

## Recognising same sex relationships: ideas and an update from South Australia

Matthew Loader

It is probably a familiar story.

In early 2000 there was no gay and lesbian political lobby in South Australia. The previous lobby group, Lesbian and Gay Community Action, had folded in 1997 after eight years of tackling many issues. So in early 2000, with a renascent law reform movement beginning to make headway in other states, a small group convened to establish a new lobby group - to become known as the 'Let's Get Equal Campaign'. The group was co-sponsored by the South Australian Gay and Lesbian Counselling Service and AIDS Council of South Australia.

Getting a lesbian and gay lobby group together is not always easy, but the Let's Get Equal Campaign has managed to survive for four years, despite the size of its organising group (never any more than five at any one time). I have never been involved in a gay and lesbian lobby group before, but I am assured by older members of the group that the success of the campaign to date may in large part be attributed to the fact that the Campaign was formed as a 'one issue' lobby group - and we have managed, by and large, to stick to this agenda.

Our issue? Removing legislative discrimination against same sex couples in state laws, or, to put it another way, equal recognition of same sex couples in state law as for opposite sex couples. As in many other jurisdictions, this discrimination results from definitions of de facto relationship that exclude same sex partners, in most cases by excluding persons of the same sex from being considered as 'husband or wife'.<sup>1</sup> For us in South Australia being behind the rest of the nation is an ironic first: South Australian parliamentarians were among the first to make discrimination on the ground of sexuality unlawful<sup>2</sup>, and the first in Australia to decriminalise male homosexuality.

The group's first step was to write to the state Equal Opportunity Commission to request an audit of state legislation to identify those that were discriminatory. That audit found some 54 laws that discriminate against same sex couples.

Acting on the results of this audit, in its first year the campaign conducted wide consultation within the lesbian, gay, bisexual and transgender communities to determine what gay and lesbian couples wanted from the law and how the campaign should approach its task of lobbying for these 54 statutes to be amended. The campaign's *Position statement* (Let's Get Equal Campaign 2000) was the outcome of that consultation and has set the tone for our subsequent activities.

I should point out that all of this predates my involvement in the campaign, so perhaps now it is worth telling you how I got involved.

### Piecemeal reforms

Until the Let's Get Equal Campaign arrived and the Equal Opportunity Commission audit was undertaken, attempts to include same sex couples in South Australian legislation have been ad hoc, although undoubtedly well intentioned - beginning with amendments by the current Attorney-General moved to the De Facto Relationships Bill in 1996.<sup>3</sup> Other attempts included amendments to a variety of government bills in a variety of areas, including successful amendments in October 2001 to an Equal Opportunity Amendment Bill presented by the then Attorney-General. (He subsequently withdrew the bill, however, rather than accept the amendments.) With a then Liberal Government unwilling, as the Let's Get Equal Campaign subsequently learned, to consider global changes to state laws, a tendency towards particularist as opposed to global reform is not unnatural.

My involvement began with one of the more significant of these attempts - a private member's bill moved by Labor backbencher Frances Bedford. At the time I was working as an electorate officer for Frances, and, in the year that the then Australian Council for Lesbian and Gay Rights made superannuation its number one priority, the decision was made to draft a bill to amend the state superannuation laws. We knew it was a limited initiative but our thinking at the time was that a limited reform, deliberately minimalist in its drafting and addressing a (supposedly) non-controversial property issue, could be done from opposition - and, ultimately, pave the way for action on a wider scale by an incoming Labor government. Thus, the Statutes Amendment (Equal Superannuation Rights for Same Sex Couples) Bill became a 'Trojan horse' for an attempt to swing Labor Party policy in the right direction.

Our goal of getting this bill through in opposition proved hopelessly optimistic. With Labor now past its first anniversary in government, the bill has only recently passed the state upper house - after nearly four years. It was first moved in the House of Assembly on 6 July 2000 and was passed by the Legislative Council with minor amendments on 30 April 2003.<sup>4</sup> It is now set to become the first South Australian statute which includes de facto same sex couples on the same legal basis as de facto opposite sex couples.

Long before this, shortly before leaving my employ with Frances, I joined the Let's Get Equal Campaign.

