Friday, 6 March 2015

Att: John Rau MP
Deputy Premier
Attorney-General
11th Floor, 45 Pirie St
Adelaide, SA, 5000

By email

Re: Registering a Defacto and Same-Sex Relationship in South Australia

I am writing to you today seeking your assistance with an issue which significantly disadvantages many South Australians who are in genuine, ongoing and committed spousal relationships with a partner who is not an Australian Citizen or permanent resident.

This matter has a significantly detrimental impact on many heterosexual and same-sex couples who are not legally married nor have lived together or cohabitated for 12 months or more allowing them to meet Australian immigration requirements to apply for a spouse/partner visa.

Despite most jurisdictions of Australia providing opportunities for couples to meet the eligibility criteria as set out in the *Migration Act 1958*, the inability of many couples being unable to officially register their relationship with Births, Deaths and Marriages Office in South Australia means that they are unable to meet the prescribed criteria.

To this end, I am requesting an immediate amendment be made to the Family Relationships Act 1975, allowing greater flexibility for South Australians to register their same-sex or heterosexual domestic relationship.

Under the Australian Migration Act and Australian Immigration Law it is possible for the spouse of an Australian Citizen, permanent resident or eligible New Zealand Citizen to apply for an Australian (spouse) visa.

There are 3 main categories under the heading of an Australian spouse visa. They are specifically for those who are married, those who are engaged, or those who are not married but have cohabitated in a defacto relationship for at least 12 months and who can demonstrate the genuine and ongoing nature of their relationship.

In addition to this, where it is possible to legally register a relationship this is also acceptable evidence by the Department of Immigration and Border Protection for a defacto visa application even where a visa applicant and their Australian spouse/sponsor have not cohabitated for 12 months.

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Specifically, the 12 month cohabitation requirement at time of lodging a visa application does not apply if the de facto relationship was registered under a law of a state or territory prescribed in the Acts Interpretation (Registered Relationship) Regulations 2008 and to this end, I am seeking a change to the the South Australian Family Relationships Act 1975..

In **Victoria**, under the Relationships Act 2008, Victorians can register their same-sex or heterosexual domestic relationship, or a caring relationship.

In **Queensland**, under the Relationships Act 2011, couples of any sex can register a relationship.

In **New South Wales**, under the Relationships Register Act 2010, two adults who are in a relationship as a couple, regardless of their sex, may apply to the Registrar for registration of their relationship.

In the **ACT**, under the Domestic Relationships Act 1994 a couple may enter into a civil partnership.

In **Tasmania**, under the Relationships Act 2003 a couple regardless of sex may register their relationship.

There is no registration system in Western Australia or the Northern Territory. Whilst there are opportunities under the Domestic Partnership program provided in the Family Relationships Act 1975, partners must have been living together for at least three years, or during four years for periods totalling three years, or have had a child together. A domestic partnership includes opposite sex couples, same-sex couples, and companion relationships.

Three years is simply too long for those seeking to meet the eligibility criteria for an Australian partner visa, particularly if a partner is living overseas and as such, this needs to be amended.

Previously I wrote to the Hon Senator Michaelia Cash, Assistant Minster for Immigration and Border Protection and Minister Assisting the Prime Minister for Women regarding changes to the migration regulations to allow greater flexibility for same-sex couples. I also requested that all states and territories extend relationship registration opportunities.

In a response to my request I received from Liz Carter, Director, Family Policy Section, Visa Framework and Family Policy Branch from the Department of Immigration and Border Protection it was stated "it is the jurisdiction of each State and Territory to determine whether to facilitate relationship registration within their respective laws and it is the Acts Interpretation (Registered Relationships) Regulation 2008 that prescribes which State and Territory relationship registration laws are recognised by the Commonwealth." And that "Neither of these matters fall within the Department of Immigration and Border Protection's portfolio."

Therefore, without changes to the Family Relationships Act 1975 many South Australians are being significantly disadvantaged compared to those living in Victoria, Queensland, NSW, the ACT and Tasmania.

South Australians who are in same-sex relationships where their spouse lives overseas are at a particular disadvantage. Under current State and Federal guidelines, any couple such as this will never be able to live permanently together in South Australia.

