

South Australia

Relationships Register Act 2016

An Act to make provision for the registration of certain relationships.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Relationships Register Act 2016*.

3—Object

The object of this Act is to provide for the legal recognition of persons in a relationship as a couple, irrespective of their sex or gender identity, by registration of the relationship.

4—Interpretation

In this Act, unless the contrary intention appears—

adult means a person of or above the age of 18 years;

corresponding law means a law of another jurisdiction declared by the regulations to be a corresponding law under this Act;

corresponding law registered relationship—see Part 4;

Register means the Relationships Register established under Part 3;

registered relationship means a relationship that is registered under this Act;

Registrar means the Registrar of Births, Deaths and Marriages within the meaning of the *Births, Deaths and Marriages Registration Act 1996*.

Part 2—Registered relationships

Division 1—Registration

5—Eligibility for registration

- (1) Two adults who are in a relationship as a couple, irrespective of their sex or gender identity, may apply to the Registrar for registration of their relationship.
- (2) A relationship cannot be registered unless at least 1 of the adults resides in South Australia.
- (3) A relationship cannot be registered if—
 - (a) either adult is in a union that is recognised as a marriage under the *Marriage Act 1961* of the Commonwealth; or
 - (b) either adult is already registered under this Act or a corresponding law as being in a registered relationship or a corresponding law registered relationship; or
 - (c) either adult is in a relationship as a couple with another person; or
 - (d) the adults are related by family.
- (4) Two adults are *related by family* if—
 - (a) 1 is the child (including an adopted child) of the other; or
 - (b) 1 is another descendant of the other (even if the relationship is traced through an adoptive parent); or
 - (c) they have a parent in common (including an adoptive parent or either or both of them).
- (5) Subsection (4) applies—
 - (a) even if an adoption has been declared void or is of no effect; and
 - (b) to adoptions under the law of any place (whether in or out of Australia) relating to the adoption of children; and
 - (c) in relation to a child whose parentage is determined by an order under section 10HB of the *Family Relationships Act 1975* (a *parentage order*) in the same way as it applies in relation to an adopted child, even if the parentage order is discharged under section 10HC of that Act (and, for that purpose, a reference in subsection (4) to an adoptive parent is to be read as a reference to a person who is declared to be the parent of a child under a parentage order).

6—Applications for registration

- (1) An application for registration of a relationship is to be made in the form approved by the Registrar and must be accompanied by—
 - (a) a statutory declaration by each person in the relationship stating the following:
 - (i) that the person wishes to register the relationship;

- (ii) that the person is in a relationship as a couple with the other person;
 - (iii) that the person is not married;
 - (iv) that the person is not registered under this Act or a corresponding law as being in a relationship or a corresponding law registered relationship;
 - (v) that the person is not in a relationship as a couple with a person other than the other applicant;
 - (vi) that the person does or does not reside in South Australia;
 - (vii) that the person is not related to the other applicant by family; and
- (b) evidence of the identity and age of each person in the relationship; and
 - (c) the fee prescribed by the regulations; and
 - (d) any other information or documents required by regulation.
- (2) The Registrar may require applicants for registration of a relationship to provide any further information that the Registrar requires to determine the application.

7—Cooling-off period for registration

- (1) The Registrar must not register a relationship before the end of the cooling-off period for the registration application.
- (2) An applicant for registration of a relationship may withdraw the application before the relationship is registered by giving the Registrar a withdrawal notice in the form approved by the Registrar.
- (3) The cooling-off period for a registration application is the period ending 28 days after the application is made.

8—Registration of relationships

- (1) The Registrar must register a relationship as soon as practicable after the end of the cooling-off period if—
 - (a) the Registrar is satisfied that the relationship may be registered under this Act; and
 - (b) the application has not been withdrawn.
- (2) The Registrar registers a relationship by making an entry relating to the relationship in the Register, including any particulars required by regulation.

9—Commencement of registered relationships

For the purposes of this Act and any other Act, a registered relationship will be taken to commence when the Registrar makes an entry relating to the relationship in the Register.

Division 2—End of registered relationships

10—Applications for revocation of registration by parties

- (1) One or both persons in a registered relationship may apply to the Registrar to revoke the registration of the relationship.

- (2) The application is to be in the form approved by the Registrar and to be accompanied by—
 - (a) a statutory declaration by at least 1 of the persons stating that the person wishes to revoke the registration; and
 - (b) if only 1 person makes the application—proof of service of notice of the application on the other person and particulars of that notice; and
 - (c) the fee prescribed by the regulations; and
 - (d) any other documents and information prescribed by the regulations.
- (3) The Registrar may dispense with the obligation to give notice of the application to the other person, or approve alternative means of giving notice, if the Registrar is satisfied that it is not reasonably practicable to give notice of the application in the manner required by or under this Act.

11—Cooling-off period for revocation applications

- (1) The Registrar must not revoke the registration of a relationship before the end of the cooling-off period for a revocation application.
- (2) An applicant for revocation of registration of a relationship may withdraw the application before the registration is revoked by giving the Registrar a withdrawal notice in the form approved by the Registrar.
- (3) The cooling-off period for a revocation application is the period ending 90 days after the application is made.

