

2017/12: Should Australia legalise same sex marriage?

What they said...

'There's only one form of love that is marriage, and that is between a man and a woman'

Mark Coleridge, Catholic Archbishop of Brisbane

'Most people recognise what our marriage laws don't: gay and lesbian Australians are just like everybody else... Our relationships are like other relationships'

Labor Opposition Senator, Penny Wong

The controversy at a glance

A voluntary Australian Marriage Law Postal Survey is being held between 12 September and 7 November, 2017, to ascertain respondents' views on whether same-sex marriage should be introduced under Australian law. The final tally of votes from the postal plebiscite poll is expected to be completed by November 15, 2017.

If the survey shows that a majority of respondents favour same-sex marriage, Prime Minister Malcolm Turnbull has promised that a private members bill seeking to legalise same-sex marriage will be introduced in the House of Representatives in late November or early December. Should such a bill go before Parliament both the Government and the Labor Opposition will allow their representatives a conscience vote on the issue.

If the survey results in a 'no' vote, Turnbull has said no bill will proceed to a parliamentary vote.

The debate surrounding this postal survey has seen vigorous campaigning for and against same-sex marriage. The Prime Minister and others have expressed concern that the debate remains respectful.

Background

(Most of the information below has been drawn from a Wikipedia entry titled 'History of same-sex marriage in Australia'.

The full text can be accessed at https://en.wikipedia.org/wiki/History_of_same-sex_marriage_in_Australia)

Current legal situation in Australia regarding same-sex marriage

In 2004 the Howard government amended the Marriage Act 1961 to state explicitly that marriage was a contract that could be entered into only by a man and a woman. The Howard government argued that the only reason that this designation was not already part of the Act was that its original framers had not considered any other combination of genders would seek to marry.

Although a same-sex marriage law was passed by the Australian Capital Territory in 2013, it was struck down by the High Court on the basis of inconsistency with federal law.

As of 2017, there have been 22 unsuccessful attempts in the Federal Parliament to legalise or recognise same-sex marriage (SSM) under federal law.

The 2016 failed plebiscite

The current Prime Minister, Malcolm Turnbull, supports same-sex marriage. The Turnbull Government went to the 2016 federal election with a policy to put the issue of same-sex marriage to a plebiscite, and was narrowly re-elected.

However, the legislation to establish the plebiscite was rejected by the Australian Senate in November 2016.

The 2017 postal survey

The voluntary Australian Marriage Law Postal Survey will be held between 12 September and 7 November 2017 to ascertain respondents' views on whether same-sex marriage should be introduced to Australian law. The final tally of votes from the postal plebiscite poll is expected to be completed by November 15, 2017.

If the plebiscite is in favour of SSM, the government has said that a bill legalising SSM will be introduced in the House in late November or early December, where it is expected to pass. (Parliamentarians are not bound by the results of the poll, but many have promised to respect the final outcome.) If the final tally is opposed, Turnbull has said no bill will proceed to a parliamentary vote.

Political implications

SSM has been a contentious issue for the Coalition government under the leadership of Tony Abbott and Malcolm Turnbull.

Analysts have suggested that both the plebiscite and the postal survey are stalling measures that have been proposed to forestall the Coalition having to table SSM legislation in the Parliament.

The issue is difficult for the Coalition as there is a significant range of opinion within the Liberal and National Parties on the question. Arriving at an agreed position on framing a new amendment to the Marriage Act and then on how to vote on any such amendment would reveal divisions in the Coalition and its electoral support base.

Internet information

On September 26, 2017, The Sydney Morning Herald published an article titled 'Like parents and kids, same-sex couples don't "qualify" for marriage: Archbishop Mark Coleridge'

The report details the view of the Catholic Archbishop of Brisbane that marriage is exclusively a union between a man and a woman.

The full text can be accessed at <http://www.smh.com.au/federal-politics/political-news/like-parents-with-kids-samesex-couples-dont-qualify-for-marriage-archbishop-mark-coleridge-20170926-gyovm2.html>

On September 21, 2017, SBS published an analysis by Liam Elphick titled 'Do same-sex couples really have the same rights as married couples?'

The piece outlines the rights currently available to those in same-sex relationships and explains the areas where they are less than those of married couples.

The full text can be accessed at <http://www.sbs.com.au/topics/sexuality/agenda/article/2017/09/14/do-same-sex-couples-really-have-same-rights-married-couples>

On September 21, 2017, Huffington Post published an article titled 'Same-Sex Marriage Could Prevent 3000 High School Suicide Attempts A Year, Mental Health Groups Say'

The article details the opinion of five major mental health organisations in Australia that legalising same-sex marriage in Australia would benefit the mental health of homosexual young people.

The full text can be accessed at http://www.huffingtonpost.com/2017/09/20/same-sex-marriage-could-prevent-3000-high-school-suicide-attempts-a-year-mental-health-groups-say_a_23217145/

On September 21, 2017, The Conversation published a comment and analysis by Hannah Robert, Lecturer in Law, La Trobe University and Fiona Kelly, Associate Professor, Law School, La Trobe University. The analysis is titled 'Explainer: what legal benefits do married couples have that de facto couples do not?' and explains where same-sex couples are disadvantaged under current law.