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Currently, the only way for partners of South Australian residents to meet Australian Immigration requirements for a spouse/partner visa is if they have lived together for 12 months. This is very hard to do when the two people permanently reside in different countries and where the spouse from overseas does not hold a visa which permits them to stay in Australia for over 12 months.

Currently there are no visas available that would allow this couple to live together in Australia for 12 months in order to specifically meet the Australian immigration guidelines required to lodge a spouse visa. The only possibility would be for the South Australian resident to move overseas or to try and use multiple visitor visas to meet the cohabitation requirements onshore. Of course, this is not an appropriate use of the visitor visa program, nor would a visitor visa permit any type of employment whilst the holder of that visa is in Australia.

If a same-sex or heterosexual couple were able to register their relationship in South Australia by demonstrating that they were in a genuine and ongoing spousal relationship (not having to reside together for 3 years, but for a shorter period of time – say 3 to 6 months) this would then permit the couple to lodge a spouse/partner visa application.

Importantly, this would not lead to automatic or immediate permanent residency in Australia. Ultimately the genuineness and ongoing nature of the relationship will still need to be assessed by the Department of Immigration and Border Protection. Once approved the visa applicant would be given a provisional 2 year spouse visa to live in Australia. After 2 years a further permanent spouse visa application needs to be made and only when the Department are satisfied that the relationship is ongoing and genuine is Australian permanent residency issued. If a relationship breaks down before the grant of permanent residency, the Department will initiate cancellation of the provisional spouse visa.

Without changes to the current laws surrounding the Domestic Partnerships program in South Australia and whilst the 3 year requirement is still in place it is unlikely that any couple in similar relationships would ever have the opportunity to live together permanently in Australia.

Regardless of gender, the Domestic Partnership program would be made more accessible to South Australians across the board if the requirements were amended to align with opportunities available in other jurisdictions.

Having worked in the area of Australian immigration for close to 20 years, I have seen countless situations where South Australian residents are being significantly disadvantaged due to their in ability to live with their spouse. I believe that the current program and policy settings are resulting in a denial of a basic human right. That being the opportunity to live together in Australia with a spouse.

I am hopeful that you will make changes and amendments to current legislation in order to provide greater recognition and greater opportunities to heterosexual and same-sex couples in state law so anyone in this situation is able to legally register their relationship in South Australia. Such changes will significantly assist couples to meet the legal requirements for the grant of an Australian spouse visa.

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Thank you for your consideration and I look forward to your response and discussing this with you further in due course.

Kind Regards,

Mark Glazbrook MMIA
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Managing Director
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The Hon John Rau MP

15AGO0525

Government of South Australia

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27 August 2015

Mr Mark Glazbrook
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Dear Mr Glazbrook

Establishing a relationships register in South Australia

Thank you for your letter regarding the registration of de facto and same sex relationships in South Australia. My response to you has been delayed as I had to consider information from different areas of my department as well as legislation in other Australian jurisdictions.

I note your concerns regarding a de facto partner applying for a partner visa under the *Migration Act 1958* (Cth), and in particular the 12 month de facto relationship requirement. However, I understand that there are some circumstances where the 12 month de facto relationship requirement does not apply. One of those such circumstances is where there are compelling and compassionate circumstances for the grant of the visa, such as the applicant has children with the partner or that cohabitation was not permissible under the law of the country where the applicant resided for the 12 months before. Another is where the partner is or was the holder of a permanent humanitarian visa and the applicant was in a de facto relationship with that partner before the permanent humanitarian visa was granted, and the partner informed Immigration (as defined in the *Migration Regulations 1994* (Cth)) of the existence of the relationship.

It is not clear to me that the migration issues you have raised warrant the establishment of a relationships register in South Australia as you have described in your letter. Any decision to establish a relationships register in South Australia will have widespread legal implications that will require significant consideration and analysis.

Yours sincerely

John Rau
Deputy Premier
Attorney-General

From: Mark Glazbrook
Sent: Tuesday, September 22, 2015 8:39 AM
To: John Rau
Subject: Introduction of a Relationships Register in South Australia - why are we a State of Inequality

For the attention of John Rau MP.

