



THE LAW SOCIETY
OF NEW SOUTH WALES

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6 January 2016

Mr Andrew Cappie-Wood
c/- Ms Jennifer Mar Young
Director
Civil Law and Cabinet
NSW Department of Justice
Locked Bag 5111
PARRAMATTA NSW 2124

By email: jennifer.mar.young@justice.nsw.gov.au

Dear Mr Cappie-Wood,

Statutory Review of the *Relationships Register Act (2010) NSW*

I am writing on behalf of the Human Rights Committee of the Law Society of NSW ("Committee"), which is responsible for considering, and monitoring, Australia's obligations under international law in respect of human rights; considering reform proposals and draft legislation with respect to issues of human rights; and advising the Law Society accordingly.

Thank you for the invitation to provide submissions to the statutory review of the *Relationships Register Act 2010* (NSW) ("Act"), which is required under s 21 of that Act.

The Act was passed into law in NSW on 1 July 2010. The Act provides a framework for adults in de facto or coupled relationships to have their relationship officially recognised in the state of NSW. This facilitates the recognition of rights available to other couples in relationships recognised at law. For example, the Committee understands that the registration of relationships under the Act greatly assists in the application process for Australian partner visas (subclasses 820 and 801).

The Act permits the registration (and therefore recognition) of relationships between two adults who are in a relationship as a couple (s 5(1)). Such recognition under the Act does not discriminate between heterosexual and homosexual relationships. In the absence of any legislative protection of marriage between same sex couples, it is widely considered that the relationship register most benefits same sex couples.

In the Committee's experience, the Act is generally operating well, and the Committee commends the NSW Parliament for having enacted legislation to provide equal recognition of relationships between adults in NSW. However, the Committee raises for consideration two matters that, in the Committee's view, would improve the operation of the Act if amended in this review process.

1. Operation of section 5(3) of the Act

Section 5(3) of the Act prescribes a list of circumstances under which the registration of a relationship would be refused. In particular, s 5(3)(a) prohibits the registration of a relationship where either adult is already married (“marriage exclusion”). Such situations would, by definition, capture and prevent a same sex couple, married overseas under foreign marriage laws, from registration of their relationship on the Relationship Register.

However, Australian citizens in same sex relationships are increasingly travelling to other jurisdictions such as New Zealand for the purposes of becoming married, and the number of countries enacting such legislation is also increasing.

Under the current wording of the marriage exclusion, a NSW resident who is married in another country could be prohibited from having their relationship registered in NSW. However, the Committee understands that the NSW Registry of Births Deaths & Marriages (“BDM”) has adopted a policy since November 2014, where it will register a same sex relationship in NSW, despite that couple having been married in a country that permits same sex marriage.

The Committee supports the adoption and implementation of such policies by BDM as it is consistent with the right to equality. However, the lack of legislative protection for foreign-married same sex couples means that the current policy direction taken by BDM is easily subject to change and the registration of the relationships of foreign-married same sex couples is not guaranteed.

The Committee notes that the above recommendations are consistent with the Relationships Register Amendment (Recognition of Same-sex and Gender-diverse Relationships) Bill 2014, which was a private member’s bill introduced in 2014 by Independent Member for Sydney, Alex Greenwich. The Committee notes that the Bill lapsed in the Legislative Assembly on 15 February 2015.

The Committee notes that the Act has provided a rights-consistent mechanism by which people in same sex relationships residing in NSW are able to have their relationships recognised at law. However, the marriage exclusion provisions in the Act, as currently drafted, have the effect of discriminating against same sex couples married in other jurisdictions by preventing the registration of these relationships in NSW.

Such provisions ought to be cured by amendment, as part of this statutory review process. This approach upholds the fundamental human right of equality as set out in Article 26 of the *International Covenant on Civil and Political Rights* to which Australia is a signatory, and would provide a legislative basis for BDM’s own policies.

2. Clarification to ensure recognition of gender diverse relationships

The Committee submits that any amendment to the Act, to enable the recognition of foreign same sex marriages, should clarify that people in gender diverse relationships are also recognised, regardless of their foreign marriage status. Such relationships include a person who identifies as trans or intersex, where the definition of “intersex” should include a person who does not wholly identify as either female or male, or who may not identify as either.

The Committee thanks you for the opportunity to provide comments. Questions should be directed to Vicky Kuek, policy lawyer for the Committee on (02) 9926 0354 or victoria.kuek@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gary Ulman', followed by a period.

Gary Ulman
President