

House of Assembly—No 85

As laid on the table and read a first time, 18 October 2012

South Australia

Civil Partnerships Bill 2012

A BILL FOR

An Act to provide for the registration of civil partnerships; to make related amendments to the *Family Relationships Act 1975* and the *Acts Interpretation Act 1915*; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Civil Partnerships Act 2012*.

2—Commencement

5 This Act will come into operation 6 months after the day on which is assented to by the Governor.

3—Interpretation

In this Act—

civil partnership celebrant means—

- 10 (a) a person registered as a civil partnership celebrant under this Act; or
(b) the Registrar;

cooling-off period, in relation to an application for registration of a relationship under section 5, means the period commencing when the application is received by the Registrar and concluding at the end of 10 clear business days after receipt of the application;

15

cancellation notice—see section 16;

cancellation period—see section 16(3);

Court means the District Court of South Australia;

eligibility criteria—see section 4(3);

20 *prohibited relationship*—see section 4(3)(b);

Register means the register established under section 22;

Registrar means the Registrar appointed under the *Births, Deaths and Marriages Registration Act 1996*;

State includes a Territory.

25 **4—Meaning of civil partnership**

- (1) Two adult persons who are in a relationship as a couple and who meet the eligibility criteria, may, irrespective of their gender, register their relationship as a civil partnership in accordance with Part 2 Division 1 or Division 2.
- (2) A civil partnership terminates only as provided by Part 2 Division 3.

30 **Note—**

Part 2 Division 3 provides for termination by death, marriage or court order.

- (3) A person may enter into a civil partnership if (and only if)—
- (a) the person is not married or in another civil partnership; and
 - (b) the person does not have any of the following relationships (a *prohibited relationship*) with the person's proposed civil partner:
 - (i) 1 is the lineal ancestor or lineal descendent of the other (even if the relationship is traced through an adoptive parent);
 - (ii) they have a parent in common (including an adoptive parent of either or both of them); and
 - (c) the person or the person's proposed civil partner lives in South Australia.

Part 2—Civil partnerships

Division 1—Registering an existing relationship

5—Application for registration of existing relationship as civil partnership

- (1) Two adult persons who, immediately before the commencement of this Division, are in a relationship as a couple and who meet the eligibility criteria, may apply to the Registrar for registration of their relationship under this Act as a civil partnership.
- (2) An application to the Registrar for registration of a civil partnership—
- (a) must be made in writing in the prescribed form; and
 - (b) must include information as to when the relationship commenced; and
 - (c) must include any other prescribed information; and
 - (d) must be accompanied by the prescribed fee; and
 - (e) must be accompanied by the prescribed documents; and
 - (f) must be accompanied by a statutory declaration verifying the information contained in the application and any other evidence the Registrar may require.
- (3) The Registrar may require 1 or both of the applicants to give the Registrar additional information or documents to determine the application.
- (4) If a requirement under subsection (3) is not complied with, the Registrar may refuse to consider the application further.

6—Cooling-off period—application for registration

- (1) The Registrar must not register a relationship under this Division before the end of the cooling-off period for the application.
- (2) Either or both of the applicants for registration may, by giving the Registrar a withdrawal notice in the prescribed form, withdraw the application during the cooling-off period.

7—Registration

- (1) As soon as practicable after the end of the cooling-off period for an application to register a relationship as a civil partnership, the Registrar may—
- 5 (a) register the civil partnership by making an entry about the civil partnership in the Register, including the prescribed particulars; or
- (b) refuse to register the relationship as a civil partnership if —
- (i) the Registrar is not satisfied that both of the applicants meet the eligibility criteria; or
- (ii) the application for registration has been withdrawn.
- 10 (2) Registration of a civil partnership under this Division will be taken to come into effect on registration or some earlier date as entered in the Register by the Registrar.