Hello Mr. Rau,

I refer to my original email and letter requesting an immediate amendment be made to the Family Relationships Act 1975, allowing greater flexibility for South Australians to register their same-sex or heterosexual domestic relationship in order for South Australia to be more aligned to opportunities available in other States and Territories in terms of meeting the relevant criteria to apply for a Defacto/Partner visa.

I have received your response to my correspondence, however, I believe that you have significantly underestimated the detrimental impact and affect that existing limitations has and will continue to have on many South Australians, their partners and their families.

I note that you have stated "it is not clear to me that the migration issues you have raised warrant the establishment of a relationships register in South Australia as you have described in your letter". This statement could not be further from the truth.

Through my business, I meet hundreds of people every year who are affected by the lack of opportunities provided in South Australia compared to those afforded to people living in other states of Australia, namely Victoria, Queensland, NSW, the ACT and Tasmania. I would estimate that there may be thousands of South Australians every year that are affected by existing limitations. I am even aware of people moving out of South Australia in order to be able to remain with their partners where the eligibility requirements can be met in other States or Territories.

Yesterday I met with two separate parties who are affected by these limitations. One a South Australian man who is in a relationship with a Thai lady and the other a couple who have been in a relationship for 14 months who are unable to meet the Federal Immigration Departments 12 month cohabitation requirements.

John and his partner Lizzie are happy for me to use their story as an example of the significant impact that your decision to not introduce a relationship register in South Australia has on residents of South Australia who are in a relationship with someone from overseas.

John Bainbridge arrived in Australia in October 2013 on a working holiday visa. He subsequently met the requirements for this visa to be extended for a further 12 months and his current visa expires on the 21st of October 2015. In July 2014 John met his Australian partner Lizzie Newland and they formed a very strong relationship. John is planning to move into his girlfriend's parents' house prior to departing Australia. John's partner Lizzie lives at home as she is completing a speech pathology degree at University. Simon has completed a bachelor degree in the UK in construction estimating and surveying, however, found working in this field in South Australia difficult due to existing economic activities. Simon could have left Adelaide to look for employment opportunities in his field in other States however he chose to remain with Lizzie.

Simon and Lizzie do not have a child from the relationship and Lizzie is not the holder of a permanent humanitarian visa and as such there is no waiver provisions of the 12 month cohabitation requirement, that is unless the South Australian government amends the act or establishes a relationship register. In fact the waiver provisions you have included in your response only assist a very small minority of applicants.

For your information immigration guidelines state the following regarding relationships that are registered under a State/Territory law prescribed in the Acts Interpretation Act.

6.5 If the relationship is registered under Australian State/Territory law

Under regulation 2.03A(5), the 12 month minimum relationship period does not apply if the relationship is registered under a State/Territory law prescribed in the Acts Interpretation Act (Registered Relationship) Regulations (namely, regulation 3) as a kind of relationship as prescribed in those Regulations.

Unlike regulation 2.03(A)(3), which explicitly requires the 12 month relationship criterion to be met at the time of visa application, regulation 2.03A(5) is silent on when the relationship must be registered. As such, an applicant who registers their de facto relationship after the application is made but before it is decided is taken to have met regulation 2.03A(5).
However, even if regulation 2.03A(5) applies, the minimum age requirement must still be met, as it is a separate legal requirement under regulation 2.03A(2).

Currently, only the following laws and relationships (and only for the 5 jurisdictions indicated) are prescribed (and so meet the requirements of regulation2.03A(5)).

Victoria:
Relationships Act 2008 - a registered relationship that is registered under s10(3)(a) of that Act.

Tasmania:
Relationships Act 2003 - a significant relationship as defined in s4 of that Act.

NSW:
Relationships Register Act 2010 - a registered relationship as defined in s4 of that Act.

ACT:
Civil Partnerships Act 2008 - a relationship as a couple between 2 adults who meet the eligibility criteria mentioned in s6 of that Act for entry into a civil partnership.