The full text can be accessed at <https://theconversation.com/explainer-what-legal-benefits-do-married-couples-have-that-de-facto-couples-do-not-83896>

On September 18, 2017, The Courier Mail published a comment by Rowan Dean titled 'Hardcore same-sex marriage supporters have an unacceptable agenda'. The comment details what Dean believes are the threats posed by radical supporters of same-sex marriage to those who oppose them.

The full text can be accessed at <http://www.couriermail.com.au/news/opinion/opinion-hardcore-samesex-marriage-supporters-have-an-unacceptable-agenda/news-story/29e77d5ab4a7932af4552686418d7773>

On September 14, 2017, news.com.au published a report titled 'Do you think that's really an appropriate language to be using?'

The article outlined the opposition of Lyle Shelton, Coalition for Marriage spokesman and Australian Christian Lobby head to same-sex marriage. Shelton argues that it would mean an increase in the number of children separated from their biological parents and compares this to the situation of Indigenous children taken from their parents.

The full text can be accessed at <http://www.news.com.au/lifestyle/gay-marriage/do-you-think-thats-really-an-appropriate-language-to-be-using/news-story/b2ddb390931215e8a47349e8a458d60b>

On September 13, 2017, The Sydney Morning Herald published a comment by former Prime Minister Tony Abbott detailing why he opposes same-sex marriage. The full text can be accessed at <http://www.smh.com.au/comment/tony-abbott-on-why-same-sex-marriage-would-fundamentally-change-society-20170912-gyfi4f.html>

On September 13, 2017, The Daily Telegraph published a comment by emeritus professor of law, David Flint, titled 'A yes vote on same-sex marriage will give politicians a blank cheque'. Flint encourages distrust of what politicians might do if able to change the Marriage Act.

The full text can be accessed at <http://www.dailytelegraph.com.au/news/opinion/david-flint-a-yes-vote-on-samesex-marriage-will-give-politicians-a-blank-cheque-to/news-story/90ee690df65651b67cc385aa5edcc3d3>

On September 10, 2017, The Sydney Morning Herald published a report titled 'Malcolm Turnbull makes conservative case for same-sex marriage at "yes" launch'

The article outlines Malcolm Turnbull's support for same-sex marriage.

The full article can be accessed at <http://www.smh.com.au/federal-politics/political-news/malcolm-turnbull-makes-conservative-case-for-samesex-marriage-at-yes-launch-20170910-gyed86.html>

On September 9, 2017, The Australian published a news report titled 'John Howard kickstarts No SSM case'

The article details the opposition of former Prime Minister John Howard to same-sex marriage. Though focusing on Howard's views, it includes those of other politicians, some of whom support Howard's position and some of whom hold different views.

The article is followed by extensive reader comment, again presenting views on both sides of the issue.

The full text can reader responses can be found at <http://www.theaustralian.com.au/national-affairs/samesex-marriage-survey-john-howard-kickstarts-the-no-case/news-story/da6ca4cc0e4bc5c6aebda25a753917ba>

On September 7, 2017, The Spectator published an opinion piece by Australian commentator David Sergeant titled 'What's changed in Britain since same-sex marriage?'

The report details what Sergeant believes are the adverse impacts in those opposed to same-sex marriage since the change of law in Britain.

The full text can be accessed at <https://www.spectator.com.au/2017/09/whats-changed-in-britain-since-same-sex-marriage/>

On September 4, 2017, The Conversation published a comment by Greg Walsh, Senior Lecturer, School of Law, University of Notre Dame Australia, titled 'Without proper protections, same-sex marriage will discriminate against conscientious objectors'

The opinion piece stresses the need for protections in any same-sex marriage legislation for those who are conscientious objectors to this change. It suggests the type of protections that might be offered.

The full text can be accessed at <https://theconversation.com/without-proper-protections-same-sex-marriage-will-discriminate-against-conscientious-objectors-83348>

On September 1, 2017, the ABC News published a report titled 'John Howard wants more detail on religious exemptions ahead of same-sex marriage survey' The report details Howard's concerns that those with religious objections will be legally protected in the event of same-sex marriage being legalised.

The full report can be accessed at <http://www.abc.net.au/news/2017-08-31/howard-wants-detail-on-religious-exemptions-same-sex-marriage/8858670>

On August 24, 2017, the conservative Anglican publication GAFCON published an article titled 'Archbishop Glenn Davies urges vote for biblical definition of marriage'

The article outlines the nature of the opposition of the Anglican Archbishop of Sydney's opposition to same-sex marriage.

The full text can be accessed at <https://www.gafcon.org/news/archbishop-glenn-davies-urges-vote-for-biblical-definition-of-marriage>

On August 24, 2017, The Conversation published a comment by Jo Robinson, Senior Research Fellow, Orygen, The National Centre of Excellence in Youth Mental Health, University of Melbourne; Eleanor Bailey, Research Assistant, Orygen, the National Centre of Excellence in Youth Mental Health, University of Melbourne; and Pat McGorry, Professor of Psychiatry, University of Melbourne.

The article is titled 'Legalising same-sex marriage will help reduce high rates of suicide among young people in Australia' and argues that legalising same-sex marriage in Australia will benefit homosexual youth.

