

## **House of Assembly—No 175**

As divided in Committee, reported with an amendment, report agreed to and passed remaining stages, 15 November 2016

South Australia

# **Relationships Register (No 1) Bill 2016**

A BILL FOR

An Act to make provision for the registration of certain relationships; to make consequential, related and other amendments to the *Births, Deaths and Marriages Registration Act 1996*; the *Domestic Partners Property Act 1996*; the *Equal Opportunity Act 1984*; and the *Wills Act 1936*.

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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 *Relationships Register (No 1) Act 2016*.

**2—Commencement**

5 This Act will come into operation on a day to be fixed by proclamation.

**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.

10 **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;

15 *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*.

20 **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.
- 25 (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
- 30 (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.

## **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**

- 5 (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—
- 10 (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**

- 15 (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—
- 20 (a) confirm, vary or reverse the Registrar's decision; and
- (b) make consequential and ancillary orders and directions.

## **Part 6—Miscellaneous**

### **29—False representation**

25 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—

- 30 (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**

- 35 (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.

## Schedule 1—Consequential, related and other amendments

### Part 1—Preliminary

#### 1—Amendment provisions

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

### Part 2—Amendment of *Births, Deaths and Marriages Registration Act 1996*

#### 2—Amendment of section 6—Registrar's functions

- (1) Section 6—after "this Act" insert:
- or any other Act
- (2) Section 6—after its present contents as amended by this clause (now to be designated as subsection (1)) insert:
- (2) In addition to the general functions referred to in subsection (1), the Registrar—
    - (a) may carry out any other function conferred on the Registrar by or under this Act or any other Act; and
    - (b) may do anything necessary or expedient to be done for the purposes of a function referred to in this section.

### Part 3—Amendment of *Domestic Partners Property Act 1996*

#### 3—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *close personal relationship*—delete "gender" and substitute:
- sex or gender identity
- (2) Section 3(1), definition of *domestic partner*—delete the definition and substitute:
- domestic partner* means—
- (a) a person in a registered relationship, and includes—
    - (i) a person who is about to enter into a registered relationship; or
    - (ii) a person who has been in a registered relationship; or
  - (b) a person who lives in a close personal relationship, and includes—

- (i) a person who is about to enter a close personal relationship;  
or
  - (ii) a person who has lived in a close personal relationship;
- (3) Section 3(1)—after the definition of *property* insert:

5                    *registered relationship* means a relationship that is registered under the  
*Relationships Register Act 2016*, and includes a corresponding law registered  
relationship under that Act.

## Part 4—Amendment of *Equal Opportunity Act 1984*

### 4—Amendment of section 5—Interpretation

- 10        (1) Section 5(1), definition of *close personal relationship*—delete "gender" and  
substitute:

sexual orientation or gender identity

- (2) Section 5(1), definition of *domestic partner*—delete the definition and substitute:

*domestic partner* means—

- 15                    (a) a person who is in a registered relationship; or  
                         (b) a person who lives in a close personal relationship;

- (3) Section 5(1)—after the definition of *registered industrial association* insert:

20                    *registered relationship* means a relationship that is registered under the  
*Relationships Register Act 2016*, and includes a corresponding law registered  
relationship under that Act;

### 5—Amendment of section 29—Criteria for discrimination on ground of sex, gender identity, sexual orientation or intersex status

- (1) Section 29—delete "he or she" wherever occurring and substitute in each case:  
the person

- 25        (2) Section 29—after subsection (3) insert:

- (4) For the purposes of this Act, a person discriminates on the ground of  
intersex status—

- 30                    (a) if the person treats another unfavourably because of the  
other's intersex status or past intersex status; or
- 35                    (b) if the person treats another unfavourably because the other  
does not comply, or is not able to comply, with a particular  
requirement and—
- (i) the nature of the requirement is such that a  
substantially higher proportion of persons who are  
not of intersex status complies, or is able to comply,  
with the requirement than of those of intersex  
status; and
  - (ii) the requirement is not reasonable in the  
circumstances of the case; or

- (c) if the person treats another unfavourably on the basis of a characteristic that appertains generally to persons of intersex status, or presumed intersex status, or on the basis of a presumed characteristic that is generally imputed to persons of intersex status; or
- (d) if the person treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.

