equity in the defence forces or the churches, because we saw them as conservative institutions, we refused to support such calls from less ideological sections of our world.

I now feel very differently about that. I think equality before the law is equality before the law, and then it is up to individuals to make the choices about how they express that equality. I personally would be surprised if I ever got married, but I very much believe that option should be there. And I know that young women and men, filling themselves with popular culture like the *Who Weekly* Wedding Special, may well want to have the choice to do the same thing. Marriage is a flexible institution, going through processes of change itself. You might get a different view from consultations with younger gay and lesbian people today if the idea of access to marriage was openly discussed as an option for consideration.

Legal barriers

Let's turn to the reasons why the change is highly unlikely. First of all, here is the definition of marriage. There was a case in 1866 *Hyde v Hyde and Woodmansee* in which Lord Penzance defined marriage as "The voluntary union for life of one man and one woman, to the exclusion of all others." That definition is still essentially the definition that is used in the current *Commonwealth Marriage Act* and in the *Family Law Act*. Civil marriage celebrants in this country must tell the couple that "marriage...is the union of a man and a woman to the exclusion of all others voluntarily entered into for life."

This definition was firmly reiterated in 1971 in the startling case of *Corbett v Corbett* — a case which is still good law in Australia despite considerable academic debate about the decision.

In Corbett's case a man sought to have his marriage declared null and void. The wife, April Ashley had undergone a sex change operation

three years prior to the marriage ceremony. All her male bits and pieces had been removed and an artificial vagina had been constructed. Her husband knew everything at the time of the marriage.

The judge held the marriage to be void because the wife was not a woman. He said we must have regard "to the essentially heterosexual character of the relationship which is called marriage". It is a relationship, he declared, "which depends on sex not on gender" and "the most extreme transsexualism...cannot reproduce a person who is naturally capable of performing the essential role of a woman in marriage".

Let me take you now to Canada. In June this year, the Canadian Parliament passed a resolution that "marriage is and should remain the union of one man and one woman to the exclusion of all others." The ruling Liberal government's Justice Minister Anne McLellan supported the motion put forward by the conservative Reform party. She said the government "has no intention of changing the definition of marriage or legislating same-sex marriage."

Clearly the Canadians were on firm legal ground when they backed this "one man and one woman" definition. But why was Parliament talking about it? The House of Commons was responding to a decision handed down by the Canadian Supreme Court which effectively expanded the definition of "spouse" in the *Family Law Act* of Ontario.

It all started with a property dispute between two lesbians.

One party wanted to receive the equivalent of maintenance after the breakdown of the relationship. Her stumbling block was a definition of spouse which was limited to a person who was either "actually married" or "a man or a woman" who fulfilled certain criteria. She argued that this definition was inconsistent with Section 15 of the *Canadian Charter of Rights and Freedoms* - and that "man and woman" should be read out of the definition of "spouse" and replaced with "two persons".

The Canadian Supreme Court essentially agreed, stating that "the crux of the issue is that this differential treatment discriminates in a substantive sense by violating the human dignity of individuals in same-sex relationships".

This decision was the catalyst for the opposition Reform party's motion on the definition of marriage. And they didn't waste any time. The court handed down its decision on May 20th this year and parliament passed the motion on June 8th.

So what is the principle in section 15 of the *Charter of Rights and Freedoms* which underpinned the Canadian Supreme Court's decision? It states, "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination."

Chris Sidoti is the Human Rights Commissioner here in Australia. In February this year he gave a paper at Sydney University Law School - "Issues and Strategies around Couple-Based Discrimination". He

talked in that about the need for explicit recognition in law of partnerships between persons of the same sex. But he said, "There is general agreement that amendments to the *Commonwealth Marriage Act* 1961 to enable marriage between same sex partners, is not an appropriate approach." He talked then about de facto extension and registered partnerships, which are evidently available in some Scandinavian countries.

Is there general agreement against the marriage option? Or are people with similar feelings to my own, not speaking out?

In July this year, Justice Kirby from our own High Court spoke at a conference on the legal recognition of same-sex partnerships in London. He said we all have "the same human needs... for human love and companionship; for family relationships and friendships; for protection against irrational and unjustifiable discrimination; and for equal rights in matters where distinctions cannot be affirmatively justified".

Justice Kirby received quite a bit of publicity for his remarks that "The game of shame is over. Reality and truth rule". He talked a lot about past impermissible love, the current continuing erosion of public opposition to legal change, the strong generational differences in attitudes and about the impact of openness.

While Michael Kirby doesn't specifically refer to same sex marriage, he does say that such studies that exist in Australia indicate a majority of same sex couples, 80 per cent, "do not consider marriage or marriage equivalents as desirable".

I think that the studies that exist are based on extremely limited research, and it has been essentially unprofessional in its scope. I'd like to have some proper research done, to know what the other same-sex couples out with the kids in suburban shopping malls, like Melissa and I in Penrith Plaza, really feel.

The churches

The churches are exploding with debates about sexuality. Some church groups argue that the legal equality I'm supporting will undermine family values and go towards destroying the institution of marriage, or at least threatening the institution of marriage. I think about that a lot because on a Sunday I'm usually at Penrith Plaza with Luke and Amelia seeing films like *Star Wars*, or eating at McDonalds. And as I sit there with the kids eating ice cream, I often wonder, exactly how am I threatening the "family" today? What exactly is the threat to the institution of marriage that Melissa, Luke, Amelia and I pose?

The glory of the common law is its capacity to incorporate change. The pressure builds, the corner is turned - from terra nullius to native title. Then the dynamic dance between the courts and the legislature begins. Has the time arrived for same-sex families? Not according to the Canadian government it seems. And it appears we see it the same Down Under as well.