

Legal and non-legal responses to the recognition of same-sex relationships

Evaluate the effectiveness of legal and non-legal responses to contemporary issues in family law. Specifically, the recognition of same-sex relationships.

In Australia, the legal and non-legal responses have been effective to a certain extent in recognising same-sex relationships. According to **Australian Marriage Equality**, 72% of Australians now support same-sex marriage as a result of the changes in societal composition and values. In turn, the legal system was forced to respond appropriately to the new alternative family arrangement by enacting and reforming numerous legislations in response to demands for marriage rights, legal status, and adoption, while non-legal measures such as NGOs and the media have greatly influenced the government in recognising the rights of same-sex relationships. However, law reform has been slow, haphazard and hence ineffective in creating marriage equality despite the achievement of legal equality in other aspects of the law.

The law has been effective in responding to changes in social values with regards to same sex relationship rights. This can be seen through the enactment of the **Crimes Amendment Act 1984 (NSW)** to decriminalise homosexuality in response to the first Mardi Gras held in 1978 that attempted to vilify homosexuality as a criminal offence. Since then the recognition of same sex relationships has made significant progress in NSW, in particular **The Property (Relationships) Act 1999 (NSW)** which recognised same sex couples to have the same legal standing as de facto relationships. As a result, couples in a relationship for two years could access the District Court to divide property and claim maintenance after a relationship breakdown. Hospital visiting rights and inheritance rights were also extended to same sex couples in the event that one partner dies intestate. However, the Howard Liberal Government passed the **Marriage Amendment Act 2004 (Cth)** to include the definition of marriage to 'the union between a man and a woman' under the **Hyde v Hyde and Woodmansee case** which precludes same sex couples from entering into a legally valid marriage including ones conducted overseas. Hence, this act was ineffective in recognising the legal standing of same sex couples in terms of providing access to marriage. Unless this definition is amended, justice and equality cannot be achieved despite the availability of de facto status or civil unions as said in the **ABC News article 'Are civil unions enough?'**. Nonetheless, other than marriage equality, the responsiveness of the legal system thus far has been effective in protecting the rights of same sex couples.

The **Adoption Amendment (Same-Sex Couples) Act 2010** recognised the right for same sex couples to adopt children despite the absence of marriage equality. Although this is effective in narrowing the gap between same sex and heterosexual rights, the act in itself is still contradictory and backward in nature, which is emphasized in **The Daily Telegraph's article 'Gay couples can't get married. But they can adopt. Huh?' (2016)**. Furthermore, strict adoption criteria must be met before the adoptive parents can be approved of, as only **0.1%** of children in **2013** had same sex parents. In addition, biological parents and faith-based adoption agencies like Anglicare can request or refuse same sex couples in adopting the child without breaching anti-discrimination laws. In a sense, this breaches the **Anti-Discrimination Act 1977 (NSW)** as **s49** of the act states that

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discrimination on the grounds of homosexuality is illegal; which reflects the inability of the law in enforcing these acts of discrimination with Australia's modern context. However, in some cases, the law can deny the birth parents wishes to reject a same sex couple in adopting their child. This was reflected when **Justice John Sackar** said that while the law required religious ties to be preserved "**as far as possible**", those concerns should not predominate alongside the "**child's best interests**". Therefore, as there are some limitations revolving around the accessibility of adoption for same sex couples, it can be seen that the legal responses have been effective only to a certain extent.

NGO's play a key role in influencing law reform with regards to the recognition of same sex relationships. In 2007, the **Australian Human Rights Commission** released the '**Same-Sex: Same Entitlements**' report which found 58 federal laws to have discriminated against same-sex couples in the area of financial and work-related entitlements and also against their children. Consequently, the report found that these laws breached the **International Covenant on Civil and Political Rights** and the **Convention on the Rights of the Child**. In response to the report, the government found that reform was "**an essential step towards a fairer and just society**" and therefore introduced 55 legal changes in areas such as taxation, social security and superannuation. One legislation in particular was the **Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008 (Cth)** which gave equal rights to property settlement and for these matters to be dealt with in the Family Court. However, despite these numerous legal responses, not all areas of the report were addressed by the government; and that although other NGO's were lobbying and campaigning for marriage and social equality, this has still not been made available in Australia. As said by **Australian Marriage Equality**, by putting same sex couples into a "**different classification, sends the message that their relationships are of a lesser standard and that the people are second-class citizens**". Nonetheless, it is clear that the impact of NGO's on the government have been an effective non-legal mean in recognising the rights of same-sex relationships.

The media has been pragmatic in educating the community about the inequities same sex couples experience. Traditional forms of media like television advertisements e.g. **Campbell's Soup**, as well as the use of new media technologies, such as social media, have enabled public opinion and views upon same-sex relationships to be influenced; with **72%** of respondents in favour of same-sex marriage in a poll conducted by **Crosby Textor** in **2014**. Social media in particular provide the public with numerous platforms to express their support or criticisms of the government revolving around the injustices experienced by same-sex couples as depicted by **The Stirrer's article 'Social media and same-sex marriage'**. Community service groups such as **Beyond Blue** and opinion leaders like **Hugh Jackman** who use the media, have been effective in raising awareness and empowering more voices, specifically the younger generation, to support and speak up to the lack of marriage equality. Moreover, as a result of globalisation, the numerous countries around the world, including the United States and Ireland, who have legalised same sex marriage recently, has put further pressure on the government to do the same in Australia. However, despite the increasing pressure to legalise same-sex marriage, the **SMH** claims '**Malcolm Turnbull moves to kill off same-sex marriage push**' (**2017**) as the Prime Minister expresses his non-support for a free "**vote in the**

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Parliament until there has been a plebiscite". The responsiveness by the government is somewhat ineffective as past marriage related laws were subjected to a Coalition free vote while it can be observed that a plebiscite would cost the taxpayers' 160 million dollars, become a platform for hatred and division, and will not be legally binding; meaning that a free vote would still need to be undertaken. Even so, despite these facts, **46%** of Australians believe there should be a plebiscite. Therefore, the non-legal responses of the media were to a certain extent effective as it has played an important role in the recognition of same-sex relationships.

In conclusion, the legal and non-legal responses in the recognition of same-sex relationships have been effective to a certain extent. This is because despite the numerous legislations that have been enacted and reforms occurring in response to marriage rights, legal status, and adoption for same sex-couples; and influential non-legal measures such as NGOs and the media, there are still many areas of the law, like same-sex marriage, that will need to be reformed in order for the rights of same-sex couples to be fully recognised in Australia.