



New South Wales

# Relationships Register Amendment (Recognition of Same-sex and Gender-diverse Relationships) Bill 2014

## Explanatory note

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

## Overview of Bill

The object of this Bill is to provide for the legal recognition of relationships between two adult persons of the same sex, or two adult persons, one or both of whom is gender-diverse, who have had their union solemnised as a marriage or a civil union in certain other countries or in certain other Australian States or Territories. This is achieved:

- (a) by providing for parties to such unions who apply for the registration of their relationship to be automatically eligible for registration under the *Relationships Register Act 2010*, and
- (b) by providing for parties to relationships that are so registered to be automatically treated as de facto partners in a de facto relationship for the purposes of New South Wales law.

## Outline of provisions

**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 on the date of assent to the proposed Act.

## Schedule 1      Amendment of Relationships Register Act 2010 No 19

**Schedule 1 [1]** updates the long title of the *Relationships Register Act 2010* to reflect the proposed extension of that Act to cover unions solemnised overseas, and civil unions, where both of the parties are of the same sex, or one or both of the parties is gender-diverse.

**Schedule 1 [2]** amends the object of the Act to reflect the proposed extension of the Act to cover unions solemnised overseas as marriages or civil unions, where both of the parties are of the same sex, or one or both of the parties is gender-diverse.

**Schedule 1 [3]** inserts definitions for expressions used in the other amendments made by the proposed Act. A *person who is gender-diverse* is defined as a person who is, or identifies as, neither wholly female nor wholly male, a combination of female and male or neither female nor male.

**Schedule 1 [4]** moves the definition of *related by family* so that it applies to all of the Act.

**Schedule 1 [5]** restates the eligibility for registration of a relationship. In addition to the current eligibility (that two adult persons are in a relationship as a couple) certain relationships can automatically be registered if an application is made (that is, without having to prove a relationship as a couple). The relationships to which the new provision extends are:

- (a) the relationship between two adults who are married to each other in a recognised union solemnised as a marriage in another country or in another Australian State or Territory that was solemnised when both parties were adults, or
- (b) the relationship between two adults who are parties to a recognised civil union solemnised in another country or another Australian State or Territory that was solemnised when both parties were adults.

The amendment also provides additional reasons why a relationship cannot be registered (in addition to if either person is married in a marriage recognised under Commonwealth law, that is, in a marriage between a man and a woman). The additional reasons are:

- (a) either person is married in a recognised union solemnised as a marriage in another country or in another Australian State or Territory to another person, or
- (b) either person is a party to a recognised civil union solemnised in another country or in another Australian State or Territory with another person.

The amendment also provides that, whereas currently an application for registration must be accompanied by a statutory declaration by each person stating that they are in a relationship as a couple with each other, the application must now state that one of the following is true:

- (a) the person is in a relationship as a couple with the other person,
- (b) the person is married to the other person in a recognised union solemnised as a marriage in another country or in another Australian State or Territory,
- (c) the person is a party with the other person to a recognised civil union solemnised in another country or in another Australian State or Territory.

The statutory declaration must also state the following:

- (a) that the person is not registered under the Act or a corresponding law as being in a registered relationship or an interstate registered relationship, whether with the other applicant or any other person,
- (b) that the person is not in a relationship as a couple with a person other than the other applicant,
- (c) that the person is not married in a recognised union solemnised as a marriage in another country or in another Australian State or Territory with another person,
- (d) that the person is not a party to a recognised civil union solemnised in another country or in another Australian State or Territory with another person.

**Schedule 1 [6]** makes it clear that an existing reference to marriage means a marriage recognised under Commonwealth law (that is, a marriage between a man and a woman).

**Schedule 1 [7]** provides for the regulations to recognise the following:

- (a) a class of unions solemnised in another country (or one or more particular states of another country) or in another Australian State or Territory as marriages between two parties of the same sex or where one or both of the parties is a person who is gender-diverse,
- (b) a class of civil unions solemnised in another country (or one or more particular states of another country) or in another Australian State or Territory as civil unions between two parties of the same sex or where one or both of the parties is a person who is gender-diverse.

The amendment also provides that, for the purposes of any New South Wales law, a person is a de facto partner of, and in a de facto relationship with, another person if the person is in a recognised union solemnised as a marriage in another country or another Australian State or Territory or a recognised civil union solemnised in another country or another Australian State or Territory.