12—Revocation on application by 1 or both persons

The Registrar must revoke the registration of a registered relationship as soon as practicable after the end of the cooling-off period if an application is made under this Division and the Registrar is satisfied that the application has not been withdrawn.

13—End of registered relationships

- (1) For the purposes of this Act and any other Act, a registered relationship will be taken to end—
 - (a) on the death of a person in the relationship; or
 - (b) on the marriage of a person in the relationship; or
 - (c) if an application for the revocation of the registration of a relationship has been made under this Division—when the Registrar makes an entry relating to the revocation of the relationship in the Register, including any particulars required by regulation.
- (2) If a registered relationship is ended by an event referred to in subsection (1)(a) or (b), the Registrar must note that fact in the Register.

13A—Certain registered relationships revoked on recognition of same sex marriages

- (1) This section applies to a registered relationship existing immediately before the recognition day if a person in the registered relationship was party to a recognised same sex marriage on the recognition day.

- (2) The registration of a registered relationship to which this section applies was, by force of this section, revoked on the recognition day.
- (3) If the Registrar becomes aware that a registered relationship was revoked under this section, the Registrar must note that fact in the Register.
- (4) In this section—

recognised same sex marriage means a marriage that—

- (a) was solemnised before the recognition day; and
- (b) was recognised in Australia as valid on the recognition day because of Part 5 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth; and
- (c) would not have been recognised apart from that Part;

recognition day means the day on which Part 5 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth commenced.

14—Void registrations

- (1) Registration of a registered relationship is void if—
 - (a) when the relationship was registered, registration under this Act was prohibited; or
 - (b) the agreement of 1 or both of the persons in the relationship to the registration was obtained by fraud, duress or other improper means; or
 - (c) when the relationship was registered, either party was mentally incapable of understanding the nature and effect of the registration.
- (2) If the registration of a registered relationship is void, the Registrar must note that fact in the Register.
- (3) A court may, on its own initiative, make an order declaring the registration of a registered relationship void by operation of this section if a question arises in proceedings as to the registration.

Part 3—Relationships Register

Division 1—Keeping the Register

15—Relationships Register

- (1) The Registrar must maintain a register of registered relationships (the ***Relationships Register***).
- (2) The Register—
 - (a) must contain the particulars of each registered relationship required under this Act, or another law, to be included in the Register; and
 - (b) may contain further information if its inclusion is authorised under the regulations.

- (3) The Register may be wholly or partly in the form of a computer data base, in documentary form, or in another form the Registrar considers appropriate.

Division 2—Registrar's powers of inquiry

16—Registrar's powers of inquiry

- (1) The Registrar may conduct an inquiry to find out—
- (a) particulars to verify information given for, or in connection with, an application for registration of a relationship or revocation of registration; or
 - (b) whether particulars of a registered relationship have been correctly recorded in the Register.
- (2) The Registrar may, by notice given to a person who may be able to provide information relevant to an inquiry under this section, require the person to answer specified questions or to provide other information within a time and in a way specified in the notice.
- (3) A person who fails, without reasonable excuse, to comply with a notice under subsection (2) is guilty of an offence.
- Maximum penalty: \$1 250.

Division 3—Correction of Register

17—Registrar's power to correct Register

- (1) The Registrar may correct the Register—
- (a) to reflect a finding made on inquiry under Division 2; or
 - (b) to bring the particulars contained in an entry about a registered relationship into conformity with the most reliable information available to the Registrar about the registered relationship.
- (2) The Registrar corrects the Register by adding or cancelling an entry in the Register or by adding, altering or deleting particulars contained in an entry.
- (3) The Registrar's power to correct the Register under this section is in addition to any other power of the Registrar under this Act or any other Act.

Division 4—Access to, and certification of, Register entries

18—Access to Register

- (1) The Registrar may, on conditions the Registrar considers appropriate—
- (a) allow a person or organisation that has an adequate reason for wanting access to the Register, access to the Register; or
 - (b) provide a person or organisation that has an adequate reason for wanting information from the Register with information extracted from the Register.

- (2) In deciding whether an applicant has an adequate reason for wanting access to the Register, or information extracted from the Register, the Registrar must have regard to—
 - (a) the nature of the applicant's interest; and
 - (b) the sensitivity of the information; and
 - (c) the use to be made of the information; and
 - (d) other relevant factors.
- (3) In deciding the conditions on which access to the Register, or information extracted from the Register, is to be given under this section, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.

19—Search of Register

- (1) The Registrar may, on application, search the Register for an entry about a particular registered relationship.
- (2) The applicant must state the reason for the applicant's interest in the subject-matter of the search.
- (3) The Registrar may reject the application if the applicant does not show an adequate reason for wanting the information to which the application relates.
- (4) In deciding whether an applicant has an adequate reason for wanting information, the Registrar must have regard to—
 - (a) the relationship (if any) between the applicant and the person to whom the information relates; and
 - (b) the age of the entry; and
 - (c) the contents of the entry; and
 - (d) other relevant factors.

