

2015/12: Should Australia legalise same-sex marriage?

What they said...

'Far from being unusual in the international community for not supporting "same-sex marriage", Australia's definition of marriage as a union of a man and a woman is consistent with that of the vast majority of world nations, who represent over 91 per cent of the global population'

Australian Prime Minister, Tony Abbott

'All of the English-speaking countries that we are closest to, Britain, Ireland, Canada, the United States, New Zealand, South Africa, they all allow gay marriage'

Federal Communications Minister, Malcolm Turnbull

The issue at a glance

On June 26, 2015, the United States Supreme Court ruled that U.S. states cannot ban same-sex marriage. This makes the United States the 21st country to legalize same-sex marriage worldwide.

One month before, on May 22, 2015, the Republic of Ireland voted via referendum to extend civil marriage rights to same-sex couples.

These developments have encouraged supporters of same-sex marriage in Australia to increase their pressure on the national legislature to make similar changes in this country.

Background

Much of the information outlined below has been abbreviated from a federal Parliament background briefing on the history of marriage laws in Australia. The full text can be accessed at http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/bill%20marriage/report/chapter2.htm

Information has also been taken from a Wikipedia entry titled Marriage Act 1961 - Australia.

The full text of this entry can be accessed at [https://en.wikipedia.org](https://en.wikipedia.org/wiki/Marriage_Act_1961_%28Australia%29#Current_status_of_the_Marriage_Amendment_Act)

[/wiki/Marriage_Act_1961_%28Australia%29#Current_status_of_the_Marriage_Amendment_Act](https://en.wikipedia.org/wiki/Marriage_Act_1961_%28Australia%29#Current_status_of_the_Marriage_Amendment_Act)

Marriage laws in Australia prior to 1961

Prior to 1961, marriage laws were the province of the different Australia states and territories with regulations varying from one jurisdiction to another. For example, from 1901 on the marriageable age in Australian states and territories was the same as the age of consent: 14 for men and 12 for women. However, in 1942, Tasmania raised the marriageable age for men to 18 and for women to 16; Western Australia followed suit in 1956 and South Australia in 1957.

Another example is the variation in state laws pertaining to Indigenous Australians which regulated whom they could or could not marry.

Victoria's Aborigines Protection Act 1869 (Vic) gave the Board for the Protection of Aborigines the power to refuse marriage applications from Indigenous Victorians. In Queensland, the Aborigines Protection and Restriction of the Sale of Opium Act 1897 (Qld) prohibited Indigenous woman from marrying anyone other than an Indigenous man without the permission of an Aboriginal Protector.

In the Northern Territory, which was governed by Commonwealth law, the Aborigines Ordinance 1918 restricted marriages between Indigenous women and non-Indigenous men. For example, the marriage of Indigenous or half-caste women to non-Indigenous men required legal permission.

Marriage law in Australia after 1961- the Marriage Act 1961

In 1961, the Australian Parliament, using its power to legislate with respect to marriage under Subsection 51(21) of the Constitution, passed the Marriage Act 1961 in order to regulate marriage law uniformly across the country.

No formal definition of marriage

The Marriage Act 1961 *did not include a definition of marriage* in Section 5 at the time it was passed into law. However, Section 46 of the Marriage Act 1961 requires authorised celebrants to explain the nature of marriage and provides some sample words:

[T]he authorised celebrant shall say to the parties, in the presence of the witnesses, the words:

'I am duly authorised by law to solemnise marriages according to the law.

Before you are joined in marriage in my presence and the presence of these witnesses, I am to remind you of the solemn and binding nature of the relationship into which you are now about to enter.

Marriage, according to law in Australia, is the union of a man and woman to the exclusion of all others, voluntarily entered into for life.'

However, it was noted at the time that this form of words did not constitute a legally binding definition of marriage.

Senator Gorton elaborated during the second reading debate that, 'I want to make it clear that the fact of a celebrant saying those words, which clause 46 requires him to say, does not have the force of law to define a marriage in the

sense in which the insertion of a definition ... would have.'

Marriage Amendment Act 2004 - defining marriage and excluding same-sex unions

In 2004, the Australian Parliament enacted the Marriage Amendment Bill 2004, introduced by then Attorney-General Mr Philip Ruddock. The bill sought to formalise the definition of marriage and to respond to the legalisation of same-sex marriages in some overseas countries.