Note: The ACT's Civil Partnerships Act 2008 has been repealed and relationship registration certificates issued in the ACT are now issued under the Domestic Relationships Act 1994. The Domestic Relationships Act 1994 is, however, not prescribed in the (Commonwealth's) Acts Interpretation (Registered Relationships) Regulations 2008. As this situation is a circumstance outside the applicant's control, it is the department's policy to accept registration certificates issued under the Domestic Relationships Act 1994.

QLD:
Civil Partnerships Act 2011 - a relationship as a couple between 2 adults who meet the eligibility criteria mentioned in section 5 of that Act for entry into a civil partnership.
Persons claiming that the minimum 12 month relationship period should not apply because their relationship is one that is registered as described above should provide evidence of the registration (including that the registered relationship is also as described immediately above).
A receipt indicating that an application for registration has been lodged is not sufficient for the purpose of regulation 2.03A(5). The relationship must be registered for regulation 2.03A(5) to be met.

The department is aware that a State/Territory authority might not assess either the de facto relationship or residency status of the parties registering their relationship. However, if a visa applicant produces valid evidence that their de facto relationship has been registered under a State/Territory law (for example, a certificate to verify registration) officers cannot impose additional criteria on that applicant in order to be satisfied that regulation 2.03A(5) is met.

∑ Regulation 2.03A(5) is met if the applicant produces valid evidence of a registered relationship.

∑ However, as regulation 2.03A applies to applicants whose relationship has already been favourably assessed against s5CB of the Act, it should be of little concern that State/
Territory authorities might issue registration certificates without assessing the relationship.

I am not aware of the widespread legal implications that would exist in this matter that you have mentioned, however, what concerns me most from your response that whilst it is entirely possible for the you and the Government to change the Act and introduce changes, regrettably you are rather choosing not to – that is you could if you wanted to, but you don't want to, which given the impact that this continues to have on many South Australians is extremely disappointing. I would imagine that the same considerations that you have spoken of would have been considered by Victoria, Queensland, NSW, the ACT and Tasmania prior to them including provisions within their respective Acts which are more compassionate and supportive to those provided in South Australia by the South Australian Government.

Like with many things, people don't often comprehend the full extent of problems and hardships faced by others due to Government policy or Acts unless it directly affects them and this could be why you do not believe that the migration issues I have raised warrant the establishment of a relationships register in South Australia. This could not be further from the truth.

John and Lizzie are now left in a dire and desperate situation. John and Lizzie are unable to meet the Defacto cohabitation requirements as they have not cohabitated for 12 months. They do not want to rush into any marriage which means that they do not meet the requirements of a fiancé or marriage application. If John leaves Australia and wants to return on a visitor visa to spend more time with his Lizzie, he may be granted a 3 month visitor visa but this will not permit him to work and is a short term temporary option. As this visa would only be valid for 3 months, this will mean that the couple still remain unable to meet the defacto 12 month cohabitation requirements. John's only other option to return to Adelaide to be with Lizzie would be a student visa.

He could enrol in a course as an international student such as a Master of Surveying program, however, this would be extremely expensive and cost in excess of $75,000.00 and as the intention of this application would be to live with his spouse and study in South Australia it is most likely that the visa would be refused as he would not be regarded as a genuine temporary entrant due to his relationship. Work limitations on a student visa are 20 hours per week or 40 hours per fortnight in most circumstances and as such Johns earning capacity would be halved which could cost him $25,000 to $30,000 in lost income per year, therefore the total economic cost of studying in Australia could be in excess of $130,000.00. Having been in Australia on a working holiday visa for 2 years and due to the fact that Lizzie is currently a full time student the financial cost of a Master program, visa costs and other associated costs for example health insurance and international travel would be too cost prohibitive for the couple.

Therefore, in a nutshell the couple could either move interstate so that they can legally register their relationship or they will both depart Australia to live in the UK as there are no opportunities for them to live together permanently in South Australia. Either of these options will cause considerable disruption to the couple and there will be a significant cost plus the an emotional, physical and financial toll on them and their immediate family.
I met with the couple yesterday and spent an hour with them trying to explain that there are currently no visa options available for them in South Australia despite opportunities existing and being provided by other States and Territories of Australia.

I believe you should reconsider the South Australian governments positions on this very important issue.

Kind Regards,

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