

# **NORFOLK ISLAND & MARRIAGE EQUALITY**

## **Background information & FAQs**

*"The court overturned the ACT law because it was inconsistent with the federal Marriage Act. The court did not say how differently drafted state or territory law might fare."* – Prof George Williams

- A bill has been tabled in the Norfolk Island Parliament that will allow same-sex couples to marry on the Island.
- Norfolk Island (NI) is situated about half-way between Australia and New Zealand in the Pacific Ocean.
- NI is a self-governing territory of Australia with its own assembly and its own laws.
- The NI Bill is not the same as the ACT law overturned by the High Court last year.
- The ACT law drew on the definition of marriage from the federal marriage Act.
- The NI Bill establishes a separate scheme for same-sex marriages that runs in parallel to, but does not touch on the federal marriage Act.
- The NI Bill has no residency requirement so couples from across Australia will be able to marry on NI.
- It has been estimated that the Norfolk Island economy could benefit by up to \$12 million per year from Australian same-sex couples marrying on the Island (based on the numbers of Australian couples already married in New Zealand).
- This is only the direct wedding spend and does not include the spins off from tourism and international exposure.
- The Bill will remove discrimination and foster greater inclusion for same-sex attracted people on Norfolk Island.
- NI same-sex marriages will be recognised as civil unions in some parts of Australia and as marriages when other parts of Australia follow NI's lead. Until then, NI marriages will provide same-sex couples with a certificate they can use to establish the existence of their relationship.
- The Bill responds to polls which show 72% support for marriage equality across Australia.
- Religious ministers will not be forced to marry same-sex couples because the celebrancy scheme under the Bill is opt in.
- The federal government has the power to veto the Bill or challenge it in the High Court.

See next page for FAQs

### **Didn't the High Court decide marriage is a federal matter?**

No. It decided the ACT Marriage equality Act was unconstitutional because it drew on the definition of marriage from federal law. The NI Bill avoids that pitfall by establishing a distinct system for same-sex marriages.

### **Does this give same-sex couples full equality?**

The NI Bill allows Australian same-sex couples to marry in their own country, something that is denied them currently. An amendment to the federal Marriage Act is necessary for full equality. The NI law is an important step in that direction.

### **Are religious freedoms protected?**

Yes. The NI Bill establishes a new celebrancy scheme separate to the federal scheme. The NI scheme will be an opt in scheme. Religious ministers are free not to opt in.

### **Should NI make laws that affect the whole country?**

72% of Australians believe same-sex couples should be able to marry. In the absence of leadership from federal parliament, Norfolk Island is responding to the overwhelming desire of Australians to see this reform happen.

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"Another federal failure will return attention to the idea of a state or territory law. It is here that the effect of the High Court decision has been exaggerated. The court overturned the ACT law because it was inconsistent with the federal Marriage Act. The court did not say how differently drafted state or territory law might fare."

"One of the problems facing the ACT was its law was not drafted in a form that gave it the best chance of success. It was crafted explicitly as a marriage equality measure, not as a law that established an entirely separate form of same-sex marriage at the territory level."

"Problems with the ACT law were apparent before the High Court decision. Hence, the view of leading NSW barrister Bret Walker, SC, was that the ACT law was invalid, but that a differently drafted law could survive constitutional attack."

**Prof George Williams, Australia's leading constitutional academic,  
Sydney Morning Herald, Dec 17<sup>th</sup> 2013**