

# marriage =

## Have you thought about... **equal legal rights?**

In conversations about "marriage equality", we are told that same-sex couples lack legal rights. But is that accurate?

### *Do Australian laws discriminate against people in same-sex relationships?*

Same-sex and de-facto couples are now treated equally when it comes to tax law, protection of income and insurance, and even adoption in three States and one Territory. Same-sex couples also have equal access to government entitlements and superannuation benefits as people in heterosexual relationships Australia-wide.

In 2009, following a full National Inquiry, the Federal Government amended more than 80 Commonwealth laws which the Australian Human Rights Commission considered discriminated against same-sex couples and families. Commonwealth laws such as the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws - General Law Reform) Act 2008* and the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws - Superannuation) Act 2008* gave formal recognition to same-sex relationships in Commonwealth legislation.

The government does not forbid couples of the same sex from publicly declaring their commitment. In addition, many Australian states and territories have undergone similar processes with respect to state and territorial laws, with the aim of introducing measures to provide public recognition of the relationship between same-sex couples, and afford equal legal entitlements as are available to married couples. Some even provide for official civil commitment ceremonies.

For example, Victoria's *Statute Law Amendment (Relationships) Act 2001* recognises the equal status of same-sex couples:

*(2) The object of this Act is to recognise the rights and obligations of partners in domestic relationships where there is mutual commitment to an intimate personal relationship and shared life as a couple, irrespective of the gender of each partner.*

In 2009, more than 80 Commonwealth laws were amended so that same-sex couples would have equal treatment under the law.

*(3) It is a further object of this Act to prevent discrimination under legislation specified in the Schedules by ensuring that all couples irrespective of gender have the same rights and obligations while at the same time recognising the importance of a commitment to a long term relationship and the security of children.*

Any further inequalities, if they do exist, can and should be dealt with through further specific legislation. A redefinition of marriage is not necessary to ensure that same-sex couples are protected by the law.

### *What rights do same-sex couples actually have in Australia?*

Since 1 July 2009, same-sex couples in Australia have **equal access** to the **tax concessions** available to married and opposite-sex de facto couples.

Same-sex couples and their children in Australia have **equal access** to the **reversionary superannuation benefits** which are applicable to married and opposite-sex de facto couples.

Same-sex couples are recognised as a couple for social security and family assistance purposes meaning that they and their children receive **equal rates of social security and family assistance** as do an opposite-sex couple.

Same-sex couples receive **equal treatment** in respect of **income and asset tests for the purposes of aged care**.

Separated same-sex couples have **equal rights to apply for child support payments** as do opposite-sex couples with children.

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Same-sex couples and their children have **equal recognition** when it comes to **visa application processes**, and can apply for a visa as a family unit or a partner (as appropriate) in the same way as opposite-sex partners. They also have **equal recognition** when it comes to **citizenship applications**.

Same-sex partners of Defence Force members also have **equal access to entitlements** given when it comes to **veterans' affairs**.

Source: Australian Government, Attorney-General's Department. Same Sex Reforms. Available at: <https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Samesexreforms.aspx>

## *Isn't it unjust discrimination not to allow two men or two women to marry?*

Treating realities which are not alike in a different way is not unjust discrimination. Only women are admitted to women's hospitals and only children to primary schools. We have programs targeted at Aboriginal and Torres Strait Islander Australians, refugees, athletes, those with disabilities or reading difficulties, and so on.

Treating realities which are not alike in a different way is not unjust. It is appropriate that specific laws exist for the relationship which naturally gives rise to children.

As such, privileging or assisting particular people in relevant ways is not arbitrary but an entirely fair response. Only a man and a woman are capable of sexual union that may result in children. The government has a very strong interest in protecting the right of those children to a mother and a father, and in reducing the likelihood that those children will become wards of the state. The civil law of marriage serves both these interests by legally bonding adult couples to any children they may create, and to each other.

The sexual interaction of two persons of the same-sex never results in children, so the government's interest in bonding same-sex couples is unnecessary, just as it is unnecessary for the government to regulate adult friendships and other relationships.

As the union of a man and a woman in marriage is different from other unions, it is not unjust that the government treats this union accordingly.

On the other hand, it is unjust to legitimise the false assertion that there is nothing distinctive about a father or a mother. It is unjust to ignore the importance for children of having, as far as possible, a mum and a dad, committed to them and to each other for the long haul. This is why the *Marriage Act 1961* exists.

## KEY POINTS

Both State and Federal laws have recognised the rights of individuals in same-sex relationships in Australia.

People in same-sex relationships have equal access to government entitlements and superannuation benefits as people in heterosexual relationships.

A redefinition of marriage is not necessary to ensure that same-sex couples are protected by the law.

Treating realities which are not alike in a different way is not unjust discrimination.