

ITEM 3A. CITY OF SYDNEY RELATIONSHIPS DECLARATION PROGRAM

FILE NO:

DATE: 28/7/04

MINUTE BY THE LORD MAYOR

To Council:

The Partnerships Register established in October 2003 by the former South Sydney City Council continues to attract inquiries and interest.

The information pack produced by South Sydney Council identified the following benefits of the Partnership Register:

- It provides a means of recognising the partnership of both same-sex and mixed-sex couples.
- The Register is the first of its kind in Australia and provided the former South Sydney Council to lead the way; and
- Although registration does not confer legal rights in the way marriage does, it may be used to demonstrate a civil relationship.

This mayoral minute proposes that the Partnership Register be restructured, renamed and relaunched. This restructure would:

- enable couples to formally declare the existence of their relationship, and how long it has been in existence;
- provide for formal record keeping of relationship declarations by the City of Sydney;
- strengthen the possible use of the scheme to provide evidence of the existence of a relationship particularly in legal proceedings where the relationship is a de facto relationship in NSW law; and
- expand the manner and circumstances in which couples may formally declare the existence of their relationship.

The City of Sydney's role in the restructured scheme will be:

- to establish and maintain a register of relationship declarations, to be named the City of Sydney Relationships Register;
- to provide appropriate public and private opportunities for couples to formally declare the existence of their relationships; and

- to appoint Council officers and other appropriate persons to administer relationship declarations; and
- to publicise the scheme.

I. MAJOR CHANGES TO THE PROGRAM

1. THE RELATIONSHIP DECLARATION

Couples who participate in this program will be able to make a written declaration before a witness or witnesses that they are a couple or are partners (**Attachment A**).

If they wish, they may also make a written declaration about the length of time they have been a couple or partners.

They may also make a written declaration that they are mutually committed to sharing their lives together.

Couples who make a relationship declaration will receive a copy of their declaration in the form a certificate from the City of Sydney.

Their relationship declaration will be recorded in the City of Sydney Relationships Register.

This is an advance on the South Sydney program which merely enabled a couple to sign the Partnership Register and receive a Certificate which confirmed they have signed the Partnership Register. This certificate stated:

“This is to certify that [Partner 1] and [Partner 2] registered their partnership on [Date] on the South Sydney Partnerships Register.”

The certificate provides space for a registration number, signatures of both partners, the General Manager and the Registering Officer.

Reasons for the change

Tim Griffiths of Abbot Tout Solicitors, who provided legal advice to South Sydney Council about the Partnerships Registration scheme, wrote:

“The Certificate of Registration issued to the couples by Council upon registration serves merely as evidence that those persons signed the Register and paid \$250.00 on that particular day. The Certificate of Partnership is not necessarily evidence of itself that those two people are partners or in a de facto relationship or have any legal obligations to each other. The Certificate does not carry the same evidential weight as a Marriage, Birth or Death Certificate issued by the Registry of Births, Deaths and Marriages. It does not have the benefit of any special statutory presumption.”

Martin Gorrick, barrister at law, and Gerard Gooden, solicitor, concur with Mr Griffiths' advice. Both Mr Gorrick and Mr Gooden have extensive experience in the law involving de facto relationships, including same sex relationships. They suggest that the scheme would be strengthened if it was better able to provide evidence which supported the existence of a de facto relationship between two people.

They point out that in legal proceedings involving de facto relationships, the dispute often turns on:

- whether or not a de facto relationship actually existed; and/or
- the duration and/or the commencement date of the relationship.

They suggest that the scheme would be more likely to provide probative (but not conclusive) evidence of the existence of a de facto relationship if the couple made written declarations about their relationship. These written declarations, together with the circumstances in which the declaration was made, could be tendered as evidence in legal proceedings.

In NSW, most legal proceedings involving de facto relationships, including same sex relationships, are commenced under:

- the *Property (Relationships) Act 1984* – where the relationship has ended and there is a dispute between the partners about the distribution of property and assets;
- the *Wills, Probate And Administration Act 1898* – where the deceased has died intestate (ie without making a will). Section 61B determines the order of succession, including the rights of a surviving de facto partner to inherit the estate; and
- the *Family Provision Act 1982* - where the deceased has arguably failed to adequately provide for a surviving de facto partner in his or her will, the partner may make a claim on the estate.

All three acts use the definition of “de facto relationship” in section 4 of the Property Relationships Act.

Section 4 (subsection 1) of the Property (Relationships) defines a [de facto relationship](#) as:

“a relationship between two [adult persons](#):

- (a) who live together as a couple, and
- (b) who are not married to one another or related by family.

