



Australian Capital Territory

Legislation (Gay, Lesbian and Transgender) Amendment Act 2003

A2003-14

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Australian Capital Territory

Legislation (Gay, Lesbian and Transgender) Amendment Act 2003

A2003-14

An Act to amend various Territory laws in relation to same sex relationships and transgender people, and for other purposes

*Notified under the Legislation Act 2001 on 27 March 2003
(see www.legislation.act.gov.au)*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Legislation (Gay, Lesbian and Transgender) Amendment Act 2003*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

10 the reputation, and public aspects, of the relationship between them

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

169A References to transgender people

- (1) A *transgender person* is a person who—
- (a) identifies as a member of a different sex by living, or seeking to live, as a member of that sex; or
 - (b) has identified as a member of a different sex by living as a member of that sex;

whether or not the person is a recognised transgender person.

- (2) A *transgender person* includes a person who is thought of as a transgender person, whether or not the person is a recognised transgender person.
- (3) A *recognised transgender person* is a person the record of whose sex is altered under the *Births, Deaths and Marriages Registration Act 1997*, part 4 or the corresponding provisions of a law of a State or another Territory.

169B References to intersex people

An *intersex person* is a person who, because of a genetic condition, was born with reproductive organs or sex chromosomes that are not exclusively male or female.

5 Dictionary, part 1, new definitions

insert

domestic partner—see section 169 (1).

domestic partnership—see section 169 (2).

intersex person—see section 169B.

recognised transgender person—see section 169A (3).

transgender person—see section 169A (1) and (2).

Part 3 Additional amendments

6 Additional amendments—sch 1

Schedule 1 amends the Acts and regulations mentioned in it.

Schedule 1 Additional amendments

(see s 6)

Part 1.1 Agents Act 1968

[1.1] Section 64 (1)

omit

- (1) A licensed agent

substitute

A licensed agent

[1.2] Section 64 (1) (b)

substitute

- (b) who is an employee, a partner, the domestic partner, a child, a parent, or a brother or sister, of the licensed agent; or

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

[1.3] Section 64 (2)

omit

Part 1.2 Bail Act 1992

[1.4] Section 3 (1), definition of *de facto spouse*

omit

[1.5] Section 3 (1), definition of *relative*, paragraph (b)

substitute

- (b) if the original person has or had a domestic partner (other than a spouse)—includes someone who would have been a relative

of a kind mentioned in paragraph (a) if the original person had been legally married to the domestic partner; and

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

[1.6] Section 3 (1), definition of *relevant person*, paragraph (a)

substitute

- (a) a domestic partner or former domestic partner of the original person; or

[1.7] Section 3 (1), definition of *relevant person*, paragraph (c)

substitute

- (c) a child of a domestic partner or former domestic partner of the original person; or

[1.8] Section 3 (1), definition of *spouse*

omit

Part 1.3 Casino Control Act 1988

[1.9] New section 108 (3A) to (3C)

insert

- (3A) However, if a transgender or intersex person is searched, the person may require that the search be conducted by either a male or a female.

Note 1 For the meaning of *transgender person*, see Legislation Act, s 169A.

Note 2 For the meaning of *intersex person*, see Legislation Act, s 169B.

- (3B) If the transgender or intersex person requires that the search be conducted by a male, the person is taken, for this section, to be male.

- (3C) If the transgender or intersex person requires that the search be conducted by a female, the person is taken, for this section, to be female.

[1.10] Section 108

renumber subsections when Act next republished under Legislation Act

Part 1.4 Children and Young People Act 1999

[1.11] New section 400 (7) to (9)

insert

- (7) However, if a child or young person who is a transgender or intersex person is searched under section 399, the child or young person may require that the search be conducted by either a male or a female.

Note 1 For the meaning of *transgender person*, see Legislation Act, s 169A.

Note 2 For the meaning of *intersex person*, see Legislation Act, s 169B.

- (8) If the child or young person requires that the search be conducted by a male, the child or young person is taken, for this section, to be male.
- (9) If the child or young person requires that the search be conducted by a female, the child or young person is taken, for this section, to be female.