The Marriage Amendment Act 2004 inserted the following definition of marriage into Subsection 5(1) of the Marriage Act: 'marriage' means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

In addition, the Marriage Amendment Act 2004 inserted Section 88EA into the Marriage Act to prohibit the recognition in Australia of same-sex marriages performed in foreign countries.

Current situation regarding the Marriage Act and same-sex marriage

In the run-up to the 2007 federal election, there was speculation that the Labor Party might change or reverse the same-sex marriage ban provided by the Marriage Amendment Act 2004. However Opposition leader Kevin Rudd twice stated his opposition to same-sex marriage.

In the run-up to the 2010 federal election, the Labor Party, under new leader and Prime Minister Julia Gillard, re-asserted their opposition to same-sex marriage. After the election, the Greens' increased numbers in the Senate and the House of Representatives led them lobby for same-sex marriage. Julia Gillard allowed a free vote on the issue in 2012 and it did not pass. She also reaffirmed her personal view opposing same-sex marriage.

In May 2013, the then backbencher Kevin Rudd announced he had changed his position. On his return to the office of Prime Minister in June 2013, Kevin Rudd became the first Australian Prime Minister to be an open supporter of changing the Marriage Act to include same-sex couples.

In 2015, the Labor Party, now in opposition, has indicated it will continue to allow its members a conscience vote on this issue (that is, it will not direct its members how to vote, allowing them to follow their own consciences.) The federal Coalition government, under the leadership of Tony Abbott, is opposed to same-sex marriage and will not allow its parliamentary members a conscience vote on any Act seeking to define same-sex unions as marriages under the Marriage Act.

Internet information

On July 26, 2015, the ABC News carried a report titled 'Labor Party agrees to maintain conscience vote on same-sex marriage for next two terms of government'

The report dealt with the most recent decision of the Labor Party not to require its parliamentary members to support same-sex marriage. The Party will continue to allow a conscience vote till 2019.

The full text of this report can be found at <http://www.abc.net.au/news/2015-07-26/labor-party-national-conference-same-sex-marriage-vote/6648834>

On July 2, 2015, ABC Radio's AM program featured an interview with the government's leader in the Senate, Eric Abetz. In the interview Senator Abetz explained his objections to legalising same sex marriage, suggesting it was out of line with the practice of our Asian neighbours.

The full text of this interview can be accessed at <http://www.abc.net.au/am/content/2015/s4265941.htm>

On June 27, 2015, United States Quartz magazine published an article titled 'The science is clear: Children raised by same-sex parents are at no disadvantage'.

The article surveys the findings of years of research which indicates that children are not disadvantaged by being reared by same-sex couples.

The full text can be accessed at <http://qz.com/438469/the-science-is-clear-children-raised-by-same-sex-parents-are-at-no-disadvantage/>

On June 16, 2015, The Advocate published a report titled 'Pope Francis: heterosexual parents best for children.'

The report is an account of a sermon given by the pontiff on June 14, 2015, in which he praised the positive qualities of heterosexual marriage, especially as an environment within which to rear children.

The full report can be accessed at <http://www.advocate.com/politics/religion/2015/06/16/pope-francis-heterosexual-parents-best-children>

On May 25, 2015, the ABC's opinion site, The Drum, published a comment by homosexual activist Rodney Croome titled 'Australia just fell further behind on gay marriage - which should give us hope'

The piece attempts to explain why more conservative countries have been among the first to legalise same-sex marriage.

Croome is the national director of Australian Marriage Equality.

The full text of this comment can be accessed at <http://www.abc.net.au/news/2015-05-25/croome-gay-marriage-ireland-australia/6494862>

A public information statement produced in 2015 by the Australian Christian Lobby titled 'Timeless: marriage and public

policy' details the ACL's defence of heterosexual marriage as the sole form of marriage legally sanctioned in Australia. The full text of this document can be accessed at <http://www.acl.org.au/wp-content/uploads/2015/05/Marriage-Brief-single-pages.pdf>

On April 1, 2015, The Sunshine Coast Daily published an opinion piece by Wendy Francis titled 'Rights of children should rule the same-sex debate'.

Francis argues that heterosexual couples provide the best environment in which to raise children.

Francis is the Queensland State Director of the Australian Christian Lobby.

The full text of this comment can be found at <http://www.sunshinecoastdaily.com.au/news/rights-of-children-should-rule-the-same-sex-debate/2593468/>

The Internet site of the Australian Government's Attorney General's Department outlines the administrative reforms undertaken to ensure same-sex couples are not discriminated against in terms of their access to government entitlements.

