

Australia should legalise same sex marriage because the benefits to same sex couples are numerous, the disadvantages to others are non-existent and because there are no reasonable objections to same sex marriage that stand up to scrutiny.

## **Benefits of Same Sex Marriage**

A person's wedding day is seen by most Australians as the best and most important day of their lives. Not surprisingly then, most people in same sex relationships want to be able to celebrate their love for each other and to have their relationship recognised in the eyes of the law. With the growing societal acceptance of homosexuality, these couples usually have many heterosexual friends who are also keen to celebrate their loving relationships. That is why this is such an important issue that has the potential to benefit many Australians.

Same sex marriage encourages people to make commitments to each other that provide their lives with stability and support. The support that partners are able to provide each other encourages them to be independent and productive. Both the Labor and Coalition parties have long seen the societal benefits of family units, even where these units have not produced children. Increasing the number of people able to participate in this tradition strengthens our society. UK Conservative Prime Minister David Cameron has pointed out that encouraging same sex partners to create ties that bind them is something that benefits society as a whole.

Encouraging monogamy and fidelity in both the heterosexual and homosexual populations reduces the spread of STIs. This benefit to public health should be seen as a great advantage for our society and to our Government given the price of our health care system.

When partners are denied the right to see their loved ones in hospital because they have not been legally recognised as their partner, we are causing great and unnecessary emotional pain. In spite of many recent legislative improvements for people in same sex relationships, the lack of marriage rights ensures that same sex couples are still subject to this sort of unfair and unnecessary discrimination. The US experiment with civil unions has failed to remove this sort of discrimination. In emergency situations, the last thing a person wants is to have to explain the legalities of civil union legislation to staff who may themselves be homophobic or simply uninformed. The US experiment has also shown that school staff have often been unaware of the implications of civil

union legislation and have discriminated against same sex partners, leading to humiliating experiences for same sex couples.

## **Objections on Traditional Grounds**

Many have argued that the traditional view of marriage should be maintained. What then is the tradition of marriage in Western culture?

In Ancient Greece, Demosthenes wrote that:

"We have prostitutes for our pleasure, concubines for our health, and wives to bear us lawful offspring."

Thus we have the beginnings of the tradition of marriage in Western civilisation. Men were encouraged to take wives for producing children, while also pursuing emotional and sexual relationships with young men. Unfortunately, there is no study available showing whether this widespread practice of allowing homosexuals to have children caused irreversible damage to the children.

The Romans and Greeks did not require any ceremony for couples to enter into "matrimonium". Couples were considered to be married once they had spent a year living together and made an informal agreement. Divorce was just as informal.

Throughout most of the history of the Roman Republic, marriage transferred a woman from the authority of her father to the authority of her husband. There was great respect for a woman who became a wife. She was in charge of the domestic staff, as well as making the clothing for the family. Women were respected for their loyalty to their husband and their competence at household chores.

So the traditional view so far appears to be that men should be able to take possession of a woman by getting her to make an informal agreement after a year's living together, so that she can do the household chores and he can be free to pursue other men or prostitutes. Oh and of course to give him children.

For the first 1200 years after Christ's death, Christian couples married according to the civil laws of the time, in a family ceremony, and often without any special church blessing. Martin Luther declared marriage to be "a worldly thing . . . that belongs to the realm of government". In the 17<sup>th</sup> Century, the English Puritans passed an Act of Parliament declaring "marriage to be no sacrament". Marriage was no longer performed by ministers, but by justices of

the peace. This was in fact the more traditional view of marriage: as a civil ceremony, not a religious ceremony.

In 1753, Lord Hardwicke's Marriage Act stipulated that only a marriage performed by an ordained Anglican clergyman in the premises of the Church of England was valid. The Hardwicke tradition of marriage was that Catholics should not have equal marriage rights.

In 1866, the judge presiding over the case of *Hyde V Hyde & Woodmansee* further defined marriage:

“Marriage as understood in Christendom is the voluntary union for life of one man and one woman, to the exclusion of all others”.

Christendom of course, meaning the Church of England, not Catholicism. This revolutionary Hyde definition allowed men to finally gain rights they had sought for years in marriage: rights such as the legal possession of their wives so that they could hit them if they were disobedient, and of course inalienable conjugal rights with their wives. This removed impediments such as the modern requirement for consent from the woman.