Section 4 (subsection 2) states:

“In determining whether two persons are in a [de facto relationship](#), all the circumstances of the relationship are to be taken into account, including such of the following matters as may be relevant in a particular case:

- (a) the duration of the relationship,
- (b) the nature and extent of common residence,
- (c) whether or not a sexual relationship exists,
- (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties,
- (e) the ownership, use and acquisition of [property](#),
- (f) the degree of mutual commitment to a shared life,
- (g) the care and support of children,
- (h) the performance of household duties,
- (i) the reputation and public aspects of the relationship.”

Section 4 (subsection 3) states:

“No finding in respect of any of the matters mentioned in subsection (2) (a)–(i), or in respect of any combination of them, is to be regarded as necessary for the existence of a [de facto relationship](#), and a court determining whether such a relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.”

None of the factors listed in subsection 2 are essential to establish the existence of a relationship. Rather, a Court has discretion to examine evidence which demonstrates the presence or absence of each of the factors listed.

The proposed relationship declaration

If a couple were to make a formal declaration about their relationship in order to provide some future evidence that their relationship existed, it is more likely that such a declaration would have evidentiary value in NSW courts if it reflected the terms of the Property (Relationships) Act.

Accordingly I propose that a two people making a relationship declaration have the opportunity to state how long their relationship has existed (see *Property (Relationships) Act* s4 (2) (a)) and to state that they are mutually committed to a shared life together (ie essentially repeating the words of section 4 (2) (f)).

Mr Gooden and Mr Gorrick advise that if a couple does not state how long their relationship has existed prior to making the declaration, they are at risk of the date of the declaration being used as the commencement date of their relationship.

A couple which makes their declaration publicly (ie in front of family and/or friends) may provide evidence relating to “the reputation and public aspects of the relationship” (see *Property (Relationships) Act* s4 (2) (i).)

A couple that did not wish to make this declaration could simply declare that they are partners and that they voluntarily consent to their names as partners being recorded in the Relationships Declaration Register. This would preserve the option available under the current scheme.

- (a) Both Mr Gooden and Mr Gorrick advise that if this proposal is adopted, potential registrants should be alerted to the possibility of legal consequences attaching to the making of a declaration; in particular that such declarations may be used as evidence in a court to adjust the property rights of the intending registrants.
- (b) This information is provided in the draft Information Pack (**Attachment B**).

2. EXPANDED OPPORTUNITIES FOR MAKING A RELATIONSHIP DECLARATION

The revised program will give couples greater choice and flexibility as to how they make their relationship declarations. Three options will be available.

(a) Private declarations and registrations

I propose that couples who wish to make their declarations privately would be able to do so by appointment at any time during normal office hours at any of the City's Neighbourhood Service Centres or in Town Hall House.

An appropriately trained Council officer will officiate at the making of the declarations and recording of the declarations in the Register.

(b) Public declarations and registrations

Couples who wish to make their declarations in front of family and friends will have two choices:

- The option of incorporating their declarations during a ceremony at Town Hall; and
- The option of incorporating their declarations into a ceremony of their own design, at a time and place of their choosing.

Town Hall declarations and registrations

I will designate a certain number of days each year for the making of relationship declarations at the Town Hall. I propose I, or a person delegated by me, will officiate at the making of these declarations.

An appropriately trained Council officer will subsequently record these declarations in the City of Sydney Relationships Register.

Ceremonies which couples arrange themselves

Some couples may wish to declare their relationship in a ceremony of their own design, at a time and place of their own choosing. They may, for example, desire a longer ceremony than the 30 minutes allotted for Town Hall declarations.

They will the option of nominate the person who will officiate at the making of their relationship declaration.

The City of Sydney may also invite expressions of interest from people who are prepared to officiate at the making of relationship declarations. A list of these persons could be provided to intending declarants.

II. POLICY IMPLICATIONS

The provision of the Relationships Declaration program is supported by the draft City of Sydney Social Plan which states:

The City of Sydney has a strong commitment to social justice. This commitment is translated into action through the development of policies and provision of services that improve the quality of life for all people in the area.

The City of Sydney Council values the many facets of its community and recognises the worth of all people in its area. To this end, Council is committed to implementing a number of social justice principles and practices in all aspects of its operations.

The former South Sydney City Council had a long standing commitment to inclusiveness of and supporting, involving and recognising the gay, lesbian and transgender community. This is evident in the Statement of Intent contained in the Gay, Lesbian & Transgender Issues Paper published in 2000:

“Council confirms its commitment to encouraging gay, lesbian and transgender people to participate in the life of the community. Council will incorporate the issues and needs of gay, lesbian and transgender people in to Council decision making, planning and community development processes.”

