

EXPOSURE DRAFT

201X-201X

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Marriage Amendment (Same-Sex Marriage) Bill 201X

No. , 201X

(Attorney-General)

**A Bill for an Act to provide for same-sex marriage,
and for related purposes**

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1
2 **A Bill for an Act to provide for same-sex marriage,**
3 **and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *Marriage Amendment (Same-Sex Marriage) Act*
7 *201X*.

8 **2 Commencement**

- 9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 28 days beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

14 Note: This table relates only to the provisions of this Act as originally
15 enacted. It will not be amended to deal with any later amendments of
16 this Act.

- 17 (2) Any information in column 3 of the table is not part of this Act.
18 Information may be inserted in this column, or information in it
19 may be edited, in any published version of this Act.

20 **3 Schedules**

21 Legislation that is specified in a Schedule to this Act is amended or
22 repealed as set out in the applicable items in the Schedule

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1 concerned, and any other item in a Schedule to this Act has effect
2 according to its terms.

1 **Schedule 1—Amendments**

2 **Part 1—Main amendments**

3 *Marriage Act 1961*

4 **1 Subsection 5(1) (definition of *marriage*)**

5 Omit “a man and a woman”, substitute “2 people”.

6 **2 Paragraph 23B(2)(b)**

7 Omit “a brother and a sister”, substitute “2 siblings”.

8 **3 Subsection 45(2)**

9 After “*or husband*”, insert “, *or spouse*”.

10 **4 Subsection 46(1)**

11 Omit “a man and a woman”, substitute “2 people”.

12 **5 Section 47**

13 Repeal the section, substitute:

14 **47 Ministers of religion may refuse to solemnise marriages**

15 *Refusing to solemnise a marriage despite this Part*

16 (1) A minister of religion may refuse to solemnise a marriage despite
17 anything in this Part.

18 (2) In particular, nothing in this Part prevents a minister of religion
19 from:

20 (a) making it a condition of solemnising a marriage that:

21 (i) notice of the intended marriage is given to the minister
22 earlier than this Act requires; or

23 (ii) additional requirements to those provided by this Act
24 are complied with; and

25 (b) refusing to solemnise the marriage if the condition is not
26 observed.

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Schedule 1 Amendments

Part 1 Main amendments

1 *Refusing to solemnise a marriage that is not the union of a man*
2 *and a woman*

3 (3) A minister of religion may refuse to solemnise a marriage despite
4 any law (including this Part) if:

5 (a) the refusal is because the marriage is not the union of a man
6 and a woman; and

7 (b) any of the following applies:

8 (i) the refusal conforms to the doctrines, tenets or beliefs of
9 the religion of the minister's religious body or religious
10 organisation;

11 (ii) the refusal is necessary to avoid injury to the religious
12 susceptibilities of adherents of that religion;

13 (iii) the minister's conscientious or religious beliefs do not
14 allow the minister to solemnise the marriage.

15 *Grounds for refusal not limited by this section*

16 (4) This section does not limit the grounds on which a minister of
17 religion may refuse to solemnise a marriage.

18 **6 Before section 48**

19 Insert:

20 **47A Marriage celebrants may refuse to solemnise marriages**

21 (1) A marriage celebrant (not being a minister of religion) may refuse
22 to solemnise a marriage despite any law (including this Part) if:

23 (a) the refusal is because the marriage is not the union of a man
24 and a woman; and

25 (b) the marriage celebrant's conscientious or religious beliefs do
26 not allow the marriage celebrant to solemnise the marriage.

27 *Grounds for refusal not limited by this section*

28 (2) This section does not limit the grounds on which a marriage
29 celebrant (not being a minister of religion) may refuse to solemnise
30 a marriage.