In Australia, women have only had the right to even own property for a bit over a hundred years. Marriage was thus more of an economic necessity than a romantic union. Even when the Marriage Act was amended, everything a woman owned became the property of her husband. Is this the traditional view of marriage that we are trying to preserve?

But Australia's Marriage law doesn't only rely on British tradition. We have our own rich tradition when it comes to marriage. Australia celebrated its Federation by enacting a law that prevented Aboriginal women from marrying non-Aboriginal men. In 1939, this was strengthened. Aboriginal people wishing to marry each other had to seek permission from the local “Protector”. You know, the ones who were responsible for taking their children and giving them rations.

Until 1975, Australia maintained Lord Hardwicke's tradition that divorce could only be obtained if adultery could be proven. Domestic violence was certainly not considered reason enough to leave a marriage, even if it could be proven.

Yet there are still those who argue that marriage is a heterosexual institution. To explain, marriage is a heterosexual institution because only heterosexuals should be allowed to marry, and only heterosexuals should be allowed to marry

because marriage is a heterosexual institution.

The tradition of marriage is that it is constantly changing according to the societal values of the time. If the word “marriage” has come to be associated with one concept of marriage, then it has shown over the centuries that it is an adaptable institution and that people are capable of adapting to it. It is illogical to freeze its meaning at one point in history.

What traditions are our politicians seeking to preserve? I can only assume the tradition of politicians oppressing minority groups in a desperate bid to get votes. Marriage does not belong to any religious group, though they are free to conduct it, as we all should be. Traditions change, and few traditions have changed as much as the tradition of marriage.

### **Objections on Religious Grounds**

Australia has committed to the freedom of religion in its constitution, its laws and its signatures on international agreements. This has benefits to religions who do not want to be controlled by Governments, to Governments who do not want to be controlled by religious leaders, and to citizens who want to be free to choose their own religion without discrimination.

Australians are thus entitled to believe that homosexuality is a legitimate and moral practice. They are even entitled to believe that God approves of it, as many Australians do.

Australians are equally entitled to hold a religious belief that God disapproves of homosexual relations but they should not be entitled to put this religious belief into Australian law. The legalisation of homosexuality has no negative impact upon the way its opponents live their lives. If they do not like gay marriage, they are free not to marry a gay person. They are free not to engage in homosexuality or even to associate with homosexual people.

However, by outlawing homosexuality, there would be a negative impact on the lives of homosexual people. This means that outlawing homosexuality would curtail the religious freedom of homosexual people. Australia does not have a state religion and the beliefs of Australians who do not object to homosexuality (and who may wish to engage in it) should be respected.

It is hypocritical for Australia to legalise homosexuality, but then say that homosexual Australians should not be allowed to marry. Either we believe that homosexuality is a legitimate practice or we do not. It is clear that many

Australians believe that homosexuality is neither inherently harmful nor immoral. Its practice has no negative impacts upon those who choose not to engage in it (or indeed those who do). Therefore, the Government has no place in outlawing it and no place in discriminating against Australians who engage in it.

Many argue that marriage is a religious institution. Yet, under the Marriage Act of 1836, civil marriages were recognised as a legal alternative to church marriages. This change occurred over 170 years ago, so it is probably about time that people got used to the idea of non-Christian marriages. Not only that, but marriage was conducted as a civil ceremony long before Christians adopted it as part of their traditions and for a long time Christians participated in civil ceremonies, not religious ones.

Today, many European countries including France and Bulgaria have legislated that couples wishing to marry must firstly hold a non-religious marital ceremony, the only sort recognised in law. Thus, non-religious marriage is firmly a part of Western tradition.

### **Marriage & the procreation of children**

As to the argument that marriage is about the procreation of children, this does not stand up to scrutiny. Many older couples marry in spite of the fact that they have no ability or desire to produce children. Younger couples are not required to prove their fertility before marrying.

If the Marriage Act were about the procreation of children, then celebrants should be required to ask newlyweds to make a commitment to attempt to produce children. Celebrants are already required to make the statement that "Marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life." It would not be hard to add a clause to this statement that marriage is "for the purpose of producing children". Yet of course, such an addition would be highly objectionable to many couples who have no ability or perhaps simply no desire to have children. This does not prevent them from wishing to marry.

But I will leave the last words to the father of Lucy Turnbull, Tom Hughes, speaking forty years ago on the topic of gay rights:

"In a pluralist society it is no part of the function of the law to uphold and preserve the Judaeo-Christian ethic simply because that ethic exists".