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LawTalk Blog



# Chronology of marriage equality and social rights in Australia

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In 1978 the [Sydney Morning Herald](#), [The Age](#) and the Sun published the names, home addresses and occupations of over 50 people who had been charged with taking part in Sydney's first [Mardi Gras](#) march and a further 100 plus names of people who were arrested arising from public protests to advance social rights. [Fairfax](#), operator of the various media outlets, would eventually [apologise for the reports in February 2016](#).

The past decade alone has seen significant changes in laws surrounding treatment and discrimination of the LGBTIQ+ community. Many State and Federal laws have previously excluded same-sex couples to marriage, adoption, access to assisted reproductive technology, and a whole host of other matters offered to heterosexual couples under the law. As we have seen shifts in societal norms and acceptance around more modern families and lifestyles, laws at both the State and Federal levels have slowly changed to provide more equal recognition and decreased discrimination against minority groups.

Arguably, the most significant change for members of the LGBTIQ+ community, and certainly the most widely televised change, occurred on 7 December 2017 when [legislation passed Federal Parliament to allow marriage equality at law](#).

## Australia's History of Marriage Equality

The journey of marriage equality in Australia was a lengthy one. Following the second anniversary of the passing of marriage equality legislation on 7 December 2017, it is worth delving into the long and drawn out process that led to marriage equality in Australia and other laws that have progressed social equality, specifically those in South Australia.

## Marriage equality timeline of events in Australia:

**9 November 1961:** Australia introduced its first Marriage Act which makes marriage law uniform across Australia. At this time there was no formal definition of marriage, with the definition instead coming from an English Court decision from 1866 called *Hyde v Hyde and Woodmansee* which stated marriage was “defined as the voluntary union for life of one man and one woman, to the exclusion of all others”.

**16 August 2004:** Following progress of marriage equality in several states in the United States of America (based on decisions from their Courts allowing marriage between same-sex couples), the Howard Government introduced amendments to the *Marriage Act 1961* to insert a formal definition of ‘marriage’ consistent with the definition from *Hyde v Hyde and Woodmansee* (e.g. the union of a man and a woman), amongst other amendments that precluded foreign marriages between same-sex couples.

**December 2013:** The Australian Capital Territory (ACT) Government passed laws to allow same-sex marriage. Following a challenge from the Federal Government, the [High Court of Australia](#) ruled on the constitutional issue of the ACT’s laws being inconsistent with the Federal Marriage Act. The ruling confirmed that only the Federal Parliament can legislate for same-sex marriage.

**November 2016:** The Senate rejects the Turnbull government’s plan to hold a national plebiscite (non-binding vote).

**9 August 2017:** The Federal Senate once again rejects the plan for a national plebiscite. The Turnbull government then moves to hold a voluntary postal survey. The survey was held between 12 September and 7 November 2017.

**15 November 2017:** Australians vote overwhelmingly in favour of marriage equality with 61.6% of the vote. The Turnbull government confirms it will therefore facilitate the passage of Senator Dean Smith’s [Marriage Amendment \(Definition and Religious Freedoms\) Bill 2017](#).

**16 November 2017:** The Bill, the *Marriage Amendment (Definition and Religious Freedoms) Bill 2017*, was introduced into Federal Parliament and provided for various amendments to Federal laws, but most significantly an amendment to section 5 of the *Marriage Act* to redefine ‘marriage’ in Australia as the union of ‘2 people’. The impact of this was to allow any 2 persons to marry under Australian law regardless of gender. Other aspects of the Bill removed provisions in existing legislation that previously prevented the recognition of foreign same-sex marriages in Australia. The Bill received approval in the Senate on 29 November 2017.

**7 December 2017:** The Bill approved in the House of Representatives on 7 December 2017, legislation legalising same-sex marriage in Australia had been passed by the House of Representatives by a majority of MPs who were asked to vote with their conscience. This legislation received royal assent (e.g. approval of the Governor General on behalf of the monarch) on 8 December 2017 and became effective Australian law on 9 December 2017.

In the first year following introduction of the legislation allowing same-sex marriages the Australia Bureau of Statistics says there were 6,538 same-sex marriages, representing 5.5% of the total marriages.

At the time the then Attorney-General, the Honourable George Brandis QC, stated:

*“This has been a demonstration of Australian democracy at its best. The right to marry in Australia will no longer be determined by sex or gender. Marriage will now be defined in the Marriage Act 1961 as the ‘union of two people to the exclusion of all others, voluntarily entered into for life’. Same-sex couples now have the same rights under the Marriage Act as all other couples.”*

## Social equality laws in South Australia:

South Australia has also seen significant progress in LGBTIQ+ rights over the past 15 years. South Australia was the first state to decriminalise male homosexuality on 17 September 1975 and has seen significant progress in changes only in the last several years following various investigations from the South Australian Law Reform Institute. Most notably we recognise the below timeline of events.

## Social equality timeline of events in South Australia:

**December 2006:** South Australia passes the *Statutes Amendment (Domestic Partners) Act 2006* which took effect on 1 June 2007. This amended 97 State Acts to replace the term “de facto” to refer to couples as “domestic partners”. This had the effect of covering same-sex couples with the same laws as opposite-sex couples.

**17 February 2017:** The *Adoption (Review) Amendment Act 2016* came into effect in South Australia which allowed same-sex couples and single persons the ability to be able to adopt children.

**21 March 2017:** South Australia passes the *Statutes Amendment (Surrogacy Eligibility) Act 2017* which allows same-sex couples and single people access to assisted reproductive treatments (such as IVF) and also altruistic surrogacy (i.e. non-commercial surrogacy).

**30 March 2017:** South Australia passes the *Statutes Amendment (Registered Relationships) Act 2017* which recognises same-sex couples who enter into registered relationship in 13 additional pieces of state legislation.

**30 October 2019:** South Australia passes amendments to the Family Relationships Act 1975 through the Surrogacy Bill 2019. The Bill repealed parts of the Family Relationships Act which, amongst other things, removed previous restrictions on same-sex parents needing to provide their own genetic material.

## Summary of changes to legal rights and recognition for LGBTIQ+ community

Legal rights and recognition for LGBTIQ+ people have come a long way, particularly in the last decade. Changes made in various laws have moved society toward genuine equality, especially in the sphere of Family Law, however other changes have provided protections against persecution and discrimination. This blog however has demonstrated only a small number of the significant struggles previously faced by members of the LGBTIQ+ community.

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