**6—Amendment of section 30—Discrimination against applicants and employees**

Section 30—delete "or gender identity" wherever occurring and substitute in each case:

, gender identity or intersex status

**7—Amendment of section 31—Discrimination against agents and independent contractors**

Section 31—delete "or gender identity" wherever occurring and substitute in each case:

, gender identity or intersex status

**8—Amendment of section 32—Discrimination against contract workers**

Section 32—delete "or gender identity" wherever occurring and substitute in each case:

, gender identity or intersex status

**9—Amendment of section 33—Discrimination within partnerships**

Section 33—delete "or gender identity" wherever occurring and substitute in each case:

, gender identity or intersex status

**10—Amendment of section 34—Exemptions**

Section 34—delete "or gender identity" wherever occurring and substitute in each case:

, gender identity or intersex status

**11—Amendment of section 35—Discrimination by associations**

- (1) Section 35(1)—delete "or gender identity" wherever occurring and substitute in each case:

, gender identity or intersex status

- (2) Section 35(2a)—after paragraph (c) insert:

or

- (d) persons of intersex status,

- (3) Section 35(2b)—delete "or gender identity" and substitute:  
    , gender identity or intersex status

**12—Amendment of section 36—Discrimination by qualifying bodies**

Section 36—delete "or gender identity" and substitute:  
    , gender identity or intersex status

**13—Amendment of section 37—Discrimination by educational authorities**

Section 37—delete "or gender identity" wherever occurring and substitute in each case:  
    gender identity or intersex status

**14—Amendment of section 38—Discrimination by person disposing of an interest in land**

Section 38—delete "or gender identity" and substitute:  
    , gender identity or intersex status

**15—Amendment of section 39—Discrimination in provision of goods and services**

Section 39—delete "or gender identity" and substitute:  
    , gender identity or intersex status

**16—Amendment of section 40—Discrimination in relation to accommodation**

Section 40—delete "or gender identity" wherever occurring and substitute in each case:  
    , gender identity or intersex status

**17—Amendment of section 45—Charities**

Section 45(a)—after subparagraph (ii) insert:  
    (iii) persons of intersex status; or

**18—Amendment of section 47—Measures intended to achieve equality**

Section 47—delete "or gender identity" and substitute:  
    , gender identity or intersex status

**19—Insertion of Part 6A**

After section 91 insert:

**Part 6A—Practice guidelines**

**91A—Commissioner may issue practice guidelines**

- (1) The Commissioner may issue practice guidelines on any matter relating to this Act.

- (2) In preparing practice guidelines, the Commissioner should consult with persons or bodies that the Commissioner considers represent the areas or persons to whom the practice guidelines will relate.
- (3) The Commissioner must publish the practice guidelines on the Commissioner's website.

### **91B—Effect of practice guidelines**

Practice guidelines—

- (a) are not legally binding; but
- (b) a court or the Tribunal may consider evidence of compliance with practice guidelines if relevant to any matter before the court or Tribunal under this Act.

## **Part 5—Amendment of *Wills Act 1936***

### **20—Insertion of section 19A**

Before section 20 insert:

#### **19A—Interpretation**

In this Division—

*partner*, in relation to a registered relationship, means either of the parties to the relationship;

*registered relationship* means a relationship that is registered under the *Relationships Register Act 2016*, and includes a corresponding law registered relationship under that Act.

### **21—Amendment of section 20—Will to be revoked by certain events**

- (1) Section 20(1)—delete "Subject to subsection (2), every will made by a man or woman is revoked by his or her marriage" and substitute:

Subject to this section, a will made by a person will be revoked by the person marrying or commencing a registered relationship

- (2) Section 20(1)—delete "his or her" wherever occurring and substitute in each case:

the person's

- (3) Section 20—after subsection (2) insert:

- (3) A will made after the commencement of the *Relationships Register Act 2016* which is expressed to be made in contemplation of the registration of a relationship under that Act, is not revoked by the commencement of the registered relationship contemplated.

### **22—Amendment of section 20A—Effect on will of ending of a marriage or registered relationship**

- (1) Section 20A(1)—delete "is terminated" and substitute:

or registered relationship is ended,

- (2) Section 20A(1)—after "spouse" wherever occurring insert in each case:  
or partner
- (3) Section 20A(1)(d)—delete "termination of the marriage" and substitute:  
the marriage or registered relationship ended
- 5 (4) Section 20A(2)(a)—after "spouse" insert:  
or partner
- (5) Section 20A(2)(b)—delete "termination of the marriage" and substitute:  
ending of the marriage or registered relationship
- (6) Section 20A(2)(c)—delete "termination of the marriage" and substitute:  
10 the ending of the marriage or registered relationship
- (7) Section 20A(2)(d)—after "spouse" insert:  
or partner
- (8) Section 20A(3)(a)—delete "terminated" and substitute:  
ended
- 15 (9) Section 20A(3)—after paragraph (a) insert:  
(ab) a registered relationship is ended when it is taken to end under the  
*Relationships Register Act 2016*;

**23—Amendment of section 22—In what cases wills may be revoked**

- (1) Section 22(a)—delete "termination of marriage" and substitute:  
20 the ending of a marriage
- (2) Section 22—after paragraph (a) insert:  
(ab) by commencing or ending a registered relationship under the  
*Relationships Register Act 2016*; or