

Current and recent reforms in other Australian jurisdictions

New South Wales

In 2008, New South Wales passed the *Miscellaneous Acts Amendment (Same Sex Relationships) Bill 2008* (NSW). The Bill amends various other pieces of NSW legislation to promote the equal treatment of same-sex couples and also amends the *Anti-Discrimination Act 1977* (NSW) to increase protection of same-sex couples from discrimination on the basis of their marital or domestic status.

Subsequently, in 2010, the *Relationships Register Bill 2010* was passed. This reform allowed same-sex couples to register their relationships, affording them the same legal rights as heterosexual de-facto couples in respect of their relationships. Further, since 2010, same-sex adoption has been legal as a result of the enacting of the *Adoption Amendment (Same Sex Couples) Act 2010* (NSW).

Gay and lesbian individuals can adopt as single parents in New South Wales, and step-parents may adopt, regardless of their sexual orientation. Also in that year, the *Surrogacy Act 2010* (NSW) came into force. This Act permits altruistic surrogacy and does not preclude same-sex couples from becoming parents as a result of an altruistic surrogacy agreement.

In 2014, the *Crimes Amendment (Provocation) Act 2014 No 13* (NSW) was enacted, which restricted the partial defence to homicide of provocation, ensuring it could not be raised in the context of a non-violent sexual advance. This, in effect, abolished the homosexual advance (or “gay panic”) defence.

Victoria

Victorian law allows same-sex couples to register their relationships as a domestic partnership, specifically a ‘domestic relationship’, under the provisions of the *Relationships Act 2008* (Vic). The City of Melbourne and the City of Yarra both keep Relationship Declaration Registers. Registering a relationship can be used to demonstrate a de facto partnership in law.

The *Equal Opportunity Act 2010* (Vic) prohibits discrimination on the basis of sexual orientation and gender identity. Victoria also has a *Charter of Human Rights and Responsibilities Act 2006* (Vic). The Charter affords basic rights, freedoms and responsibilities of all people in Victoria. The preamble notes, “human rights belong to all people without discrimination, and the diversity of the people of Victoria enhances our community.”

As a result of the passage of the *Assisted Reproductive Treatment Bill 2008* (Vic), IVF is legal for all women in Victoria except sex offenders. This law reform also allowed greater

parenting rights to parents of surrogate children, including female same-sex partners. Altruistic surrogacy is also legal in Victoria.

The current Victorian government has a policy to amend Victorian adoption law to allow same-sex adoption.¹ Pursuant to this policy, the government in 2015 commissioned a review to consider the legal changes required to permit adoption of children by same-sex couples under Victorian law.²

Also in 2015, the Victorian government created a new role for a state gender and sexuality commissioner. In July 2015, Ms Rowena Allen was appointed as Victoria's first gender and sexuality commissioner. Equality Minister, Martin Foley, stated that the role will involve "working across government, working across the community, to challenge and bring around reform to make sure every Victorian feels safe to be who they are."³

Queensland

Law reform has occurred in Queensland to recognise homosexual relationships. The *Discrimination Law Amendment Act 2002* (Qld) amended the definition of 'de facto partner' to include same-sex couples. There have been corresponding amendments across a broad range of state legislation to recognise same-sex partners.

The Civil Partnerships Act 2011 (Qld) permits same-sex couples to register their partnerships. This was subsequently renamed as the *Relationships Act 2011* (Qld).

Most recently, in April 2015, the Queensland Attorney-General confirmed that the Queensland Parliament would consider amendments to ensure the homosexual advance defence would no longer constitute provocation as a partial defence to homicide.⁴

Tasmania

In recent years, Tasmania has made a raft of legislative reforms making it a model jurisdiction in terms of anti-discriminatory laws for LGBTI people.

¹ Martin Foley MP, "Same Sex Adoption a Step Closer with Review of Laws" (Media Release, 22 February 2015) <<http://martinfoley.com.au/wp-content/uploads/2015/02/150222-FOLEY-Same-sex-adoption-a-step-closer-with-review-of-laws.pdf>>.

² Ibid.

³ Author unstated, "Rowena Allen announced as Victoria's first gender and sexuality commissioner" *ABC News* (online), 15 July 2015, <<http://www.abc.net.au/news/2015-07-15/rowena-allen-victorias-first-gender-and-sexuality-commissioner/6621884>>.