These statements can be accessed at <https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Samesexreforms.aspx>

The Internet site of the Australian Government's Department of Social Services lists a range of entitlements that some same-sex couples can access in the same way as heterosexual couples.

This information can be found at <https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/recognition-of-same-sex-relationships>

In December 2013, the Australian Institute of Family Studies released a research paper titled 'Same-sex parented families in Australia'.

The paper surveys a range of research into the effects on children of being reared within same-sex families. It concludes that the effects overall are either beneficial or at least as positive as those experienced by children in heterosexual households.

The full text can be found at <https://aifs.gov.au/cfca/publications/same-sex-parented-families-australia>

In September 2012, the Australian Human Rights Commission issues a position paper on marriage equality titled 'Marriage equality in a changing world'.

The position paper argues that the rite to civil marriage should be available to those in same-sex partnerships.

The full text of this paper can be accessed at <https://www.humanrights.gov.au/lesbian-gay-bisexual-trans-and-intersex-equality-0>

On June 11, 2011, The Sydney Morning Herald published a report by Leesha McKenny titled 'Same-sex marriage could lead to polygamy, says Jensen'

The report details a number of the objections made by the Anglican Archbishop of Sydney, Dr Peter Jensen, to the legalisation of same-sex marriage. Jensen suggests that such a legislative change could lead to those in either polygamous or incestuous relationships seeking similar treatment.

The full text can be accessed at <http://www.smh.com.au/national/samesex-marriage-could-lead-to-polygamy-says-jensen-20110610-1fx29.html>

The marriage equality lobby group Australian Marriage Equality has on its Internet site a list of twelve arguments in favour of allowing same-sex couples access to marriage.

These arguments can be accessed at <http://www.australianmarriageequality.org/12-reasons-why-marriage-equality-matters/>

Arguments against legalising same-sex marriage in Australia

1. Marriage is traditionally a union between a man and a woman

Those who support the proposition that marriage as a legal entity should remain exclusively a union between a man and a woman claim that this is the form of union traditionally and historically sanctioned within Western culture.

In October, 2013, the Prime Minister, Tony Abbott, declared, 'From time immemorial, in every culture that's been known, marriage or that kind of solemnised relationship has been between a man and a woman.'

Former Prime Minister Julia Gillard has also endorsed 'marriage' as a term best reserved for the traditional union of a man and a woman. She has further stated that there should be other ways of acknowledging different sorts of enduring personal partnerships. In an interview with Ann Summers in 2013, Gillard stated, 'I think that marriage in our society could play its traditional role and we could come up with other institutions which value partnerships, value love, value lifetime commitment.'

On July 2, 2015, former Prime Minister John Howard gave an interview in which he defended his government's action in reforming the Marriage Act so that it stipulated that marriage was exclusively a union between a man and a woman. Mr Howard said his government in 2004 updated the Marriage Act so any changes to the 'centuries-old' approach should never be left to the courts. Mr Howard's emphasis on the length of time for which marriage has been regarded as a union between a man and a woman indicates the extent to which he believes it is important to protect what he considers the

traditional nature of marriage. Mr Howard described the belief that 'marriage' described the formal recognition of a union between a man and a woman as a 'bedrock understanding of our society',

2. A majority of other nations have not legalised same-sex marriage

Opponents of same-sex marriage note that a majority of nations around the world do not term same-sex unions marriages under the law.

This point was made at some length in a letter written to the Prime Minister, Tony Abbott, on June 5, 2015. The letter was written by a cross-denominational representation of 38 church leaders. It states, 'Because of the crucial role marriage plays as the nursery for the future of the community, and its responsibility always to act in the best interests of children, governments everywhere recognise and regulate marriage. Far from being unusual in the international community for not supporting 'same-sex marriage', Australia's definition of marriage as a union of a man and a woman is consistent with that of the vast majority of world nations, who represent over 91 per cent of the global population. To date, only 21 of the 193 member states of the United Nations have changed their legal definition of marriage to incorporate same-sex unions.'

In addition to the wide-spread opposition to same-sex marriage in other nations, it has been claimed that legalising same-sex marriage would put Australia out of step with Asia and may jeopardise Australia's relations with other countries in our region.

