

Survey Form  
Australian Marriage Law Postal Survey

Should the law be changed to allow same-sex couples to marry?

Yes  No

Adults must be free to make their own lifestyle decisions, including marriage, without interference by the government or any need for its approval.

### Policy

The Liberal Democratic Party (LDP):

- Believes private sexual activities and lifestyle choices voluntarily undertaken by adults are not matters for government intervention except to prevent coercion and protect children.
- Believes marriage is a private matter (assuming informed consent) and should be free from government rules and regulation, with the government's role limited to providing a register.
- Would amend relevant legislation so that marriage between two individuals had the same consequences irrespective of whether they were of the same or different gender.
- Believes those who perform marriages and provide marriage services should be free to discriminate in accordance with their own views of marriage.
- Believes children should be adopted into a loving, stable and safe environment, irrespective of the marital status, gender or any other irrelevant attributes of the adopters.
- Does not support, endorse or recommend any particular sexual preference or lifestyle.

## Discussion

Freedom is the right to choose; the right to create for yourself the alternative of choice. Without the responsibility and exercise of choice a man is not a man but a member, an instrument, a thing. Archibald Macleish (1882-1982)

Adults must be free to make their own decisions without interference by the government or requiring its approval. Adults are not like children, who lack sufficient experience of life to make reasoned choices and cannot appreciate what it means to take responsibility for those choices. They do not need anyone to make their choices for them. They can choose where to live, which job to take, where to go on holiday and what to do with their money, and live with the consequences. Similarly, they can choose their particular lifestyle including such things as how to live, whether to live alone or with others, and who to live with.

In most countries these matters are taken for granted. In only a few countries, for example the former Soviet Union, Cuba and North Korea, have adults been compelled to work in certain jobs, live in assigned premises or go on holiday to designated locations. Similarly, in only a few countries are people forced to marry against their will.

Having such a right inevitably means some people will make silly or unwise choices that others find amusing, perplexing or annoying. It also means that some people will make choices of which others strongly disapprove. That does not entitle them to seek to interfere in those choices.

The role of the government is to ensure choices are freely made and do not result in coercion of others, and that responsibility for the consequences of choices is not transferred to others (for example by claiming to be a victim or by later arguing that the choice was made involuntarily).

Most people will fight vigorously to protect their own right to choose. However, many will quickly acquiesce to arguments that governments 'do something' to prevent people from engaging in activities of which they disapprove.

This is not only hypocritical but also dangerous. What they generally fail to realise is that if others can be prevented from making choices, the same can happen to them. Once government interference in the lives of others is accepted as legitimate, there is little to stop others, whether malicious or well-intentioned, from co-opting the government to control, manipulate or manage the lives of any individual or group they choose.

Although such interference is frequently justified on the grounds that it is in the best interests of those affected, those who do the interfering invariably have the loudest voices, greatest

numbers or most political leverage and those who endure the interference are in the opposite situation.

The only safe principle is for the government to be prevented from interfering in the choices of individuals no matter what those choices might be, so long as they are freely made and non-coercive.

It therefore follows that private sexual activities and lifestyle choices are not matters about which governments have a right to intervene. In terms of regulation, except to prevent coercion, they are no-go areas.

This is particularly relevant in relation to the rights of LGBTI individuals. Discrimination by governments against LGBTI individuals (or even in favour of them) is not acceptable.

In most western democracies, government discrimination against LGBTI individuals is subtle relative to earlier times. A same-sex partner, for example, may be denied next of kin rights that a heterosexual partner would automatically receive. In areas such as immigration, welfare, inheritance, health care and workers compensation, LGBTI individuals may be subject to inferior treatment because they do not fit the standard male-female orthodoxy. That is discrimination.

The Liberal Democratic Party does not support, endorse or recommend any particular sexual preference or lifestyle. It also does not consider governments should be seen as a source of rights to be granted. Rather, it views governments as a threat to pre-existing rights through its power to take them away.

Consistent with the principle of the principle of non-interference, the LDP acknowledges and respects the rights of others to make their own choices, provided they also accept responsibility for their consequences.

It considers the role of government to be limited to the prevention of coercion in the exercise of choice, including the protection of children, and to ensuring that the consequences of choice are not transferred to others.

In government it would repeal or amend laws that created disadvantage for LGBTI individuals on the basis of their difference from heterosexuals, to remove such disadvantage.

## **Same-Sex Marriage**

Marriage is a social concept, recognized in law, for those who choose to make a public declaration of their love and commitment to each other.

