

13 February 2007

## RELATIONSHIP DECLARATIONS REGISTER

**Division** Community and Places

**Presenter** Colleen Lazenby, Manager Safety and Wellbeing

### Purpose

1. To present the draft policy and guidelines for the proposed City of Melbourne Relationship Declarations Register.

### Recommendation from Management

2. That the Community Services Committee endorse the draft policy and guidelines for public comment for a period of two weeks.

### Key Issues

3. Declarations made in the Relationship Register do not confer legal rights in the same manner as currently recognised through legal marriage.
4. Both the City of Sydney and the Tasmanian Office of Births, Deaths and Marriages established a Relationship Register in 2003. Since this time the uptake of these registers shows total number of relationships registered with each program as 31 and 77 respectively.
5. As part of the application process, applicants will be required to sign a statement stating that they are not registered with any other Relationship Register and the information they provide is true and accurate.
6. Acknowledging Melbourne's role as a state capital the register will be open to the people of Victoria

### Time Frame

7. It is proposed that the Register will commence operation on 2 April 2007. This timeframe will allow for:
  - 7.1. a period of public consultation on the proposed policy and guidelines;
  - 7.2. preparation and dissemination of promotion material; and
  - 7.3. testing of internal systems for the Register to ensure it is fully operational.

### Relation to Council Policy

8. The City of Melbourne has a strong commitment to cultural diversity and social justice. This commitment is translated into action in the development of policies and provision of services that improve the quality of life all people who live in the municipality.

9. *Council Plan 2005-2009*, under Strategic Objective 3, 'Inclusive and Engaging City', includes various four-year strategies. Among them are:
  - 9.1. 'Welcome and facilitate all sectors of the community to participate in City Life' by:
    - 9.1.1. developing and implementing a Cultural Diversity Action Plan that aims to ensure the participation of people from culturally diverse communities; and promoting strong civic culture and engagement through expression of ideas, discussion and critical debate; and
  - 9.2. 'Encourage social equity, inclusion and wellbeing' by:
    - 9.2.1. engaging communities in cultural development, including marginal and high-need groups.
10. *A Strategy for a Safer City 2004-2006* under Priority Area 2: A Well Informed Community includes an action that aims to:
  - 10.1.1. address the needs of the gay, lesbian, bisexual, transgender and intersex communities by working with key services and groups to identify ways of reducing harm and crime within, and against, the gay, lesbian, bisexual, transgender and intersex communities.
11. A Relationships Declaration Register provides the City of Melbourne with an opportunity to affirm its commitment to and further develop these strategies.

### **Consultation**

12. Discussions with the City of Sydney, the Tasmanian Office of Births, Deaths and Marriages, and the State of California, who operate a similar scheme, have helped inform the development of the draft policy and guidelines for the City of Melbourne Relationship Declaration Register.
13. It is proposed that the draft policy and guidelines will be made available for public comment for a period of two weeks.
14. During the public comment phase the administration will make contact with the inner metropolitan Councils to gauge their interest in a coordinated approach to the Scheme.

### **Government Relations**

15. At the Commonwealth level the Human Rights and Equal Opportunity Commission ("HREOC") recently conducted a review of Commonwealth Legislation which reported that it currently excludes same sex couples from accessing the same financial and work related entitlements as married couples.
16. In September 2006 HREOC released its second Discussion Paper and also a detailed research paper. The second Discussion Paper contains a preliminary list of Commonwealth Legislation that may require amendment to be fully inclusive of same sex relationships.
17. The second discussion paper found the primary source of discrimination against same-sex couples at the Commonwealth level is the way in which terms such as 'spouse', 'de facto' and 'child' are defined in legislation. Ultimately HREOC proposes sending a final report to the Attorney General in early 2007 so that these issues can be addressed by Federal Parliament in mid 2007.
18. The City of Melbourne acknowledges the significant number of gay, lesbian and transgender people living within the municipality. Legal and community recognition of same sex relationships is an issue of growing importance both nationally and internationally.

## Finance

19. Establishment costs for the Register are estimated at \$16,000 and the Annual operating costs are estimated at \$4,500. Breakdown of estimated costs are as follows:

19.1. Establishment costs:

- 19.1.1. Development of data base and reporting functions \$5,000
- 19.1.2. Design and printing of certificates \$2,500
- 19.1.3. Design and printing of promotion material and application forms \$5,000
- 19.1.4. Official launch of Register \$3,500
- 19.1.5. Establishment costs will be sourced from 2006-07 budgets of the Safety and Wellbeing, Corporate Communications and Business Information Services branches.

