

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Citizenship, Minister for Regulatory Reform, and Vice-President of the Executive Council) [8.02 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

On 23 February this year the Keneally Government announced it would introduce legislation to create a relationships register, making it easier for unmarried couples to prove they are in committed or de facto relationships and to access legal entitlements.

The Government has fulfilled that commitment by bringing this bill before the House today.

The Labor Government has a strong record on ensuring intimate relationships of all hues are given the respect and acceptance they deserve under the laws of this State.

Under the leadership of Neville Wran, Labor introduced the De Facto Relationships Act in 1984.

This was a landmark piece of legislation. It was the first in Australia to give clear statutory rights to people living in de facto relationships to seek court orders for an adjustment of property interests when their relationships broke down.

In 1999 the Carr Labor Government introduced further reforms to relationships legislation amending the definition of de facto spouse to include same sex cohabiting couples in the parts of the Property (Relationships) Act 1984 that deal with adjusting property interests when a relationship breaks down as well as for a number of other purposes in NSW law.

Most recently in 2008, this Government introduced a suite of same sex relationship reforms including providing for a consistent definition of "de facto partner", including same-sex partners, across most NSW laws.

As a result of these reforms, de facto couples have access to a wide range of legal rights and entitlements.

Today, this Government has taken another step forward in relationship reform by introducing legislation that will create a formal mechanism to recognise relationships through registration.

The bill also aims to create an option for couples in such relationships to demonstrate their 'de facto' status more easily when dealing with various bodies, including government agencies and service providers in order to access their rights and entitlements.

The register will also ensure that NSW is in line with Commonwealth Government moves to remove discrimination against unmarried people in heterosexual and same-sex relationships.

The Commonwealth has amended its Acts Interpretation Act 1901 (Cth) to define a "de facto partner", for Commonwealth legislation which adopts this definition, to include a partner in a registered relationship under a prescribed law of a State or Territory. The Government is working with the Commonwealth to have this bill added as a 'prescribed law' once passed by the NSW Parliament.

Establishing a relationships register for NSW will ensure that NSW citizens have the option of being automatically recognised as de facto partners for the purposes of Commonwealth legislation as well as NSW legislation.

The intention is that partners in registered relationships should be able to more easily access certain Commonwealth benefits to which they are entitled and should, for example, have the right to be treated as a family covered by one pharmaceutical benefits safety net concession card.

This bill also brings NSW in line with other jurisdictions that have relationship registers, including the Australian Capital Territory, Victoria and Tasmania. Statutory schemes recognising de facto relationships have also been enacted in Canada, New Zealand, the USA and parts of Europe.

This bill recognises that people in NSW choose to enter diverse forms of relationships. Unmarried couples, whether in heterosexual or same sex relationships, will be able to register their relationships, receive a certificate of registration, and know that their relationship is respected and recognised in NSW. The register provides an option for such couples to express their commitment to each other in a dignified and legally recognised way.

Registration will mean that couples will be recognised as "de facto partners" for the purposes of most legislation in NSW. As the NSW Law Reform Commission has pointed out, one major benefit of a relationship register is that it creates a mechanism to provide certainty in terms of identifying parties to a relationship.

This reform respects the dignity of unmarried couples. It does this by creating a mechanism by which couples who register their relationship will, for the purposes most NSW legislation, have access to rights and entitlements as de facto partners without having to establish each time that they are in a genuinely committed relationship. This will make the

process of seeking to access entitlements and assert rights easier for such couples, and will also provide greater certainty of outcome.

For example, a certificate of registration could be presented to a court, or to a hospital, as evidence that the parties are de facto partners. In relation to medical treatment, this will mean that someone in a registered relationship should in most cases be able to consent to medical treatment for their partner if their partner cannot consent, without having to argue about the nature of their relationship. For same sex couples in particular, this should prove a useful tool for countering any possible reluctance to recognise their relationship.

However, registration will not replace the existing framework for recognising de facto relationships. The current system will be preserved as an alternative, based on a requirement that couples live together and an assessment of the nature of their relationship and the degree of their commitment, amongst other factors. For those who choose not to register their relationships, this will not count against them when it comes to establishing de facto status on the existing test.

A registered relationship is not, of course, a marriage. The NSW Parliament has no constitutional power to legislate in relation to marriage, which is defined by the federal Marriage Act 1961 (Cth) to exclude same sex couples. However, the bill does recognise the freedom of individuals to choose to enter relationships in diverse forms, and provides legal recognition and support for that choice.

I turn now to the key features of the bill.

The object of the bill is to provide for the legal recognition of persons in a relationship as a couple, regardless of their sex, by registration of the relationship.

The register will be administered by the Registrar of Births, Deaths and Marriages.

Registration will be voluntary. A couple must apply to the Registry of Births Deaths and Marriages in order to have their relationship registered. As pointed out by the NSW Law Reform Commission, this recognises individual autonomy, with partners voluntarily choosing to register their relationship and to be bound by the legislation.

