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# The Marriage Act 1961

## A Very Odd Document

by Katherine Cummings

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What will happen to those who do not fit the neat gender boxes defined by the law?

**W**e have seen a lot of argument in recent years concerning the pros and cons of same-sex marriage. To my mind this is rearranging deckchairs or fiddling round the edges. I have dealt briefly with my view of marriage reform in an editorial a few issues ago, but I would like to go more deeply into some of the points raised, and add some more.

***Why should not a contract be written to include more than two people and a variety of sexes? Why should it not be written for a set length of time?***

The refusal of both the Government and Opposition to spend more than a sentence or two in dismissing the arguments for same sex marriage, reiterating the mantra that "marriage is to be between a man and a woman" merely indicates that they are going where they think the votes are and are unwilling to think logically about the whole concept of marriage.

First, marriage is not a religious contract. It is a civil contract, as shown by the fact that a) a legal marriage can be performed at a registry office or by a celebrant with no reference to any religion, and b) religious marriages have no legality until they are recorded with the Registry of Births, Deaths and Marriages. It follows that all the pomp, circumstance and decoration which surrounds the service is simply, as it were, icing (and sometimes cute little bride and groom figures) on the cake. Essentially a marriage is a voluntary contract providing mutual support and entered into for life.

Before going on to examine that concept, let us look briefly at the *Marriage Act 1961 (Cth.)*. The Act runs to a neat 100 pages but much of it is exploration of unlikely cases and the creation of regulations to say who may marry whom and under what circumstances (no, you can't be married by a ship's captain, that's a myth). The Act starts with a list of definitions, twenty-one in all, although many are subdivided. We are told that Australia includes Norfolk Island. Since this has been true since 1914 and Norfolk is a Territory just like Cocos, Christmas, the A.C.T. and the Northern Territory, among others, I wonder why it was singled out for mention.

Marriage means the union of a man and woman to the exclusion of all other, voluntarily entered into for life. Note, however, that the terms man and woman are not defined anywhere in the Act. Too hard? I thought so. The truth is that any definition of "man" or "woman" can be shown to have exceptions except for the arbitrary fallback of politicians "A man is a person defined by the law as a man, and a woman is a person defined as a woman". But on what are these definitions to be based? The presence or absence of a defining birth certificate?

What will happen to those who do not fit the neat gender boxes defined by the law? People who claim to be of no defined gender? People who have components of both sexes in their genetic make-up? People who change gender role but cannot have irreversible genital surgery?

We also have the *Family Law Act 1975 (Cth.)*, which covers, inter alia, divorce, or as they more ominously put it, the dissolution of marriage. And this dissolution is also to be entered into voluntarily, at least for one of the potentially dissolute people involved. So surely we need a revision of various parts of the marriage ceremony., e.g. "Whom God has joined together, let no man put asunder ... unless he is a Judge of the Family Court." And "for better, for worse, for richer for poorer, in sickness and in health ... or until I change my mind for whatever reason ...".

We pretend to be monogamous. The truth is we are merely serial monogamists, wed as often as we wish, but to one person at a time.

Did you know that an "overseas country means a country or place other than a part of the Queen's dominions, and, in Part V, includes a vessel which is for the time being in the territorial waters of such a country or place"? If this means anything in English it means that New Zealand and Canada and around fifteen or sixteen other places are not overseas countries and if you sail a vessel through the territorial waters of one of the Queen's Dominions, your vessel becomes part of an overseas country for as long as you stay.

We have established that marriage is a civil contract, not a supernatural endorsement, but it cannot be registered unless it satisfies various parameters concerning the persons being married, their ages, relationship to each other, previous marriages etc.

Clearly these parameters could be altered by a stroke of a parliamentary pen, just as age of consent has been and should be if they contravene the wishes of the majority. Most people are in agreement that same-sex marriages are a reasonable extension to the current system. And since it is a civil contract, why should not the contractors write their own terms, by mutual agreement, yet retain all the protections of the law accorded to marriages?

Why should not a contract be written to include more than two people and a variety of sexes? Why should it not be written for a set length of time? Adults should make their own terms for living, as long as no third parties suffer. Let us think more broadly and campaign more imaginatively rather than limiting our projected reform to same-sex marriage.

## Katherine Cummings



Katherine Cummings is a writer and transgender activist, currently working at the N.S.W. Gender Centre as Librarian and Information Worker. Her autobiography, *Katherine's Diary*, based on a two-year series of radio talks she gave on Radio National's "Health Report", won the Australian Human Rights Award for Non-Fiction in 1992. It has since been expanded and updated and was re-issued at the end of 2007.

Katherine edits *Polare*, the quarterly magazine of the Gender Centre and writes for it. She is currently putting together a collection of her essays, short stories, poems and book reviews to be published in mid-2013 under the title *The Life and Loves of a Transgender Woman*.

Katherine transitioned in 1986 at the age of fifty-one.



**The Life and Loves of a Transgendered Lesbian Librarian**

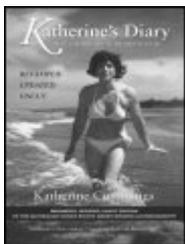
Author: Katherine Cummings

Publisher: Beaujon Press (2014)

I.S.B.N.-13: 978-098036535X

**From Polare Magazine Review:** The publication of this collection is a timely reminder that there is still a lot to learn about gender identity, its causes, aetiology and expression. To redress common misconceptions, prejudices, and targeted violence, ethically focussed education is critical. Of overriding importance is the acknowledgment of the truth of all 'real-life' experiences and within this framework Katherine's lifetime experience, retold through cleverly assembled vignettes (essays,

book reviews, verses and poems), is central. The book's content is varied and provides the reader with decisive personal viewpoints centred on the paramount issue of gender identity.



**Katherine's Diary: Revamped, Updated, Uncut Edition**

Author: Katherine Cummings

Publisher: BookSurge Publishing (2008)

I.S.B.N.-13: 978-1439215456

**From Bookpod Book Store website:** "I think that I was irrational, even insane, at the time. My transsexualism had taken hold of me with such obsessive force that I could not concentrate on anything else. There I was, a fifty-year-old professional academic librarian who had desperately wanted to be female ever since memories began ..." In 1986 John Cummings became Katherine Cummings and a whole life changed. In this painfully honest account of John's transformation into

a woman, Katherine tells of years of fantasising behind locked doors, of the betrayal felt by her family and the final relief of surgery. Katherine's Diary covers a lifetime of self-discovery and self-destruction told with acerbic wit and crisp observation.

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The Gender Centre is committed to developing and providing services and activities, which enhance the ability of people with gender issues to make informed choices. We offer a wide range of services to people with gender issues, their partners, family members and friends in New South Wales. We are an accommodation service and also act as an education, support, training and referral resource centre to other organisations and service providers. The Gender Centre is committed to educating the public and service providers about the needs of people with gender issues. We specifically aim to provide a high quality service, which acknowledges human rights and ensures respect and confidentiality.