The oldest evidence of ceremonies uniting a man with a woman date from about 2300 BC in Mesopotamia. By 2000 BC the concept of committed partnership had spread to the Hebrews, Greeks and Romans.

Contrary to common belief, the origins of marriage are neither religious nor related to the raising of children. Anthropologists theorize that most primitive marriages were polygamous and had little to do with love, monogamy or religion. Rather, they were a means to expand the land or other assets of a clan, either through the receipt of a dowry or the merger of two clans' assets.

With ownership of property by individuals rather than clans, marriage also became the principal means of ensuring the legitimacy of heirs to whom the property could be transferred. Through marriage a woman became a man's property and her reproduction controlled. In ancient Greece, a father would give his daughter to a man, saying: 'I pledge my daughter for the purpose of producing legitimate children.'

This was not intended to prevent the conception and raising of children outside marriage. Hebrew men could have several wives, and married Greek and Roman men were free to visit concubines and prostitutes. However, their wives were required to stay home and wives who did not produce children might be returned to their parents.

Religious guidelines around marriage are not thought to have developed until the practice was several hundred years old, and were first used as a means of preventing different religious groups from losing wealthy followers by restricting them from marrying into other religions.

As the Church gained power, a priest's blessing became required. By the 8th century, the church used marriage as a ceremony to confer heavenly grace while consolidating earthly power. Only in 1563, at the Council of Trent, was marriage promoted as a holy sacrament.

In Western Europe it was not until the Middle Ages that marriage in churches began to occur. However, church marriages were not the norm until the 17th century and then only for the nobility. Marriage was also used as a tool to unite different royal families' bloodlines, creating alliances that were instrumental in enabling the European monarchies to colonize much of the rest of the world.

A new ideology of marriage arose in industrial countries in the 1800s. Longer life spans, working out of the home, urban living and ideals of equality allowed young couples to experience a period of marriage without young children. This encouraged new criteria for successful marriages: romance, companionship, emotional satisfaction and compatibility.

The role of the government in marriage was negligible until it took on the role of maintaining a register of marriages, a function previously performed mostly by churches. Births and

deaths were similarly recorded. In the nineteenth century this began to take on a regulatory aspect. For example, laws that set the minimum age for marriage, stipulated parental consent in certain cases and prohibited bigamy and the marriage of siblings were introduced.

In the twentieth century the government's role in marriage increased dramatically with legislation to manage the ending of marriages, particularly relating to custody of children and division of property.

In Australia, the Federal Government has legislative authority over marriage. The two main pieces of legislation are the Marriage Act and the Family Law Act. The Marriage Act prescribes the minimum marriageable age, authorises marriage celebrants, prescribes the elements of a valid marriage and recognition of marriages conducted overseas. The Family Law Act established the Family Court and prescribes the process for settling disputes over divorce, division of property and custody and maintenance of children.

A number of other Acts and Regulations, both State and Federal, contain provisions that depend on marital status. For example, the estate of a person who dies without leaving a valid will is divided according to legislation that recognises legal marriage. Similarly, the legal spouse of an Australian citizen is treated differently from a de facto partner under immigration legislation.

The argument that marriage is specifically intended for the raising of children is incorrect, both historically and in modern terms. Children have always been born outside marriage and are now a sizeable minority. Furthermore, many married couples are choosing not to have children at all. Marriage and children may be frequently related to each other, but they are certainly not interdependent.

Many people regard the government's role in the regulation of marriage to be excessive, particularly in relation to divorce and its consequences, and are choosing de facto relationships rather than formal marriage to escape its heavy-handed intrusion. As a consequence, many children are born and raised in families in which their parents are not formally married.

Marriage is simply a formal declaration by two individuals of their commitment to each other. In every sense it is a private matter, based on the personal choice of those involved, and in legal terms comparable to a private contract. The role of government is to record that choice, not regulate or approve it. Having government define, control or sanction marriage, or give advantages (or disadvantages) to people based upon their marital status, is beyond the protection of individual rights. It is certainly not valid for the government to purport to give or withhold approval to marry on the basis of the sexual preference of those involved or the fact that the marriage involves two people of the same gender.

The LDP does not endorse or reject marriage - it simply regards it as a personal decision that anyone should be entitled to make free of government interference, irrespective of their sexual orientation or lifestyle choice. Thus the LDP preference is not to seek the granting by governments of equal rights for same-sex marriages, but the withdrawal of government so that it remains a private domain.

The LDP believes the Australian electorate is willing to accept same-sex marriage on simple fairness grounds. That includes recognition that some same-sex couples want to be formally married.