The full text can be accessed at <https://theconversation.com/legalising-same-sex-marriage-will-help-reduce-high-rates-of-suicide-among-young-people-in-australia-82917>

On August 21, 2017, The Australian published a report titled 'Protect the Aussie way of life: Abbott'. The article outlines the fears of former Prime Minister, Tony Abbott, that legalising same-sex marriage might undermine the freedoms of those opposed. The article includes quotations from those against this view.

The full text can be accessed at <http://www.theaustralian.com.au/national-affairs/tony-abbott-hits-back-at-george-brandis-on-samesex-marriage/news-story/3f98f087750759dafb5fca6c78a5e873>

On August 18, 2017, Medium published a comment and analysis by epidemiologist Gideon Meyerowitz-Katz titled 'Same-Sex Couples Make Great Parents'

Meyerowitz analyses the data offered on each side of the argument and accuses those who are critical of same-sex parents of bias.

The full text can be accessed at <https://medium.com/@gidmk/same-sex-couples-make-great-parents-2f74857ef9a3>

On August 18, 2017, Australian Baptist Ministries issued a media release titled 'Australian Baptists View on Same Sex Marriage'. The release details the church's support for marriage as a union between a man and a woman, primarily intended for the rearing of children.

The full text can be accessed at <http://www.baptist.org.au/australian-baptists-view-on-same-sex-marriage/>

On June 23, 2017, Life Site published a report titled 'Court upholds law protecting Christians who oppose gay "marriage" in Mississippi'. The report details the protections provided those who oppose same-sex marriage following its legalisation in Mississippi.

The full text can be accessed at <https://www.lifesitenews.com/news/court-upholds-mississippis-strong-religious-freedom-law>

On May 29, 2017, PoliticsMeansPolitics.com published a comment by Renai Warner titled 'Love Is Love: The Fight for Marriage Equality in Australia'.

Warner argues in favour of same-sex marriage on a basis of equity and respect. The full text can be accessed at <https://politicsmeanspolitics.com/love-is-love-the-fight-for-marriage-equality-in-australia-51b4ac255af2>

On September 5, 2016, Herald Sun columnist, Andrew Bolt, argued that legalising same-sex marriage could pave the way for legalising polygamy.

The full text can be accessed at <http://www.heraldsun.com.au/blogs/andrew-bolt/polygamy-dating-site-is-a-warning-first-samesex-marriage-next-polygamy/news-story/49a4165624b8d3eb6ddfd02131e5a02b>

On March 9, 2016, The Conversation published an analysis by Jennifer Power, Senior Research Fellow at the Australian Research Centre in Sex, Health and Society, La Trobe University. The analysis is titled 'Same-sex couples and their children: what does the evidence tell us?'

Power analyses the data and concludes that children reared by same-sex couples do not appear to be disadvantaged.

The full text can be accessed at <https://theconversation.com/same-sex-couples-and-their-children-what-does-the-evidence-tell-us-55565>

The February 2016 edition of The Monthly published an essay by Labor Senator Penny Wong titled 'It's time: the case for marriage equality'

Wong presented a detailed argument supporting same-sex marriage and countering many of the arguments commonly presented against it.

The full text can be accessed at <https://www.themonthly.com.au/issue/2016/february/1454245200/penny-wong/it-s-time>

The human rights lobby group, Amnesty International Australia, has part of its Internet site given over to supporting same-sex marriage. Its arguments centring on equality can be accessed at <https://www.amnesty.org.au/marriage-equality-resources-for-action/>

The lobby group Australian Marriage Equality has an extensive Internet site arguing in support of same-sex marriage. Its arguments centring on equality can be accessed at <http://www.equalitycampaign.org.au/for-love-and-commitment>


FindLaw Australia has a section of its Internet site which responds to the question 'How are same-sex couples recognised in Australian law?'


The full text of this response can be accessed at <http://www.findlaw.com.au/articles/4290/how-are-same-sex-couples-recognised-in-australian-.aspx>


Arguments in favour of legalising same sex marriage

1. Prohibiting same-sex couples from marrying denies them equality and challenges the validity of their relationships. Supporters of same-sex marriage claim that, without access to marriage, same-sex couples are being denied equality before the law. They further argue that preventing same-sex couples from marrying denies them the symbol of public acceptance that marriage provides for heterosexual couples. Relatedly, they argue that being precluded from marrying suggests that same-sex relationships are deficit or inferior and places an artificial barrier between same-sex couples and the rest of the Australian community.


Labor Senator Penny Wong, a prominent homosexual politician, has stated, 'One of the things that make liberal democratic societies both liberal and democratic is the equal treatment of people: granting the same rights, imposing the same responsibilities and giving access to the same opportunities. Discriminating against people on the basis of an innate characteristic, like sexual orientation, is anti-liberal and anti-democratic.'

Senator Wong further argues, 'Most people recognise what our marriage laws don't: gay and lesbian Australians are just like everybody else... Our relationships are like other relationships. Our desire to make a public and lasting commitment to the woman or man we love is the same, too.' 

On May 29, 2017, Renai Warner posted the following comment on PoliticsMeansPolitics.com, 'People in same-sex relationships are being denied the chance to legally marry the most significant person in their lives. Their family and friends are being denied the opportunity to see them have a wedding day like everyone else, where their love is shared and accepted for what it simply is. Love. These people are being denied equality!' 