While neither document specifically mentions the implementation of a program like the Relationships Declaration, all the documentation, the identification of the key elements of best practice, the proposed principles and policy framework all provide a sound foundation for the introduction of this program.

III. ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS

The City of Sydney acknowledges the significant number of gay, lesbian and transgender people living within the LGA. Legal recognition of same sex relationships is an issue of growing importance throughout the world. In Australia lesbian and gay couples are recognised in immigration, but only the ACT has any broad form of same sex relationship recognition. Its Domestic Partnerships Act recognises same sex partnerships relationships in areas like property division and wills.

It is entirely appropriate and relevant to the local community for the City of Sydney to provide a means for gay, lesbian, transgender and mixed gender couples to register their relationship.

IV. RELEVANT LEGISLATION

While the NSW Local Government Act 1993 does not list the provision of a Relationship Declaration program as a function of councils, it does set out a charter under which the City of Sydney is charged with the following:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- to exercise community leadership

It is eminently reasonable therefore under the Charter, for Council to provide a means for same sex and mixed gender couples to identify a significant personal relationship and to provide evidence of this. It is particularly relevant given the significant number of gay, lesbian and transgender people in the City of Sydney community.

The *Privacy and Personal Information Protection Act 1998* deals with how all NSW public sector agencies manage personal information. It includes 12 Information Protection Principles that are legal obligations covering the collection, storage, use and disclosure of personal information.

The City of Sydney Relationships Declaration will not be made available for inspection by members of the public. However it is proposed that should the applicants consent, Council may use the information provided on an application form to produce anonymous statistics. By providing this information, applicants consent to it being held and used for this purpose.

Specific entries in the register will only be made available on demand to certain public officials, for example, the police in connection with an enquiry.

V. FINANCIAL IMPLICATIONS

Council reduced the fee for registering a partnership on the Partnership Register from \$250 to \$150 when adopting City of Sydney Fees and Charges for 2004-2005. This will continue as the fee for making a relationship declaration and having that declaration recorded in the City of Sydney Relationships Register. No additional charge is to be applied to ceremonies.

VI. CONCLUSION

The adoption of the Partnerships Declaration by the City of Sydney is viable and appropriate and in line with a general movement world-wide to address the issue of gay marriage. In lieu of formal legal and social recognition of same sex relationships, the Partnerships Declaration will provide a means to recognise the partnership status of couples, both same sex and mixed sex and to provide evidence of a civil relationship. It is in concordance with Council's policies on access and equity, inclusiveness and support to all groups within the community.

RECOMMENDATION:

That arising from consideration of a Minute by the Lord Mayor to Council on 2 August, 2004 on the proposed City of Sydney Relationships Declaration Program, it be resolved that:

- (A) The Partnerships Register program offered by the former South Sydney City Council be relaunched and offered by the City of Sydney.
- (B) The Partnerships Register be renamed the City of Sydney Relationships Declaration Program.
- (C) The South Sydney Program be amended according to the proposals set out in this Minute, the attached draft Information Pack (Attachment B) and the attached draft Application Form (Attachment A).
- (D) Prior to adoption by Council:
 - (i) this Minute and the draft kit attached to this Minute be placed on public exhibition for one month;
 - (ii) this Minute, together with any submissions received be considered by the Community Services, Small Business and Tourism Committee following the period of public exhibition.
- (E) Applications for making a relationship declaration under the Program will be taken at the One Stop Shop and the Neighbourhood Service Centres.
- (F) Place Managers or persons authorised by the General Manager will be authorised to receive relationship declaration applications, to make private appointments with applicants for the making of relationship declarations and to officiate at the making of relationship declarations by private appointment.
- (G) Relationship Declarations will be conducted each year in the Sydney Town Hall with the Lord Mayor or her delegate officiating, on dates to be determined by her office.
- (H) The General Manager, the Manager Customer Services and the Customer Services Project Officer are the only persons authorised to have access to Relationship Declaration records.

- (I) The Customer Service Project officer is nominated as the officer responsible for the Relationships Declaration Program.
- (J) In addition to publishing the City of Sydney Relationships Declaration Program Information Pack, the City shall:
 - (i) prepare and publish a brochure summarising and explaining the Program, and this brochure shall be on display and available from the One Stop Shop, all Neighbourhood Service Centres, all City of Sydney libraries and such other premises as may be determined by the General Manager;
 - (ii) publish information about the Program on the City of Sydney website and shall make available for download the Information Kit, Application Form and brochure, with this information and these downloads being easily available from a link on the website homepage.

(SGD) COUNCILLOR CLOVER MOORE MP
Lord Mayor