Division 2—Registering new relationships

8—Entry into civil partnership

- 15 (1) Before 2 persons enter into a civil partnership, they must give notice in the prescribed form of their intention to enter into a civil partnership to—
- (a) a civil partnership celebrant; and
- (b) if the civil partnership celebrant is not the Registrar—the Registrar.
- (2) Notice of intention must be given not earlier than 12 months and not later than 10 days before the declaration of civil partnership is made.
- 20 (3) The notice—
- (a) must be accompanied by—
- (i) a statutory declaration made by each person verifying—
- (A) that the person wishes to enter into a civil partnership with the other person; and
- 25 (B) that the person is not married or in a civil partnership; and
- (C) that the person believes the person and the other person do not have a prohibited relationship; and
- (D) where the person lives; and
- (ii) the prescribed fee; and
- 30 (iii) the prescribed documents as to proof of each person’s identity and age; and
- (iv) any other prescribed documents or information; and
- (b) must state the day on which the 2 persons intend to make a declaration of civil partnership.
- 35 (4) As soon as practicable after receiving the notice and statutory declarations, the civil partnership celebrant must give each person notice in the prescribed form setting out the legal effect of a civil partnership.

- (5) Two persons who have given notice as required under this section may make a declaration of civil partnership before the civil partnership celebrant and at least 1 other adult witness.
- (6) The declaration must be made by each person to the other and must contain a clear statement that—
- (a) names both persons; and
 - (b) acknowledges that they are freely entering into a civil partnership with each other.
- (7) If the civil partnership celebrant before whom the declaration is made is not the Registrar, the celebrant must, within 3 business days after the declaration, notify the Registrar of the declaration in the prescribed form.

9—Registration after declaration of civil partnership

- (1) The Registrar must, as soon as practicable after becoming aware that a declaration of civil partnership has been made—
- (a) register the civil partnership by making an entry about the civil partnership in the Register including the prescribed particulars; or
 - (b) refuse to register the relationship as a civil partnership if —
 - (i) the Registrar is not satisfied that both of the applicants meet the eligibility criteria; or
 - (ii) the application for registration has been withdrawn.
- (2) Registration of a civil partnership under this Division will be taken to come into effect on the date on which the declaration was made as entered in the Register.

Division 3—Termination of civil partnerships

10—How civil partnership is terminated

- A civil partnership will be terminated on—
- (a) the death of a party to the partnership; or
 - (b) the marriage of a party to the partnership (whether to the other party or to some other person); or
 - (c) by order of the Court under this Division.

11—Application for Court order

- (1) If—
- (a) the parties to a civil partnership have lived separately and apart for a continuous period of at least 12 months; and
 - (b) 1 (or both) of the parties is of the belief that the civil partnership has broken down and there is no likelihood of reconciliation between the parties,
- either or both of the parties may apply to the Court for an order terminating the civil partnership.

- (2) An application for termination of a civil partnership must—
- (a) be made in writing by 1 or both of the parties to the partnership; and
 - (b) be accompanied by an affidavit by the party or each of the parties stating that—
 - 5 (i) the parties have lived separately and apart for a continuous period of at least 12 months; and
 - (ii) the party believes or parties believe (as the case may be) that the civil partnership has broken down and there is no likelihood of reconciliation between the parties; and
 - 10 (c) be filed in the Court; and
 - (d) if the application is made by only 1 of the parties, within 14 days of being filed in the Court, be served on the other party; and
 - (e) otherwise be made in accordance with the rules of court.

12—Withdrawal of application

- 15 (1) An applicant for an order terminating a civil partnership may withdraw the application before the date fixed for deciding the application.
- (2) However, if the application has been made by both parties to the civil partnership, the applicant may withdraw the application only with the consent of the other applicant.
- 20 (3) The withdrawal may be effected by filing a notice in accordance with the rules of court.

