

Legal recognition
of lesbian and gay
couples in South
Australia



LET'S GET EQUAL CAMPAIGN

Legal recognition of same sex relationships in South Australia State election manifesto

SOCIETY, RELATIONSHIPS AND THE LAW

Our social fabric is built upon loving, committed relationships.

The law has long recognised this by granting a range of rights, benefits and responsibilities for people in relationships, including both married and unmarried couples.

THE PROBLEM FOR SAME SEX PARTNERS

The problem with our current laws is that they are very narrow and do not recognise many important human relationships – including same sex couples.

For example, if you are in a gay or lesbian relationship, unlike heterosexual de facto couples:

- you won't inherit your partner's assets if they die without a will
- if your partner is hospitalised, you may be denied access to them or involvement in their medical treatment
- if your partner dies, you may be denied rights to make any decisions about the body or the funeral

These are rights most people would take for granted, but **as far as South Australian law is concerned, gay and lesbian relationships simply don't exist.**

In fact, there are **over 90 South Australian laws** which discriminate against same sex partners.¹

Because of this, many same sex couples who have been together for decades find themselves without legal rights or protection at difficult times in their lives – rights they would **automatically** have if they were heterosexual.

IT IS TIME FOR SOUTH AUSTRALIA TO ACT

South Australia has fallen behind the rest of the country.

We are now the ONLY state that has not removed discrimination against same sex couples in state laws.

Same sex partners are even recognised **more broadly in federal laws** than they are in South Australia – and John Howard has said he is 'strongly in favour of removing any property and other discrimination that exists against people who have same-sex relationships'.²

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Around the world, 35 countries now recognise same sex couples – and the list is growing.³

Thirty years ago, South Australia led the nation and much of the world in decriminalising homosexuality⁴ – now we hold the ‘wooden spoon’ when it comes to gay rights.

A parliamentary inquiry in 2005 found **57 per cent support** for recognition of same sex partners.⁵ Media and academic polls have indicated higher support.⁶ One recent poll of 24,000 Australians found up to 65 per cent did not object to same sex relationships.⁷

It is clear that the current law does not reflect the attitudes of most South Australians.



Same sex couple recognition. Source: www.wikipedia.org

HOW CAN REFORM BE ACHIEVED?

Equal rights for de facto same sex partners

South Australian law defines de facto relationships to exclude lesbians and gay men. The law only applies if the couple is heterosexual.

A bill⁸ granting equal rights to same sex partners was presented to the parliament by the Rann Government; however it failed to pass before parliament was adjourned for the election. **This bill must be re-introduced and passed as a priority.**⁹

Based on models adopted in other states, the bill was amended in the Legislative Council to provide protection for a new category of ‘domestic partner’. **There is no reason these amendments should not continue to be included in the bill.**

Civil unions for all de facto partners

De facto relationships are recognised retrospectively by the courts when a dispute or crisis arises. For the growing number of de facto couples in South Australia¹⁰ this causes unnecessary trauma and legal costs at the most inappropriate time.

Through civil unions, de facto partners can **register** their relationship with the authorities without going through the formalities of marriage, gaining **legal certainty** and **peace of mind**. Increasingly popular among de facto couples regardless of sexuality, civil unions are already available in parts of Australia and comparable countries around the world.¹¹

Civil unions have been proposed nationally and at a state level for many years – including in South Australia.¹² Now is the time to act. **A civil unions scheme allowing registration of de facto relationships should be set up as a priority.**

Parenting by same sex partners

The bill excluded rights for same sex partners in adoption and reproductive technologies – and failed to amend statutory presumptions that enable both same sex partners to be noted as parents on a child’s birth certificate. **These issues should now be addressed.**

An increasing number of Australian states and territories allow same sex partners access to adoption and reproductive technology.¹³ And, according to the last census, up to 15 per cent of same sex partners are already raising children¹⁴ – but without adequate recognition of this by the law.

OUR POLICY FOR THIS ELECTION

The Let's Get Equal Campaign calls on all political parties to adopt the following as policy:

1. Acknowledge that **discrimination** against same sex partners is **out of step** with community attitudes, national trends and international human rights.
2. Agree that such **discrimination causes much hardship** and must be eliminated.
3. Ensure the re-introduction and passage of the *Statutes Amendment (Relationships) Bill 2005 as a priority* after the election (including amendments to recognise domestic partners passed by the Legislative Council).
4. Ensure the introduction and passage of a **civil unions scheme** for de facto partners modeled on the Tasmanian and ACT legislation.
5. Ensure the introduction and passage of equal rights for same sex partners in adoption, reproductive technology and parenting presumptions.