### **Towards a global solution - a government discussion paper at last ...**

From the first, the Let's Get Equal Campaign's objective was to seek a global solution, rather than a piecemeal approach. Specific legislative initiatives in the meantime, while welcome, have been ad hoc and leave large gaps. A holistic approach, however, while preferable, is only possible with the support of government and so the campaign's strategy was to seek a government-led review of South Australian legislation, followed by government-led omnibus legislative amendments. The then Liberal Government declined to meet with us. When we wrote to them raising the issue, we received a polite letter in reply from the then premier, John Olsen, in which he assured us that the *Equal Opportunity Act 1984* provided sufficient protection for gay and lesbian couples - obviously he hadn't even talked to the Equal Opportunity Commission who compiled the audit of 54 state laws in the first place!

The then Labor Opposition promised us they would review the legislation in government. This promise was made in three ways: most directly in a meeting with the Labor leader, Mike Rann; secondly, buried in a policy paper about anti-discrimination and cultural diversity; and, thirdly, in motions which had carried through the Labor Party State Convention.<sup>5</sup> It is only because of the election of the Labor Government that a review, though much delayed, is now underway; it has recently completed a six week period of public consultation, following the release of a Government discussion paper outlining the issues and the Government's proposed approach (SA Government 2003). Although a formal response to the consultation is not yet available, it is understood that there were over 2,000 submissions to the review, including many pro-forma letters prepared by the Let's Get Equal Campaign for supporters to use (copies available from <[www.letsgetequal.org.au](http://www.letsgetequal.org.au)>).

It has been a long time coming, but at last, there has been a formal Government review and there will shortly be a formal Government response. How far that response will go in part relies upon the boundaries that the Government set for itself in releasing the discussion paper.

### **A very conservative step forward**

While the Government discussion paper represents a step forward and an attempt to address the issue of same sex relationships in a holistic rather than piecemeal fashion, it does so within the constraints of an existing schema for relationship recognition of limited scope and application. The discussion paper acknowledged some of these limitations:

The Government recognises ... that current legal terms and definitions are based on an analogy with marriage, and may not be appropriate for same-sex relationships. (SA Government 2003, p.10)

But, in general, the approach is 'to bring about equality between opposite-sex and same-sex couples under State law'. Accordingly, the Government 'intends to retain a couple-recognition scheme that is limited to cohabiting couples and that gives more substantial recognition to long-standing couples than to couples of short duration'.

By doing so, it assumes that the existing system of relationship recognition, designed for opposite sex couple relations, is suited for adaptation to same sex couples.

It is a very conservative step forward.

By contrast, the Let's Get Equal Campaign's position has been to advocate that the discrimination against same sex couples consists of a lack of equal treatment in relation to both non-married opposite sex couples (who are catered for by the limited presumptive recognition scheme in state law) and to opposite sex couples generally. To achieve equality of treatment, the law must therefore put same sex couples on the same footing as opposite sex couples. (And that, of course, assumes that only 'couple' relationships are worthy of legal recognition.)

Insofar as state law is able to do this, it should be about offering a variety of options without trespassing on the federal parliament's prerogatives in relation to marriage. This includes putting same sex couples on the same footing as non-married opposite sex couples in relation to the presumptive relationship recognition scheme encapsulated in state law, but also advocating for:

- language treatment which does not establish hierarchy or preference for any particular kind of relationship;
- a broader definition of relationship, including re-consideration of the use of cohabitation as a criterion for legal recognition; and
- maximising opportunities in state law for non-married partners, whether same sex or opposite sex, to obtain the recognition of the law.

### **Cohabitation as a criterion**

Currently, as for other jurisdictions, most South Australian laws require cohabitation for a minimum period as a key criterion for recognition as a de facto partner or putative spouse. The minimum period, when imposed, varies from two years up to five years. According to the government discussion paper:

The reason for this policy approach is that the imposition of legal rights and duties without the consent of the parties should be reserved for situations where it is likely that the parties' affairs have merged, or the parties have ordered their lives in such a way that legal intervention is warranted to protect them, or one of them. The endurance of a cohabiting relationship is a key indicator that this may have occurred. (SA Government 2003, p.10)

However, the paper acknowledges that reliance on the duration of cohabitation is not common to all jurisdictions and that, in some jurisdictions where reforms have been undertaken, other indicators relating to the nature and quality of the relationships have supplemented significantly less stringent cohabitation requirements.

