

# Civil Partnerships and Other Legislation Amendment Bill 2012

## Explanatory Notes

### Objectives of the Bill

The objectives of the Civil Partnerships and Other Legislation Amendment Bill 2012 (the Bill) are to:

- (a) remove the provisions from the *Civil Partnerships Act 2011* (the Act) which allow a couple to make a declaration before a civil partnership notary of their intention to enter into a civil partnership with each other;
- (b) remove the provisions from the Act which allow a person to be registered as a civil partnership notary and which require the maintenance of a civil partnership register;
- (c) amend the termination provisions in the Act, so that a civil partnership is no longer terminated by a District Court order but by lodging an application with the registry of the Births, Deaths and Marriages (BDM);
- (d) change the short title of the Act to '*Relationships Act 2011*' and the terminology used from '*civil partnerships*', '*civil partners*' and '*cooling off period*' to '*registered relationships*', '*registered partners*' and '*registration period*' respectively;
- (e) make amendments to the following Acts as a consequence of the amendments made in this Bill and the relationship registration scheme under the Act: *Births, Deaths and Marriages Registration Act 2003*; *Births, Deaths and Marriages Registration Regulation 2003*; *Civil Partnerships Regulation 2012*; *Corrective Services Act 2006*; *Duties Act 2001*; and *Succession Act 1981*; and
- (f) make consequential amendments to the various Acts and Regulations set out in the schedule to the Bill to reflect the new terminology of the *Relationships Act 2011*, '*registered relationships*', '*registered partners*' and '*registration period*'.

## Reasons for the Bill

The Act currently provides for the legal recognition of relationships of couples, regardless of gender, by registration of the relationships. Once registered the relationships are recognised as ‘civil partnerships’. Currently, under the Act, a couple applies to register their relationship at the BDM. The Act also currently provides a couple with the option of having a civil partnership declaration ceremony (ceremony) before a civil partnership notary, prior to registration of their civil partnership. A ten day cooling off period applies to applications for registration i.e. the registration cannot take effect until after the ten day period has expired.

The Act also currently provides for: revoking civil partnerships by application to the District Court; recognising interstate civil relationships as civil partnerships for the purposes of Queensland legislation; and a registration process for civil partnership notaries.

Registration of a civil partnership provides a couple with proof of the existence of a relationship. A registration certificate of the civil partnership is available to the parties, which can be used by agencies, such as the passport office and Department of Transport and Main Roads as proof of a change of name on their licence or passport.

This Bill partially repeals the Act to remove the provisions that may be perceived to mimic marriage. For example, the provisions of the Act that provide for the holding of a ceremony sanctioned by the Act will be repealed as the ceremony could be perceived as mimicking a marriage ceremony.

This Bill will preserve the institution of marriage as a life long commitment between a man and a woman under the *Marriage Act 1961 (Cth)*. However, the Bill retains the relationship registration scheme which allows a couple to register their relationship and so gain legal recognition of their status, primarily for medical and financial purposes.

This change will mean that couples will still be able to register their relationship and the rights of parties will be retained. The provisions relating to a ceremony do not affect the rights of the parties.

The amendments in this Bill will also bring this Act into line with the interstate relationship registration legislation in New South Wales, Victoria and Tasmania, which do not include ceremonies as part of the legislative scheme.

## **Achievement of the Objectives**

The Bill repeals the provisions in the Act that allow a couple to have a Government sanctioned civil partnership declaration ceremony to express their intention to enter into a civil partnership with each other and for a person to be registered as a civil partnership notary. These provisions will ensure the Act will provide for a relationship registration scheme that is consistent with the relationship registration schemes in New South Wales, Victoria and Tasmania.

The rights of those couples who have a registered civil partnership prior to the date of commencement of the Bill will be preserved, including those couples who have opted to have a ceremony prior to the registration of their relationship.

The Bill will also include provisions to change the title of the Act from the '*Civil Partnerships Act 2011*' to '*Relationships Act 2011*' and the terms used in the Act from '*civil partnerships*', '*civil partners*' and '*cooling off period*' to '*registered relationships*', '*registered partners*' and '*registration period*' respectively. These changes focus the Act on its objective, to register relationships.