On July 2, 2015, Eric Abetz, the government leader in the Senate stated during an ABC Radio interview, 'The Labor Party and other journalists tell us time and time again that we are living in the Asian century, tell me how many Asian countries have redefined marriage?'

Those who hold this view claim that the increasing significance of Asia to Australia from an economic and a diplomatic point of view makes it important that Australia not introduce legislative and social changes that would needlessly antagonise our Asian neighbours.

Developing this point further, Senator Abetz continued, 'Are we in the Asian century or not? It's amazing how certain people try to pick and choose in relation to debates.'

The federal Agriculture Minister, Barnaby Joyce has similarly claimed that legalising same-sex marriage could damage Australia's relations with Asia.

Mr Joyce stated, 'I think that what we have to understand is that when we go there [Asia], there are judgments, whether you like it or not, that are made about us and they see in how we negotiate with them whether they see us as - whether they see us as decadent.'

When asked specifically whether legalising same-sex marriage would lead to Asian nations viewing Australia as 'decadent', Mr Joyce stated, 'I think in some instances they would, yes.'

3. Heterosexual marriages are the best environment within which to raise children

Some opponents of same-sex marriage claim that such unions are not the most suitable environment within which to rear children. They express concern that endorsing same-sex unions by classifying them legally as marriages may be seen as an encouragement for same-sex couples to rear children.

In his Sunday sermon delivered on June 14, 2015, Pope Francis praised heterosexual marriage, stressing the complementary natures of the different genders. He then stressed the value that importance of heterosexual couples in the rearing of children. Pope Francis stated, 'Children mature seeing their father and mother like this; their identity matures being confronted with the love their father and mother have, confronted with this difference.' Similarly, in a letter written to the Prime Minister, Tony Abbott, on June 5, 2015, by a cross-denominational representation of 38 church leaders, it was stated, '[A] stable, loving marriage provides the best conditions for raising children. Marriage between a man and a woman gives children the best chance of being loved and raised by their biological mother and father. This is the family structure most consistent with a child's right to know who they are and where they have come from. It is the family structure associated most strongly with positive child outcomes. Any adult person can love and care for a child. But, as a couple, two persons of the same sex are not able to provide a child with the experience of both mothering and fathering. Only the institution of marriage between a man and a woman has this inherent capacity to provide children with both of these relationships that are so foundational to our human identity and development.'

On April 1, 2015, The Sunshine Coast Daily published a comment by Wendy Francis, Queensland state director for the Australian Christian Lobby in which she states, 'The undeniable truth is that redefining marriage will result in yet another group of children being deliberately removed from their parents as a result of government legislation.

Same-sex marriage advocates believe motherless children to be a desirable outcome. They are lobbying for boys to be raised without their fathers and for girls to be raised without their mothers.

Life throws lemons sometimes, and it's not always possible for children to be with their mother and father, but we must learn from past mistakes and refuse to make laws that will deliberately deprive children of their mother or their father.'

A similar view was expressed by former Prime Minister John Howard in 2013 when he stated, '[A]nything we can do to preserve current notions of marriage are more likely on balance to provide the best environment for raising children.'

4. Same-sex unions are not legally discriminated against

It has been claimed that same-sex couples receive the same rights and entitlements as heterosexual couples.

The Internet site of the Australian Government's Attorney General's Department states, 'The Australian Government believes that people are entitled to respect, dignity and the opportunity to participate in society and receive the protection of the law regardless of their sexual orientation.'

Following the Australian Human Rights Commission's report *Same-Sex: Same Entitlements* and an audit of Commonwealth legislation in 2009, 85 Commonwealth laws were amended to eliminate discrimination against same-sex couples and their children.

These amendments aimed to remove discrimination to enable same-sex couples and their children to be recognised by Commonwealth law and enjoy the same entitlements as opposite-sex de facto couples and their children.'

The Australian Government's Department of Social Services site states, 'Same-sex de facto couples and their families have the same entitlements as opposite-sex de facto couples and their families.'

It goes on to list a range of entitlements which 'some' same-sex couples enjoy in the same manner as heterosexual couples. These include partner concession card benefits; bereavement benefits if a partner dies; exemption of the family home from the assets test when one partner enters nursing home care and the other partner continues to reside there; recognition as independent for Youth Allowance if in a same-sex relationship for over 12 months; lesbian relationships recognised as a qualifying relationship for Widow Allowance; War Widow or widowers pension; access to the Child Support Scheme; access to the Pharmaceutical Benefits Scheme and Medicare safety nets as a family; allowing private sector superannuation trustees to make same-sex couples and their children eligible for reversionary benefits; enabling reversionary benefits from Commonwealth (defined benefit) superannuation schemes to be conferred on same-sex partners and the children of same-sex relationships and tax concessions.

