

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

(a) to provide for the legal recognition of relationships of couples, regardless of sex, by registration of the relationships,

(b) to recognise registered relationships, and interstate registered relationships, as de facto partnerships for the purposes of State legislation.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act (other than the amendments made by Schedule 2.2 and Schedule 3) on a day or days to be appointed by proclamation. Those amendments will commence on the date of assent to the proposed Act.

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Clause 3 states the object of the proposed Act, which is to provide for the legal recognition of persons in a relationship as a couple, regardless of their sex, by registration of the relationship.

Clause 4 defines certain words and expressions used in the proposed Act.

Part 2 Registration of relationships

Clause 5 entitles 2 adults who are in a relationship as a couple to apply to the Registrar of Births, Deaths and Marriages (the Registrar) for registration of their relationship in the Register kept under the Births, Deaths and Marriages Registration Act 1995 (the Register). At least one of them must reside in New South Wales. A relationship cannot be registered if either adult is married, is in a registered relationship or a relationship as a couple with another person or the adults are related by family.

Clause 6 provides for the requirements for applications for registration of a relationship, including a statutory declaration as to the requirements for registration.

Clause 7 enables the Registrar to require further information to be provided by applicants for registration of a relationship.

Clause 8 provides that each application for registration is subject to a 28 day cooling off period, after which the relationship may be registered.

Clause 9 requires the Registrar to register a relationship in the Register as soon as practicable after the end of the cooling off period if satisfied that the relationship may be registered under the proposed Act and that the registration application has not been withdrawn.

Part 3 End of registration of relationships

Clause 10 provides that registration of a relationship is revoked on the death of a person in the relationship or on the marriage of a person in the relationship.

Clause 11 enables one or both parties to a registered relationship to apply for revocation of the relationship and provides for the requirements for applications for revocation of registration of a relationship.

Clause 12 provides that each application for revocation of registration is subject to a 90 day cooling off period, after which the registration may be revoked.

Clause 13 requires the Registrar to revoke the registration of a registered relationship as soon as practicable after the end of the cooling off period if an application is made in accordance with the proposed Part and the application has not been withdrawn.

Clause 14 makes registration of a registered relationship void if it was prohibited when it was registered, the agreement to registration of a party was obtained by fraud,

duress or other improper means or (at registration) either party was mentally incapable of understanding the nature and effect of the registration. A court may make an order declaring the registration of a relationship void.

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Clause 15 provides for the Registrar to cancel the entry of a registration in the Register if the registration is revoked or is void.

Part 4 Miscellaneous

Clause 16 enables regulations to be made declaring registered relationships under laws of other States or Territories to be interstate registered relationships for the purposes of the proposed Act. Among other things, this has the effect of recognising parties to such a relationship as de facto partners for the purposes of New South Wales legislation (see amendments to the Interpretation Act 1987 in Schedule 2.2).

Clause 17 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 18 confers a right to appeal to the Administrative Decisions Tribunal for a review of a decision of the Registrar made in the exercise or purported exercise of functions under the proposed Act.

Clause 19 makes it an offence to disclose information obtained in the administration or execution of the proposed Act, except with consent, in connection with the administration or execution of the proposed Act or in other specified circumstances.

Clause 20 provides for offences under the proposed Act or regulations under the proposed Act to be dealt with summarily before the Local Court.

Clause 21 provides for the review of the proposed Act in 5 years.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Acts relating to relationship register

Births, Deaths and Marriages Registration Act 1995 No 62

Schedule 2.1 [1] amends the objects of the Births, Deaths and Marriages Registration Act 1995 to include a reference to the functions conferred by the proposed Act.

Schedule 2.1 [2] applies the Births, Deaths and Marriages Registration Act 1995 to the registration of relationships under the proposed Act. The effect of this is to apply general provisions of that Act relating to the registration of events such as deaths or marriages, and the operation of the Register, to the registration of relationships.

Schedule 2.1 [3] and [4] include the Registrar's functions under the proposed Act in the Registrar's general Register functions and enable the Registrar's functions under the proposed Act to be delegated.

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Schedule 2.1 [5] enables regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

Interpretation Act 1987 No 15

Schedule 2.2 inserts proposed section 21C into the Interpretation Act 1987. The proposed section defines the expressions de facto partner and de facto relationship for the purposes of State legislation and instruments made under State legislation. A person is defined as being a de facto partner of another person if the person is in a registered relationship or interstate registered relationship with the person or is in a de facto relationship with the person. A person is defined as being in a de facto

relationship with another person if the person is in a relationship as a couple with the person and living together and they are not married to one another or related by family. The provision sets out circumstances that can be taken into account when determining whether there is a relationship as a couple, including the duration of the relationship, whether a sexual relationship exists and the degree of mutual commitment to a shared life. The circumstances generally reflect those currently applied under the Property (Relationships) Act 1984 in determining whether a de facto relationship exists.

Property (Relationships) Act 1984 No 147

Schedule 2.3 amends the Property (Relationships) Act 1984 to include registered relationships and interstate registered relationships as de facto relationships for the purposes of that Act. That Act deals with property rights under State law for persons in de facto relationships within the meaning of that Act.

Schedule 3 Amendment of Acts and instruments
relating to de facto partners

Schedule 3 amends various Acts and instruments for the following purposes:

- (a) to replace definitions of de facto partner and de facto relationship, that currently adopt the definitions contained in the Property (Relationships) Act 1984, with references that adopt the new definitions inserted in the Interpretation Act 1987 by Schedule 2.2. In cases where the new definition of de facto partner is adopted, references will now also apply to registered relationships and interstate registered relationships, whether or not other criteria for identifying a de facto relationship are met,
- (b) to preclude the application of some Acts and instruments to registered relationships and interstate registered relationships, where parties do not live together, by applying those Acts and instruments only to de facto relationships within the meaning of the new definition inserted in the Interpretation Act 1987. That definition does not refer to registered relationships or interstate registered relationships. Such relationships are likely (because of their nature) to fall within that definition but will not qualify merely because of registration.

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In the Acts as amended, a mere reference to a de facto partner or a de facto relationship will automatically adopt the reference to the Interpretation Act 1987, without any need to expressly refer to that Act.