Whether cohabitation should be an exclusive criterion for legal recognition of a relationship was a significant question raised by the Let's Get Equal Campaign, in its submission to the government review. At least for certain areas of law, the campaign has advocated legal recognition for non-cohabiting partners, whether same sex or opposite sex. Both the Australian Capital Territory and Victoria provide for recognition of non-cohabiting partners in certain limited circumstances. In the case of Victoria, these include laws relating to health and care issues (e.g. guardianship), death of a partner, anti-discrimination, domestic violence and evidence law.<sup>6</sup>

In a critique of the 1999 New South Wales reforms (*Property (Relationships) Legislation Amendment Act 1999*), which declined to implement a category of non-cohabiting partners despite the example given by the Australian Capital Territory's laws, Millbank and Sant (2002) argue that the need for cohabitation is 'possibly the greatest flaw of the NSW Act definition, as in many cases it could mean nothing is gained for people in non-traditional relationships':

Cohabitation may be an indicator of financial and emotional interdependence in a relationship (and therefore the need to access legal avenues such as statutory property division regime) or it may not. Such a criterion should not be used in an under-inclusive manner any more than it ought to be used in an over-inclusive manner (by covering, for example, all cohabitantes regardless of their relationship). (pp.207-208)

It is this sentiment that the Victorian Government accepted in introducing provisions recognising non-cohabiting couples for particular circumstances. According to Attorney-General, Rob Hulls MLA: 'Victorians demonstrate their intimate commitment to being a couple in ways as diverse as our community... The government respects such diversity and believes that no single factor should be determinative of a domestic relationship' (Legislative Assembly, *Hansard*, 23 November 2001, p.1911).

Similar proposals have been canvassed by the Tasmanian Parliament's joint standing committee inquiring into relationships reform:

In our modern pluralist society the traditional family is but one of many different family types, all sharing similar values and confronting the same difficulties as traditional families. Non-traditional families may consist of couples that choose to live in 'marriage like' relationships without being married or may involve individuals in non-sexual relationships who share their lives in a mutually supportive relationship involving emotional and economic interdependence. (Parliament of Tasmania 2001, pp.22-23)

A significant flaw with an approach which relies upon cohabitation as an exclusive criterion is that, in most cases where the minimum period of cohabitation required is five years under South Australian law, many couples - same sex or opposite sex - will simply not be able to avail themselves of any of the benefits of legal recognition for a considerable time. In one study by the Australian Family Project, cited by the current South Australian Attorney-General during debate on the De Facto Relationships Bill in 1996, it was found that de facto relationships lasted on average for two years, and up to three quarters were finished after four years: 'This means that, leaving aside those relationships that produce children, the Bill will catch fewer than half the *de facto* relationships in South Australia and, of those, some will be excluded by certified agreement' (House of Assembly, *Hansard*, 6 June 1996, p.1755).

Part of the problem with a cohabitation criterion arises from the limitations of a presumptive scheme of recognition and it is legitimate, in this context, to ask whether cohabitation and what period of cohabitation are reasonable in order to give rise to the recognition of law.

It is not only governments, however, that balk at introducing more flexible criteria but, in South Australia's case, a relatively conservative tradition of parliamentary drafting (witness the legalese of the term 'putative spouse' - would any non-lawyer know what is meant by this?).

### **How to recognise 'couples'**

The Government discussion paper outlines various means for defining couple-based relationships and canvasses a variety of options, including models adopted by other jurisdictions. A common feature of reforms enacted across Australian jurisdictions or about to be enacted is the provision of gender-neutral definitions which describe a relationship without reference or comparison to marriage. This would represent a departure from the existing approach to relationship recognition for de facto opposite sex couples in South Australia. The difficulties in defining same sex couples in relation to marriage are well illustrated in the drafting of the Statutes Amendment (Equal Superannuation Rights for Same Sex Couples) Bill. The

definition provided by the South Australian Parliamentary Counsel for this bill demonstrates the problems that can be encountered. For the purposes of the bill (soon to be proclaimed), a couple includes two persons who are:

Cohabiting with each other in a relationship that has the distinguishing characteristics of a relationship between a married couple (except for the characteristics of different sex and legally recognised marriage and other characteristics arising from either of those characteristics) ... (clause 7A(1))

Phew! It's torturous! Looking back, I wish Frances and I had gone down a path other than the 'minimalist' one which points to the difficulties that arise in defining same sex relationships by reference to marriage criteria. However, I must defend the bill and Frances Bedford, because our tactic at the time, moving the bill in opposition, was to neutralise possible conflicts and (hopefully) get it through. We (mistakenly) thought at the time that creating a new term and definition such as 'domestic partner' - which is the Let's Get Equal Campaign's preferred course of action (more anon) - would raise more questions. As it turned out the social conservatives in the parliament adopted a more straightforward strategy: they simply ensured the bill never got debated, and it was only with Labor's transition to government that the bill was expedited through both houses.