Opponents of same-sex marriage claim the issue is not one of equal rights but one of accuracy. According to this argument, same-sex couples are entitled to the same legal rights and benefits as other couples, they are simply unable to describe their union as a marriage because according to the traditional definition of 'marriage', same-sex unions do not qualify.

5. Legalising same-sex marriage could lead to pressure to legalise polygamy

Opponents of legalising same-sex marriage argue that if the conventional definition of marriage is altered this could lead to further alterations of a type which a majority of Australians would find unacceptable.

The key change referred to in this context is polygamy. It is claimed that the arguments that are used to justify same-sex marriage could also be used to justify marriage between multiple partners.

In June, 2015, the federal government's leader in the Senate, Eric Abetz, stated, 'It is an institution that, if you change its definition, you simply open a Pandora's box and we are witnessing that in some of the European countries.'

Senator Abetz went on to explain that activists in the Netherlands, Scandinavia and the United States had 'commented on and pursued' the cause of 'polyamorous' marriages of groups of people.

In September, 2012, Liberal Senator Cory Bernardi made similar claims. Senator Bernardi argued with regard to same-sex marriage, 'It is another chip in the fabric of our social mores...The time has come to ask, when will it end? If we are prepared to redefine marriage ... what is the next step?'

Senator Bernardi went on to suggest, 'The next step ... is having three people that love each other...able to enter into a permanent union endorsed by society, or four people. There are even some creepy people out there, who say that it's OK to have consensual sexual relations between humans and animals. Will that be a future step?'

In June, 2011, the Anglican Archbishop of Sydney, Dr Peter Jensen, stated, 'This claim for a right to be married could open the way for other forms, such as polygamous marriages or perhaps even marriage between immediate family members.'

Arguments in favour of legalising same sex marriage in Australia

1. Refusing to allow same-sex couples to marry is discriminatory and promotes inequality

It has been claimed that excluding same-sex couples from being able to form a marriage as currently defined and recognised under the Marriage Act is an act of discrimination which denies the equal value of same-sex unions.

In September 2012 the Australian Human Rights Commission issued a position paper on marriage equality. The lead statement of the Commission's paper claims 'the fundamental human rights principle of equality means that civil marriage should be available, without discrimination, to all couples, regardless of sex, sexual orientation or gender identity.'

The position paper went on to state, 'The principle of equality requires that any formal relationship recognition available under law to opposite-sex couples should also be available to same-sex couples. This includes civil marriage.'

It has been claimed that denying access to marriage to same-sex couples is discriminatory as the sexual orientation of the partners does not determine the worth of their relationship.

In an article published in *The Guardian* on July 2, 2015, the leader of the federal Opposition, Bill Shorten, stated of legalising same-sex marriage 'It is a chance for us to say, as a nation, to lesbian, gay, bisexual, transgender and intersex Australians: your love is equal under the law...'

To say to young people who identify as gay: we are proud of you for who you are. You have a right to the same hopes, dreams and opportunities as every Australian, including the right to marry the person you love.

To say to same-sex couples: you deserve the right to celebrate your love with a public measure of devotion.'

It has also been noted that denying same-sex couples the right to marry encourages other forms of discrimination against them. Australian Marriage Equality states as one of its twelve reasons why same-sex couples should be able to marry, 'The negative message sent out by discrimination in marriage fosters prejudice, discrimination and unequal treatment against same-sex relationships in the wider community.'

Australian Marriage Equality goes on to note, 'There is a substantial body of Australian social research which shows the vulnerability of same-sex attracted people to prejudice, discrimination and unequal treatment. These surveys have

consistently found that same-sex attracted people experience unacceptably high levels discrimination in the workplace, discrimination in other aspects of their lives including at school and in their families, and hate-motivated assault. Studies have also directly linked bans on same-sex marriages to higher levels of discrimination.'

2. Same-sex couples are equally capable of raising children well

It has claimed that children raised in same-sex families demonstrate no adverse effects when compared to children raised by heterosexual couples.