Part 1.5 Civil Law (Wrongs) Act 2002

[1.12] Section 20, definition of *member*, paragraphs (a) and (b)

substitute

- (a) a domestic partner; or

[1.13] Section 20, definition of *member*

renumber paragraphs when Act next republished under Legislation Act 2001

[1.14] Section 29, definition of *family member*, paragraphs (a) and (b)

substitute

- (a) a domestic partner;

[1.15] Section 29, definition of *family member*

renumber paragraphs when Act next republished under Legislation Act 2001

[1.16] Section 31 (1) (b), (c) and (d)

substitute

- (b) a domestic partner of A; or
(c) another family member of A, if A was killed, injured or put in danger within the sight or hearing of the other family member.

[1.17] Dictionary, note 2

insert

- domestic partner (see s 169)

Part 1.6 Confiscation of Criminal Assets Act 2003

[1.18] Section 37 (5), definitions of *domestic partner* and *domestic partnership*

omit

[1.19] New section 211 (2A) to (2C)

insert

- (2A) However, if a transgender or intersex person is searched, the person may require that the search be conducted by either a male or a female.
- (2B) If the transgender or intersex person requires that the search be conducted by a male, the person is taken, for this section, to be male.
- (2C) If the transgender or intersex person requires that the search be conducted by a female, the person is taken, for this section, to be female.

[1.20] Section 211 (4), definitions of *same sex* and *transgender person*

omit

[1.21] Section 211

renumber subsections when Act next republished under Legislation Act

[1.22] Dictionary, note 2

insert

- domestic partner (see s 169)
- intersex person (see s 169B)
- transgender person (see s169A)

Part 1.7 Cooperatives Act 2002

[1.23] Section 155 (d)

omit

spouse

substitute

domestic partner

[1.24] Section 232 (1), definition of *associate*

omit

spouse

substitute

domestic partner

[1.25] Section 276 (1) (b)

omit

spouse

substitute

domestic partner

[1.26] Dictionary, definition of *spouse*

omit

[1.27] Dictionary, note 2

insert

- domestic partner

Part 1.8 Coroners Act 1997

[1.28] Section 3 (1), definition of *immediate family*, paragraph (a)

omit

spouse

substitute

domestic partner

[1.29] Section 3 (1), definition of *immediate family*, new note

insert

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

[1.30] Section 3 (1), definition of *spouse*

omit

Part 1.9 Crimes Act 1900

[1.31] New section 185A

insert

185A Search of transgender or intersex person

- (1) If a transgender or intersex person is searched under this part, the person may require that the search be conducted by either a male or a female.
- (2) If the transgender or intersex person requires that the search be conducted by a male, the person is taken, for this part, to be male.
- (3) If the transgender or intersex person requires that the search be conducted by a female, the person is taken, for this part, to be female.

[1.32] Section 397 (1)

omit

spouse

substitute

domestic partner

[1.33] Dictionary, note 2

insert

- domestic partner (see s 169)
- intersex person (see s 169B)
- transgender person (see s169A)

[1.34] Dictionary, definition of *de facto spouse*

omit

[1.35] Dictionary, new definition of *domestic partner*

insert

domestic partner includes former domestic partner.

[1.36] Dictionary, definition of *relative*, paragraph (b)

substitute

- (b) if the original person has or had a domestic partner (other than a spouse)—includes someone who would have been a relative of a kind mentioned in paragraph (a) if the original person had been legally married to the domestic partner; and

[1.37] Dictionary, definition of *relevant person*, paragraph (a)

substitute

- (a) a domestic partner of the original person; or

[1.38] Dictionary, definition of *relevant person*, paragraph (c)

substitute

- (c) a child of a domestic partner of the original person; or

[1.39] Dictionary, definition of *spouse*

omit

**Part 1.10 Crimes (Forensic Procedures)
Act 2000**

[1.40] Section 6, note

omit

[1.41] Section 17

omit

[1.42] New section 49A

insert

49A Rules for carrying out forensic procedures—transgender and intersex people

- (1) This section applies if—
 - (a) a forensic procedure is carried out on a transgender or intersex person; and
 - (b) the provision under which it is carried out refers to a person of the opposite sex, or the same sex.
- (2) The transgender or intersex person may require that the procedure be carried out by either a male or a female.
- (3) If the transgender or intersex person requires that the procedure be carried out by a male, the person is taken, for this Act, to be male.

- (4) If the transgender or intersex person requires that the procedure be carried out by a female, the person is taken, for this Act, to be female.