The lobby group Australian Marriage Equality argues, 'Marriage is about the commitment shared between two people who love each other and want a secure future together. LGBTI Australians should have the same opportunities for love, commitment and happiness as everyone else.' 

The same position is adopted by Amnesty International Australia which has given over a section of its Internet site to support same-sex marriage. The site states, 'Marriage matters to Australians. For many people it is the way they choose to express their love and commitment to their partner.'

At the moment loving LGBTIQ couples do not have the freedom to express their love and commitment to one another through marriage... Everyone should be treated equally under the law. 

2. Same-sex couples do not have the same rights as married heterosexual couples

De facto couples, whether same-sex or heterosexual, do not enjoy all the rights that apply to a married couple.

One of the key differences is that a married couple does not have to prove the existence or validity of their relationship, whereas a de facto homosexual or heterosexual couple does.

In an analysis and opinion piece published in The Conversation on September 21, 2017 Hannah Robert and Fran Kelly noted, 'In all contexts, de facto relationships require significant proof, which means partners may have to provide evidence about their living and child care arrangements, sexual relationship, finances, ownership of property,

commitment to a shared life and how they present as a couple in public. [↗](#)

In a background and opinion piece published on the SBS News site on September 21, 2017, Liam Elphick stated, 'Married couples do not have to go through such a process: there is no need to prove a commitment to each other. Once a couple has a valid marriage certificate, that is game over and they have all the legal rights that attach to marriage. Furthermore, marriage is covered by uniform federal laws that mean it is irrelevant which state or territory you reside in, unlike the piecemeal de facto relationship laws that apply differently in each state and territory.' [↗](#)

There are numerous circumstances where a partner in a de facto homosexual relationship is required to prove the existence of their relationship. One of these is if their partner is very ill, in order to make decisions about their care and treatment. Another is if their partner has died, in order to be listed as their spouse on a death certificate or to be involved in funeral planning. Thus, in crucial situations, often provoking extreme distress, a same-sex partner can be effectively closed out of the process.

Further, even with this proof of relationship, there are many examples of a same-sex couple's de facto status being challenged by one partner's family of origin. Such challenges cannot occur if the couple is married. Unmarried de facto couples also often experience difficulties attaining residency and/or working rights overseas.

Same-sex couples are uniquely affected by these disadvantages associated with being in a de facto relationship. Firstly, unlike a heterosexual couple in a de facto relationship, the same-sex couple has no choice. The heterosexual couple has the option to marry, the same-sex couple does not. Secondly, the same-sex couple has to deal with the prejudice that sometimes exists against their sexual orientation which can compound the difficulties they face as a consequence of having to prove the validity of their relationship.

3. Legalising same-sex marriage would reduce social and psychological pressures on homosexual youth

Supporters of same-sex marriage argue that amending the Marriage Act to allow same-sex couples to marry would be a significant step toward reducing the sense of isolation and discrimination that prompts mental health problems especially among homosexual youth.

In an opinion piece published in The Conversation on August 24, 2017, it was noted, 'Young same-sex attracted people, in particular, already experience feelings of social discrimination, which could increase if same-sex marriage is not legalised. Same-sex-attracted young people are roughly twice as likely to be diagnosed with a mental health disorder, more than six times more likely to have thoughts of suicide, and five times more likely to make a suicide attempt than their heterosexual peers.' [↗](#)

Such feelings of alienation and rejection as young homosexuals, in particular, often feel can be reduced by societal acceptance of same-sex marriage. The same Conversation opinion piece observed, 'In Denmark same-sex married men experienced a reduction in rates of premature death after the implementation of a registered partnerships law in 1989. Similarly, in the United States, implementation of same-sex marriage policies has been associated with a 7% relative reduction in the proportion of high school students attempting suicide.' [↗](#)

Numerous peer reviewed studies have shown the negative health impacts caused by discrimination against LGBTQI people. Five of Australia's most prominent mental health groups - Black Dog Institute, headspace, ReachOut, the Brain and Mind Centre at University of Sydney and Orygen - have drawn on these studies to argue that a 'yes' vote on marriage equality could reduce youth suicide attempts in Australia by up to 3000 per year.

A spokesperson for the Blackdog Institute, Dr Fiona Shand, has stated, 'If you legalise same-sex marriage then you are very likely to see a reduction in those suicide attempts and suicide deaths.'

Dr Shand has further stated, 'We don't get involved in anything to do with politics or anything like that. But in this case, the evidence is fairly clear: this could be really beneficial for our young people, for our school aged people in particular. It's actually sending a very powerful message to our young people who are struggling with their sexual orientation and identity that they are accepted, and they do belong.' [↗](#)

Jono Nicholas, CEO of ReachOut, has similarly stated, 'This confronting statistic highlights both the human impacts of the current discrimination against LGBTQI relationships, and the positive future that marriage equality can achieve for Australia.'

As Australia's leading youth mental health organisations, we see, hear and feel the real and devastating link between LGBTQI discrimination and youth suicide rates and mental illness every day. [↗](#)

4. Child rearing issues are not relevant to the same-sex marriage debate

Opponents of same-sex marriage often claim that they are concerned about the welfare of children raised by same-sex parents. Those who support same-sex marriage argue that the children of same-sex couples suffer no disadvantage. Though there is some inconsistency in results, a majority of studies seeking to demonstrate the impact on child welfare of being raised by same-sex parents indicate there is no significant difference between children raised in these circumstances and those raised in a family with heterosexual parents.