**Schedule 1 [8]** updates a heading to a section.



New South Wales

# Relationships Register Amendment (Recognition of Same-sex and Gender-diverse Relationships) Bill 2014

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New South Wales

# Relationships Register Amendment (Recognition of Same-sex and Gender-diverse Relationships) Bill 2014

No. , 2014

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## A Bill for

An Act to amend the *Relationships Register Act 2010* to provide for the recognition of relationships involving adult persons of the same sex, or one or both of whom is gender-diverse, that are solemnised as marriages or civil unions in certain other jurisdictions and to ensure that those persons are treated as de facto partners under New South Wales law.

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**The Legislature of New South Wales enacts:**

1

**1 Name of Act**

2

This Act is the *Relationships Register Amendment (Recognition of Same-sex and Gender-diverse Relationships) Act 2014*.

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4

**2 Commencement**

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This Act commences on the date of assent to this Act.

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<b>Schedule 1</b>	<b>Amendment of Relationships Register Act 2010</b>	1
	<b>No 19</b>	2
<b>[1] Long title</b>		3
	Insert “and the relationships of persons in certain same-sex or gender-diverse unions solemnised overseas” after “de facto relationships”.	4 5
<b>[2] Section 3</b>		6
	Omit the section. Insert instead:	7
	<b>3 Object of Act</b>	8
	The object of this Act is to provide for the legal recognition of certain relationships through registration. The relevant relationships are those between:	9 10 11
	(a) two adult persons in a relationship as a couple (whether they are persons of different sexes or of the same sex or one or both is a person who is gender-diverse), or	12 13 14
	(b) two adult persons in a union solemnised as a marriage in another country or another Australian State or Territory (whether both persons are of the same sex or whether one or both is a person who is gender-diverse), or	15 16 17 18
	(c) two adult persons in a civil union solemnised in another country or in another Australian State or Territory (whether both persons are of the same sex or one or both is a person who is gender-diverse).	19 20 21
<b>[3] Section 4 Definitions</b>		22
	Insert in alphabetical order in section 4 (1):	23
	<i>person who is gender-diverse</i> means a person:	24
	(a) who has physical, hormonal or genetic features that are:	25
	(i) neither wholly female nor wholly male, or	26
	(ii) a combination of female and male, or	27
	(iii) neither female nor male, or	28
	(b) who identifies as:	29
	(i) neither wholly female nor wholly male, or	30
	(ii) a combination of female and male, or	31
	(iii) neither female nor male.	32
	<i>recognised civil union solemnised in another Australian State or Territory</i> means a civil union recognised by the regulations made under section 15B (2).	33 34
	<i>recognised civil union solemnised in another country</i> means a civil union recognised by the regulations made under section 15B (1).	35 36
	<i>recognised union solemnised as a marriage in another Australian State or Territory</i> means a union recognised by the regulations made under section 15A (2).	37 38 39
	<i>recognised union solemnised as a marriage in another country</i> means a union recognised by the regulations made under section 15A (1).	40 41

<b>[4] Section 4 (3)–(5)</b>	1
Insert after section 4 (2):	2
(3) Two adults are <i>related by family</i> if:	3
(a) one is the child (including an adopted child) of the other, or	4
(b) one is another descendant of the other (even if the relationship between them is traced through an adoptive parent), or	5 6
(c) they have a parent in common (including an adoptive parent of either or both of them).	7 8
(4) Subsection (3) applies:	9
(a) even if an adoption has been declared void or is of no effect, and	10
(b) to adoptions under the law of any place (whether in or out of Australia) relating to the adoption of children.	11 12
(5) Subsection (3) applies in relation to a child whose parentage is transferred as a result of a parentage order, or an Interstate parentage order, within the meaning of the <i>Surrogacy Act 2010</i> in the same way as it applies in relation to an adopted child, even if the parentage order is discharged or otherwise ceases to have effect. For that purpose, a reference in that subsection to an adoptive parent is to be read as a reference to a person to whom the parentage of a child is transferred under such a parentage order.	13 14 15 16 17 18 19
<b>[5] Sections 5 and 6</b>	20
Omit the sections. Insert instead:	21
<b>5 Eligibility for registration</b>	22
(1) Two adult persons, regardless of their sex, may apply to the Registrar for registration of their relationship if:	23 24
(a) they are in a relationship as a couple, or	25
(b) they are married to each other in a recognised union solemnised as a marriage in another country, or a recognised union solemnised as a marriage in another Australian State or Territory, to which they are the only parties, or	26 27 28 29
(c) they are both the only parties to a recognised civil union solemnised in another country or a recognised civil union solemnised in another Australian State or Territory.	30 31 32
(2) A relationship cannot be registered unless at least one of the adults resides in New South Wales.	33 34
(3) A relationship cannot be registered if:	35
(a) either person is in a marriage, within the meaning of the <i>Marriage Act 1961</i> of the Commonwealth, or a marriage in another country that is recognised by the Commonwealth as a valid marriage, whether to the other person in the relationship or to another person, or	36 37 38 39
(b) either person is married in a recognised union solemnised as a marriage in another country, or a recognised union solemnised as a marriage in another Australian State or Territory, to a person other than the other person in the relationship, or	40 41 42 43
(c) either person is a party to a recognised civil union solemnised in another country, or a recognised civil union solemnised in another Australian	44 45

