

# CIVIL PARTNERSHIPS BILL 2011

## Explanatory Notes

### Objectives of the Bill

The objectives of the Civil Partnership Bill 2011 (the Bill) are to:

- a) provide for the legal recognition of relationships of couples, regardless of gender, by registration of the relationships, to be known as civil partnerships;
- b) allow couples the option of making a declaration of their intention to enter into civil partnerships before a civil partnership notary, prior to the registration of their civil partnerships;
- c) provide for a process for the termination of civil partnerships;
- d) recognise interstate registered civil relationships as civil partnerships for the purposes of State legislation;
- e) create a registration process for civil partnership notaries; and
- f) make consequential amendments to the following Acts as a result of the civil partnership scheme: *Acts Interpretations Act 1954, Anti-Discrimination Act 1991, Births, Deaths and Marriages Registration Act 2003, Body Corporate and Community Management Act 1997, Corrective Services Act 2006, Duties Act 2001, Electrical Safety Act 2002, First Home Owner Grant Act 2000, Guardianship and Administration Act 2000, Integrated Resort Development Act 1987, Judges (Pensions and Long Leave) Act 1957, Land Tax Act 2010, Payroll Tax 1971, Powers of Attorney Act 1998, Prostitution Act 1999, Public Trustee Act 1978, Sanctuary Cove Resort Act 1986, Status of Children Act 1978, Succession Act 1981, Supreme Court Act 1995 and Surrogacy Act 2010.*

### Reasons for the Bill

The Bill augments the reforms made by the Queensland Government in 2002 when a large number of Queensland Acts were amended to recognise the rights and obligations of partners in de facto relationships, irrespective of the gender of each partner.

The Bill generally aligns with reforms made in Tasmania in 2004, Victoria in 2008, Australia Capital Territory in 2008 and New South Wales in 2010 to recognise civil partnerships through a registration process. In 2009, the Australian Capital Territory extended their civil partnership legislation to allow a same-sex couple to make a declaration to each other of their intention to enter into a civil partnership prior to the registration of their civil partnership.

The Commonwealth Government in 2008 made comprehensive amendments to over 100 pieces of their legislation to recognise people in same-sex relationships have the same legal benefits and entitlements to a range of Commonwealth Government areas, including superannuation schemes, social security, family law, veteran's entitlements, taxation, health and immigration. This reform package also included the recognition of

registered civil partnerships under State laws as a domestic relationship for the purposes of certain Commonwealth laws, for example family law and superannuation.

### **Achievement of the Objectives**

The Bill provides that a civil partnership is a legally recognised relationship that may be entered into by any two adults, regardless of their gender. A person is eligible to enter into a civil partnership only if the person is not married, already in a civil partnership and not in a prohibited relationship with the other person. A prohibited relationship is where the person is a lineal ancestor or descendant or a sibling or half sibling of the other person. Further, at least one of the parties to the civil partnership must live in Queensland.

A civil partnership is entered into when the two adults, who are in a relationship as a couple either:

- a) register their relationship at the Registry of Births, Deaths and Marriages (BDM); or
- b) make a declaration of civil partnership and have their relationship registered at the BDM.

Registration of the civil partnership will provide proof of the existence of the spousal relationship. Partners in a registered civil partnership will not have to provide any further evidence to establish their relationship exists. This will make it easier for civil partners to access their rights under Queensland laws.

When a couple intend to make a declaration to each other of their intention to enter into a civil partnership, the couple must provide to a civil partnership notary and the Registrar-General of the BDM, a *Notice of intention to enter into a civil partnership*. The notice is to be given not earlier than 12 months and not later than 10 days before the declaration is to be made. After the declaration has been made, the civil partnership notary is required to provide to the Registrar-General written notice the declaration has been made, so that the civil partnership may then be registered.

The Bill provides for the eligibility criteria and registration process for a civil partnership notary.