[1.43] Dictionary, note 2

insert

- intersex person (see s 169B)
- transgender person (see s 169A)

[1.44] Dictionary, definition of *opposite sex*

omit

[1.45] Dictionary, definition of *recognised transgender person*

omit

[1.46] Dictionary, definition of *same sex*

omit

[1.47] Dictionary, definition of *transgender person*

omit

Part 1.11 **Custodial Escorts Regulations
2002**

[1.48] Regulation 6 heading

substitute

6 **Rules for carrying out searches—general**

[1.49] New regulation 6A

insert

6A Rules for carrying out searches—transgender and intersex people

- (1) If a transgender or intersex person is searched under these regulations, the person may require that the search be conducted by either a male or a female.

Note 1 For the meaning of *transgender person*, see Legislation Act, s 169A.

Note 2 For the meaning of *intersex person*, see Legislation Act, s 169B.

- (2) If the transgender or intersex person requires that the search be conducted by a male, the person is taken, for regulation 6, to be male.
- (3) If the transgender or intersex person requires that the search be conducted by a female, the person is taken, for regulation 6, to be female.

Part 1.12 Dangerous Goods Act 1975

[1.50] Section 42 (2)

substitute

- (2) A search of a person under this section must be carried out by a person of the same sex as the person being searched.
- (3) However, if a transgender or intersex person is searched, the person may require that the search be carried out by either a male or a female.
- (4) If the transgender or intersex person requires that the search be carried out by a male, the person is taken, for this section, to be male.
- (5) If the transgender or intersex person requires that the search be carried out by a female, the person is taken, for this section, to be female.

[1.51] Section 43 (3)

substitute

- (3) A search of a person under this section must be carried out by a person of the same sex as the person being searched.
- (4) However, if a transgender or intersex person is searched, the person may require that the search be carried out by either a male or a female.
- (5) If the transgender or intersex person requires that the search be carried out by a male, the person is taken, for this section, to be male.
- (6) If the transgender or intersex person requires that the search be carried out by a female, the person is taken, for this section, to be female.

[1.52] Dictionary, note 2

insert

- intersex person (see s 169B)
- transgender person (see s 169A)

**Part 1.13 Domestic Relationships Act
1994**

[1.53] Section 3 (1), definition of *domestic relationship*

substitute

domestic relationship means a personal relationship between 2 adults in which one provides personal or financial commitment and support of a domestic nature for the material benefit of the other and includes a domestic partnership but does not include a legal marriage.

[1.54] Section 3 (1), definition of *domestic relationship*, new note

insert

Note For the meaning of *domestic partnership*, see Legislation Act, s 169.

**Part 1.14 Drugs of Dependence Act
1989**

[1.55] New section 189 (2A) to (2C)

insert

(2A) However, if a transgender or intersex person is searched, the person may require that the search be conducted by either a male or a female.

Note 1 For the meaning of *transgender person* see Legislation Act, s 169A.

Note 2 For the meaning of *intersex person*, see Legislation Act, s 169B.

(2B) If the transgender or intersex person requires that the search be conducted by a male, the person is taken, for this section, to be male.

(2C) If the transgender or intersex person requires that the search be conducted by a female, the person is taken, for this section, to be female.

[1.56] Section 189

renumber subsections when Act next republished under Legislation Act

Part 1.15 Firearms Act 1996

[1.57] New section 75 (3) to (5)

insert

- (3) However, if a transgender or intersex person is searched, the person may require that the search be carried out by either a male or a female.

Note For the meaning of *transgender person* see Legislation Act, s 169A.

Note For the meaning of *intersex person*, see Legislation Act, s 169B.

- (4) If the transgender or intersex person requires that the search be carried out by a male, the person is taken, for this section, to be male.
- (5) If the transgender or intersex person requires that the search be carried out by a female, the person is taken, for this section, to be female.

Part 1.16 **First Home Owner Grant Act 2000**

[1.58] Section 6 (1)

substitute

- (1) A person is the *partner* of the applicant if the person is the applicant's domestic partner.