The evidence most commonly used to justify this claim comes from a meta-analysis of 33 studies published in 2010. This wide-ranging analysis, published in The Journal of Marriage and Family, concluded 'The gender of parents...has minor significance for children's psychological adjustment and social success.' [↗](#)

A further discussion of the evidence around the effect of same-sex parenting published in The Conversation on March 26, 2016, noted, 'Several subsequent studies, including a large Australian study, have replicated these (2010) findings.'

[↗](#)
In an analysis and opinion piece published in Medium on August 18, 2017, epidemiologist Gideon Meyerowitz-Katz

further argued that the often-made claim that same-sex parenting is detrimental to the development of children is based on flawed science.

Meyerowitz-Katz examined a 2012 study frequently used to justify the assertion that same-sex couples harm children and demonstrated that it failed adequately to define what a same-sex couple was or what it meant to be 'raised' by one. The 2012 study included as 'same-sex parents' anyone who had ever had a same-sex relationship, irrespective of whether this was the one within which that person had reared children. Further, the data was gathered through an online survey and the researchers do not appear to have filtered out disingenuous responses. [↗](#)

Opponents of the disparaging claims made about same-sex couples as parents also note that these claims should have little bearing on the same-sex marriage debate. According to this line of argument, children will continue to be raised in non-traditional family groupings irrespective of whether same-sex couples are allowed to marry.

Some commentators maintain that the discussion around the welfare of children with same-sex parents is fuelled by prejudice. Opponents of same-sex marriage are accused of bigotry because they do not similarly condemn single-parent families or call for more rigorous grounds for divorce.

Meyerowitz-Katz has condemned what he sees as the bigotry of the supposed 'concern for children' position in his critique of the evidence upon which it is based. He stated, 'Marriage law has nothing whatsoever to do with children? -?it has been legal for quite some time for same-sex couples to have kids? -?the anti-equality campaign has to focus on something. If they admitted this was about, say, denying people basic rights because of centuries of religious bigotry, no one would listen.' [↗](#)

5. Legalising same-sex marriage will benefit the institution of marriage

Supporters of same-sex marriage argue that the reform of the Marriage Act to allow same-sex couples to marry will benefit rather than harm the institution.

The Prime Minister of Australia, Malcolm Turnbull has referred to the 23 other countries that have legalised same-sex marriage, including many culturally similar to Australia, and argued, 'In any one of those nations, has the sky fallen in? Has life as we know it ground to a halt? Has traditional marriage been undermined? And the answer is plainly no.'

Rather than weaken either marriage or the societies that value it, supporters of same-sex marriage argue that having more people publicly pledging their loving commitment to each other is advantageous.

Prime Minister Turnbull has stated, 'I am very firmly of the view that families are the foundation of our society and we would be a stronger society if more people were married and fewer were divorced...If the threat to marriage today is lack of commitment then surely other couples making and maintaining a commitment sets a good rather than a bad example.'

Turnbull directly addressed the potential harm same-sex marriage might do existing marriages and stated, 'I am utterly unpersuaded by the proposition that my marriage to Lucy - 38 years long next March - or indeed any marriage is undermined by two gay men or two gay women setting up house down the road, whether it is called a marriage or not.' [↗](#)

Labor Senator Penny Wong has similarly stated, 'In 2012, John Key, New Zealand's conservative prime minister, spoke for many when he said, "if two gay people want to get married, then I can't see why it would undermine my marriage to Bronagh". Likewise, I have never understood how my commitment to Sophie could threaten anyone else's marriage.'

Penny Wong has also quoted another overseas political leader, then Britain's Conservative Prime Minister, David Cameron, who has similarly argued that gay marriage would strengthen both society and marriage. Wong quotes, 'David Cameron, the conservative prime minister of the United Kingdom, has observed, "Society is stronger when we make vows to each other and we support each other. So I don't support gay marriage in spite of being a Conservative. I support gay marriage because I'm a Conservative.'" [↗](#)

6. Anyone with religious or other conscientious objections to same sex marriage need not attend or officiate at such services

Supporters of same-sex marriage argue that those with conscientious objections to the reform will not be disadvantaged. Federal Cabinet minister, Christopher Pyne, has stated that any same-sex marriage legislation presented to Parliament will include provisions to protect those in the community with conscientious objections.

Pyne has referred approvingly to a private members Bill already drafted by Coalition MP Dean Smith. He has stated, 'The bill that Dean Smith had drafted, which has gone through an exhaustive committee process last year and earlier this year, I believe has the sufficient protections. Because nobody is trying to make religious institutions or conscientious objectors do anything that they don't want to do.' [↗](#)

A similar point has been made by federal treasurer Scott Morrison who has stated, 'If the survey were to return a yes, well any bill that would then come forward...would...ensure religious freedoms were protected and I can assure Australians this would be at the top of my list for that particular bill and how it went through.' [↗](#)

Labor Senator Penny Wong has argued that Australia's respect for religious freedoms and its Constitutional separation of Church and State will ensure that no same-sex marriage legislation would ever require clerics to act against their conscience. She has stated, 'For this reason, no marriage equality bill passed by the national parliament would require churches to conduct same-sex weddings.' [↗](#)

On more mundane commercial questions of whether those opposed to same-sex marriages should be compelled to supply goods or services to such marriages, Wong believes that common sense is likely to supply a solution in most situations. She implies that there are likely to be service providers who indicate that they specialise in catering for same-sex marriage services and that a same-sex couple would be likely to use such services.