State or Territory, with a person other than the other person in the relationship, or	1 2
(d) either person is registered under this Act as being in a registered relationship, or	3 4
(e) either person is registered under a corresponding law as being in an interstate registered relationship, or	5 6
(f) either person is in a relationship as a couple with another person, or	7
(g) the two persons are related by family.	8
<b>6 Applications for registration</b>	9
(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 statutory declaration by each person in the relationship stating that one or more of the following is true:	10 11 12 13
(a) the person is in a relationship as a couple with the other person,	14
(b) the person is married to the other person, and no other person, in a recognised union solemnised as a marriage in another country or a recognised union solemnised as a marriage in another Australian State or Territory,	15 16 17 18
(d) the person is a party with the other person, and no other person, to a recognised civil union solemnised in another country or a recognised civil union solemnised in another Australian State or Territory.	19 20 21
(2) The statutory declaration by each person in the relationship must also state the following:	22 23
(a) that the person wishes to register the relationship,	24
(b) that the person is not married, within the meaning of the <i>Marriage Act 1961</i> of the Commonwealth, or a marriage in another country that is recognised by the Commonwealth as a valid marriage, whether to the other applicant or another person,	25 26 27 28
(c) that the person is not registered under this Act or a corresponding law as being in a registered relationship or an interstate registered relationship, whether with the other applicant or any other person,	29 30 31
(d) that the person is not in a relationship as a couple with a person other than the other applicant,	32 33
(e) that the person is not married in a recognised union solemnised as a marriage in another country, or a recognised union solemnised as a marriage in another Australian State or Territory, to a person other than the other applicant,	34 35 36 37
(f) that the person is not a party to a recognised civil union solemnised in another country, or a recognised civil union solemnised in another Australian State or Territory, with a person other than the other applicant,	38 39 40 41
(g) whether or not the person resides in New South Wales,	42
(h) that the person is not related to the other applicant by family.	43
(3) An application must also be accompanied by the following:	44
(a) evidence of the identity and age of each person in the relationship,	45
(b) the fee prescribed by the regulations,	46
(c) any other documents and information prescribed by the regulations.	47

<b>[6] Section 10 Revocation of registration by events</b>	1
Insert “in a marriage within the meaning of the <i>Marriage Act 1961</i> of the Commonwealth, or a marriage in another country that is recognised by the Commonwealth as a valid marriage” after “relationship” in section 10 (b).	2 3 4
<b>[7] Part 3A</b>	5
Insert after Part 3:	6
<b>Part 3A Recognition of certain same-sex and gender-diverse relationship statuses</b>	7 8
<b>15A Recognition of same-sex and gender-diverse unions solemnised as marriages in another country or in another Australian State or Territory</b>	9 10
(1) The regulations may declare that the following are recognised unions solemnised as a marriage in another country for the purposes of this Act:	11 12
(a) a class of unions solemnised as marriages between two parties of the same sex in another country (or one or more particular separate jurisdictions (such as states) within another country) under a law of that other country (or state),	13 14 15 16
(b) a class of unions solemnised as marriages between two parties where one or both of the parties is a person who is gender-diverse in another country (or one or more particular separate jurisdictions (such as states) within another country) under a law of that other country (or state).	17 18 19 20
(2) The regulations may declare that the following are recognised unions solemnised as a marriage in another Australian State or Territory for the purposes of this Act:	21 22 23
(a) a class of unions solemnised as marriages between two parties of the same sex in another Australian State or Territory under a law of that other State or Territory,	24 25 26
(b) a class of unions solemnised as marriages between two parties where one or both of the parties is a person who is gender-diverse in another Australian State or Territory under a law of that other State or Territory.	27 28 29
(3) However, a regulation must not declare a relationship to be a recognised union solemnised as a marriage in another country or a recognised union solemnised as a marriage in another Australian State or Territory unless:	30 31 32
(a) under the law of that country (or particular state of the country) or State or Territory, the relationship:	33 34
(i) must be between two adults, and	35
(ii) must be solemnised consensually, and	36
(iii) must not be solemnised between people who are related by family, and	37 38
(iv) must not be solemnised between people who are legally married, and	39 40
(b) the relationship is not a marriage within the meaning of the <i>Marriage Act 1961</i> of the Commonwealth, and	41 42
(c) the relationship is not a marriage in another country that is recognised by the Commonwealth as a valid marriage.	43 44

