The South Australian Law Reform Institute (SALRI) is compiling a list of South Australian laws and regulations that discriminate against individuals and families on the grounds of sexual orientation, gender, gender identity, or intersex status. SALRI would like to hear from you about the current South Australian laws that apply to the legal recognition of relationships, particularly same sex relationships or relationships involving sex and gender diverse people. We hope this fact sheet helps you get started.

What kinds of relationships are recognised under South Australian law?

South Australian law currently recognises a range of different relationships and attributes specific legal rights to these relationships. The relationship attracting the most legal rights is that of legal marriage as defined under the Marriage Act 1961 (Cth) as between a man and a woman. Because the Marriage Act is a Commonwealth law, constitutional rules apply that limit the types of laws South Australia can make about marriage. In short, it is very difficult for a State or Territory to have a definition of ‘marriage’ that is inconsistent with the Commonwealth’s definition of a heterosexual union.

South Australia can, with greater certainty, make laws about other types of relationships. For example, in the 2000s, South Australian Parliament introduced a number of legislative reforms to provide greater legal recognition for same sex couples and to remove some legislative provisions that discriminated against people on the basis of their marital status or sexuality, such as laws relating to superannuation. This included the Statutes Amendment (Domestic Partners) Act 2006, which made changes to 97 separate laws and replaced the term ‘de facto’, with the concept ‘domestic partnership’.

Currently, under the Family Relationships Act 1975 (SA), a person will be in a ‘domestic partnership’ if he or she is living with another person in a ‘close personal relationship’ and has lived with that person for at least the last three years, or has had a child with that person.

A ‘close personal relationship’ is defined as a relationship between two adults (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis. It does not include two people where one is paid to care for the other, but it does not matter whether or not a sexual relationship exists, or has ever existed, between them.

Two people can have their domestic partnership legally recognised by going to Court and showing that the criteria mentioned above are met.

Domestic partners can also make a written agreement called a Domestic Partnership Agreement (DPA) about their living arrangements and joint property under the Domestic Partners Property Act 1996 (SA). A DPA is like a contract between domestic partners about their shared life that can be certified by lawyers and enforced by a court. It can cover matters such as how joint property (including family home or superannuation) would be divided if the partners were to separate, or how
financial matters will be arranged during the relationship. A DPA can also cover non-financial matters, including the termination of the partnership.

As a result of these changes, same sex couples, or couples involving sex or gender diverse people, who were previously excluded from the definition of 'de facto' under many laws can now fall within the definition of 'domestic partners'. This can have flow on affects for other legal rights, including parenting rights (discussed in Fact Sheet 5). These reforms were followed by the enactment of the Statutes Amendment (De Facto Relationships) Act 2011 (SA) that recognises same sex couples in asset forfeiture, property and stamp duty applications.

There have since been a number of unsuccessful attempts to introduce a system of civil unions for same sex couples in South Australia, as well as attempts to make South Australian laws that would permit or recognise same sex marriage. Other States, such as New South Wales, have made laws that recognise same sex marriages solemnised overseas.

What do you think about these laws?

We would like to know what you think about these current laws. To tell us your thoughts, complete the online feedback form, or visit the SA Government’s YourSAy website for other ways to get in touch.

Attempting to answer the following questions might help with your response:
> Were the reforms to South Australian laws in the 2000s effective at removing discrimination against same sex couples?
> Is the concept of ‘domestic partners’ appropriate legal recognition for same sex couples, or couples involving sex or gender diverse people? For example, is the requirement for two people to be living in a close personal relationship for three years appropriate?
> Should other forms of relationship recognition, such as civil unions, be considered - keeping in mind the constitutional limits on South Australia in relation to laws about marriage?
> Should South Australia register same-sex marriages solemnised overseas?
> Are Domestic Partnership Agreements appropriate tools to govern the financial and other affairs of same sex couples or couples involving sex or gender diverse people?

Where to go for further information

Domestic Partners Property Act 1996 (SA)

Family Relationships Act 1975 (SA)

South Australian Government's LGBTIQ Inclusion Strategy

Equal Opportunity Commission SA Fact Sheets on Legal Recognition of Same Sex Couples

Australian Human Rights Commission’s Same Sex Same Entitlements Report

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