Wong notes, 'It seems to me that dragooning a hostile caterer or a disapproving photographer into being part of your

special day would be a recipe for overcooked main courses or blurry photographs. In the real world, I suspect market forces and common sense will prevail. [↗](#)

Arguments against legalising same sex marriage

1. Marriage is a heterosexual union

Many opponents of same-sex marriage claim that the institution of marriage exists to endorse heterosexual unions, particularly those intended for procreation and child-rearing. They argue that marriage brings together two distinct and biologically different individuals, whose biological difference enables them to produce children.

This position was put by former Prime Minister, Tony Abbott, in an opinion piece published in The Sydney Morning Herald on September 13, 2017. Mr Abbott stated that Australia should 'continue to reserve the term "marriage" for the relationship of one man with one woman, ideally for life and usually dedicated to children. [↗](#)

Stressing the unique nature of a heterosexual union, the Catholic Archbishop of Brisbane, Mark Coleridge, has stated, 'There's only one form of love that is marriage, and that is between a man and a woman.' The Archbishop went on to acknowledge that other forms of love, including homosexual love, may have equal value, but that they were not the form of love that is being sanctioned in a marriage. Referring to same-sex love, Archbishop Coleridge concluded, 'like the love of friends ... it is valuable, but it's not, and it can't be, the kind of love that we call marriage. [↗](#)

A similar insistence on the unique nature of the heterosexual union and thus its sole right to be termed a 'marriage' has been made by the Anglican Archbishop of Sydney, Glenn Davis. The Archbishop has stated, 'No one denies that loving relationships can exist between two persons of the same sex. However, men and women are not the same. It is the very differences between the sexes that enhance the marriage union and create the opportunity of the bearing of children. [↗](#)

The same view has been put by Australian Baptist Ministries which issued a media release on August 18, 2017, stating, 'There are compelling cultural and heritage reasons for rejecting this proposed radical social reform... A strong society needs a strong commitment to marriage and family. Marriage is best understood as the union of a man and a woman. [↗](#) Mr Abbott has similarly defended the long-standing distinction made when dealing with heterosexual love. He stated, 'We shouldn't lightly change what's been the foundation of our society for generations. [↗](#)

2. Same-sex marriage will increase the number of children denied access to their biological mother or father

Opponents of same-sex marriage frequently question the impact on children in same-sex partnerships of being separated from one or both of their biological parents.

On September 8, 2017, former Prime Minister, John Howard, placed a central emphasis on the rights of children within the marriage debate. Howard stated, 'I believe there is a conflict here between those seeking the right for same-sex marriage and the rights of the child, and I believe the right of the child to have a mother and father should be preserved.' Howard further stated, 'I recognise that there are homosexual couples who are caring and conscientious parents who do a good job and there are plenty of neglectful heterosexual parents. But the clear evidence is that you have outcomes that are superior for children in the longer term if they have a mother and a father. [↗](#)

A reader comment published in The Australian on September 11 extended this argument. The commentator, 'Leigh', argued, 'For me the issue is more about what do we think defines a family. Marriage is the cornerstone of a family. SSM institutionalises the removal of at least one biological parent. Is that fair for the child? When a parent dies or divorces, we call that a tragedy, but now we want to institutionally validate this as a new normal. For this reason I don't think SSM can ever be equal to traditional marriage.'

The following day 'Leigh' further noted, 'Marriage... is a protective environment to create and raise children. Now gay couples can raise children: but they can never create children within the "contract" of marriage. Thus for me, the core purpose of marriage is now altered and to the significant disadvantage of the child. [↗](#)

Opponents of same-sex marriage have argued that sanctioning same-sex unions through marriage will create larger numbers of children who have little or no access to at least one of their biological parents.

This situation has been compared to that of Indigenous children separated from their parents, and to that of adopted children or to children who have been separated from a parent through divorce. In all of these cases the child can feel very strongly the loss of one or more biological parent. Critics of same-sex marriage claim that this change would simply increase the number of children suffering under this emotional burden.

This argument has been put by Lyle Shelton, Coalition for Marriage spokesman and Australian Christian Lobby head. Shelton has stated, 'Any public policy which requires a child to miss out on their mum and dad...is not a good thing. It doesn't mean that gay people can't love children - of course they can. And it didn't mean that the people who took indigenous children into their homes didn't love them. Love is not the issue. The issue was whether it was right for government policy to cause a child to miss out on the love of their mum and their dad. [↗](#)

3. Same sex couples have the same legal rights as heterosexual couples

Opponents of legalising same-sex marriage argue this change to the law is not necessary as same-sex couples already enjoy the same legal rights as heterosexual couples.