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Amendments **Schedule 1**
Main amendments **Part 1**

1 **47B Religious bodies and organisations may refuse to make facilities**
2 **available or provide goods or services**

3 (1) A religious body or a religious organisation may, despite any law
4 (including this Part), refuse to make a facility available, or to
5 provide goods or services, for the purposes of the solemnisation of
6 a marriage, or for purposes reasonably incidental to the
7 solemnisation of a marriage, if:

8 (a) the refusal is because the marriage is not the union of a man
9 and a woman; and

10 (b) the refusal:

11 (i) conforms to the doctrines, tenets or beliefs of the
12 religion of the religious body or religious organisation;
13 or

14 (ii) is necessary to avoid injury to the religious
15 susceptibilities of adherents of that religion.

16 (2) Subsection (1) applies to facilities made available, and goods and
17 services provided, whether for payment or not.

18 (3) This section does not limit the grounds on which a religious body
19 or a religious organisation may refuse to make a facility available,
20 or to provide goods or services, for the purposes of the
21 solemnisation of a marriage, or for purposes reasonably incidental
22 to the solemnisation of a marriage.

23 **7 Subsection 72(2)**

24 After “*or husband*”, insert “, *or spouse*”.

25 **8 At the end of section 81**

26 Add:

27 Example: A chaplain may refuse to solemnise a marriage that is not the union of
28 a man and a woman where the refusal conforms to the doctrines,
29 tenets or beliefs of the chaplain’s church or faith group.

30 **9 Subsection 88B(4)**

31 Repeal the subsection.

32 **10 Section 88EA**

33 Repeal the section.

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Schedule 1 Amendments

Part 2 Amendment of the Sex Discrimination Act 1984

1 **Part 2—Amendment of the Sex Discrimination Act**
2 **1984**

3 *Sex Discrimination Act 1984*

4 **11 Subsection 40(2A)**

5 After “in direct compliance with”, insert “, or as authorised by,”.

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1 **Part 3—Application and transitional provisions**

2 **12 Definitions**

3 In this Part:

4 *amended Act* means the *Marriage Act 1961*, as amended by this Act.

5 **13 Application of amendments**

6 (1) Except as provided by subitem (2), the amendments made by this
7 Schedule only apply in relation to a marriage (within the meaning of the
8 amended Act) that takes place at or after the commencement of this
9 item.

10 (2) Part VA of the amended Act (recognition of foreign marriages) applies
11 at and after that commencement in relation to a marriage (within the
12 meaning of the amended Act), even if the marriage took place before
13 that commencement.

14 (3) For the purposes of determining whether parties to a marriage are
15 within a prohibited relationship as mentioned in paragraph 88D(2)(c) of
16 the amended Act (as it applies because of subitem (2)),
17 paragraph 23B(2)(b) of the amended Act applies.

18 **14 Recognition of certain marriages by foreign diplomatic or**
19 **consular officers that occurred in Australia before**
20 **commencement**

- 21 (1) A marriage is recognised as valid in Australia if:
- 22 (a) the marriage was solemnised in Australia, before the
23 commencement of this item, by or in the presence of a
24 diplomatic or consular officer of an overseas country
25 (whether or not the country was a proclaimed overseas
26 country at the time the marriage was solemnised); and
 - 27 (b) at the time the marriage was solemnised:
 - 28 (i) the marriage was not recognised in Australia as valid
29 because the marriage was not the union of a man and a
30 woman; and
 - 31 (ii) the marriage was recognised as valid under the law of
32 the overseas country; and

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Schedule 1 Amendments

Part 3 Application and transitional provisions

1 (c) had the marriage occurred in the overseas country at the time
2 the marriage was solemnised, the marriage would, after
3 items 9 and 10 of this Schedule commence, be recognised as
4 valid under Part VA of the *Marriage Act 1961*.

5 (2) In this item:

6 *Australia* includes the external Territories.

7 *diplomatic or consular officer* has the meaning given by section 52 of
8 the *Marriage Act 1961*.

9 *overseas country* has the same meaning as in Division 3 of Part IV of
10 the *Marriage Act 1961*.

11 *proclaimed overseas country* has the meaning given by section 52 of
12 the *Marriage Act 1961*.