It should be recalled that this bill was crafted and introduced from opposition and before the Let's Get Equal Campaign itself had come into existence and certainly before I had joined the group. Its approach precedes the Let's Get Equal Campaign's consultation with the lesbian, gay, bisexual and transgender communities and the collective thinking that ultimately resulted in the Let's Get Equal *Position statement*. It is not surprising that the bill's ideas are perhaps somewhat dated, although as an ad hoc reform initiative it has certainly served a purpose, keeping the issue alive in the state parliament.

As a lobby group, the Let's Get Equal Campaign's belief that legislation should establish a definition of 'couple' that is free from comparison to marriage has, therefore, been reinforced by this experience. But defining a 'couple' in a legal vacuum does not enthuse the legal fraternity and legislators and in most legislative proposals a list of indicators, for the guidance of the courts, have been included to assist in interpreting the definition.

The indicators developed for New South Wales legislation and subsequently adopted by the Australian Capital Territory, Queensland, Victoria and Western Australia are based on, but clearly differentiated from, common law approaches (Millbank and Sant 2002, pp.191-192). However, Millbank and Sant make the point that 'the problem with such a list is that it is fundamentally influenced by the origins and history of de facto law, which had as its starting point a comparison with marriage - for example, the "procreation of children" and "reputation and public aspects of the relationship"':

There has already been considerable variation in the interpretation of the factors and the weight put on them in decisions under several New South Wales laws. For instance, in one case under the *Family Provision Act 1982*, considerable emphasis was placed upon the 'public reputation' aspect (as a result, a woman living with a man in a situation of semi-secrecy was held not to be a de facto partner because the man did not 'hold out' the woman as his wife). Such an emphasis would be clearly disadvantageous to lesbian and gay couples who may not acknowledge their relationship to their families, or indeed to many other people at all. (pp.191-192)

The Let's Get Equal Campaign acknowledges this position. In our view, other models which have been put forward may be preferable to the model as adopted in other jurisdictions. These include, for example, private member's bills put forward by the Tasmanian Greens, the NSW Democrats and NSW independent MP Clover Moore.<sup>7</sup>

However, although most inquiries into relationships recognition have recommended a broader approach to simply codifying the common law, the Let's Get Equal Campaign also believes that

consistency between jurisdictions is important. Accordingly, the campaign submitted to the Government review that the indicia adopted by the Australian Capital Territory, New South Wales, Queensland, Victoria and Western Australia should also be used in South Australia, but we also urged the Government to raise the issue of improving the definitional indicators with other Australian governments.

### **Words, words, words - inclusive terminology**

Words and the hierarchy of language are important. To some degree the symbolic value of legislative change to recognise same sex couples is as important as the practical consequences for people in such relationships. This is what one Government minister, speaking to the Bedford Bill, called 'the expressive function of [the] law' which 'allows us to lay down values that the society wishes to express on behalf of its citizens to the broader community' (Hon Jay Weatherill MP, House of Assembly, *Hansard*, 16 October 2002, p.1567). This is another flaw in the minimalist approach, which merely seeks to use the existing definitions rather than wipe the slate clean and start anew.

In South Australia terms describing relationships include 'de facto partner', 'putative spouse' and 'spouse'. It is not merely enough that same sex couples are included in these definitions, or that a new category such as 'committed same sex partner' is tacked on at the end (which was one proposal suggested by South Australian Catholic social commentator, Fr John Fleming), or that same sex partners are included by implication (subsumed might be a better word) into a new and very broad category of 'dependent' while maintaining definitions of 'spouse' and 'putative spouse' which are exclusively heterosexual (which was proposed by conservative MPs in response to the Bedford Bill). To do any of these would be to reinforce the second-class nature of non-traditional relationships in relation to traditional relationships.