(4)	The Registrar must, if registering a recognised union solemnised as a marriage in another country or a recognised union solemnised as a marriage in another Australian State or Territory in the Register under section 9:	1 2 3
(a)	note that the parties are in a recognised union solemnised as a marriage in another country or in another Australian State or Territory, and	4 5
(b)	specify the country (or the particular state of the country) or the other Australian State or Territory in which the union was solemnised.	6 7
(5)	For the purposes of New South Wales law:	8
(a)	a recognised union solemnised as a marriage in another country or a recognised union solemnised in another Australian State or Territory that is registered under this Act is a de facto relationship, and	9 10 11
(b)	the parties to that relationship are de facto partners.	12
(6)	A marriage that is solemnised by or in the presence of a diplomatic or consular official of another country under the law of that country and that is recognised as valid by that other country is, for the purposes of this Act, taken to have been solemnised in that other country.	13 14 15 16
<b>15B</b>	<b>Recognition of same-sex and gender-diverse civil unions solemnised in another country or in another Australian State or Territory</b>	17 18
(1)	The regulations may declare that the following are recognised civil unions solemnised in another country for the purposes of this Act:	19 20
(a)	a class of unions solemnised as civil unions between two parties of the same sex in another country (or one or more particular separate jurisdictions (such as states) within another country) under a law of that other country (or state),	21 22 23 24
(b)	a class of unions solemnised as civil unions between two parties where one or both of the parties is a person who is gender-diverse in another country (or one or more particular separate jurisdictions (such as states) within another country) under a law of that other country (or state).	25 26 27 28
(2)	The regulations may declare that the following are recognised civil unions solemnised in another Australian State or Territory for the purposes of this Act:	29 30 31
(a)	a class of unions solemnised as civil unions between two parties of the same sex in another Australian State or Territory under a law of that other State or Territory,	32 33 34
(b)	a class of unions solemnised as civil unions between two parties where one or both of the parties is a person who is gender-diverse in another Australian State or Territory under a law of that other State or Territory.	35 36 37
(3)	However, a regulation must not declare a relationship to be a recognised civil union solemnised in another country or a recognised civil union solemnised in another Australian State or Territory unless:	38 39 40
(a)	under the law of that country (or particular state of the country) or State or Territory, the relationship:	41 42
(i)	must be between two adults, and	43
(ii)	must be solemnised consensually, and	44
(iii)	must not be solemnised between people who are related by family, and	45 46
(iv)	must not be solemnised between people who are legally married, and	47 48

(b)	the relationship is not a marriage within the meaning of the <i>Marriage Act 1961</i> of the Commonwealth, and	1 2
(c)	the relationship is not a marriage in another country that is recognised by the Commonwealth as a valid marriage.	3 4
(4)	The Registrar must, if registering a recognised civil union solemnised in another country or a recognised civil union solemnised in another Australian State or Territory in the Register under section 9:	5 6 7
(a)	note that the parties are in a recognised civil union solemnised in another country or in another Australian State or Territory, and	8 9
(b)	specify the country (or the particular state of the country) or the other Australian State or Territory in which the civil union was solemnised.	10 11
(5)	For the purposes of New South Wales law:	12
(a)	a recognised civil union solemnised in another country or a recognised civil union solemnised in another Australian State or Territory that is registered under this Act is a de facto relationship, and	13 14 15
(b)	the parties to that relationship are de facto partners.	16
(6)	A civil union that is solemnised by or in the presence of a diplomatic or consular official of another country under the law of that country and that is recognised as valid by that other country is, for the purposes of this Act, taken to have been solemnised in that other country.	17 18 19 20
<b>[8]</b>	<b>Section 16, heading</b>	21
	Omit “ <b>Recognition</b> ”. Insert instead “ <b>Declaration</b> ”.	22