The Bill also provides for a process for the termination of a civil partnership. This will occur automatically if a person in a civil partnership dies or marries. The other way to terminate a civil partnership is by a District Court order. One or both of the parties to the civil partnership may apply for an order after the parties have lived separately and apart for a period of 12 months and either or both of the parties believe the civil partnership has broken down.

As a result of the legal recognition of a civil partnership as a spousal relationship, amendments are required to certain other Queensland legislation to ensure a civil partnership, or a person who is a civil partner in a civil partnership, is also recognised under that particular piece of legislation. The amendments in Part 6 of the Bill provide for these consequential amendments.

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## **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**

The following aspects of the Bill may represent a breach of fundamental legislative principles, which are justified in the circumstances.

Offences:

*Section 4(2) of the Legislative Standards Act 1992 provides that legislation must have sufficient regards to the rights and liberties of individuals.*

The Bill includes an offence for a civil partnership notary if the notary:

- a) allows the declaration of civil partnership, or a purported declaration, to be made before the notary and the required notice has not been given or not properly given to the notary; or
- b) allows the declaration of a civil partnership to be made and the notary has reasonable grounds to believe the civil partnership is void because of duress or fraud, mistaken identity, or one party does not have capacity.

The Bill also includes an offence for a person if the person:

- a) makes a declaration before a third person knowing that the third person is not a civil partnership notary; or
- b) makes a declaration before a third person who is not a civil partnership notary, but has reasonable grounds to believe that their partner believes the third person is not a civil partnership notary.

The maximum penalty for each of these offences is 50 penalty units or imprisonment for six months.

The offences are justified on the basis that a proper regard and respect for the declaration process is necessary to ensure the importance and standing of the declaration is maintained within the community and amongst those that participate in the event. A civil partnership notary is the pivotal role during the making of the declaration by the couple to each other, which is usually made in front of the couple's family members and friends. The formal commitment to each other by the couple should be undertaken in the true manner intended by the legislation and there should be no attempt by any party to circumvent the legislative requirements. Therefore, due regard for the declaration process is to be observed and non-compliance with the legislation should be deterred. The offences are consistent with those provided for in the Australian Capital Territory and also in the Commonwealth under the *Marriages Act 1961*.

The Bill also makes it an offence if a civil partnership notary does not provide the written notice of the making of the declaration to the Registrar-General in the stipulated time period. The maximum penalty is five penalty units.

The provision of the written notice by the civil partnership notary to the Registrar-General is important so that the registration of the civil partnership can take place. As the registration of the civil partnership is the impetus to create the legal standing, any tardiness by the civil partnership notary in providing the notice may have an adverse

effect on the couple whose relationship is not registered. Therefore, to ensure compliance an offence provision is required. The maximum penalty of five penalty units is not disproportionate to the offence and is consistent with similar provisions in the Australia Capital Territory.

The Bill also amends the *Corrective Services Act 2006* to insert a new provision that requires a person who is in custody of the chief executive and intends to enter into a civil partnership to give notice to the chief executive. This is consistent with section 26 of the *Corrective Services Act 2006*, which requires a person in custody to give notice when he or she intends to be married. Consistent with section 26, the new provision will also include an offence if the person does not provide the notice to the chief executive. The maximum penalty is 20 penalty units, which is the same penalty imposed in section 26. Action in this regard is necessary when considering the chief executive's statutory responsibility under section 10(1) of the *Corrective Services Act 2006* to keep records of the details of prisoners.

## **Consultation**

Consultation on the Bill has been undertaken with all relevant Government Departments including the Department of the Premier and Cabinet, Queensland Treasury, Department of Justice and Attorney-General and the Department of Community Safety.

## **Notes on Provisions**

### **PART 1 - Preliminary**

*Clause 1* establishes the short title of the Act as the *Civil Partnership Act 2011*.

*Clause 2* provides that the Act commences on a day to be fixed by proclamation.

*Clause 3* states that the dictionary in schedule 2 defines particular words used in the Act.

