

# Legalisation of same sex marriage in australia



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Within the Australian legal system law reform is a significant element as the effectiveness of the protection of an individual is subjected by the ability of the legal system to respond quickly to the changing needs of society. As a nation, Australia has been long attempting to respond to the community's changing values, to therefore determine justice for same-sex relationships. Thus, this study aims to assess the effectiveness of the legal system in responding to the values of society when referring to the legalisation of same-sex marriage in the Australian Constitution.

Previous studies have been shaped and governed by perceptions of what the family is and how it is changing and developing from an unconcerned stance to now aiming to achieve justice, equality and protection for all family members, regardless of the nature of their relationships, through the implementation of various remedies (Walker, 2007; Kirby, 2001; Williams, 2006; Morgan, 1993). Little research is available concerning the changing ethics and morals of society (in response to same-sex relationships) and the laws effectiveness of addressing such values (Anthony & Drabsch, 2006; Offord, 2003; Jost, 2008;). Thus, my research further aims to highlight that changes in society's morals are mirrored through the increased status of same-sex relationships and therefore propose that the continuously changing nature of society means that the law should change accordingly.

In an attempt to examine the legal and social perspectives of same-sex relationships in Australia, my chosen sources (Anthony et al. 2006; Walker 2007) acknowledge the law's response in redefining the construct of the family to accommodate same-sex relationships. Anthony and Drabsch (2006) use the works of academic scholars to emphasise the growing acceptance

and tolerance of homosexual relationships within contemporary society. Hence, the article argues that as society continues to develop and alter so to do the values, morals and ethical standards that were once important to a particular generation. This is useful to my research as it reinforces that it is essential that the legal system changes and reforms to meet the needs of society, thus balancing individual and community rights. However, restricted to theory and conjecture, Anthony et al. (2006) limits the reliability and usefulness of their work through a lack of data retrieved by means of direct observation and experiment. Recent studies outlined by Walker (2007) explore the reluctance of both the legal system and society in providing marital recognition of same-sex couples. The author suggests that legitimizing such an institution will devalue marriage and in turn hold negative effects for homosexuals. The article is readable and there is a logical rationale of the study design, yet, there is no statistical or graphical support to highlight significant conclusions.

Undertaking research on this topic comes with challenges in conceptualization and data collection, for various reasons both homosexuals and heterosexuals may be reluctant to give information about their experiences or attitudes towards same-sex marriage. In addition it is essential that the research remains objective to ensure personal bias is not interpreted within the study.

The foundation of my research is the changing nature of society's ethical values and perceptions and the responsibility of organisations to accommodate these changes and thus, not discriminate on the basis of sexuality. Anthony et al. (2006) provide a comparative analysis of state and <https://assignbuster.com/legalisation-of-same-sex-marriage-in-australia/>

federal legislation to reinforce the marriage of same-sex couples as a secular institution. Same sex couples are generally denied many rights, simply because they are not recognized as being a sincere family unit. Under the ' Marriage Act (1961)', the legal requirements of marriage include that the parties be a man and woman. Thus, Anthony et al (2006: 19) suggests that the aspects of the traditional definition are not fully reflected in contemporary society. In contrast, Walker (2007) proposes that ' seeking recognition of same sex marriage would not be a successful strategy' (p. 109). Through the extensive use of interpretative and academic study, Walker (2007) argues that due the changes of the ' De Facto (Relationships) Act (1984)', same sex couples are ' effectively looked upon as a " family unit", under laws relating to property and social security. Due to the constantly changing values of families, the authors argue that there is growing acceptance within Australian society that some people choose to live in committed relationships with another person of the same sex. Therefore, the social consensus of marriage between homosexuals requires further investigation.

Current law has been ineffective at protecting same-sex couples against discrimination in society. ' The Anti-Discrimination Act (1977)', prohibits discrimination against homosexuality however it fails to protect same-sex couples against discrimination, which indicates that the law is ineffective at protecting the rights of the individual and achieving equality. Although the law has been ineffective at achieving justice for the individual in many areas, Walker (2007), through theoretical analysis, argues that it has to be recognized that when considering society as a whole, the law has been

relatively effective as it is clear that numerous sectors of society are still opposed to gay marriage. However, it can also be argued that the failure of the legal system to accommodate for gay and lesbian marriages is a violation of a persons human rights. With reference to the ' Universal Declaration of Human Rights (1948)', which states, " Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family", Anthony et al. (2006) implies that denying same-sex couples to marry, devalues the character and sincerity of same-sex relationships. Thereby, excluding lesbian and gay men from an institution that legally and socially recognizes the significance of their relationship reinforces my hypothesis that homosexuals are negatively stigmatized and thus, are not accepted as equal members of the Australian community.

In relation to Australian society, same-sex marriage has always been a vast aspect. Changing societal values and the legal systems effectiveness to respond to such values when referring to the legalization of same-sex marriage in the Australian Constitution remains inconsistent in pace and approach. The studies conducted by Anthony et al (2006) and Walker (2007) provide the fundamental foundations for developing concise theoretical understandings of same-sex marriage, and thus, aid as supplementary information for constructing public policy in response to law reform. Overall, the research suggests that there is a significant correlation between law reform and rapid social change - with rising divorce rates, declining numbers of marriages, larger acceptance of de facto and same-sex relationships, and advancements in productive and gender reassignment technology(Anthony

et al. 2006 & Walker 2007). Conducted in an attempt to evaluate a plethora of legislation including amendments and addendum, the reviewed literature highlights the many inequalities that exist between heterosexual and homosexual relationships. Thus, with reference to past research of academic scholars, current legislation and the personal experiences and attitudes of both heterosexual and homosexual individuals, my research aims to provide a longitudinal qualitative study whereby the Government's ability to address conflicting social attitudes in regards to same-sex marriage in the Australian Constitution is assessed.