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

[1.59] Section 6 (3)

omit

Part 1.17 **Gambling and Racing Control Act 1999**

[1.60] Schedule 1, clause 2 (3) (a)

omit

spouse

substitute

domestic partner

[1.61] Schedule 1, clause 2 (3) (a), new note

insert

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

Part 1.18 **Guardianship and
Management of Property Act
1991**

[1.62] Sections 10 (5) and 35 (1) (b)

omit

spouse

substitute

domestic partner

[1.63] Dictionary, note 2

insert

- domestic partner (see s 169)

[1.64] Dictionary, definition of *spouse*

omit

Part 1.19 **Health Records (Privacy and
Access) Act 1997**

**[1.65] Section 4, definition of *immediate family member*,
paragraph (a) (ii)**

substitute

(ii) a domestic partner of the consumer; or

[1.66] Section 4, definition of *immediate family member*, paragraph (a), new note

insert

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

Part 1.20 Land (Planning and Environment) Act 1991

[1.67] Section 186D (5) (a)

omit

partner

substitute

domestic partner

[1.68] Section 186D (7)

substitute

(7) In this section:

child, of a lessee, includes a child of the lessee's domestic partner.

[1.69] Dictionary, note 2

insert

- domestic partner (see s 169)

Part 1.21 Land Titles Act 1925

[1.70] Section 79

omit

spouse

substitute

domestic partner

[1.71] Section 79, new note

insert

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

Part 1.22 Legal Practitioners Act 1970

[1.72] Section 102 (1) (c)

substitute

- (c) is the domestic partner of the solicitor by whom the records are kept; or

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

[1.73] Section 102 (2) (b) (ii)

substitute

- (ii) the domestic partner of the solicitor by whom the records are kept; or

[1.74] Section 113 (2)

omit

spouse or de facto spouse

substitute

domestic partner

[1.75] Section 113 (2), new note

insert

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

Part 1.23 Liquor Act 1975

[1.76] Section 151, definition of *responsible adult*, paragraph (a)

omit

spouse

substitute

domestic partner

[1.77] Section 151, definition of *responsible adult*, new note

insert

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

[1.78] Section 151, definition of *spouse*

omit

Part 1.24 Mental Health (Treatment and Care) Act 1994

[1.79] Section 4, definition of *relative*

omit

spouse

substitute

domestic partner

[1.80] Section 4, definition of *relative*, new note

insert

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

[1.81] Section 4, definition of *spouse*

omit

Part 1.25 Periodic Detention Act 1995

[1.82] New section 50 (4A) to (4C)

insert

(4A) If a transgender or intersex person is searched, the person may ask that the search be carried out by either a male or a female.

Note 1 For the meaning of *transgender person* see Legislation Act, s 169A.

Note 2 For the meaning of *intersex person*, see Legislation Act, s 169B.

(4B) If the transgender or intersex person asks that the search be carried out by a male, the person is taken, for this section, to be male.

(4C) If the transgender or intersex person asks that the search be carried out by a female, the person is taken, for this section, to be female.

[1.83] Section 50

renumber subsections when Act next republished under Legislation Act

Part 1.26 Periodic Detention Regulations 1995

[1.84] Schedule 2, clause 1

omit

An officer

substitute

- (1) An officer

[1.85] Schedule 2, clause 1

insert

- (2) However, if a detainee who is a transgender or intersex person is tested, the detainee may require that the test be carried out by either a male or a female.

Note 1 For the meaning of *transgender person* see Legislation Act, s 169A.

Note 2 For the meaning of *intersex person*, see Legislation Act, s 169B.

- (3) If the transgender or intersex person requires that the test be carried out by a male, the person is taken, for this clause, to be male.
- (4) If the transgender or intersex person requires that the test be carried out by a female, the person is taken, for this clause, to be female.

Part 1.27 Perpetuities and Accumulations Act 1985

[1.86] Section 14 (1) (c)

omit

spouses

substitute

spouses, de facto spouses, domestic partners

[1.87] Section 14 (1) (c), new note

insert

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

Part 1.28 Pharmacy Act 1931

[1.88] Section 9A (2), definition of *specified relative*

substitute

specified relative means a domestic partner, parent, child or grandchild.

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

Part 1.29 Powers of Attorney Act 1956

[1.89] Section 2 (1), definition of *relative*, paragraph (b)

substitute

(b) a domestic partner.

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

Part 1.30 Protection Orders Act 2001

[1.90] Section 23 (2), example

omit

de facto spouses

substitute

domestic partners

[1.91] Dictionary, note 2

insert

- domestic partner (see s 169)

[1.92] Dictionary, definition of *de facto spouse*

omit

[1.93] Dictionary, new definition of *domestic partner*

insert

domestic partner includes a former domestic partner.