On September 14, 2017, SBS published a comment by Liam Elphick which included the observation, 'In 2008... the federal Labor government passed a reform package that removed discrimination against same-sex de facto couples in areas such as taxation, superannuation, aged care, citizenship, and family law. In theory, this meant that "de facto" same-sex couples should enjoy most of the legal rights that attach to marriage. [↗](#)

FindLaw Australia states, 'A couple who is in a same-sex relationship for all intents and purposes have the same rights

as those who are in a legally recognised marriage. Whether it is property, parental or estate rights, individuals who are in a committed, intimate relationship are protected in Australian law. [↗](#)

FindLaw Australia notes the provisions that the Commonwealth Family Law Act considers when deciding on the rights that attach to partners in a de facto relationship. These include: the length of the relationship; the nature and extent of common residence; the existence of a sexual relationship; the dependence, interdependence, and any arrangements for financial support; the ownership, acquisition, and use of property; the degree of a mutual commitment to a shared life; the care and support of children the performance of household duties; and the reputation and public aspects of the relationship. [↗](#)

In an opinion piece published in The Sydney Morning Herald on September 13, 2017. Mr Abbott stated, 'Already, indeed, same sex couples in a settled domestic relationship have exactly the same rights as people who are married.' [↗](#)

Very much the same point was made by Rowan Dean in an opinion piece published in The Courier Mail on September 18, 2017. Dean stated, 'Gay couples already have virtually all the same legal rights in Australia as heterosexual couples, thanks to our generous de facto marriage laws.' [↗](#)

4. Legalising same-sex marriage would undermine the rights of those opposed on religious or conscientious grounds

Critics of legalising same-sex marriage argue that such a law could result in discrimination against people who are unable to support or help implement the newly established legal right of same-sex couples to marry.

It is claimed that in overseas jurisdictions where people have refused, on the basis of conscience, to involve themselves with same-sex marriages they have been either legally or financially penalised and in some instances forced out of business. Former Australian Prime Minister, Tony Abbott, has stated, 'In Britain, Catholic adoption agencies (have) had to close down right around the country because they refused to toe the line on same-sex marriage (and allow same-sex couples to adopt).' [↗](#)

Former Prime Minister John Howard has argued that before the same-sex marriage debate proceeds further, the government must draft legislation that would protect the rights of those with religious or conscientious objections to same-sex marriage. Liberal MP Dean Smith has already proposed a private members bill which would include some of the protections Howard is seeking. [↗](#)

Such legislation exists in some other jurisdictions, including the United States state of Mississippi, where religious organisations, such as churches, cannot be forced to use their facilities to celebrate or solemnise weddings that violate their beliefs; religious adoption agencies can continue to operate requiring that every child should be placed with a married mother and father; and bakers, photographers, florists and similar wedding-specific vendors cannot be forced to use their talents to celebrate same-sex weddings if they cannot do so in good conscience. [↗](#)

In the absence of such legislation in Australia, there are those who fear that legalising same-sex marriage would lead to discrimination against those who remain opposed to it.

It has been further claimed that since the legalisation of same-sex marriage in Britain, the climate of support for the rights of homosexuals was impinging on the former rights of those opposed to homosexuality in areas that do not relate to same-sex marriage.

In an opinion piece published in The Spectator on September 7, 2017, Australian commentator David Sergeant noted that Britain's High Court had recently ruled that a 'Pentecostal couple were ineligible to be adoptive parents. While the court recognised their successful and loving record of adoption, they decreed that above all else: "The equality provisions concerning sexual orientation should take precedence".' Thus a couple or an individual's attitude to homosexuality could preclude them from accessing rights or services they had previously enjoyed. [↗](#)

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

It has been claimed that relaxing the definition of marriage to include a union between two people of the same sex could lead to other changes that many within the Australian community would oppose.

The most frequently mentioned further modification by those opposed to any changes to the Marriage Act is that once same-sex marriage was accepted this might lead to a push to have polygamy accepted within Australia.

Emeritus professor of law, David Flint, has stated, 'Politicians could subsequently approve new forms of marriage or measures to punish supporters of traditional marriage.

We have no idea what these could be. Some European politicians and clergymen have seriously proposed that sharia law be introduced to legitimise polygamous marriages, demeaning seriously women's rights.

This could subsequently lead to the recognition of other practices, including underage and arranged marriages. [↗](#)

A similar argument has been put by Herald Sun commentator Andrew Bolt. On September 5, 2016, Bolt stated, 'I warned Malcolm Turnbull and others of the Left that saying yes to same-sex marriage would make it hard to say no to polygamy. How could we say no to any three adults marrying once we've agreed to any two?'

Bolt went on to claim that some within the Greens already accept polygamy. He cites a prominent (unnamed) party official claiming senator Sarah Hanson-Young's has insisted that limiting marriage to two consenting adults discriminates against others in the gay community, including polyamorists.

Bolt argues that the increasing number of immigrants within Australia whose original cultures endorse polygamy means there may well be a growing pressure to legalise this form of marriage. [↗](#)

6. Legalising same-sex marriage is part of a more general challenge to heterosexual marriage and to traditional gender identity

Some opponents of same-sex marriage see such a change to the Marriage Act as part of a larger campaign against heterosexual marriage and traditional gender identity. They claim same-sex marriage derives from a worldview which denies that gender is fixed and binary and which seeks to promote the concept of gender fluidity.

Among those who hold this view is Guy Barnett, the Tasmanian Minister for Resources, Building and Construction. Mr Barnett has stated, 'If the law of the land is changed to legalise same sex marriage, schools will be obliged to teach gay and lesbian sexual activity in the classroom.'

