

Civil partnerships: an unintended casualty in the pursuit of equality? An Anglo-Australian perspective

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An unfortunate side-effect of the introduction of equal marriage was that, after decades of discrimination against the LGBT community, we have been left with another form of discrimination in how the law recognises relationships in the UK.

Civil partnerships were introduced in the UK in 2005, providing legal recognition of same-sex relationships outside of marriage. Civil partners and married couples have the same rights and responsibilities in many areas, with only minor differences in how their relationships are legally formed and dissolved. Since 2014, same-sex couples have also been able to marry in England, Scotland and Wales (though unfortunately not in Northern Ireland).

This means that same-sex couples in Great Britain now have two options for formalising their relationship (civil partnerships and marriage), whereas opposite-sex couples have only one (marriage). Last month, following a 3 ½ year campaign by a couple who were prevented from entering into a civil partnership because they are a man and a woman, the Supreme Court unanimously held that this was discriminatory.

The decision of the Supreme Court itself has not changed the law. In fact, the decision on how to proceed is one for the government to make. There are three possibilities: it could extend civil partnerships to opposite-sex couples; phase them out (by preventing the registration of new partnerships); or abolish them altogether (forcibly

converting existing partnerships into marriages). Whatever the outcome, the decision will affect the LGBT community more than any other.

Some may say that extending civil partnerships to straight couples would rob such unions of their distinctiveness. For all their flaws – they were only created to placate the LGBT community before the introduction of equal marriage, after all – they are undoubtedly queer in nature. It would arguably be a shame for this to be lost.

However, it would certainly be much worse for civil partnerships to be phased out or abolished. Very many people – of all orientations – object to marriage due to what they consider to be its heteronormative connotations. For others, marriage has been unable to shake off its religious and patriarchal history, carrying certain social expectations, pressures and traditions that do not apply to civil partnerships. Without civil partnerships, those couples with reservations about marriage would have to choose between entering into an institution that is not right for them and having no legal or financial protection whatsoever.

Getting rid of civil partnerships would also ignore the fact that there is continuing demand for them. In 2016 – the last year for which statistics are available – there was an increase of 3.4% in the number of people entering into civil partnerships in England and Wales. In addition, a government consultation in 2014 found that 20% of people would prefer a civil partnership to marriage. Far from being consigned to the history books as a mere stepping stone in the pursuit of equality, civil partnerships continue to be relevant even after the introduction of same-sex marriage.

Abolition would have a particularly profound impact on those currently in civil partnerships. It cannot be right to force thousands of people who never intended to marry into such a relationship by compulsorily converting their civil partnership. The truth is, given the plurality of relationships and lifestyles enjoyed in 2018, we need more options, not fewer.

For example, consideration should be given to the law in relation to cohabitants (i.e. those living together in a genuine domestic relationship, whether on a same-sex or opposite-sex basis). Arguably, steps should be taken to align it with the law that applies to married couples.

In Australia, legislative changes in 2009 meant that parties to a de-facto relationship (regardless of sexual orientation) are treated in same way as married couples in the event of relationship breakdown. This has meant that same-sex couples in Australia are able to enjoy the option to marry (since same-sex marriage was legalised in December 2017), or not – by simply cohabiting in a de-facto relationship – without being disadvantaged financially if the relationship breaks down.

Further, for those who wish to formalise their relationship without marrying, there is a process in most States of Australia to register their domestic relationship (regardless of their gender or whether they are living together), which makes it easier for non-married couples to access their rights under State law without having to provide further evidence of the existence of their relationship, e.g. discussing a partner's health in an emergency situation or seeking compensation entitlements as a dependent partner. Countries across the world are increasingly offering their citizens a range of legal relationships from which to choose.

Admittedly, civil partnerships are not without their critics. For some, they are unnecessary; for others, irrelevant. However, the important point is that they remain an option. Equal marriage is of course to be welcomed, but only as part of a range of options for couples – gay or straight. Following the recent Supreme Court decision, the government has the perfect opportunity to extend civil partnerships and legislate for increased protection for cohabiting couples. It would be a real shame if, in the pursuit of "equality", the government ignored the strength of opinion about how couples want to live and restricted our options to marriage alone.

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