



Opinion by
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The plebiscite is dead, but the quest for marriage equality lives on

The **same-sex marriage plebiscite bill** has been on life support ever since **Labor announced** that it would not support a non-binding, non-compulsory national vote on whether same-sex couples should be allowed to marry. Last night, surrounded by many of its close friends and relatives, the decision was made to discontinue life support. The plebiscite can now be pronounced dead and given the burial it deserves.

In the end the vote in the Senate was 29 in support of holding a plebiscite, and 33 against, with WA Liberal senator Dean Smith abstaining. The 33 who voted against consisted of senators from Labor, the Greens, three from the Nick Xenophon Team and Derryn Hinch. The Coalition managed to convince four One Nation Senators, the Liberal Democrat senator David Leyonhjelm and Tasmanian senator Jacqui Lambie to vote in favour of the plebiscite. The defeat of the plebiscite bill is a win for the LGBTI community and their supporters, who feared that allowing a national debate about whether they are entitled to equal rights would subject them to a splenetic campaign of personal attacks. We only need to look at the campaigns that were run in opposition to the screening of the **Gayby Baby documentary in NSW**, and the **Safe Schools Coalition**, to know there are significant portions of the Australian population who are not ready to have mature and respectful debates on any issues to do with the rights of LGBTI people.

The defeat of the plebiscite is also a win for democracy. As **Senator Stirling Griff** of the Nick Xenophon Team observed: "We're elected to make decisions, not to outsource them."

Similarly, Liberal **Senator Dean Smith** said that a plebiscite would "irretrievably undermine the principle of parliamentary sovereignty".

It is a fundamental principle of democracy that we elect our politicians to make decisions on our behalf. Former High Court Judge **Michael Kirby** was right to highlight the dangerous precedent this plebiscite could have set. He said:

It will mean any time that there is something that is controversial, that's difficult for the parliamentarians to address or they don't want to address, they'll send it out to a plebiscite.

Before the final demise of the plebiscite bill, there were many government MPs asserting that there would be no parliamentary vote on marriage equality until 2019 if Labor did not back the plebiscite. However, this is likely to have been a negotiating tactic to increase pressure on Labor.

Now that the distraction of a plebiscite is over, it is time for some good faith negotiations on the way forward. NSW Premier **Mike Baird** provides a useful precedent of how this can be done. After

announcing a ban on greyhound racing in July 2016, **Baird turned around three months later** and said:

So it's clear in hindsight as we reflect on this we got it wrong — I got it wrong, the Cabinet got it wrong, the government got it wrong.

Prime Minister Malcolm Turnbull would win back much of the respect he has lost in recent times if he took a leaf out of Mike Baird's book, and acknowledged that a plebiscite was no longer possible, so it is the duty of parliament to move forward with deciding whether same-sex couples should be allowed to marry.

There are several bills that the Turnbull government can choose to support:

1. Labor's **Marriage Legislation Amendment Bill 2016**
2. Adam Bandt, Cathy McGowan and Andrew Wilkie's **Marriage Legislation Amendment Bill 2016 No. 2** (The cross-benchers' Bill);
3. Senator David Leyonhjelm's **Freedom to Marry Bill 2016**.

These bills have some significant differences, mostly around the extent to which different individuals and organisations are exempt from being involved in same-sex weddings. It is appropriate that religious organisations should not be forced to ordain marriages that are against their religious beliefs. However, such exemptions should not extend to non-religious businesses such as civil celebrants, florists and caterers. For this reason, Leyonhjelm's bill should not be adopted, since it seeks to exempt suppliers of wedding goods and services from their obligations not to discriminate pursuant to the **Sex Discrimination Act 1984**.

Supporting Labor's bill might be a bridge too far for Malcolm Turnbull. However, if he were to support the cross-benchers' Bill, opposition leader Bill Shorten might well do the same. We could then have a much needed demonstration of our politicians making the 45th Australian Parliament function in an effective and democratic manner, and in a way that enables the pressing issues of our time to be dealt with in a timely manner.

If Turnbull is unable to garner the support of the conservative members of his party, then we will all have to wait until 2019, when **I predict**, Prime Minister Bill Shorten will promptly and proudly enact legislation amending the Marriage Act to allow all couples to marry, regardless of their sexual orientation, gender identity or intersex status.

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