In our submission to the government review, the campaign proposed the adoption of new, gender-neutral terminology which does not establish a 'relationship hierarchy' or define relationships by reference to marriage. Our preferred approach was to adopt the term 'domestic partner' and define it to include a married partner, a de facto opposite sex or same sex partner using the descriptors and indicators utilised in New South Wales, Victoria, Western Australia, Queensland and the Australian Capital Territory, and partners who might be registered under a partnership registration scheme (whether in South Australia or elsewhere).

### **Partnership registration - an option?**

I know that partnership registration schemes have been a topic that has generated much debate in recent years. We revisited it in our submission to the government review for two reasons:

- It has been canvassed in a Tasmanian inquiry and proposed for introduction by the ACT Government.
- In conjunction with a presumptive recognition scheme, it could grant gay and lesbian partners close to the same opportunities as opposite sex couples who have access to federal marriage laws.

We have not advocated a registration scheme as the sole mechanism for addressing discrimination against same sex couples, but we do see it as providing an additional option - for both same sex and opposite sex couples - and as worth advocating for. The gay and lesbian rights movement in Australia has refrained from making demands for gay marriage rights. This has been motivated, I think, partly by tactics (Australia is not ready for this debate) and partly by a genuine antipathy towards an institution that is seen as fundamentally heterosexist.

But presumptive recognition schemes have their limitations - for any kind of couple. They come into play usually in crisis or emergency situations to protect one or both parties in the relationship and, often, partners in a relationship seek to have the relationship legally recognised after the event. I cannot imagine many de facto couples seeking a declaration that they are a 'putative spouse' in South Australian law just so that they can have the certificate from the court. In fact the South Australian legislation is specifically designed to be operative for a

specific purpose. A person seeks a court declaration that they are a 'putative spouse' only for a 'certain date' and '[i]t shall not be inferred from the fact that the Court has declared that two persons were putative spouses, one of the other, on a certain date, that they were putative spouses as at any prior or subsequent date' (section 11(6), *Family Relationships Act 1975* (SA)).

Courts can be worrisome places and it is worthwhile considering a simple non-court process that allows people to know that they have confirmed their relationship without need for recourse to the legal system. Moreover, as noted in debate on the South Australian De Facto Relationships Bill in 1996, the time period applicable in the presumptive scheme (five years in South Australia) can prevent many de facto couples from accessing the rights and benefits of the law.

In our submission, therefore, the Let's Get Equal Campaign suggested that there should be an option, for the purposes of South Australian law, to register a partnership and thereby circumvent the time period of the presumptive scheme. Once registered, a couple would be automatically presumed to be a 'domestic couple' and therefore entitled to all the rights, benefits and protections afforded to domestic partners without:

- having to seek a declaration from the District Court; or
- having to wait for the relevant time period (five years for most statutes) to elapse.

Registration would be by consent of both partners and there would also have to be a deregistration process similar to that for marriage under existing family law. Couple registration schemes specifically for same sex couples have been implemented in a variety of jurisdictions around the world.<sup>8</sup> A registration scheme is also being considered introduced by the ACT Government in the current parliamentary session.

According to the Tasmanian Parliament's Joint Standing Committee on Community Development (2001), a registration scheme could operate very satisfactorily in combination with a presumptive model of relationships recognition:

In combining both the presumptive model of recognition and the registration model, this approach provides maximum flexibility and protection to a wide variety of people and circumstances. (p.49)

This approach was also recommended by the Victorian Equal Opportunity Commission (1998), which noted that legislatively and administratively the process would be 'relatively straight forward' (p.51). In a submission to the NSW parliamentary inquiry into relationships reform (Parliament of New South Wales 1999), Mr Ken Clarke summarised the issue by saying 'it would be far simpler for many couples to have a form of registration of relationships (of any type) that defines basic obligations and rights and provides corresponding legal protection to those rights' (p.25).

The Let's Get Equal Campaign believes it is worth considering again.

### **Consistency across the nation**

Achieving consistent recognition of our relationships across the nation should be a compelling force now that, in most jurisdictions, equality of recognition has been achieved or is at hand. Critically, this must include reforms to federal laws that discriminate against same sex couples.

In our submission to the South Australian Government, the campaign suggested several measures, including:

- a nationally consistent definition of a relationship;
- mutual recognition of both presumptive recognition and partnership registration schemes;
- a conscious effort by jurisdictions to build up a common body of case law;
- an intergovernment agreement about the rights, benefits and protections that should be available to partners in relationships.