[1.94] Dictionary, definition of *relative*, paragraph (b)

substitute

- (b) if the original person has or had a domestic partner (other than a spouse)—includes someone who would have been a relative of a kind mentioned in paragraph (a) if the original person had been legally married to the domestic partner; and

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

[1.95] Dictionary, definition of *relevant person*, paragraph (a)

substitute

- (a) a domestic partner of the original person; or

[1.96] Dictionary, definition of *relevant person*, paragraph (c)

substitute

- (c) a child of a domestic partner of the original person; or

[1.97] Dictionary, definition of *spouse*

omit

Part 1.31 Remand Centres Regulations 1976

[1.98] Regulation 7 (3)

substitute

- (3) The search of a detainee or his or her quarters under subsection (1) or (2) must, if practicable, be carried out by a custodial officer of the same sex as the detainee.

(3A) If the detainee is a transgender or intersex person, the person may ask that the search be carried out by either a male or a female.

Note 1 For the meaning of **transgender person** see Legislation Act, s 169A.

Note 2 For the meaning of **intersex person**, see Legislation Act, s 169B.

(3B) If the detainee asks that the search be carried out by a male, the detainee is taken, for this section, to be male.

(3C) If the detainee asks that the search be carried out by a female, the detainee is taken, for this section, to be female.

[1.99] Regulation 7

renumber subregulations when regulations next republished under Legislation Act

[1.100] New regulation 10 (5A)

insert

(5A) For subregulation (5), a transgender or intersex person is taken to be of the sex with which the person identifies.

Note 1 For the meaning of **transgender person** see Legislation Act, s 169A.

Note 2 For the meaning of **intersex person**, see Legislation Act, s 169B.

[1.101] Regulation 10

renumber subregulations when regulations next republished under Legislation Act 2001

Part 1.32 Sale of Motor Vehicles Act 1977

[1.102] Section 42 (b)

substitute

- (b) who is an employee of, or is the domestic partner of, the licensed dealer; or

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

Part 1.33 Transplantation and Anatomy Act 1978

[1.103] Section 4 (1), definition of *next of kin*

substitute

next of kin means—

- (a) for a dead child—someone mentioned in the definition of *senior available next of kin*, paragraph (a) (i), (ii) or (iii); or
- (b) for any other dead person—someone mentioned in that definition, paragraph (b) (i), (ii), (iii), (iv) or (v).

[1.104] Section 4 (1), definition of *senior available next of kin*

substitute

senior available next of kin means—

- (a) for a dead child—
- (i) if a parent of the child is available—the parent; or
- (ii) if a parent of the child is not available—an adult brother or sister of the child who is available; or
- (iii) if no-one mentioned in subparagraph (i) or (ii) is available—someone who was the child's guardian immediately before the child's death and who is available; and
- (b) for any other dead person—

- (i) if the person was, immediately before his or her death, party to a domestic partnership and the person who was then his or her domestic partner is available—the domestic partner; or
- (ii) if the person was, immediately before his or her death, party to a domestic partnership but the person who was then his or her domestic partner is not available— an adult son or daughter of the dead person who is available; or
- (iii) if the person was not, immediately before his or her death, party to a domestic partnership—an adult son or daughter of the dead person who is available; or
- (iv) if no-one mentioned in subparagraph (i), (ii) or (iii) is available but a parent of the dead person is available—the parent; or
- (v) if no-one mentioned in subparagraph (i), (ii), (iii) or (iv) is available— an adult brother or sister of the dead person who is available.

Note For the meaning of *domestic partner* and *domestic partnership*, see Legislation Act, s 169.

[1.105] Section 26

omit

Part 1.34 Truck Act 1900

[1.106] Section 10 (1) (e)

omit

spouse

substitute

domestic partner

Schedule 1 Additional amendments
Part 1.35 Victims of Crime (Financial Assistance) Act 1983
Amendment [1.107]

[1.107] Section 10 (1) (e), new note

insert

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

Part 1.35 Victims of Crime (Financial Assistance) Act 1983

[1.108] Section 2, definition of *close family member*, paragraph (a)

substitute

(a) the domestic partner of the victim; or

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

Endnote

Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

[Presentation speech made in Assembly on 12 December 2002]

I certify that the above is a true copy of the Legislation (Gay, Lesbian and Transgender) Amendment Bill 2003 which originated in the Assembly as the Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002 and was passed by the Legislative Assembly on 13 March 2003.

Clerk of the Legislative Assembly

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