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Marriage as a concept has changed repeatedly and dramatically over the centuries.

Originally, marriage was a legal contract to register and protect the financial interests of two families and their offspring. Even in ancient Rome the religious aspects were not acknowledged.

“(T)here were no standard nuptial liturgies [in the Christian Church] before the eighth or ninth centuries, but the frequent references to the blessing of marriage ... do not indicate liturgies required for this purpose; ... [and] were simply referring to the blessing of the bride.”

“(U)ntil the twelfth century marriage was not connected, in law, theology or the popular imagination, with erotic or romantic fulfilment. Indeed, marriage should not be based on sexual attraction according to the church”.¹

There is also strong evidence that the first recorded services for couples in the very early Christian church were to dedicate two men to one another, not heterosexual couples.¹

Over many centuries, however, the Christian church has become more involved in marriage and adopted its own definitions and intentions. Opinions changed, and Quaker Lucretia Mott, (1793-1880) in an impassioned speech to the New York legislature in 1861 said *“marriage was a sacred union between two people and the law had nothing to do with it at all. Let all the laws governing both marriages and divorce be swept away!”*²

As a fellow Quaker, I agree with her.

I am Treasurer for the Religious Society of Friends (Quakers) in Australia, having been involved with Quakers for 50 years. The Society has been concerned about equality since its establishment in England in the 17th century, and, consistent with that, made a public statement in 1975 calling for the then laws against male homosexual acts to be repealed. More recently they have specifically supported same-sex relationships and in 2010 made a public statement confirming their recent practice of treating same-sex marriages in the same way as opposite-sex ones. They also called for a change in the law to make marriage independent of the sexuality or gender of the partners.

As someone who has been a volunteer telephone counsellor for around 50 years (with The Samaritans (UK) and Lifeline and the Gay & Lesbian Welfare Association in Queensland) I am also aware of the effect that legislation and legislative attitudes can have on peoples' health and wellbeing. Whilst changes in attitudes and legislation in recent years have greatly improved the situation, any continuing discrimination against varied sexuality and gender still causes problems.

There is no single attitude to marriage in Australia today. Aside from different customs among our varied cultural groups (which includes polygamy), marriage often brings with it a number of assumptions and expectations; by the couple as well as by other people. Many assumptions are unstated. Sexual monogamy is assumed (but not necessarily achieved!); it is assumed you will live together; it is often assumed you will have/want children. And so it goes on. There are almost as many views of marriage as there are adults in Australia.

The law has also varied in its regulation of marriage. Before the *Married Women's Property Act 1883* *“any money made by a woman either through a wage, from investment, by gift, or through inheritance automatically became the property of her husband once she was married.”*³ Such attitudes would be unthinkable in Australia today.

Over many years the Common Law recognised other types of relationships. Even in the 17th century couples who lived together were regarded by the Courts as *de facto* (“in fact”) married, even though they had not gone through the legal ceremony.

These other forms of relationship have come to be recognised in Australian legislation at both the State and Federal level. The most recent example is, of course, Queensland's *Civil Partnerships Act 2011*. However, same- or opposite-sex relationships other than marriage have been acknowledged and incorporated into a wide variety of other legislation for many years. One of the earliest recognitions of same-sex relationships was in the Commonwealth sphere – the recognition of such partnerships in immigration regulations in 1990.⁴

My partner Gary and I are now recognised as a 'couple' in most Federal and State legislation. This applies to tax and social security benefits, dying without a Will, permission for hospital treatment and the many other issues where regulations are different for 'couples' and for single people. Under Queensland legislation Gary is my 'spouse' and most legislation uses that term whether we are married or not. About the only legislation which doesn't recognise our relationship concerns the adoption of children (and of course the Marriage Act itself!).

The Commonwealth *Marriage Act 1961* is now redundant. For all other legislation it has become irrelevant whether you are 'married' in accordance with that Act or not. Couples are defined by whether you have lived together domestically for the relevant period.

My preference, therefore, is that the *Marriage Act 1961* be abolished.

This should have some attraction for the government because it would leave the question of 'marriage' in the hands of the churches or any other organisations which wished to conduct ceremonies. The government could wash its hands of whether 'marriage' means same- or opposite-sex by opting out altogether.

Religious or other 'marriage' ceremonies would have no legal force, other than possibly providing evidence that two or more people have indicated that they were committed to one another at some particular moment.

And what is more attractive, the government could opt out of any aspects of 'divorce' since that legally wouldn't exist any more. There would still need to be a Family Court to sort out separation arrangements, custody of children, etc., but those arrangements are already available and used by non-married couples.

Couples wishing to provide themselves with greater legal security could make Wills, Powers of Attorney, Advanced Health Directives and other documents indicating their intentions.

So let's repeal the Commonwealth *Marriage Act 1961*.

However, I recognise that it may be a long-term aim. In the meantime recognition of same-sex relationships in the Marriage Act is obvious. How can one oppose it?

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References:

1. Boswell, John *The marriage of likeness; same-sex unions in pre-modern Europe* (London 1996)
2. Bacon, Margaret Hope *Valiant Friend; the life of Lucretia Mott* (USA 1980)
3. Wikipedia, http://en.wikipedia.org/wiki/Married_Women's_Property_Act_1882 (11/3/2012)
4. Gay & Lesbian Immigration Task Force, <http://www.glitf.org.au/AboutUs.htm> (11/3/2012)