19.2. Annual operating costs:

- 19.2.1. Annual advertisement in newspapers to promote the Register \$1,500
- 19.2.2. Additional printing of related collateral \$3,000
- 19.2.3. It is anticipated that the City of Melbourne Register can be managed by an existing staff position within the Community Services Group.

## Legal

20. The legal implications arising from the recommendation made are accurately described in this report.

## Sustainability

21. This policy supports the City of Melbourne's ongoing commitment to Sustainability under the triple bottom line reporting framework.
22. The Register is viable and in line with a general international movement to address the issues of access and equity, inclusiveness and support to all groups within the community.

## Comments

23. A copy of the draft policy and guidelines for the Register is attached for consideration.
24. The purpose of the Register is to:
- 24.1. enable same-sex and mixed-sex couples to formally declare the existence of their relationship, and how long it has been in existence;
  - 24.2. provide for formal record keeping of relationship declarations by the City of Melbourne; and
  - 24.3. enable the possible use of the register to provide evidence of the existence of a relationship particularly in legal proceedings where the relationship is a de facto relationship in Victorian Law.

25. The City of Melbourne's role will be to:
  - 25.1. establish and maintain a register of relationship declarations, to be named the City of Melbourne Relationship Declarations Register;
  - 25.2. provide a private opportunity for couples to formally declare the existence of their relationships;
  - 25.3. appoint an officer of the City of Melbourne and/or other appropriate persons to administer relationship declarations; and
  - 25.4. publicise the existence of the Register.
26. The proposed procedure for making a relationship declaration is as follows:
  - 26.1. applications for a Relationship declaration need to be completed by both parties and submitted in person to the City of Melbourne Town Hall Customer Service Centre (Administration building) along with the registration fee \$50;
  - 26.2. upon receipt of an application, registration fee and appropriate proof of identify, an appointed City of Melbourne Officer will make contact with the applicants to schedule a personal interview for the purpose of signing the certificates;
  - 26.3. the Director Community and Places Division will appoint a member of the Division as the officer responsible for administering applications and officiating at the signing of the certificates;
  - 26.4. after attending the interview and signing the certificates, one certificate will be issued to the applicants and the other will be stored in a secure file;
  - 26.5. a customer service request for each individual application will be generated via Council's Corporate Management System and issued with a specific service request number and registration number;
  - 26.6. details of all registered declarations will be stored in a secured excel spreadsheet which will be maintained by the responsible officer; and
  - 26.7. the responsible officer and relevant senior officers of Council involved in the establishment and management of the register are the only persons authorised to have access to the Register.
27. Communication Strategy:
  - 27.1. A detailed draft communications plan outlining communications and media strategy has been developed by Corporate Communications for the Register identifying:
    - 27.1.1. target audiences;
    - 27.1.2. communications objectives;
    - 27.1.3. issues and considerations;
    - 27.1.4. key messages;
    - 27.1.5. implementation plan; and
    - 27.1.6. methods of evaluation.

28. Operational costs will be subject to the annual budget approval process. Set up costs will include establishment of the Register (excel database); development and dissemination of promotional material; design, printing and issuing of certificates. Ongoing costs are proposed to include annual advertisement in local newspapers; additional printing of certificates and staff time to administer and officiate over the relationship declarations. The \$50 registration fee proposed will recover some of the costs associated with maintaining the Register.

## Background

29. On 28 November 2006 Council resolved to establish a means by which couples may formally declare, privately or publicly the existence of their relationships.
  30. At this meeting Council requested a report be presented to the Community Services Committee in February 2007 on the following:
    - 30.1. draft Relationships Declaration Policy and Guidelines;
    - 30.2. proposing the manner in which a Relationship Declaration Register should be established and maintained;
    - 30.3. identifying appropriate persons to administer Relationship Declarations;
    - 30.4. proposing a Communication Strategy for the Relationship Declaration Scheme;
    - 30.5. addressing any other matter incidental or ancillary to the establishment and maintenance of a Relationship Declaration Scheme;
    - 30.6. request a report be brought to the Community Services Committee looking at the findings of the Human Rights and Equal Opportunity Community report into the financial and workplace entitlements and impacts on same sex relationships; and
    - 30.7. request a report be presented to Community Services Committee in February 2007 on the financial annual costing for the maintenance of the register.
    - 30.8. write to the State Government noting Council's concerns about its failure to discuss and debate the issue of civil unions.
  31. This report responds to items 29.1-7 of the February Community Services Committee report. A letter has also been drafted to the State Government to satisfy 29.1 and has been forwarded to the Lord Mayor for consideration.
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### Attachments:

1. Relationship Declarations Register – Policy and Guidelines

# **CITY OF MELBOURNE RELATIONSHIP DECLARATION REGISTER POLICY AND GUIDELINES**

## **February 2007**

### **Introduction**

The Melbourne City Council has adopted the City of Melbourne Relationship Declaration register as a means of recognising the relationship status of couples, irrespective of gender.