The Bill also amends the termination provisions in the Act to provide that a registered relationship is no longer terminated by a District Court order but by lodging an application with the registry of the BDM. This simplifies the current termination process. Further the current court ordered dissolution process could be seen to be equivalent to the current legal procedure to dissolve a marriage. The proposed termination provisions will be consistent with the termination provisions of the relationship registration schemes in New South Wales, Victoria and Tasmania.

Consequential amendments have also been made to various Acts as a result of the changes proposed by this Bill in order to reflect the new terminology and the provisions in the new relationships registration scheme.

## **Estimated Cost for Government Implementation**

The costs associated with the implementation of this Bill will be met within existing resources.

## **Consistency with Fundamental Legislative Principles**

Section 4(3) of the *Legislative Standards Act 1992* provides that legislation must have sufficient regard to the rights and liberties of individuals. The

amendments will remove the rights of a couple to hold a Government sanctioned civil partnerships declaration ceremony to express their intention to enter into a civil partnership with each other. The ceremony under the Act, was a ‘symbolic’ gesture only with no effect on the legality of the relationship registration.

A couple will still be able to hold a ceremony that will celebrate their commitment in front of their family and friends.

Also, it is considered the number of couples who will be affected by the amendments in this Bill are minimal. As at the 14 June 2012, a total of 653 applications had been received from couples wanting to register their relationship, with only 23 of these couples opting to have a ceremony prior to the registration of their relationship.

The Bill also includes a provision that will allow for a Regulation to be made to amend any Act or Regulation in relation to a consequential amendment that needs to be made as a result of the amendments made in this Bill, and in particular the renaming of an entity or other thing. This Bills changes the short title of the Act and changes certain terms used in the Act. The Bill includes consequential amendments to various Acts and Regulation. This provision will allow for other consequential amendments to be made to other Acts or Regulations, which were not made in this Bill and will need to be made. The effect of the amendments may operate retrospectively.

This may be considered a breach of the fundamental legislative principles as the provision allows an Act to be amended by a Regulation and also the amendment may operate retrospectively. The amendments that may be made by the Regulation refer only to consequential amendments made as a result of this Bill in relation to the renaming of an entity or other thing. This provision will expire after one year from its commencement and is for the specific purpose of enacting any consequential amendments in a timely and efficient manner. Therefore, it is considered this provision is necessary and is justified.

## **Consultation**

Consultation on the Bill has not been undertaken. However, the Act was the subject of the consideration by the relevant Parliamentary Portfolio Committee prior to its passage with public submissions sought and public hearings conducted. The Liberal National Party Government made an

election commitment to review the Act with the possibility of amendments to repeal or partially repeal the Act being publicly made.

## Notes on Provisions

### Part 1 Preliminary

*Clause 1* establishes the short title of the Act as the *Civil Partnerships and Other Legislation Amendment Act 2012*.

### Part 2 Amendment of Civil Partnerships Act 2011

*Clause 2* provides part 2 amends the *Civil Partnerships Act 2011*.

*Clause 3* changes the long title to be 'An Act to provide for registered relationships'.

*Clause 4* amends section 1 to change the short title of the Act to *Relationships Act 2011*.

*Clause 5* amends the part 2 heading to be *Registered relationships*.

*Clause 6* amends section 4 to omit the words 'civil partnership' wherever they appear and to substitute them with the words 'registered relationship'. *Clause 4* also amends the note to the section to substitute the word 'registration' for the word 'court order'.

*Clause 7* amends section 5 to omit the words 'civil partnership' wherever they appear to substitute them with the words 'registered relationship' and to omit the words 'civil partner' and to substitute them with the words 'registered partner'.

*Clause 8* amends the part 2, division 3 heading to be *Entering into registered relationships*.

*Clause 9* omits section 6 and inserts a new section 6 that defines how a registered relationship is entered. It provides that a registered relationship is entered into by two adults who are in a relationship as a couple and who meet the eligibility criteria in section 5 by having their relationship registered under section 9(1)(a).