### **PART 2 – Civil partnerships**

#### **Division 1 - General**

*Clause 4* specifies that a civil partnership is a legally recognised relationship that may be entered into by two adults, regardless of their sex, subject to the provisions set out in the Act and may be terminated only in accordance with the Act.

#### **Division 2 - Eligibility**

*Clause 5* provides for who is eligible to enter into a civil partnership. A person is eligible if the person is not married or in a civil partnership and is not in a prohibited relationship with the other party to the civil partnership. A person is in a prohibited relationship the other person if the relationship is with a lineal ascendant or descendant, or sibling or half sibling. Also, at least one of the parties to the civil partnership must live in Queensland.

**Division 3 – Entering into civil partnerships**

*Clause 6* provides that two adults, who are in a relationship as a couple, regardless of their sex and who meet the eligibility requirements, may enter into a civil partnership. The couple may enter into a civil partnership by having their relationship registered in accordance with section 9 of the Act; or by making a declaration of civil partnership under section 11 of the Act and having their relationship registered under section 12 of the Act.

*Clause 7* outlines the requirements for the registration of a civil partnership. An application is to be made by the couple to the Registrar-General, Births Deaths and Marriages (registrar). The application must be accompanied by a statutory declaration attesting to certain matters, as well as certain documents to prove the person's identity, age and other matters. The registrar may request additional material that is needed to consider the application. The registrar may refuse to consider the application until the additional material is supplied.

*Clause 8* provides that there is to be a cooling off period, defined in Schedule 2 as 10 days, in which either or both of the parties to the application for registration of the civil partnership, may apply to withdraw the application.

*Clause 9* provides that the registrar may register the relationship as a civil partnership (as soon as practicable after the cooling off period) by making an endorsement to that effect on the application. The registrar may refuse to register the relationship as a civil partnership if not satisfied that one or both of the parties meet the eligibility requirements or if a withdrawal notice has been provided in the cooling off period.

*Clause 10* sets out the process for when a couple intend to make a declaration of their intention to enter into a civil partnership. The requirements include such matters as giving a notice of their intention to enter into a civil partnership to the civil partnership notary and if the civil partnership notary is not the registrar, then also to the registrar. The notice is to be accompanied by a statutory declaration by each of the parties attesting to certain matters as well as documents to prove the person's identity, age and other matters. After receipt of the notice the civil partnership notary is to provide to the parties a written notice setting out the legal effect of a civil partnership.

*Clause 11* provides for the process for the making of the declaration. The declaration is made by each of the parties to the other party, in front of the civil partnership notary and an adult witness. The declaration must be made not earlier than 10 days and not later than 12 months after the day the notice was provided to the civil partnership notary.

*Clause 12* sets out the process for the registration of the civil partnership by the registrar following a declaration of civil partnership, including the endorsement by the registrar on the application of the day when the registration has effect.

*Clause 13* provides that a civil partnership entered into by a registration process only has effect when the registrar registers the relationship in accordance with section 9(1)(a) of the Act. If the registration of the civil partnership followed a declaration process, the civil partnership has effect from the day stated by the registrar under section 12(3).

#### **Division 4 - Termination**

*Clause 14* provides for when a civil partnership is terminated: either automatically on the death or marriage; or by a court order.

*Clause 15* sets out the process by which the parties to a civil partnership may apply for a court order for the termination of his or her civil partnership. The parties (or one of the parties) may apply to the District Court when: the parties have been separated for a continuous period of at least 12 months and that either or both of the parties have formed the belief the civil partnership has broken down and there is no likelihood of a reconciliation. The application must be accompanied by an affidavit attesting to certain matters.

*Clause 16* provides that where an application for a court order for termination of a civil partnership is made by one party, they must serve the application and affidavit on the other party to the civil partnership.

*Clause 17* provides for the process where an applicant for an order to terminate the civil partnership may apply to withdraw the application before the date fixed for deciding the application. If the application is made by both parties, the withdrawal notice is to be made with the consent of the other.