Barnett further argued that the concept of fixed gender would also be open to challenge. He stated, 'Once gender is removed from our marriage laws it will quickly be removed from our classrooms.' He was particularly critical of what he referred to as Victoria's 'so-called Safe Schools program...where they promote gender fluidity.'

Karen Dixon, from Coalition for Marriage, has similarly stated that the consequences of legalised same sex marriage would be 'diabolical'.

Ms Dixon has claimed, 'It's not just a simple matter of can two people of the same gender get married...Once you make changes to marriage you're changing the way that a family unit is structured ... once you legalise something, then you make it okay, you make it right, you make it good. It follows that the education in our school system should reflect the laws of our nation.'

On Monday, August 29, 2017, former Prime Minister, Tony Abbott, stated on Sydney radio station 2GB, 'This isn't just about marriage. Sure, marriage is the immediate focus but there are lots and lots of implications here and we've got to think them through before we take this big leap into what I think is the dark.

How, for instance, can we legitimately say no to gender fluidity programs like so-called Safe Schools if we've de-gendered marriage? If we've officially sanctioned de-gendering marriage, it's very hard not to see de-gendering come in in so many other areas as well.'

Further implications

The Australian Bureau of Statistics (ABS) will release weekly national statistics indicating the number of votes it has received from Tuesday, October 3, until the survey closes on November 7. The ABS will not, however, be issuing a progressive tallies of the number of 'yes' and 'no' votes it has received.

The results of the postal survey are expected to be known by November 15, 2017.

An article published in The University of Melbourne's Pursuit magazine explains what will happen. 'Immediately following the survey, the ABS will announce how many of the 16 million enrolled Australian voters responded to the survey, and the number who voted yes and no. This will be broken down by electorate, state and national - as well as participation by age and gender.

The vote will be decided by a simple majority of people who return the form, and depending on the result, the government will decide if it will allow consideration of a private member's bill to legalise same-sex marriage.

If the postal ballot results in a 'no' vote, Prime Minister Malcolm Turnbull has indicated that the Government would not support a private members' bill on the issue going ahead in the Parliament.

If the postal ballot results in a 'yes' vote, Turnbull has promised to allow the Coalition government a private member's bill to be introduced to the Parliament in the final sitting fortnight of 2017 to change the definition of marriage. Government representatives in both houses of Parliament would be given a conscience vote on the issue.

Labor representatives will have a conscience vote on same-sex marriage until the next election. After the 46th session of Parliament, members of the ALP will all be bound to vote in favour of changing the law to allow same-sex couples the opportunity to marry. It is estimated that most Labor representatives currently support same-sex marriage and would vote in favour of it if a private members bill is put this year.

The Greens support same-sex marriage and have been campaigning for marriage equality for more than a decade. They are predicted to vote in favour of any private members bill amending the Marriage Act to allow same-sex marriage.

The Nick Xenophon Party supports same-sex marriage and has, as part of its policy platform, the intention to 'remove all discrimination from the Marriage Act to ensure that all people, regardless of their sex or gender identity, have the opportunity to marry.'

Currently it is not possible to predict what the outcome of the postal ballot will be. An analysis by Peter Hartcher published in the Sydney Morning Herald on September 15, 2017, noted, 'The great majority of Australians think that marriage should be available to same-sex couples. On the average of the six credible polls of the last six weeks, the 'yes' has an advantage of two-to-one.'


Some commentators have suggested that such figures indicate that the 'yes' vote will inevitably prevail. Hartcher warns that this may not be the case. He suggests there are a number of impediments to the anticipated success of the 'yes' case. He writes, 'First is complacency and a failure of turnout... it all depends on who sends their ballot paper in and who doesn't. That's where it will be won and lost. And we don't have a lot of experience in this country about forecasting turnout.'

Hartcher further notes, 'The second big risk for the "yes" campaign is the behaviour of some of its own supporters. A campaign leader poses the question: "What's working for the 'no' campaign so far? It's the actions of the crazies on our side."

It has been suggested that extreme and unattractive behaviour from either the 'yes' or the 'no' supporters will have the capacity to alter the vote of those who are relatively undecided.

Hartcher suggests that the third development that could see the 'yes' vote fail to succeed would be if voters were

diverted from the central question of whether or not they supported marriage equality to peripheral issues. The vote could be lost because some people equated same-sex marriage with the 'Safe Schools' program being conducted in Victorian schools, or because they were persuaded to see same-sex marriage as creating a second 'stolen generation', with children being denied access to their biological parents.

Hartcher looks in particular at another issue raised by former Prime Minister John Howard, how the rights of those with religious objections to same-sex marriage would be accommodated, and claims that this is also essentially a diversionary tactic which could change the vote of those who would otherwise support same-sex marriage. 

If the postal vote is 'yes' and a same-sex marriage private members bill were to go before Parliament, then there is also the possibility that concern about these secondary issues, particularly protecting members of the community with conscience-based objections to same-sex marriage, could undermine Parliamentary support for marriage equality.

It is likely that the postal survey will result in a 'yes' vote and that a private members bill allowing same-sex marriage will then pass through the federal Parliament before the end of the year; however, until these two events have actually occurred no certainty on the question is possible.