*Clause 10* amends section 7 to omit the words ‘civil partnership’ wherever they appear and substitutes them with the words ‘registered relationship’. It also removes the reference in section 7(1) to section 6(a).

*Clause 11* amends section 8 to omit the words ‘cooling off’ wherever they appear and to substitute them with the word ‘registration’.

*Clause 12* amends section 9 to omit the words ‘civil partnership’ wherever they appear to substituted them with the words ‘registered relationship’. It also omits the words ‘cooling off’ in section 9(1) and substitutes them with the word ‘registration’ and replaces the abbreviated form of ‘pt 5A’ in the note to section 9(2) with ‘part 5A’.

*Clause 13* omits sections 10, 11 and 12.

*Clause 14* omits the current form of section 13 and inserts a new section 13 which deals with when a registered relationship has effect.

*Clause 15* amends section 14 to omit the words ‘civil partnership’ wherever they appear to substitute them with the words ‘registered relationship’. Section 14(2) is omitted and replaced with a new section 14(2) which provides that a registered relationship may also be terminated under section 18.

*Clause 16* omits sections 15 to 19 and replaces these sections with new forms of these provisions which provide for a new termination process by an application to the Registrar-General appointed under the *Births, Deaths and Marriages Act 2003*.

New section 15 provides that one or both parties to a registered relationship may, in the approved form, apply to terminate the registered relationship. The application must be accompanied by the documents listed in the section and prescribed by regulation. The application must also be accompanied by the prescribed fee. If only one party applies, the section requires the other party is to be served with notice of the application.

New section 16 provides how a party is to be served with a copy of the termination application.

New section 17 provides that the Registrar must not register the termination until after the end of the termination period, which is 90 days. The applicants to the termination application may lodge a withdrawal notice within those 90 days.

New section 18 provides the circumstances when the Registrar may register the termination application. If a withdrawal notice has been made by the applicants, the Registrar must not register the termination application.

New section 19 provides when the termination takes effect, which is when the Registrar registers the termination application under section 18. This Registrar can not register the termination until 90 days have elapsed.

*Clause 17* omits part 3, sections 20 to 26, which deals with the civil partnership notary scheme.

*Clause 18* amends section 30 to omit the heading ‘civil partnerships’ and replace it with ‘registered relationships’. It also substitutes the words ‘registered relationship’ for ‘civil partnership’ wherever they appear in the section. This clause also omits the reference to the words ‘nature of the declaration under section 11’ in section 30(b)(ii), as the power to allow a couple to make a declaration of their intention to enter into a civil partnership with each other before the civil partnership notary and one or more other adult witnesses will no longer exist.

*Clause 19* omits section 31.

*Clause 20* omits section 32 and inserts a new form of section 32 setting out the way that documents relating to the termination of a registered relationship may be served on a party to the registered relationship as required under section 16.

*Clause 21* amends section 33 to replace the heading ‘Civil partnerships’ with ‘Registered relationships’ and omit the words ‘civil partnership’ wherever they appear substitute them with the words ‘registered relationship’.

*Clause 22* omits section 34.

*Clause 23* omits section 36 and inserts a new section 36 that includes provision for a regulation under the Act to include a power to prescribe fees for a matter under the Act, as well as the refunding or waiving of fees payable under the Act.

*Clause 24* Inserts a new part 6, sections 37 to 47, which deals with the transitional application of the amendments to the Act.

New section 37 provides for the definition to be used in part 6.

New section 38 will preserve the rights of couples who have a civil partnership registered prior to the commencement of the Act (whether or not a civil partnership declaration ceremony was held) as they are taken to be registered relationships.

New section 39 will preserve the rights of couples who have an interstate registered relationship (prior to the commencement of the Act) that has, by virtue of section 4 of the *Civil Partnerships Regulation 2012*, been taken to be registered under the Act.

New section 40 provides that applications made under section 7, prior to the commencement of this Act that have not yet been registered, will be taken to be applications to register a relationship as a registered relationship.