*Clause 18* provides that the District Court may make an order to terminate the civil partnership if satisfied the applicants have lived separately and apart for a continuous period of 12 months and the civil partnership has broken down and there is no likelihood of a reconciliation between the parties. The District Court is to provide to the registrar a copy of the order no later than 28 days after the day the order is made.

*Clause 19* provides that the District Court order to terminate the civil partnership has effect on the day the order is made.

### **PART 3 – Civil partnership notaries**

#### **Division 1 - Registration**

*Clause 20* sets out the requirements for a person to apply to be a civil partnership notary and the matters the registrar must have regard to when deciding whether to register the person as a civil partnership notary.

*Clause 21* requires the registrar to keep a register of persons registered as civil partnership notaries, including the details of the information to be recorded in the register, how the register is to be kept and how the register may be accessed by members of the public.

**Division 2 - Cancellation**

*Clause 22* provides that this division applies when the registrar considers that a person registered as a civil partnership notary does not satisfy, or no longer satisfies the criteria for registration.

*Clause 23* sets out the *show cause notice* process to be followed by the registrar and the person whose registration as a civil partnership notary, the registrar proposes to cancel must follow.

*Clause 24* allows a person to whom a *show cause notice* has been given, to make written representations to the registrar and the registrar must consider all the written representations.

*Clause 25* provides for how the show cause notice process may end, if after consideration by the registrar of the accepted written representations by the person, the registrar no longer believes the ground exists to cancel the registration.

*Clause 26* provides for how the registrar may cancel the registration of the person as a civil partnership notary. The registrar may cancel the registration if, after considering the accepted representations by the person, still believes the ground exists to cancel the registration and the cancellation is warranted. This clause further provides for the registrar is to give an information notice to the person for the purposes of seeking a review to QCAT of the registrar's decision.

**PART 4 – Notification and Review of decisions**

*Clause 27* defines the term '*reviewable decision*' for use in this division.

*Clause 28* provides for the process and requirements for the registrar to give an information notice after a reviewable decision is made. The reviewable decisions and the entities to be given an information notice are set out in schedule 1, column 4 of the Act.

*Clause 29* provides for who may apply to QCAT for review of a reviewable decision.

**PART 5 – Miscellaneous**

*Clause 30* provides for the circumstances when a civil partnership may be void and the District Court may make an order to declare a civil partnership void.

*Clause 31* provides that a civil partnership is not invalid only because a requirement about the form of notice given under section 10 was not complied with. The clause provides for further circumstances where a civil partnership is not invalid.

*Clause 32* specifies the process for service of court documents required to be served under section 16 of this Act.

*Clause 33* provides that a regulation may provide that a relationship under a corresponding law is a civil partnership for the purposes of this Act.

*Clause 34* creates various offence provisions for a civil partnership notary and a person under this Act. A civil partnership notary commits an offence if the notary allows a declaration of civil partnership, or purported declaration, to be made while knowing that certain requirements under the Act have not been complied with. A civil partnership notary also commits an offence if a declaration is made before the notary, and the notary has reasonable grounds to believe the civil partnership would be void. A person commits an offence under the Act if the person makes a declaration with the intention of entering into a civil partnership but knows the person before whom the declaration is being made is not a civil partnership notary. A person also commits an offence under the Act if the person makes a declaration with the intention of entering into a civil partnership but has reasonable grounds to believe that his or her partner believes the person before whom the declaration is being made is not a civil partnership notary.

All offences under this clause have a maximum penalty of 50 penalty units or 6 months imprisonment.

*Clause 35* provides that approved forms for use under this Act may be approved by the chief executive.

*Clause 36* provides that the Governor-in-Council may make regulations for this Act.

## **PART 6 – Amendments**

### **Division 1 – Amendment of this Act**

*Clause 37* provides that this division amends this Act immediately after commencement of section 2.

