

The Hon Jay Weatherill  
Premier of South Australia  
GPO Box 2343  
ADELAIDE SA 5001

22 November 2016

Dear Premier

### Righting wrongs for LGBTIQ people in South Australia

The South Australian Rainbow Advocacy Alliance (SARAA) advocates for the health and welfare of LGBTIQ people and aims for LGBTIQ people to live happy and fulfilled lives in the wider community. The Human Rights Law Centre (HRLC) works to protect and promote the rights of LGBTIQ people across Australia has been closely involved in the development of schemes to expunge or extinguish historical homosexual convictions in other jurisdictions. The HRLC also provides free and confidential legal advice and assistance to those living with historical convictions, including men in South Australia.

Together, we congratulate you on the commitment to apologise to LGBTIQ people for the past criminalisation and discrimination they have suffered at the hands of the state. A formal state apology for past wrongs committed against LGBTIQ recognises the harm caused by unjust laws which criminalised homosexuality and rebuilds LGBTI community trust and confidence in the government and law enforcement.

We commend the South Australian Government on being the first state to introduce laws aimed at redressing historical wrongs caused by remaining convictions for consensual same-sex activity. The amendments introduced in the *Spent Convictions (Decriminalised Offences) Amendment Bill 2013 (SA) (Bill)* which provided for consensual same-sex activity to be spent under the *Spent Convictions Act 2009 (SA) (Act)* was a welcome move forward for South Australians.

However, the scheme currently has a number of limitations that prevent it from achieving its intended purpose. We recommend a number of improvements to ensure the scheme operates fairly and effectively (see attached submission provided to your Department on 11 November 2016). Namely:

- The **scheme should be broadened** to include the full range of offences used to persecute LGBTIQ people.
- The **purpose** and **legal effect** of the scheme should be clarified to achieve ‘expungement’ rather than spending convictions – this is important for symbolic but also practical reasons.
- The **process** should be improved to be accessible, confidential and more sensitive to the needs of LGBTIQ people who have suffered trauma.

For example, one HRLC client is unable to apply for a conviction of ‘buggery’ to be spent in South Australia because he was 14 at the time of the offence and therefore did not consent to the sexual act (the current scheme requires all conduct to be consensual). Our client would today be considered a victim of sexual abuse yet he is unable to access the current scheme.

Given these weaknesses and gaps in the current scheme, we are concerned that the positive benefit of the planned apology will be undermined if these improvements are not made, or committed to, prior to the apology taking place. As you would understand, an important element of any formal apology is a commitment to future action to continue to rebuild relations with the affected community.

We understand that the South Australian Government's ground-breaking LGBTI Inclusion Strategy is also due to expire at the end of 2016. The apology would be a fitting occasion to commit to a further strategy for the coming years and demonstrate the Government's commitment to supporting LGBTIQ communities and their families into the future.

We understand the apology is currently proposed to go ahead next Thursday. We urge the Government to do everything in its power to ensure the bills being considered in the Legislative Council are passed so as not to undermine the integrity and impact of the apology.

We thank you for your continuing commitment to LGBTIQ South Australians and would welcome the opportunity to discuss the above further with you in person.

Yours sincerely

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