Under the program two people may declare that they are partners and have this declaration recorded in the City of Melbourne Relationship Declaration Register. While making a relationship declaration does not confer legal rights in the way marriage does it may be used in legal proceedings brought pursuant to the *Property Law Act 1958*, the *Administration and Probate Act 1958* and other legislation involving domestic partnerships.

Applicants will be required to sign a statement stating that they are making a relationship declaration in good faith and the information they provide is true and accurate.

The City of Melbourne reserves the right to cease the keeping of the Relationship Declaration Register at any time.

### **The relationship declaration**

Couples who participate in this program will be able to make the following written declarations before a witness or witnesses:

- They are a couple or are partners; and/or
- The length of time they have been a couple or partners; and/or
- 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 Melbourne.

The relationship declaration will be recorded in the City of Melbourne Relationship Declaration Register and issued with a registration number.

### **Confidentiality of data**

The collection, access and storage of information in connection with the City of Melbourne Relationship Declaration Register will be undertaken in accordance with the *Information Privacy Act 2000*.

The City of Melbourne Relationship Declaration Register will not be made available for inspection by members of the public.

If the applicants consent, the City of Melbourne 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 their legitimate enquiries.

Couples may obtain copies of their own register entry upon presentation of identification. The City of Melbourne may charge a fee to recover the cost of providing copies.

Should couples wish to make their individual entry available to a third party, they must submit a written request to the City of Melbourne.

The Register and all related documents are stored in a secure environment within City of Melbourne premises and access is strictly controlled.

### **Recorded names**

All records relating to applicants for participation in the program will be recorded as shown in the documents provided as identification.

### **Conditions for making a relationship declaration and recording the declaration in the Relationship Declaration Register**

1. The making of a relationship declaration is by appointment only and subject to the City of Melbourne receiving the application form with the required documentation and payment of the application fee.
2. Applicants must complete and sign the application form to confirm that there are no reasons why they should not make a relationship declaration and the declaration recorded in the Register.
3. All documents provided in a foreign language must be translated into English by an authorised translation service.
4. The City of Melbourne reserves the right to refuse an application to make a relationship declaration.
5. The City of Melbourne reserves the right to subsequently note on its records of a relationship declaration any information it receives stating that false or misleading information has been provided.

## Age

- Persons applying to register must be aged 16 or over on the date of application. Any person aged 18 or over applying to register with a person aged under 18 on the date of application must sign a statement that they are not in a position of trust over that person. [see note below]
- Any person under the age of 18 on the date of application must submit written consent to their making a relationship declaration from their parent(s) or legal guardian(s). The consent must be signed by a Justice of the Peace verifying that the document was signed in his/her presence by the parent(s) or guardian(s).
- Partners must provide evidence of their date of birth. Acceptable forms of evidence are:
  - birth certificate
  - passport
  - driver licence.

*Note: For the purpose of the City of Melbourne Relationship Declaration, a person is in a position of trust over another person if:*

- a. they are that person's step-parent, guardian or foster parent;*
- b. they are that person's school teacher and the other person is their pupil;*
- c. they have an established personal relationship with the other person in connection with the provision of religious, sporting, musical or other instruction to that other person;*
- d. they are a custodial officer of an institution of which the other person is an inmate; or*
- e. they are a health professional and the other person is their patient.*

## Related persons

- Relationships will not be registered if the partners are related. [see note below].

*Note: For the purpose of the City of Melbourne Relationship Declaration, a person is related to another person if:*

- a. they are the ancestor or descendant of that person;*
- b. they are the brother, sister, half-brother or half-sister of that person; or they are, or have been at any time, the adopted parent or adopted child of that person under any law of any place, whether in or out of Australia, relating to the adoption of children.*

## Previous relationship declarations

- A person who has previously made a relationship declaration shall not be permitted to make a relationship declaration without first having requested in writing that the termination of the previous relationship be recorded in the Register.