*Clause 38* amends the long title of the Act.

### **Division 2 – Amendment of Acts Interpretation Act 1954**

*Clause 39* provides that this division amends the *Acts Interpretation Act 1954*.

*Clause 40* amends section 36 to insert new definitions of ‘civil partner’ and ‘civil partnership’ and includes a ‘civil partner’ under the definition of ‘spouse’.

### **Division 3 – Amendment of Anti-Discrimination Act 1991**

*Clause 41* provides that this division amends the *Anti-Discrimination Act 1991*.

*Clause 42* amends section 31 to provide for the circumstances where the person or the couple are in a civil partnership.

*Clause 43* amends the schedule to the Act to add a civil partner to the definition of 'relationship status'.

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

*Clause 44* provides that this division amends the *Births, Deaths and Marriages Registration Act 2003*.

*Clause 45* inserts a new Part 5A for civil partnerships that contains three new sections – sections 25A to 25C. Sections 25A to 25C provide for the registration by the registrar of civil partnerships and the termination of civil partnerships. These new sections explain the process by which the registrar is to register the civil partnerships that are entered into; or the process to register the civil partnership has terminated or is declared void. The new sections also provide that the civil partnership notary is to provide written notice to the registrar of the making of the declaration of a civil partnership no later than two weeks after the day the declaration is made. There is a maximum penalty of 5 penalty units if the civil partnership notary does not comply with this requirement.

#### **Division 5 – Amendment of Body Corporate and Community Management Act 1997**

*Clause 46* provides that this division amends the *Body Corporate and Community Management Act 1997*.

*Clause 47* amends section 309 to include reference to a civil partnership.

#### **Division 6 – Amendment of Corrective Services Act 2006**

*Clause 48* provides that this division amends the *Corrective Services Act 2006*.

*Clause 49* inserts a new section 26A to provide for the notice a person, who is in the chief executive's custody, must provide to the chief executive prior to applying to register a civil partnership or giving a notice of intention to enter into a civil partnership. Failure to provide the notice is an offence with a maximum penalty of 20 penalty units. The chief executive must approve the way a declaration is conducted, if the declaration is to be held in a corrective services facility.

#### **Division 7 – Amendment of Duties Act 2001**

*Clause 50* provides that this division amends the *Duties Act 2001*.

*Clause 51* amends the definition of spouse in schedule 6 by omitting the definition. The definition of spouse for the purposes of this Act, will be the definition in the *Acts Interpretation Act 1954*.

*Clause 52* amends section 151(1) to include reference to a civil partnership.

### **Division 8 – Amendment of Electrical Safety Act 2002**

*Clause 53* provides that this division amends the *Electrical Safety Act 2002*.

*Clause 54* amends the schedule to the Act and the definition of ‘spouse’ to include a ‘civil partner’.

### **Division 9 – Amendment of First Home Owner Grant Act 2000**

*Clause 55* provides that this division amends the *First Home Owner Grant Act 2000*.

*Clause 56* amends section 9 of the Act to incorporate a civil partner and a civil partnership within this section.

### **Division 10 – Amendment of Guardianship and Administration Act 2000**

*Clause 57* provides that this division amends the *Guardianship and Administration Act 2000*.

*Clause 58* amends section 26 to include the circumstance when the guardian or administrator were in a civil partnership with the adult and the civil partnership is terminated.

*Clause 59* amends the definition of ‘special personal matter’ in schedule 2 to include when the adult either consents to entering into a civil partnership, or consents to the termination of a civil partnership.

### **Division 11 – Amendment of Integrated Resort Development Act 1987**

*Clause 60* provides that this division amends the *Integrated Resort Development Act 1987*.

*Clause 61* amends section 179D of the Act to incorporate a civil partnership within the definition of spouse.

**Division 12 – Amendment of Judges (Pensions and Long Leave) Act 1957**

*Clause 62* provides that this division amends the *Judges (Pensions and Long Leave) Act 1957*.