New section 41 provides for the transitional provisions regarding applications made under section 12 prior to the commencement of the Act. Applications made under this section that have not yet been finalised, will be taken to be made under section 7. The section then provides the process for registration of these applications. This will mean that if an application under section 12 has not been finalised and the civil partnership declaration ceremony has not been undertaken, the parties will not be able to undertake the ceremony and the application will be processed in accordance with section 41.

New section 42 provides that where a couple have lodged an application under the former section 10 and the declaration ceremony has taken place, but the relationship is not yet registered prior to the commencement of the Bill, the registrar is to register the relationship or refuse to register the relationship under section 9(1)(a) and 9(1)(b) respectively, as soon as practicable.

New section 43 provides that where a person has applied for a review of a reviewable decision under schedule 1, item 1 and the review is not yet completed before commencement of the Bill, the Act as in force before commencement continues to apply for the purpose of completion of the review.

New section 44 provides that section 30 (Void civil partnerships) which is repealed by this Bill, will continue to apply to those civil partnerships entered into in the way mentioned in the repealed section 6(b) prior to the commencement of this Act in particular circumstances.



New section 45 provides that section 31 (Non-compliance with certain requirements) that is repealed by this Bill, will continue to apply to those civil partnerships entered into in the way mentioned in the repealed section 6(b) prior to the commencement of this Act, in particular circumstances.

New section 46 provides that a reference in an Act or document to the term 'civil partnership' will be taken to be a reference to a 'registered relationship'.

New section 47 clarifies that the power of the Governor to make or amend regulations is not affected by any amendments made under this Act.

New section 48 provides for the circumstances when a transitional regulation may be made.

*Clause 25* amends schedule 1 to the Act which sets out a table of reviewable decisions under sections 27 to 29 of the Act to omit the reference to section 12(1)(b) (item 1, column 2), to omit the reference to 'civil partnership' in item 1, column 3 and replace it with 'registered relationship', and to omit items 2 and 3 . The schedule is further amended to include a new matter that is considered a reviewable decision, that is a refusal by the Registrar to register a termination application under section 18.

*Clause 26* amends schedule 2 to the Act (the dictionary) to omit the defined terms, 'accepted representations', 'civil partnership notary', 'cooling-off period', 'show cause notice' and 'show cause period' and inserts definitions for 'registration period', 'termination application' and 'termination application period'. The registration period for an application made under section 7 is consistent with the current cooling-off period under the Act.

## **Part 3                      Amendment of Civil Partnerships Regulation 2012**

*Clause 27* provides that section 27 amends the *Civil Partnerships Regulation 2012*.

*Clause 28* amends the short title to '*Relationships Regulation 2012*'

*Clause 29* amends section 3 to remove the references to sections 8, 9 and 10 of the Act and to omit the references to sections 10(2)(b) and 10(2)(c).

*Clause 30* amends the heading of section 4 by omitting ‘Civil partnerships’ and inserting ‘Registered relationships’, and replacing the reference to ‘civil partnership under the Act’ to a ‘registered relationship under the Act’.

*Clause 31* inserts a new section 5 to provide that the prescribed fee for making an application under section 15 to terminate a registered relationship is \$31.00.

## **Part 4                      Amendment of Births, Deaths and Marriages Registration Act 2003**

*Clause 32* provides that this part amends the *Births, Deaths and Marriages Registration Act 2003*.

*Clause 33* amends the heading of part 5A ‘Civil partnerships’ by replacing it with ‘Registered relationships’.

*Clause 34* amends the heading of section 25A to replace the words ‘civil partnership’ with ‘registered relationship’ and in section 25A(1) removing the words ‘*Civil Partnerships Act 2011*, section 9 or 12’ and replacing them with, ‘*Relationships Act 2011*, section 9(1)(a)’.

*Clause 35* amends section 25B to replace the words ‘civil partnership’ with ‘registered relationship’ wherever they appear and in section 25B(1) removing the words ‘*Civil Partnerships Act 2011*, section 9 or 12’, and replacing it with, ‘*Relationships Act 2011*, section 9(1)(a)’. The clause also omits sections 25B(3) and (4).