⁴ Amy Remeikis, "Queensland looks to right wrongs against gay community" *Brisbane Times* (online), 9 April 2015, <<http://www.brisbanetimes.com.au/queensland/queensland-looks-to-right-wrongs-against-gay-community-20150408-1mgzp4.html>>.

Perhaps of most note, Tasmania was the first Australian jurisdiction to establish a system of relationship registration, allowing unmarried, unrelated couples domiciled or resident in Tasmania who are in a 'significant relationship' to register their relationship regardless of their sex or gender orientation; *Relationships Act 2003* (Tas). Once a relationship is registered, the couple is taken to be in a relationship equivalent to marriage under Tasmanian law and are de facto partners for family law purposes. Since 2009, couples registering their relationship have been able to receive a ceremonial certificate and have a relationship ceremony, signing their relationship registration in the presence of witnesses and a marriage celebrant.

More recently, amendments to the Tasmanian *Anti-Discrimination Act 1998* (Tas) in 2013 extended protections on the basis of intersex status. The term 'intersex' is now defined and included as an attribute, the basis on which discrimination is prohibited. The 2013 reform also specifically prohibited discrimination on the basis of 'gender identity'. The reforms also extended its prohibitions to include conduct that humiliates, intimidates, ridicules, offends or insults when it is linked to sexual orientation, intersex, gender identity and lawful sexual conduct.

Tasmania also has progressive same-sex adoption laws, there being recent amendments to adoption law via the *Adoption Amendment Act 2013* (Tas). In Tasmania, couples who have been in a registered relationship for three years are now eligible to adopt. This permits same-sex couples meeting the criteria to adopt.

Western Australia

The *Acts Amendment (Gay and Lesbian Law Reform) Act 2002* (WA) amended the state's *Equal Opportunity Act 1984* (WA) to include sexual orientation, giving broader protection to LGBTI people. This Act also permitted same-sex couples to adopt in the state, as well as permitting same-sex step-parent adoptions. Same-sex couples also have access to ART, including IVF. If a child is conceived through ART, both names of a same-sex couple can be listed on the child's birth certificate as the child's parents.

Australian Capital Territory

Protection from discrimination is contained in the *Discrimination Act 1991* (ACT) and the *Human Rights Act 2004* (ACT). The *Domestic Relationships Act 1994* (ACT) was drafted so as to not exclude same-sex relationships from the definition of domestic partnership. This means that the law applies to same-sex relationships just as it does in heterosexual relationships in areas such as inheritance and distribution of property and finance in the event of separation.

In 2004, the *Adoption Act 1993* (ACT) was amended so that it would not preclude same-sex couples who have lived in a domestic partnership for three years from adopting a child. Also in that year, the *Parentage Act 2004* (ACT) was enacted, which was aimed at removing discrimination by enabling same-sex couples to be considered within the meaning of 'parent' under the Act. Altruistic surrogacy is also available in the ACT and genetic same-sex parents can obtain parenting orders to become the legal parents of a child born in the context of a surrogacy arrangement.

In 2012, the *Civil Unions Act 2012* (ACT) commenced, enabling same-sex couples in the ACT to commence their civil union with a legally binding ceremony. In 2013, the ACT went further and legalised same-sex marriage by enacting the *Marriage Equality (Same Sex) Act 2013*. However, the High Court subsequently struck down this Act, ruling that it was unconstitutional.

In 2014, the ACT government amended the *Births, Deaths and Marriage Act 1997* (ACT) to provide better legal recognition for trans and intersex people.⁵

This amendment followed an inquiry and report by the ACT Law Reform Advisory Council into providing legal recognition of transgender and intersex people in the ACT.⁶

The amendment means the law no longer requires trans people to have gender reassignment surgery in order to change their legal sex on their birth certificate. The amending Act includes the addition of the category 'X', as well as male and female sex options.

Northern Territory

In the Northern Territory, the *Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003* removed legislative discrimination against same sex couples in many respects across a number of Acts and Regulations.

⁵ See the Bill's Explanatory Statement, 1, http://www.legislation.act.gov.au/es/db_48869/20131128-56706/pdf/db_48869.pdf

⁶ Gabrielle McKinnon, "Gender Identity Law Reform in the ACT" (September 2011), <http://www.hrc.act.gov.au/content.php/content.view/id/295>