In December 2013, the Australian Institute of Family Studies released a research paper titled 'Same-sex parented families in Australia'. The paper indicates 'About 11% of Australian gay men and 33% of lesbians have children. [These] Children may have been conceived in the context of previous heterosexual relationships, or raised from birth by a co-parenting gay or lesbian couple or single parent.'

The paper surveys a range of studies on the effects of same-sex households on the children reared within them. It concludes, 'Overall, research to date considerably challenges the point of view that same-sex parented families are harmful to children. Children in such families do as well emotionally, socially and educationally as their peers from heterosexual couple families.'

The paper further notes 'Some researchers have concluded there are benefits for children raised by lesbian couples in that they experience higher quality parenting, sons display greater gender flexibility, and sons and daughters display more open-mindedness towards sexual, gender and family diversity.'

On June 27, 2015, United States Quartz magazine published an article titled 'The science is clear: Children raised by same-sex parents are at no disadvantage'. The article notes 'In January, researchers from the Columbia Law School examined 76 studies published after 1985 and found that only four of them concluded that children raised by gay couples faced additional adversity as a result of having same-sex parents.'

The magazine later noted 'More recently, researchers from the University of Colorado Denver and the University of Oregon used the tool Web of Science to examine the ways in which scientific papers analysed children of same-sex parents over time, and how each paper cited others to back its analysis. They found that over time, more and more papers cited other research that highlighted that there are "no differences" in the outcomes for children based solely on whether they were raised by same-sex, heterosexual, or single parents.'

3. Restrictions on marriage have changed over time

Supporters of same-sex marriage argue that there is nothing immutable, time-honoured or unchangeable about the institution of marriage. As an example, it has been noted that the age at which Australians could marry have varied over time and according to jurisdiction.

Prior to 1961, marriage laws were the province of the different Australia states and territories with regulations varying from one jurisdiction to another. For example, from 1901 on the marriageable age in Australian states and territories was the same as the age of consent: 14 for men and 12 for women. However, in 1942, Tasmania raised the marriageable age for men to 18 and for women to 16; Western Australia followed suit in 1956 and South Australia in 1957.

There have also been varying restrictions placed on Aboriginal Australians right to marry.

Victoria's Aborigines Protection Act 1869 (Vic) gave the Board for the Protection of Aborigines the power to refuse marriage applications from Indigenous Victorians. In Queensland, the Aborigines Protection and Restriction of the Sale of Opium Act 1897 (Qld) prohibited Indigenous woman from marrying anyone other than an Indigenous man without the permission of an Aboriginal Protector.

In the Northern Territory, which was governed by Commonwealth law, the Aborigines Ordinance 1918 restricted marriages between Indigenous women and non-Indigenous men. For example, the marriage of Indigenous or half-caste women to non-Indigenous men required legal permission.

Rodney Croome, the national director of Australian Marriage Equality has stated, 'some Aborigines resisted control. Women deliberately fell pregnant to their forbidden fiancs, couples escaped to states without marriage controls, and in 1935 the "half-caste women of Broome" petitioned the WA Parliament declaring:

"Sometimes we have the chance to marry a man of our own choice... therefore we ask for our Freedom so that when the chance comes along we can rule our lives and make ourselves true and good citizens."

Rodney Croome has also noted that restrictions have been imposed limiting other mixed race marriages. 'Because of the White Australia Policy servicemen in occupied Japan were refused permission to marry local Japanese women or, if they married anyway, were unable to return to Australia with their Japanese wives.'

In other periods and cultures the right to marry has been limited by class and religious belief and women's rights within marriage were severely restricted with ownership of any property they brought to the marriage reverting to their husband. It was not until the late 1800s that the Married Women's Property Act enabled married women to hold property of their own. Victoria passed legislation in 1884, New South Wales in 1879, and the remaining states passed similar legislation between 1890 and 97.

All these limitations are now regarded as inappropriate. Supporters of same-sex marriage claim restrictions on lesbian and homosexual unions are equally inappropriate.

4. Those with religious objections would not be required to support or officiate at same-sex marriages

It has been claimed that religious objections to same-sex marriage should not be effected by ant change in law which allows same-sex civil unions.

