



Marriage Equality

Currently, only couples of opposite sex are able to marry in Australia. In addition, only people who are identified as male (M) or female (F) are entitled to marry, provided they marry a person of the opposite sex.

Couples of the same sex are not entitled to marry in Australia¹ and people who are intersex or 'gender non-specified' are not permitted to marry in Australia, regardless of the sex or gender identity of their partner:

- Intersex² people are born with a biological sex that does not fit neatly into either male or female³
- Intersex people have physical, hormonal or genetic features that are:
 - a) neither wholly female nor wholly male; or
 - b) a combination of female and male; or
 - c) neither female nor male.
- Gender-diverse people have a gender identity that does not match the sex assigned to them at birth⁴. Gender-diverse people may (or may not) undergo changes such as gender reassignment surgeries and/or hormone replacement therapy to transition to the gender they align with, and may choose to identify as M, F or X (gender non-specified). In addition to male (M) or female (F) there is now a legal option for people to identify as X (gender non-specified)⁵.
- Australian law now recognises the status of intersex people and gender-diverse to live free from discrimination⁶. However, Australian marriage law does not recognise X (gender non-specified) status and therefore excludes intersex and gender-diverse people.

Couples who are married in other jurisdictions, where marriage equality is lawful, are not entitled to have that marriage recognised in Australia if they do not meet the requirement to be of opposite sex⁷.

Marriage in Australia is a civil institution. Powers to make laws about marriage are provided for in the Constitution⁸. Laws defining and regulating marriage are made by the Commonwealth of Australia, and not by any church or religious body or organisation.

ANMF acknowledges the compelling research that identifies the health risks to those who are discriminated against on the basis of gender, sexual orientation or gender identity including social isolation, poor self-esteem, and the risk to mental health and well-being.^{9 10} Same-sex attracted and intersex and gender-diverse people do not exist on the fringe of society or in isolation; they are our members, family, friends, workmates and neighbours.

It is the position of the Australian Nursing and Midwifery Federation that:

1. Nurses, midwives and assistants in nursing advocate a human rights approach based on equality. Understanding of the issues and promoting change to entitle marriage equality for same-sex couples and intersex and gender-diverse people is consistent with a human rights approach.
2. The rights afforded to heterosexual couples to choose to marry the partner of their choice should be afforded to same-sex couples, intersex and gender-diverse people



3. Excluding same-sex couples and intersex and gender-diverse people from the right to marriage discriminates solely on the basis of sexuality, gender identity and intersex status.
4. It is consistent with a human rights approach of equality that same-sex couples and intersex and gender-diverse people have the same legislated rights and responsibilities to marriage as heterosexual couples.
5. Same-sex couples and intersex and gender-diverse people are seeking the right to choose to marry. This would be consistent with the rights of heterosexual couples who have a choice to marry, or not. Recognising unions as de facto relationships does not go far enough.
6. Continuing to exclude same-sex couples and intersex and gender-diverse people from the right to marriage implies that these couples' love for each other and commitment to each other is less valuable than for heterosexual couples.
7. Marriage equality affirms the diversity of families for children and young people.
8. All Members of Parliament must have a right to vote on Bills enabling marriage equality according to the beliefs of the majority their constituents rather than on party-political lines.
9. Issues of religion are secondary in the process to amend legislation to include same-sex couples and intersex and gender-diverse people to marry. Religious issues are personal and private. Legislative change is a public process.
10. Religious organisations should not be able to discriminate against employees wishing to access marriage equality laws should they be passed.
11. Public opinion supporting marriage equality reflects changing attitudes to same-sex couples' rights to marriage. A majority of Australians support same sex marriages.¹¹

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References

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5. High Court of Australia, NSW Register of Births, Deaths and Marriages v Norrie [2014] HCA 11, 2 April 2014. Available at: <http://www.hcourt.gov.au/assets/publications/judgment-summaries/2014/hca-11-2014-04-02.pdf>
6. Australian Human Rights Commission (2013) op cit.
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