13—Making of court order

- (1) On application under section 11, the Court may make an order terminating the civil partnership if the Court is satisfied that—
- 25 (a) the applicants have lived separately and apart for a continuous period of at least 12 months; and
 - (b) the civil partnership has broken down and there is no likelihood of reconciliation between the parties.
- (2) The parties to a civil partnership may be held to have lived separately and apart for a continuous period of at least 12 months even if they have continued to reside in the same residence or either party has rendered some household services to the other.
- 30 (3) If the Court makes an order under subsection (1), the Court must give a copy of the order to the Registrar no later than 30 days after the day the order is made.
- (4) On receipt of an order under subsection (3) terminating a civil partnership, the Registrar must, as soon as reasonably practicable after receiving a copy of the order,
- 35 make an entry to that effect in the Register.

14—When Court order takes effect

If the Court makes an order under section 13(1), the civil partnership is terminated on the day the order is made.

Part 3—Civil partnership celebrants

15—Registration of civil partnership celebrants

- (1) A person may apply to the Registrar to be registered as a civil partnership celebrant.
- (2) An application to the Registrar for registration as a civil partnership celebrant—
 - (a) must be made in writing in the prescribed form; and
 - (b) must include any prescribed information; and
 - (c) must be accompanied by the prescribed fee; and
 - (d) must be accompanied by the prescribed documents; and
 - (e) must be accompanied by a statutory declaration verifying the information contained in the application and any other evidence the Registrar may require.
- (3) On application under this section, the Registrar may register the applicant if satisfied that the applicant—
 - (a) is an adult; and
 - (b) has the knowledge and the skills or experience necessary to exercise the functions of a civil partnership celebrant; and
 - (c) is a suitable person to be registered as a civil partnership celebrant.

16—Cancellation of registration of civil partnership celebrant

- (1) If the Registrar considers that a person registered as a civil partnership celebrant does not satisfy, or no longer satisfies, the criteria for registration under section 15, the Registrar may give the person a notice under this section (a *cancellation notice*).
- (2) The cancellation notice must state the following—
 - (a) that the Registrar proposes to cancel the person's registration as a civil partnership celebrant at the end of the cancellation period; and
 - (b) the reason for the proposed cancellation; and
 - (c) a statement of the person's right to have the cancellation reconsidered by the Registrar under section 17.
- (3) The *cancellation period* commences on the date specified in the cancellation notice and ends 30 days later on the date specified in the cancellation notice.

17—Reconsideration of cancellation notice

- (1) The person may request reconsideration of the cancellation notice by the Registrar during the cancellation period.
- (2) The request for reconsideration—
 - (a) must be made in the prescribed manner and form; and
 - (b) be accompanied by the prescribed fee; and
 - (c) must specify the reason or reasons that registration should not be cancelled; and

- (d) may be accompanied by supporting documents.
- (3) The Registrar must consider the request for reconsideration and relevant documents provided under this section.

18—Ending cancellation process without further action

5 If, after considering the request for reconsideration of the cancellation notice, the Registrar no longer believes the ground exists to cancel the registration, the Registrar—

- (a) must take no further action in relation to the cancellation notice; and
- (b) must, as soon as practicable, give notice to the person that no further action
10 will be taken in relation to the cancellation notice.

19—Cancellation of registration

- (1) If a person does not request the Registrar to reconsider a cancellation notice during the
15 cancellation period, the person's registration as a civil partnership celebrant will, by force of this subsection, be cancelled on the day on which the cancellation period ends.
- (2) If, after considering a request for reconsideration of a cancellation notice, the Registrar—
 - (a) still believes the ground exists to cancel the registration; and
 - (b) believes cancellation of the registration is warranted,
20 the Registrar may cancel the registration of a civil partnership celebrant.
- (3) The Registrar must, as soon as practicable, give notice of the decision to cancel registration under subsection (2) to the person.
- (4) The decision of the Registrar under subsection (2) does not take effect until—
 - (a) 30 days after the day notice to cancel is given to the person; or
25 (b) if an application for review is made to the Court within 30 days after the day notice to cancel registration is given—the day the review is decided or the application for review otherwise ends.
- (5) The Registrar must, as soon as practicable after a person's registration as a civil partnership celebrant is cancelled, make an entry to that effect in the Register.

20—Applications for review

30 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 Court for review of the decision.