It will not just be enough to move on to adoption and reproductive technologies where jurisdictions have left these for later or to move the debate into the federal arena where reforms are clearly needed in a variety of areas. We will need to advocate, as a movement, that, nationally, the various jurisdictions start to really consider what a relationship is and when the law should recognise one. This process could not only be valuable in sorting out discrepancies that exist between state and territory jurisdictions (cohabitation vs. non-cohabitation, time periods, varying rights under law, varying relationship indicia, etc.), but could also serve as a useful political tool to bring the debate into the federal sphere.

### **A maturing debate**

The debate about relationship recognition in South Australia is slowly maturing.

The recent passage of the Bedford Bill has begun to focus parliamentarians' minds on the issue. Interestingly, that bill was significantly improved by amendments, moved in the upper house by a Liberal backbencher, which would protect applicants before the courts for a 'putative spouse' declaration from having all of their details splashed over the next day's news.

Even the opponents of the Bedford Bill have adopted the discourse of anti-discrimination. Instead of opposing the bill on the basis of homophobic moralism, they suggested that state legislation ought also to include other forms of domestic relationships, such as carers, as in some NSW legislation - and that, by not doing so, the Bedford Bill entrenched 'discrimination' against other non-traditional relationships. Never mind that, in the mouths of the socially conservative MPs who have advocated it, these arguments are, to say the least, a tad disingenuous (particularly given their eleventh hour nature) - to have moved the argument this far from the original 'moral majority' arguments is significant in itself. In fact, extension of relationships recognition to include categories of relationship beyond the 'couple', as in New South Wales, was a position advocated by the Let's Get Equal Campaign in our submission to the government review - but not at the expense of equal recognition of same sex relationships with opposite sex relationships.

Not only have we seen the conservative debate become more mature, but also the use of increasingly sophisticated arguments and tactics by the progressives, as they begin to learn and understand the complexity of the issues. A private member's bill introduced by Greens MP Kris Hanna on the day the Bedford Bill passed the state upper house introduced the term 'domestic partner', of which same sex partner is a subset (Stamp Duties (Equal Entitlements for Same Sex Partners) Amendment Bill 2003). I think it is safe to say that the significance of wording (which the Let's Get Equal Campaign has consistently advocated) was lost on most progressives until the social conservatives, led by John Fleming, started suggesting that tacking same sex couples on the end of the 'spouse' definition would be problematic and it would be better to create a new term and not interfere with the current definition of married couple.

As the discourse of both progressives and conservatives matures, however, so must that of the lesbian and gay rights movement. We still have a way to go in South Australia - hopefully we will see legislation in the parliament this year - but many of you, o readers, will now be living in a state which has reformed all or most of its laws.

Having progressed so far over the last decade, now is certainly the time to re-engage in our own internal discussion - and at a national level - for the next stage in our struggle for liberty, acceptance and recognition.

Definitely a familiar story.