## Fee

- The fee for making a relationship declaration and having the declaration recorded in the City of Melbourne Relationship Declarations Register is \$50.
- Fifty percent of the fee will be refunded if either person applying to make a relationship declaration gives notice of his or her intent not to proceed within 21 days of applying to make a relationship declaration.
- No refund will be made if either person applying to make a relationship declaration decides not to proceed with making the declaration more than 21 days after applying to make the declaration or fails to make the declaration.
- Following an application, if a couple fails to make a relationship declaration, original application details will be destroyed.

## Recording the termination of a relationship

- The City of Melbourne cannot amend the relationship declarations that individuals have made. Either or both parties to a relationship declaration may request the City of Melbourne to record on the Relationship Register that the relationship has terminated. Upon receiving such a request in writing, the City of Melbourne shall record in the register that it has received notification of the termination of the relationship. Where the notification has been received from one party only, the City of Melbourne shall provide a copy of the notice of termination to the other party.

## Legal consequences of making a relationship declaration

- Making a relationship declaration does not change the legal status of the persons making the declaration. However, the fact two people have made a relationship declaration may be presented as evidence of the existence of that relationship in legal proceedings.
- People contemplating making a relationship declaration should be aware that legal proceedings involving domestic relationships may be commenced under in Victoria. Victorian legislation allows for the rights of domestic partners to be asserted in areas such as inheritance (*Administration and Probate Act 1958*) and property division on relationship breakdown (*Property Law Act 1958*).
- Importantly, a Court may consider the fact that a relationship declaration was made, and the words used in the relationship declaration, in determining whether a domestic relationship existed and for how long.
- Depending on the dispute, the Court is likely to look at a range of factors. For example, in a property law dispute brought under the *Property Law Act 1958*, section 275(2) provides that all the circumstances of the relationship are to be taken into account, including any one or more 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 reputation and public aspects of the relationship.”
- A couple who declare they are mutually committed to sharing their life together may be providing evidence about “the degree of mutual commitment to a shared life” and “duration of [their] relationship”.
  - Individuals who want more information about the legal consequences of making a relationship declaration and having it recorded in the City of Melbourne Relationship Declaration Register should seek independent legal advice.

### **Procedure for making a relationship declaration**

1. Couples wishing to make a relationship declaration can apply to do so by obtaining a copy of the City of Melbourne Relationship Declaration Register application form (attached to these Guidelines).
2. The application form must be completed and signed by both partners making the application and lodged in person at the City of Melbourne Town Hall Customer Service Centre (Administration Building).
3. An officer of the City of Melbourne will be in contact with the parties within 30 days of the application form being lodged to schedule a personal interview.
4. During the personal interview the City of Melbourne officer officiating at the making of a relationship declaration shall:
  - ascertain that both persons who have applied to make the relationship declaration are present;
  - request that they each sign the relationship declaration certificates;
  - witness their signing the relationship declaration certificates; and
  - sign the relationship declaration certificate as the person officiating.
5. The making of the relationship declaration will take less than 10 minutes, after which the couple will receive one signed copy of the certificate.
6. The City of Melbourne does not conduct ceremonies in association with the making of relationship declarations.

### **Further information**

Further information is available by contacting:  
City of Melbourne Hotline on 03 9658 9658 or by accessing Council’s website:  
[www.melbourne.vic.gov.au](http://www.melbourne.vic.gov.au)

**FINANCE ATTACHMENT**

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**RELATIONSHIP DECLARATIONS REGISTER**

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Establishment costs and 2006/07 operating costs for the register will be absorbed within existing budgets. Future operating costs will be included as part of the 2007/08 budget process.

**Joe Groher**  
Manager Financial Services

## LEGAL ATTACHMENT

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### RELATIONSHIP DECLARATIONS REGISTER

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The *Statute Amendment (Relationship) Act 2001* and *Statute Law Further Amendment (Relationship) Act 2001* amended various Victorian Acts in relation to domestic relationships.

De facto relationships and de facto partners are now referred to as ‘domestic relationships’ and ‘domestic partners’ in relevant Victorian legislation.

Despite the object of the Act being “to recognise the rights and obligations of partners in domestic relationships where there is mutual commitment to an intimate personal relationship and shared life as a couple, irrespective of the gender of each partner”, it does not provide a means by which partners can privately or publicly register their relationship.

The Relationship Declaration policy and guidelines make it clear that a relationship declaration may be used in legal proceedings brought pursuant to the *Property Law Act 1958*, the *Administration and Probate Act 1958* and other legislation involving domestic partnerships. In and of itself however, the fact that a relationship declaration has been made is not determinative in establishing that a “domestic relationship” exists but is one of the factors that a Court may look to.

**Kim Wood**  
Manager Legal Services