Clause 5 of the bill provides that a relationship will be eligible for registration where the parties to be relationship are:

adults, at least one of whom resides in NSW;

in a relationship as a couple;

not married, in another registered relationship, or in a relationship as a couple with another person; and

not related to each other by family.

As with the ACT, Victorian and Tasmanian schemes, it will not be a requirement for registration that couples live together.

The Government considers that people may be genuinely in a committed relationship even though they do not live together. This may be for reasons relating to employment, convenience or personal choice. For example, a person's partner may work for long periods interstate, or a same sex couple living in a conservative community may decide not to live together for fear of discrimination.

The registration of a relationship will be void under clause 14 of the bill if registration was prohibited when it was registered— that is where the person or persons did not meet the eligibility requirements.

The registration will also be void if the agreement to registration was obtained by fraud, duress or other improper means or if, at the time of registration, either party was mentally incapable of understanding the nature and effect of registration.

Clause 14 also empowers a court to declare a registration void.

Clause 6 deals with applications for registration. To apply, both members of the couple will need to sign a statutory declaration stating that they meet the eligibility requirements and that they wish to register the relationship. They will also need to provide evidence of their identity and age.

A fee will be payable with the application to register, and the amount will be set by regulation.

As with the ACT, Victorian and Tasmanian schemes, couples will not have to prove any particular form of personal or financial commitment.

The effect of clauses 8 and 9 is that, on receipt of a valid application and after a 28-day cooling off period, the Registrar must register the relationship. The cooling off period is designed to ensure that the decision to register a relationship is a considered one. Either party may withdraw their application during the cooling off period.

Clause 10 provides for automatic revocation of registration if one of the parties dies or marries. There is also provision in clause 11 to revoke a relationship in cases where a relationship has broken down. The Registrar of Births, Deaths and Marriages can revoke the registration of a relationship on the application of one or both of the parties.

If only one partner wishes to have the registration revoked, he or she will have to demonstrate that notice has been served on the other party. The Registrar can dispense with that notice requirement if satisfied that it is not reasonably

practicable to give notice as required. This ensures that no person should have to remain in a registered relationship if they do not wish to, while recognising the right of the other person to be duly informed.

To ensure that registrations are not revoked lightly, and also to encourage people to think carefully before entering into registered relationships, clause 12 creates a 90-day cooling off period before a registration can be revoked.

The bill also allows for the potential recognition of interstate registered relationships. Clause 16 provides that regulations may declare a class of relationships registered or recognised under a corresponding law of another State or Territory are 'interstate relationships' for the purposes of the proposed Act.

This will ensure couples that register their relationship in another jurisdiction and then move to NSW do not have to re-register their relationship in this state. The Government is discussing the implementation of reciprocal arrangements with the ACT, Victoria and Tasmania.

I will now turn to the definition of a "de facto partner".

Schedule 2.2 of the bill creates a new definition of 'de facto partner' to be included in the Interpretation Act 1987. This definition will become the standard definition for most NSW laws and will achieve greater consistency in determining who is a de facto partner in a range of contexts.

This definition of "de facto partner" will recognise two different types of relationships. The first type will be based on the test for establishing a "de facto relationship" which currently applies in most NSW legislation, that is, by reference to the definition in the Property (Relationships) Act 1984.

Under this test, a couple will be taken to be in a de facto relationship if they have a relationship as a couple living together and they are not married to one another or related by family. The relevant provision sets out the 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 second type of de facto partner will be a partner in a registered relationship or interstate registered relationship. This will mean that couples who register their relationship will not need to demonstrate how they meet the list of factors just mentioned in order to meet the definition of de facto partner under most NSW laws.

Schedule 3 of the bill makes consequential amendments to over 120 pieces of NSW legislation. Most of these amendments apply the new Interpretation Act 1987 definition of "de facto partner". This ensures that for most NSW legislation including, for example, certain superannuation and workers compensation legislation, partners in a registered relationship will be recognised as de facto partners.

For some pieces of legislation it is important that a cohabitation requirement be maintained. In these cases, reference is made only to "de facto relationship", based essentially on the existing test which requires that couples live together. Reference to registered relationships is not included in such Acts since cohabitation is not required for a couple to register their relationship. This has been done, for example, with the Landlord and Tenant Act 1899, since the rights provided under that Act are aimed at situations where couples live together.

Further, some NSW legislation will retain its own specific definition of "de facto relationship" or "de facto partner". In these cases it is intended that the Interpretation Act 1987 definitions of these terms will not apply. This is the case for Acts which deal with specific issues where a tailored definition is appropriate, such as the Adoption Act 2000 and the Duties Act 1997.

This bill is an important step towards removing discrimination for unmarried couples, whether they are in heterosexual or same-sex relationships. It provides a mechanism for demonstrating their shared commitment and facilitates the recognition of such relationships for practical purposes. It also demonstrates a respect for different relationship choices and promotes a more inclusive society in NSW.

I commend the bill to the House.