20—Protection of privacy

In providing information extracted from the Register, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.

21—Issue of certificates

- (1) On completing a search of the Register, the Registrar may issue a certificate—
 - (a) certifying particulars contained in an entry; or
 - (b) certifying that no entry was located in the Register about the relevant relationship.
- (2) A certificate under subsection (1)(a) is admissible in legal proceedings as evidence of—
 - (a) the entry to which the certificate relates; and
 - (b) the facts recorded in the entry.

22—Falsification of certificate etc

A person must not forge or falsify a certificate or other document under this Act.

Maximum penalty: \$10 000 or imprisonment for 2 years.

23—Access policies

- (1) The Registrar must maintain a written statement of the policies on which access to information contained in the Register is to be given or denied under this Division.
- (2) The Registrar must give a copy of the statement, on request, to any person.

24—Fees

- (1) The regulations may prescribe fees, or a basis for calculating fees, for—
 - (a) access to the Register; or
 - (b) a search of the Register; or
 - (c) the issue of a certificate following a search of the Register; or
 - (d) other services provided by the Registrar.
- (2) The regulations may allow for fees to be fixed by negotiation between the Registrar and the person who asks for the relevant services.

25—Power to remit fees

The Registrar may, in appropriate cases, remit the whole or part of a fee under this Act.

Part 4—Recognition of corresponding law registered relationships**26—Corresponding laws and corresponding law registered relationships**

- (1) A law of another State or a Territory of the Commonwealth, or of another country, that, in accordance with the general requirements, provides for the registration or the formal recognition of a relationship may be declared by the regulations to be a corresponding law under this Act.
- (2) For the purposes of subsection (1), the general requirements for a corresponding law are that, to be registered or formally recognised under that law, a relationship—
 - (a) must be between 2 adult persons; and
 - (b) must have been entered into consensually; and
 - (c) must not be between persons who are related by family; and
 - (d) must not be entered into by a person who is already in a union that is recognised as a marriage under the *Marriage Act 1961* of the Commonwealth; and
 - (e) must not be entered into by a person who is already in a relationship that is registered or formally recognised under that law.

27—Corresponding law registered relationships taken to be registered relationships under this Act

- (1) For the purposes of this Act and any other Act, a corresponding law registered relationship, that is not a marriage within the meaning of the *Marriage Act 1961* of the Commonwealth, will be taken to be a registered relationship under this Act.
- (2) A person who is in a corresponding law registered relationship may apply to the Registrar for a certificate to that effect.
- (3) An application under subsection (2) must be accompanied by—
 - (a) evidence of the identity and age of each person in the relationship; and
 - (b) evidence that the relationship is a corresponding law registered relationship; and
 - (c) the fee prescribed by the regulations; and
 - (d) any other documents and information prescribed by the regulations.

Part 5—General power of review

28—Review

- (1) A person who is dissatisfied with a decision of the Registrar made in the performance or purported performance of functions under this Act may apply to the Magistrates Court for a review of the decision.
- (2) On a review, the Court may—
 - (a) confirm, vary or reverse the Registrar's decision; and
 - (b) make consequential and ancillary orders and directions.

Part 6—Miscellaneous

29—False representation

A person who makes a false or misleading representation in an application or document under this Act, knowing it to be false or misleading, is guilty of an offence.
Maximum penalty: \$1 250.

30—Unauthorised access to or interference with Register

A person must not, without the authority of the Registrar or other lawful authority—

- (a) obtain access to the Register or information contained in the Register; or
- (b) make, alter or delete an entry in the Register; or
- (c) interfere with the Register in any other way.

Maximum penalty: \$10 000 or imprisonment for 2 years.

31—Regulations

- (1) The Governor may make regulations that are necessary or expedient for the purposes of this Act.

- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) make provision for the service of notices under this Act; and
 - (b) impose a penalty not exceeding a fine of \$1 250 for contravention of a provision of the regulations; and
 - (c) fix fees and provide for the payment, recovery, waiver or refund of fees.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation amended by principal Act

The *Relationships Register Act 2016* amended the following:

Births, Deaths and Marriages Registration Act 1996

Domestic Partners Property Act 1996

Equal Opportunity Act 1984

Wills Act 1936

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2016	67	<i>Relationships Register Act 2016</i>	15.12.2016	1.8.2017 (<i>Gazette 1.8.2017 p3038</i>)
2019	46	<i>Statutes Amendment (Legalisation of Same Sex Marriage Consequential Amendments) Act 2019</i>	19.12.2019	Pt 14 (s 32)—1.5.2020 (<i>Gazette 30.4.2020 p838</i>)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.5.2020
<i>Pt 1</i>		
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.5.2020</i>
Pt 2		
s 13A	inserted by 46/2019 s 32	1.5.2020
<i>Sch 1</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.5.2020</i>