

## Marriage Equality 2017

### Preamble

Lesbian, gay, bisexual, transgender, intersex and queer/questioning (LGBTIQ) Australians experience significantly poorer health outcomes than the broader population. Many of these inequalities are the tragic manifestation of a long history of institutional discrimination, including: the criminalisation of male homosexuality, the classification of homosexuality as a psychiatric disorder, the availability of the 'gay panic defence' in cases of assault or murder, and the prohibition of same-sex adoption. Many of these injustices have been appropriately nullified, yet LGBTIQ Australians still do not enjoy equal treatment under Australian law.

In 2004, former Prime Minister John Howard introduced an amendment to the *Marriage Act 1961* which defined marriage as "the union of a man and a woman to the exclusion of all others, voluntarily entered into for life".<sup>1</sup> As a result of this amendment, Australian same-sex couples are excluded from the institution of marriage; an omission that has significant psychosocial and physiological health consequences for LGBTIQ identifying Australians.

### AMA Position

1. It is the right of any adult and their consenting adult partner to have their relationship recognised under the *Marriage Act 1961*, regardless of gender.
2. Current anti-discrimination laws should be maintained and enforced to ensure that businesses cannot withhold goods or services from clients due to their gender or sexual orientation.
3. There are real and significant mental and physiological health impacts arising from structural discrimination, and the AMA supports moves to eliminate it in all of its forms.
4. All Australian doctors should offer sensitive, non-discriminatory care to all of their patients, regardless of their sexual orientation or gender identity.

### Background

There is no definitive data on the number of Australians who identify as LGBTIQ. According to data from the 2011 Census, same-sex couples make up approximately one per cent of all Australian couples,<sup>2</sup> whilst over three per cent of all respondents to a 2014 Roy Morgan survey identified as homosexual.<sup>3</sup> It is likely that these figures are an underrepresentation of the true number of Australians who identify as LGBTIQ.

Marriage equality has been on the Australian political agenda, with varying degrees of urgency, for more than a decade. Since the 2004 amendment to the *Marriage Act*, 18 Bills directly addressing marriage equality or same-sex marriage have been considered by the Australian Parliament, none of which have progressed past the Second Reading Stage.<sup>4</sup> Six of these Bills were considered by the 44<sup>th</sup> Parliament, suggesting that the push for marriage equality is gaining increasing traction.

In October 2013, the ACT Legislative Assembly passed the *Marriage Equality (Same Sex) Act 2013*, which allowed marriage between two consenting adults of the same sex. The Commonwealth Government challenged the Act in the High Court. In December 2013, the High Court struck the laws down as unconstitutional, thereby voiding all ceremonies carried out under the Act. The judgment confirmed the Federal Parliament's power to legislate for same-sex marriage.

In October 2016, the Federal Parliament considered the *Plebiscite (Same-Sex Marriage) Bill 2016*<sup>5</sup> which sought to establish the legislative framework for a compulsory in-person vote in a national plebiscite that would ask Australians: "Should the law be changed to allow same-sex couples to marry?" The Bill was passed through the House of Representatives but was defeated in the Senate by a vote of 29-33.

It is likely that marriage equality will remain on the political agenda until it is resolved.

### Importance of recognition

People who identify as LGBTIQ have significantly poorer mental and physiological health outcomes than those experienced by the broader population, and are more likely to engage in high-risk behaviours such as illicit drug use or alcohol abuse.<sup>6</sup> People who identify as LGBTIQ have the highest rates of suicidality of any population group in Australia.<sup>6</sup> It is important to consider these inequities a consequence of discrimination and stigmatisation of LGBTIQ identifying individuals, rather than a symptom of the orientation itself. Measures which reduce stigmatisation, such as marriage equality, have been shown to improve overall health outcomes among LGBTIQ populations.<sup>7</sup>

Some of the inequalities experienced by LGBTIQ Australians can be explained by the Minority Stress Model, which proposes that poorer health outcomes in minority groups can be partially attributed to stressors caused by living in a hostile or homophobic culture.<sup>8</sup> Minority stress arises from external factors, such as discrimination, or internal factors, such as internalised homophobia or identity concealment. There is a growing body of evidence to suggest that Minority Stress is extremely common among LGBTIQ Australians and their health outcomes are suffering as a result.<sup>9</sup>

Poor health outcomes for LGBTIQ Australians are compounded by reduced access to health care.<sup>10</sup> Structural discrimination, such as the absence of marriage equality, has been shown to impede access to health care. Conversely, access has been shown to improve after the adoption of less discriminatory laws.<sup>11</sup>

### Implications for Doctors

The lack of legal recognition of same-sex couples can have tragic consequences in medical emergencies, for example, when one partner may need to make decisions on behalf of their ill or injured spouse. Without a legally recognised marriage, individuals may not have the right to advocate for their partner, and decision-making power may be deferred to a member of the patient's immediate biological family.<sup>12</sup>

### Children's welfare in same-sex parented families

Same-sex parenting is, and should be treated as, a separate issue to same-sex marriage or marriage equality. Thousands of Australian children are already being raised in same-sex parented families.<sup>13</sup>

There is no putative, peer-reviewed evidence to suggest that children raised in same-sex parented families suffer poorer health or psychosocial outcomes as a direct result of the sexual orientation of their parents or carers. There is research highlighting that physical, psychosocial, psychological, and educational outcomes for these children are on par with, and in some aspects comparatively better than, children raised in heterosexual parented families.<sup>14</sup>

Children of same-sex parented families do, however, experience negative psychosocial outcomes when their family is the subject of perceived stigmatisation, rejection, or homophobia.<sup>15,16</sup> Marriage denial, and the ongoing public debate surrounding the introduction of same-sex marriage, has been shown to compound perceptions of homophobia and rejection among these families.

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### References

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