OUR APPROACH TO THIS ELECTION

The fight to recognise same sex partners has been going on for a decade in South Australia.¹⁵

It's taken too long to get this just and sensible reform enacted. The gay and lesbian community has had enough of empty promises and lack of action.

We will not settle for anything less than full equality. And we will not let homophobic politicians get away with blocking this legislation again.

The Let's Get Equal Campaign will be **targeting** politicians who opposed, or have a policy to oppose, equal rights for same sex partners. We recognise that some parties offer a conscience vote, while others have a party position.

Our election campaign will include:

1. **Targeting marginal seats:** We will focus on key marginal seats, targeting politicians who have opposed the bill. This will include:
 - polling of marginal seats on gay rights issues
 - letterboxing campaigns
 - supporting gay-friendly candidates
2. **Supporting gay-friendly politicians in the upper house:** We will support upper house politicians from major and minor parties who have had a record of support for gay rights. We will campaign against homophobic parties and politicians.
3. **Seeking commitments from the major parties:** We will seek commitments from Labor and Liberal as well as other parties to ensure the re-introduction and passage of the bill as a priority in the next parliament.
4. **Building support in the South Australian community:** We will increase the level of community support for same sex partners and the need for change.



We will not settle for anything less than full equality!

MORE INFORMATION

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- ¹ This excludes state public sector superannuation schemes. A Government backbencher succeeded in getting a private member's bill granting legal rights in state public sector superannuation laws passed by both houses of state parliament in 2003.
- ² Prime Minister, Hon John Howard MP, Press Conference Transcript, Commonwealth Parliamentary Offices, Sydney, 22 December 2005 at www.pm.gov.au/news/interviews/Interview1735.html.
- ³ More information from www.ilga.org or www.wikipedia.org.
- ⁴ South Australia was the first Australian jurisdiction to decriminalise homosexuality in 1975.
- ⁵ Report of the Social Development Committee at www.parliament.sa.gov.au/committees.
- ⁶ For example, in Western Australia, where the Government passed sweeping changes to legislation to recognise and include same sex couples, one poll taken during the heat of debate on the legislation found up to 86 per cent of Western Australians supported ending discrimination: Pryer, W, 'WestPoll – Most Back Gay Rights', *The West Australian*, 8 December 2001. Moreover, attempts to wind back the changes by the Opposition did not result in any favorable electoral results.
- ⁷ The attitudinal research of 24,000 Australians was conducted by The Australia Institute/Roy Morgan Research in 2003/2004 and found only 35 per cent of people considered homosexuality to be immoral: Flood M and Hamilton C 'Mapping Homophobia in Australia' July 2005 at www.tai.org.au.
- ⁸ *Statutes Amendment (Relationships No 2) Bill 2005*.
- ⁹ The bill should be updated to include any legislation made in the meantime.
- ¹⁰ There are around 110,000 South Australians (or 7.3 per cent) in heterosexual de facto relationships based on the 2001 census. More information from www.aifs.gov.au/institute/info/charts/menu.html.
- ¹¹ Civil unions are proposed for the ACT and available in Tasmania, New Zealand, the United Kingdom, parts of the United States, France, Germany, Austria, Italy, Scandinavia and the Benelux nations, Argentina and Brazil. More information from www.ilga.org or www.wikipedia.org.
- ¹² Civil unions are to be introduced in the ACT, are under consideration in Victoria, have been implemented in Tasmania and have been proposed nationally, in NSW and South Australia. Last year a *Civil Unions Bill 2005* was presented to the SA parliament.
- ¹³ Same sex partners can adopt as a couple in WA and Tasmania, with reforms on the agenda for the ACT and Victoria. Same sex partners can access reproductive technology in NSW, the ACT, Tasmania and WA and High Court rulings have struck down laws that prevent access by lesbians to reproductive technology in SA and Victoria.
- ¹⁴ 300 SA children are being raised by same sex partners according to the last census.
- ¹⁵ The first attempt to recognise same sex partners was made by amendments to the *De Facto Relationships Bill 1996*. An audit of all SA laws was conducted by the Equal Opportunity Commission in 2000 and found 54 laws that discriminate against same sex partners. Since then further laws that discriminate have been identified by the SA Attorney-General's Department.