The Priest
FRANK BRENNAN

“Marriage” means different things to different people. For me, the paradigm of marriage is an exclusive, indissoluble covenant between a man and a woman entering a partnership for life, ordered to their good and to the procreation and education of their children. Not every marriage matches the paradigm. Some couples are infertile or too old to have children. But the paradigm still makes sense. Marriage is an institution for the good of the couple, and for the good of their kids, if there be any, and grandkids etc.

Australian civil law on marriage varies from my paradigm. Under Australian law, marriage is not indissoluble. Either party can terminate a civil marriage on one year’s separation. There is no requirement that the parties be open to the bearing and nurturing of each other’s children. There are many married couples who choose not to have children. There are many married couples who choose not to have children.

There are many couples in Australia who choose not to marry. There are many children born out of wedlock. There is an increasing number of children being raised by same-sex couples. It may not be too long before a significant number of these children share the genetic inheritance of two same-sex parents.

Especially with an ageing society, the state has an interest in recognising and affirming relationships between persons committed to supporting each other, regardless of their sexual orientation. Discrimination against same-sex couples should be removed in the public domain. In Britain, this has been achieved by legislating for civil unions. Archbishop Vincent Nichols, president of their Catholic Bishops Conference, recently said: “We were very nuanced. We did not oppose gay civil partnerships. We recognised that in English law there might be a case for those.” It is time Australia went the same way.

Many same-sex couples tell us that their relationship is identical with marriage. Until the majority of married couples are convinced this is so, politicians would be wise to maintain the distinction between marriage and civil unions. Our parliamentarians should now legislate to recognise civil unions. The Commonwealth Parliament should not legislate to change the paradigm of marriage unless and until the majority of persons living that paradigm seek a change. Decisions about adoption and assisted reproduction should always be informed by the best interests of the child. Religious groups should be free to maintain their paradigm of marriage for their own members.

Frank Brennan is a Jesuit priest and professor of law at the Public Policy Institute, Australian Catholic University.
THE NEWLYWED
Aaron Allegretto

On the weekend I was speaking to my 78-year-old (Catholic) grandmother, who summed up my views on gay marriage with a simple yet poignant statement, "I do not understand why two people who love each other cannot get married." Born in Australia, I became a British citizen in 2000. After a lifetime of being told that I could not marry the person I love, I finally had the right to choose. It was the first time that I felt equal in the eyes of the state.

Brett and I have been together for four years and had a civil partnership on January 21 under British law. It wasn't a conventional or traditional wedding—there was not a single grain of rice and no church service. What we did have in common to other weddings, were two people in love, standing before their friends, celebrating their commitment and pride in their relationship. Despite what some people will have you believe, the sky did not fall in.

Our friends are quick to point out that gay marriage is not a threat to the institution of marriage. The real threat to society is the failure to recognise the love between two people, and all of the negative consequences that come with that—hate, homophobia, discrimination, violence and isolation. Love between two people should be celebrated, not demonised.

The right to marry is a human right and should be the choice of the couple, not the choice of the state. Far be it for me to comment on Julia Gillard’s relationship, that is a matter for her and her partner, but if she is to be supported for making the choice not to marry the man she loves, logic and fairness dictate that she not stand in the way of others who want to do just that—marry the love of their life.

In taking this stance, government is promoting the idea that gay and lesbian people should be treated differently to other couples.

Aaron Allegretto is a workplace lawyer.

THE LAWYER
George Williams

Australian law should be changed to allow same-sex couples to marry. As it stands, the federal Marriage Act discriminates against people on account of their sexuality by restricting marriage to the "union of a man and a woman to the exclusion of all others".

The unfairness and injustice involved in banning gay marriage has led many nations to change their law. Courts have often been the catalyst. For example, gay marriage was recognised in Canada and parts of the US after judges held that denying same-sex couples the right to marry breached their right to equality.

Unfortunately, Australia is the only democratic country in the world without a national bill of rights. This means we are alone in being unable to challenge our unequal marriage laws in court.

The argument against gay marriage can have a religious base. Australian law respects this, and states that people are entitled to act and express views based upon their religious convictions. In particular, section 116 of the constitution says the Federal Parliament cannot make any law "prohibiting the free exercise of any religion".

However, this has its limits. Australians are not entitled to impose their religious views on others. This is reflected in the separation of church and state. Hence, at the same time as protecting religious freedom, section 116 states that the Commonwealth shall not make any law "for establishing any religion" or "for imposing any religious observance", and "no religious test shall be required as a qualification for any office or public trust under the Commonwealth".

These rules are vital to a healthy democracy. The separation of church and state extends to the law of marriage. In Australia, marriage is governed by civil law. This means that it is for our elected representatives in state and federal parliaments to determine who can, and cannot, marry.

The law should state that every person is entitled to marry the person of their choice. It should also provide that religious officials cannot be required to solemnise any particular marriage. With this in mind, marriage under Australian law should be described as "the voluntary union of two persons to the exclusion of all others".

George Williams is the Anthony Mason professor of law at the University of NSW.

Every person is entitled to marry the person of their choice.
"Legitimising gay marriage is like legalising child abuse," tweeted Family First senate candidate Wendy Francis in the lead-up to last year's federal election.

It was a comment that was unashamedly homophobic, but sadly typical in a country where views such as Francis's have been allowed to flourish under the nose of many consecutive governments.

When it comes to allowing same-sex couples to marry, Australia lags behind many other countries around the world such as Argentina, South Africa and the US state of Iowa.

This month, during Australia's Universal Periodic Review by the United Nations Human Rights Council, a number of countries recommended that Australia allow same-sex couples to marry in order to meet our international human rights obligations. The government in turn “acknowledged” these recommendations but is yet to act on any of them.

The government agrees that same-sex couples should be assessed for social security in the same way as heterosexual couples, so it should follow that same-sex couples be granted access to a civil institution like marriage in the same way heterosexual couples are. So why do we remain in a land of antiquity?

Christian groups who oppose same-sex marriage argue that heterosexual marriage is the bedrock of society, a safe haven to raise a family, and that the status quo should be maintained in the name of so-called “tradition”. But a tradition, in their view, that has always understood marriage as between a man and a woman.

This is a somewhat misguided view, particularly when you consider that the legal requirements and process for getting married in Australia have long been determined by secular laws, which govern us all.

Irrespective of Christian opinion on who should be entitled to marry, it is the Marriage Act 1961 – not the Bible – that defines marriage and provides the legal framework for both religious institutions and civil celebrants to legally marry people.

Perhaps more importantly, we need to recognise that one of our most fundamental human rights is the right to be treated as equals under the law and to live our lives free from unfair discrimination.

When people are denied this right, they are denied their dignity and respect.

The reality is, this is a fundamental human rights issue and supporters of same-sex marriage will continue to push for equal rights under the law.

Reform in this area is long overdue and despite fierce opposition, gay and lesbian communities are confident our elected representatives will find the courage to lead the way and allow same-sex couples to marry.

Kellie McDonald is the co-convenor of the NSW Gay and Lesbian Rights Lobby.