## Endnotes

1. There are a variety of terms used in South Australian law for varying purposes. All of these exclude same sex partners. The primary term used in most statutes, 'putative spouse', has not, to my knowledge, been tested in the courts, but the decision in *Brown v Commissioner of Superannuation* (1995) 38 ALD 344 would apply. Section 11 of the *Family Relationships Act 1975* (SA) provides that: 'A person is, on a certain date, the putative spouse of another if he is, on that date, cohabiting with that person as the husband or wife *de facto* of that other person ...'
2. *Equal Opportunity Act 1984*. Unlike New South Wales, which was the first state to make discrimination on the basis of homosexuality unlawful, South Australia's legislation was deliberately crafted to include discrimination on the basis of sexuality, including homosexuality, bisexuality, transsexuality and heterosexuality, as well as presumed sexuality.
3. Other initiatives include amendments moved in the lower and upper houses to Government bills by the then Labor Opposition and a stamp duty bill moved by Greens MP Kris Hanna in the lower house.
4. The Legislative Council amendments, moved by a Liberal backbencher and supported by the Government and Democrats, prevent media reporting of details of court proceedings in which one party was seeking a declaration that he/she was the 'putative spouse' of another.
5. Labor carried the following resolution at its State Convention in October 2000 prior to being elected to government: 'Labor supports a comprehensive review of all state legislation to remove discrimination against gay, lesbian, bi-sexual and trans-gender people'. At the State Convention in October 2002 five further motions were carried.
6. For the purpose of non-cohabiting couples, the Victorian law provides the following definition: 'An adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof'. Legislation amended to include the broader definition of 'domestic partner' includes: *Alcoholics and Drug-dependent Persons Act 1968*, *Coroners Act 1985*, *Health Act 1958*, *Health Records Act 2001*, *Human Tissue Act 1982*, *Mental Health Act 1986*, *Crimes (Family Violence) Act 1987*, *Victims of Crime Assistance Act 1996*, *Co-operative Housing Societies Act 1958*, *Goods Act 1958*, *Motor Car Traders Act 1986*, *Partnership Act 1958*, *Prostitution Control Act 1994*, *retirement Villages Act 1986*, *Second-Hand Dealers and Pawnbrokers Act 1989*, *Trustee Companies Act 1984*, *Guardianship and Administration Act 1986*.
7. The Significant Personal Relationships Bill (No 2) 1998 (Tas), De Facto Relationships Amendment Bill 1998 (NSW), and Significant Personal Relationships Bill 1997 (NSW). The comprehensive report by the NSW Legislative Council Standing Committee on Social Issues indicated a clear preference for 'the more expansive indicia contained in the DFRA Bill 1998' as it 'would provide the Courts with greater flexibility' (p.53 and recommendation 8).
8. These include Belgium, Catalonia in Spain, Denmark, Finland, France, Greenland, Iceland, The Netherlands, Norway, Sweden, and Hawaii and some US cities. See Millbank and Sant (2002, p.184).

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## Appendix

The following legislation was identified by the Equal Opportunity Commission as discriminating against same sex couples in its audit of South Australian legislation:

*Administration and Probate Act 1919*  
*Adoption Act 1988*  
*Associations Incorporation Act 1985*  
*Chiropractors Act 1991*  
*City of Adelaide Act 1998*  
*Cremation Act 1891*  
*Criminal Injuries Compensation Act 1978*  
*Criminal Law Consolidation Act 1935*  
*Crown Lands Act 1929*  
*De Facto Relationships Act 1996*  
*Dentists Act 1984*  
*Domestic Violence Act 1994*  
*Equal Opportunity Act 1984*  
*Evidence Act 1929*  
*Family Relationships Act 1975*  
*Governors Pension Act 1976*  
*Guardianship and Administration Act 1993*  
*Housing and Urban Development (Administrative Arrangements) Act 1995*  
*Industrial and Employee Relations Act 1994*  
*Inheritance Family Provision Act 1972*  
*International Transfer of Prisoners Act 1998*  
*Judges Pension Act*  
*Land Agents Act 1994*  
*Local Government Act 1934*  
*Medical Practitioners Act 1983*  
*Mental Health Act 1993*  
*Motor Vehicles Act 1959*  
*Parliamentary Superannuation Act 1974*  
*Passenger Transport Act 1994*  
*Pharmacists Act 1991*  
*Physiotherapists Act 1991*  
*Police (Complaints and Disciplinary Proceedings) Act 1985*  
*Police Superannuation Act 1990*  
*Public Corporations Act 1993*  
*Public Intoxication Act 1984*  
*Real Property Act 1886*  
*Renmark Irrigation Trust 1936*  
*Reproductive Technology Act 1988*  
*Residential Tenancies Act 1995*  
*Soil Conservation and Land Care Act 1989*  
*South Australian Housing Trust Act 1995*  
*South Australian Office of Financial Supervision Act 1992*  
*Southern State Superannuation Act 1994*  
*Stamp Duties Act 1923*  
*Superannuation (Benefits Scheme) Act 1992*  
*Superannuation Act 1988*  
*Supported Residential Facilities Act 1992*  
*Survey Act 1992*  
*Transplantation and Anatomy Act 1983*  
*Veterinary Surgeons Act 1985*  
*Water Resources Act 1997*  
*Witness Protection Act 1996*  
*Workers Rehabilitation and Compensation Act 1986*  
*Wrongs Act 1936*

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Matthew Loader is a member of the Let's Get Equal Campaign in Adelaide. A state public servant, he previously worked for a member of parliament, and is also a member of the Australian Labor Party.

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