*Clause 36* amends section 25C to replace the words ‘civil partnership’ with ‘registered relationship’ wherever they appear and removes the words ‘*Civil Partnerships Act 2011*’ in section 25C(1) replacing them with ‘*Relationships Act 2011*’.

*Clause 37* inserts a new division 6 with a new section 65. The new section 65 provides that a reference in a document issued under the Act to a civil

partnership is, on the commencement of this section, taken to be a reference to a registered relationship.

## **Part 5**                      **Amendment of Births, Deaths and Marriages Registration Regulation 2003**

*Clause 38* provides that this part amends the *Births, Deaths and Marriages Registration Act 2003*.

*Clause 39* amends section 13 to replace the words ‘civil partnership’ with ‘registered relationship’ wherever they appear.

*Clause 40* omits section 13A and replaces this section with a new section 13A, that sets out the particulars which are prescribed for the registration of a registered relationship.

*Clause 41* omits section 13B and replaces this section with a new section 13B, that sets out the particulars which are prescribed for a termination of a registered relationship.

*Clause 42* amends section 15 to replace the words ‘civil partnership’ with ‘registered relationship’ wherever they appear. This clause also inserts a new section 15(3)(g) to prescribe the information that may be obtained from the register in relation to civil partnerships registered prior to commencement of this Act.

*Clause 43* omits section 17B and replaces this section with a new section 17B, that sets out the particulars for what is to be included in a commemorative registered relationship certificate.

*Clause 44* omits section 18A and replaces this section with a new section 18A, that sets out the particulars for what is to be contained in a registered relationship extract.

*Clause 45* amends schedule 1 to the Regulation to be consistent with the new terminology used in the *Relationships Act 2011*.

*Clause 46* amends schedule 2 to the Regulation to be consistent with the new terminology used in the *Relationships Act 2011*.

## **Part 6**                      **Amendment of Corrective Services Act 2006**

*Clause 47* provides that this part amends the *Corrective Services Act 2006*.

*Clause 48* Omits section 26A and replaces it with a new section 26A, which provides for the process a person must follow when they intend to enter into a registered relationship while in custody.

## **Part 7**                      **Amendment of Duties Act 2001**

*Clause 49* provides that this part amends the *Duties Act 2001*.

*Clause 50* amends section 151(1) to replace the words ‘civil partnership’ with ‘registered relationship’ wherever they appear.

*Clause 51* amends the schedule 6 definition of spouse to provide that ‘spouse’ includes ‘de facto partner’ and ‘registered partner’.

## **Part 8**                      **Amendment of Governors (Salary and Pensions) Act 2003**

*Clause 52* provides that this part amends the *Governors (Salary and Pensions) Act 2003*.

*Clause 53* amends the definition of ‘surviving partner’ in the schedule (Dictionary) to include a person who was in a registered relationship.

## **Part 9**                      **Amendment of Succession Act 1981**

*Clause 54* provides that this part amends the *Succession Act 1981*.

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*Clause 55* amends section 5AA to replace the words ‘civil partnership’ with ‘registered relationship’ and the words ‘civil partner’ with ‘registered partner’ wherever they appear. The clause also inserts a replacement section 5AA(4) to define ‘dependent former husband or wife or registered partner of a deceased person’.

*Clause 56* amends section 13 to include sections 14A and 15A as referenced in that section.

*Clause 57* amends section 14A to replace the words ‘civil partnership’ with ‘registered relationship’ wherever they appear.

*Clause 58* amends section 15A to replace the words ‘civil partnership’ with ‘registered relationship’ and the words ‘civil partner’ with ‘registered partner’ wherever they appear. The clause also inserts new definitions for ‘registered partner’, ‘former registered partner’, ‘termination’ and ‘void’.

## **Part 10                      Other amendments**

*Clause 59* provides that the Acts or Regulations listed in the schedule are amended to change the terminology used from: ‘*Civil Partnerships Act 2001*’ to ‘*Relationships Act 2011*’, ‘civil partnership’ to ‘registered partnership’ and ‘civil partner’ to ‘registered partner’.

The schedule to the Act lists the various Acts and Regulations to be consequentially amended.