*Clause 63* amends section 8 of the Act to provide for the circumstance when the spouse of the retired judge was in a civil partnership with the retired judge at the time of the judge's retirement.

**Division 13 – Amendment of Land Tax Act 2010**

*Clause 64* provides that this division amends the *Land Tax Act 2010*.

*Clause 65* amends the definition of spouse in schedule 4 to include a civil partner.

**Division 14 – Amendment of Payroll Tax Act 1971**

*Clause 66* provides that this division amends the *Payroll Tax Act 1971*.

*Clause 67* amends the definition of spouse in section 74D to include a civil partner.

**Division 15 – Amendment of Powers of Attorney Act 1998**

*Clause 68* provides that this division amends the *Powers of Attorney Act 1998*.

*Clause 69* inserts a new section 52A to provide for the effect of the entering into a civil partnership on an enduring power of attorney.

*Clause 70* inserts a new section 53A to provide for the effect of the termination of a civil partnership on an enduring power of attorney.

*Clause 71* amends the definition of 'special personal matter' in schedule 2 to include when the adult either consents to entering into a civil partnership; or consents to the termination of a civil partnership.

**Division 16 – Amendment of Prostitution Act 1999**

*Clause 72* provides that this division amends the *Prostitution Act 1991*.

*Clause 73* amends the definition of spouse in schedule 4 by omitting the definition. The definition of spouse for the purposes of this Act, will be the definition in the *Acts Interpretation Act 1954*.

**Division 17 – Amendment of Public Trustee Act 1978**

*Clause 74* provides that this division amends the *Public Trustee Act 1978*.

*Clause 75* amends section 94 of the Act to include the words ‘or civil partner’.

*Clause 76* amends section 107 of the Act to include the words ‘or civil partner’

**Division 18 – Amendment of Sanctuary Cove Resort Act 1985**

*Clause 77* provides that this division amends the *Sanctuary Cove Resort Act 1985*.

*Clause 78* amends section 104D(2)(a) to include a civil partnership.

**Division 19 – Amendment of Status of Children Act 1978**

*Clause 79* provides that this division amends the *Status of Children Act 1978*.

*Clause 80* amends section 8 to include the circumstance when the father and mother are in a civil partnership when the child is born and how paternity of the child is recognised.

*Clause 81* amends section 15 to include the circumstance when the woman is in a civil partnership with a man.

*Clause 82* amends section 19B to include the circumstance when the woman is in a civil partnership and undergoes a fertilisation procedure with the consent of her civil partner.

*Clause 83* amends section 20 to include the circumstance when the woman is in a civil partnership and undergoes a fertilisation procedure without the consent of her civil partner.

**Division 20 – Amendment of Succession Act 1981**

*Clause 84* provides that this division amends the *Succession Act 1981*.

*Clause 85* amends definition of spouse within section 5AA to provide that a civil partner is included within the definition and that a civil partnership is a type of spousal relationship.

*Clause 86* inserts a new section 14A into the Act to provide for the effect of entering into a civil partnership on a will.

*Clause 87* inserts a new section 15A into the Act to provide for the effect of the end of a civil partnership on a will; or the effect of a court order declaring the civil partnership is void on a will.

### **Division 21 – Amendment of Supreme Court Act 1995**

*Clause 88* provides that this division amends the *Supreme Court Act 1985*.

*Clause 89* amends section 23A of the Act to include a civil partnership.

### **Division 22 – Amendment of Surrogacy Act 2010**

*Clause 90* provides that this division amends the *Surrogacy Act 2010*.

*Clause 91* amends the note in section 7(2) of the Act to include the words ‘and a civil partner’.

### **Schedule 1 – Reviewable decisions**

The schedule includes the table setting out the decisions under the Act which are reviewable decisions under the Act.

### **Schedule 2 – Dictionary**

The schedule defines certain words or terms used in the Act.