Marriages can be conducted by either civil celebrants or ministers of religion. In an article published in The Australian on

July 6, 2015, Australian Human Rights Commissioner, Tim Wilson, stated, 'The Marriage Act...recognise[s] civil marriages. A civil marriage is defined as a union between two people voluntarily entered into for life and can be solemnised by a licensed civil celebrant. The act...also recognise[s] religious marriages in different religious traditions ... As things stand, a minister of a religious faith can solemnise a marriage based on their faith's prescription. So a priest could only solemnise a marriage between a man and a woman based on the prescriptions of that faith. The spirit of this tradition can already be found in other countries, such as Britain, with different religious communities.' It has been argued that any minister of religion would be able to refuse to conduct a marriage service for a couple who did not meet the conditions for marriage required by the particular religious denomination which the minister represented. Therefore, if a particular religion is opposed to same-sex marriage no change in Australian law would require its members and ministers to endorse or officiate at such a marriage.

5. Other comparable countries have legalised same-sex marriage

Supporters of same-sex marriage being made legal in Australia note that it has been legalised in many comparable countries.

Since 2001, 21 countries have legalised same-sex marriage, affording full recognition and rights to couples entering into them.

In chronological order these are The Netherlands (April 1, 2001), Belgium (June 1, 2003), Spain (July 3, 2005), Canada (July 20, 2005), South Africa (2006), Norway (January 1, 2009), Sweden (May 1, 2009), Portugal (June 5, 2010), Iceland (June 27, 2010), Argentina (July 22, 2010), Denmark (15 June 2012), Uruguay (April 2, 2013), New Zealand (April 17, 2013), France (April 23, 2013), Brazil (May 14 2013), England and Wales (July 17, 2013), Luxembourg (June 18, 2014), Scotland (February 4, 2014), Finland (signed February 20, 2015, effective 2017), Ireland (May 23, 2015) and the United States (June 26, 2015).

It has been noted that many countries with cultural backgrounds similar to Australia can be found within this list. Key among these are Canada, New Zealand, Ireland and the United States.

The recent addition of Ireland and the United States to the group of countries that have legalised same-sex marriage has increased the pressure for such marriages to be legalised in this country. The Communications Minister Malcolm Turnbull has stated that the US Supreme Court's landmark to allow same-sex marriage will 'clearly' influence Australia. Mr Turnbull has further stated 'All of the English-speaking countries that we are closest to, Britain, Ireland, Canada, the United States, New Zealand, South Africa, they all allow gay marriage.'

Further implications

Same-sex marriage will only become legal in Australia when a majority of members of both the House of Representatives and the Senate support it.

The Australian House of Representatives contains 150 seats. On 19 September 2012, a bill introduced by Labor MP Stephen Jones aimed at legalising same-sex marriage was defeated 42 to 98 votes. Labor MPs were allowed a conscience vote while Liberal Party Leader Tony Abbott did not allow a free vote for Liberal Party MPs. However, Liberal frontbencher Kevin Andrews said, '(We) counted the numbers ... The reality is it would not have made much difference whatsoever to the numbers. There would have been half a dozen people... who would have voted the other way.'

In May 2015 some Labor MPs such as Chris Bowen and Julie Owens announced their newfound support of same-sex marriage, though they implied they might vote in favour of it in the Parliament only if the Labor Party retained its conscience vote on the matter rather than binding all MPs and Senators in favour of the reform.

On July 27, 2019, the Labor Party agreed to retain a conscience vote on the issue until 2019. This was probably a wise tactical move, as there may have been some opponents of same-sex marriage within the Opposition who would have been prepared to cross the floor on the issue had their Party attempted to force them to vote in favour of it.

Retaining a conscience vote throughout the term of the next Parliament removes what may have been a source of controversy within the Labor Party, while clearly indicating the Party's support for same-sex marriage. The move may well provide encouragement for supporters of a conscience vote within the Coalition to push their leader to allow it.

Only time will reveal when a majority of Australia's parliamentarians will support such amending legislation.

Newspaper items used in the compilation of this issue outline

The Age: February 3, 2015, page 19, comment by Clementine Ford, 'Why getting married is a betrayal of gay people'.
<http://www.theage.com.au/comment/same-sex-marriage-needs-straight-people-to-take-a-stand-in-australia-20150202-133krv.html>

The Age: June 11, 2015, page 20, comment by Peter Day, 'Mother, father, child: the best formula so far'.
<http://www.theage.com.au/comment/mother-father-child-the-best-formula-so-far-20150610-ghke7s.html>

The Age: June 10, 2015, page 20, comment (with Spooner cartoon) by Steve Dow, 'Faith, bigotry and the children of gay parents'.
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