21—Offences

- (1) It is an offence if a civil partnership celebrant—
 - (a) allows a declaration of civil partnership, or a purported declaration, to be
35 made before the celebrant; and

- (b) the celebrant has not received the notices required under section 8 (including the statutory declaration and anything else required under that section) within the time required under that section.

Maximum penalty: \$1 250.

- 5 (2) A civil partnership celebrant commits an offence if—

- (a) the celebrant allows a declaration of civil partnership, or a purported declaration, to be made before the celebrant; and
- (b) the celebrant has reasonable grounds to believe that the civil partnership would be void under section 29.

10 Maximum penalty: \$1 250.

- (3) A person who makes a false or misleading statement or representation in a declaration, application or document under this Act, knowing it to be false or misleading commits an offence.

Maximum penalty: \$10 000.

15 **Part 4—Register**

22—Register

- (1) The Registrar must maintain a register or registers of civil partnerships and civil partnership celebrants.
- (2) The Register—
 - 20 (a) must contain the particulars of each civil partnership and civil partnership celebrant; and
 - (b) may contain any other information the Registrar thinks fit.
- (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.
- 25 (4) The Registrar must maintain the indexes to the Register that are necessary to make the information contained in the Register reasonably accessible.

23—Registrar's power to correct Register

- 30 (1) The Registrar may correct the Register to bring the particulars contained in an entry about a civil partnership or civil partnership celebrant into conformity with the most reliable information available to the Registrar.
- (2) The Registrar may correct 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.

24—Access to Register

- 35 (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—
- 5 (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.
- 10 (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.

25—Search of Register

- 15 (1) The Registrar may, on application, search the Register for an entry about a particular civil partnership or civil partnership celebrant.
- (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
- 20 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
- 25 information relates; and
- (b) the age of the entry; and
- (c) the contents of the entry; and
- (d) other relevant factors.

26—Protection of privacy

30 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.

27—Issue of certificate

- (1) On completing a search of the Register, the Registrar may issue a certificate—
- 35 (a) certifying particulars contained in an entry; or
- (b) certifying that no relevant entry was located in the Register.
- (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.

28—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 Part
- (2) The Registrar must give a copy of the statement, on request, to any person.

5 Part 5—Miscellaneous

29—Void civil partnerships

A civil partnership is void if—

- (a) either party did not meet the eligibility criteria when the relationship was registered as a civil partnership; or
- 10 (b) either party did not freely enter into the civil partnership because—
 - (i) the party's agreement to enter into the civil partnership was obtained by duress or fraud; or
 - (ii) the party was mistaken about the identity of the other party or the nature of the declaration under section 8; or
 - 15 (iii) the party did not have the capacity within the meaning of the *Guardianship and Administration Act 1993* to enter into the civil partnership.

30—Civil partnerships under corresponding laws

- 20 (1) The regulations may make provision for the recognition of a relationship under a corresponding law as if it were a civil partnership under this Act.
- (2) In this section—

corresponding law means a law of another State or country prescribed by the regulations to be a corresponding law for the purposes of this section.

31—Regulations

- 25 (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or desirable for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or the Registrar; and
 - 30 (b) fix fees, or a basis for calculating fees, for—
 - (i) access to the Register; or
 - (ii) a search of the Register; or
 - (iii) the issue of a certificate following a search of the Register; or
 - (iv) other services provided by the Registrar; and
 - 35 (c) provide for the payment, refund, recovery or waiver of fees; and
 - (d) fix penalties not exceeding \$1 250 for breaches of the regulations.

Schedule 1—Related amendment

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

5 2—Amendment of *Acts Interpretation Act 1915*

Section 4—after subsection (4) insert:

- (5) A reference in an Act or statutory instrument to a *spouse* will be taken to be a reference to a person who is a party to a civil partnership registered under the *Civil Partnerships Act 2012*.

10 3—Amendment of *Family Relationships Act 1975*

Section 11A, definition of *close personal relationship*—after paragraph (a) insert:

- (ab) the relationship between parties to a civil partnership registered under the *Civil Partnerships Act 2012*; or