

2008

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Dr Deb Foskey)

## Civil Partnerships Amendment Bill 2008

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## Civil Partnerships Amendment Bill 2008

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### A Bill for

An Act to amend the *Civil Partnerships Act 2008*, and for other purposes

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

**1 Name of Act**

This Act is the *Civil Partnerships Amendment Act 2008*.

**2 Commencement**

This Act commences on 1 October 2008.

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

**3 Legislation amended**

This Act amends the *Civil Partnerships Act 2008*.

*Note* This Act also amends the following legislation (see sch 1):

- *Births, Deaths and Marriages Registration Act 1997*
- *Births, Deaths and Marriages Registration Regulation 1998*.

**4 Civil partnerships—general  
Section 5 (1)**

*substitute*

- (1) A civil partnership is a legally recognised relationship that, subject to this Act, may be entered into by any 2 adults, regardless of their sex.

**5 Division 2.3 heading**

*substitute*

**Division 2.3 Entering into civil partnership**

**6 New section 6A**

*in division 2.3, insert*

**6A How civil partnership is entered into**

Two adults who are in a relationship as a couple, regardless of their sex, and who meet the eligibility criteria in section 6, may enter into a civil partnership by—

- (a) having their relationship registered under section 8; or
- (b) making a declaration before a civil partnership notary under section 8B.

*Note* The registrar-general must enter particulars of a civil partnership entered into under this Act in the register under the *Births, Deaths and Marriages Registration Act 1997*, pt 5A.

**7 Application for registration  
Section 7 (1) (except note)**

*substitute*

- (1) Two people who wish to enter into a civil partnership as mentioned in section 6A (a) may apply to the registrar-general for registration of their relationship as a civil partnership.

**8 New sections 8A and 8B**

*in division 2.3, insert*

**8A Notice of intention to enter into civil partnership**

- (1) Before 2 people enter into a civil partnership as mentioned in section 6A (b), they must give notice to a civil partnership notary of their intention to enter into a civil partnership.

*Note 1* If a form is approved under s 19 for a notice, the form must be used.

*Note 2* The notice must be given not earlier than 18 months, and not later than 5 days, before the civil partnership is entered into (see s 8 (2)).

- 1           (2) The notice must be accompanied by—
- 2               (a) a statutory declaration made by each person stating—
- 3                     (i) that the person wishes to enter into a civil partnership
- 4                     with the other person; and
- 5                     (ii) that the person is not married or in a civil partnership;
- 6                     and
- 7                     (iii) that the person believes the person and the other person
- 8                     do not have a prohibited relationship; and
- 9                     (iv) where the person lives; and
- 10           (b) the evidence required by section 13 of each person's identity
- 11           and age; and
- 12           (c) anything else prescribed by regulation.
- 13           (3) As soon as practicable after receiving the notice and statutory
- 14           declarations, the civil partnership notary must give each person a
- 15           written notice setting out the legal effect of a civil partnership.
- 16           *Note*     If a form is approved under s 19 for a notice, the form must be used.

17   **8B           Declaration of civil partnership**

- 18           (1) Two people who have given notice to a civil partnership notary in
- 19           accordance with section 8A may enter into a civil partnership by
- 20           making a declaration before the civil partnership notary and at least
- 21           1 other witness.
- 22           (2) The declaration must be made not earlier than 5 days, and not later
- 23           than 18 months, after the day the notice was given to the civil
- 24           partnership notary.
- 25           (3) The declaration must be made by each person to the other and must
- 26           contain a clear statement that—
- 27               (a) names both parties; and

- 1 (b) acknowledges that they are freely entering into a civil  
2 partnership with each other.

3 **9 New part 2A**

4 *insert*

5 **Part 2A Civil partnership notaries**

6 **11A Registration of civil partnership notaries**

- 7 (1) A person may apply, in writing, to the registrar-general to be  
8 registered as a civil partnership notary.

9 *Note 1* If a form is approved under s 19 for this provision, the form must be  
10 used.

11 *Note 2* A fee may be determined under s 18 for this provision.

- 12 (2) On application by a person under subsection (1), the  
13 registrar-general may register the applicant if satisfied that the  
14 applicant—

15 (a) is an individual aged 18 years or older; and

16 (b) has the knowledge and the skills or experience necessary to  
17 exercise the functions of a civil partnership notary under this  
18 Act; and

19 (c) is a suitable person to be registered as a civil partnership  
20 notary.

- 21 (3) If the registrar-general is not satisfied under subsection (2), the  
22 registrar-general must refuse to register the applicant.

- 1           (4) In deciding whether a person is a suitable person to be registered as  
2           a civil partnership notary, the registrar-general must have regard to  
3           the following:
- 4           (a) whether the person has been convicted, or found guilty, in  
5           Australia of an offence punishable by imprisonment for 1 year  
6           or longer;
- 7           (b) whether the person has been convicted, or found guilty, outside  
8           Australia of an offence that, if it had been committed in the  
9           ACT, would have been punishable by imprisonment for 1 year  
10          or longer;
- 11          (c) whether the person has been convicted, or found guilty, of an  
12          offence against, or has otherwise contravened, this Act;
- 13          (d) whether the person is or has been an undischarged bankrupt,  
14          has executed a personal insolvency agreement or has otherwise  
15          applied to take the benefit of any law for the relief of bankrupt  
16          or insolvent debtors;
- 17          (e) whether the person has a physical or mental incapacity that  
18          may affect the exercise of the person's functions as a civil  
19          partnership notary.
- 20          (5) In deciding whether a person is a suitable person to be a civil  
21          partnership notary, the registrar-general may have regard to  
22          anything else the registrar-general considers relevant.

23       **11B       Register of civil partnership notaries**

- 24           (1) The registrar-general must keep a register of people registered as  
25           civil partnership notaries under this Act.
- 26           (2) The register may be kept in any form, including electronically, that  
27           the registrar-general decides.



- 1           (3) The register must include the following information for each person  
2           registered as a civil partnership notary:
- 3           (a) the person's full name;
- 4           (b) the person's address and contact details;
- 5           (c) the date the person was registered;
- 6           (d) if the person's registration is cancelled or the person otherwise  
7           ceases to be registered—the date the registration ceases.
- 8           (4) The register must be available for public inspection at reasonable  
9           times.

10       **11C           Cancellation of registration**

11           The registrar-general may cancel a person's registration as a civil  
12           partnership notary if the registrar-general considers that the person  
13           does not satisfy, or no longer satisfies, the criteria for registration  
14           under section 11A (2).

15       **11D           Review of decisions**

16           Application may be made to the administrative appeals tribunal for  
17           review of a decision of the registrar-general—

- 18           (a) to refuse to register a person as a civil partnership notary under  
19           section 11A; or
- 20           (b) to cancel a person's registration as a civil partnership notary  
21           under section 11C.

22       **11E           Notice of reviewable decisions**

- 23           (1) If the registrar-general makes a decision mentioned in section 11D,  
24           the registrar-general must give a written notice of the decision to  
25           each person affected by the decision.

- (2) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

## **10 New section 12A**

*insert*

### **12A Noncompliance with certain requirements**

- (1) A civil partnership is not invalid only because a requirement of section 8A was not complied with.
- (2) A civil partnership is not invalid only because the person to whom the parties gave notice under section 8A, or before whom the parties made the declaration under section 8B, was not a civil partnership notary if either party believed, when giving the notice or making the declaration, that the person was a civil partnership notary.

## **11 Sections 16 and 17**

*substitute*

### **16 Offences**

- (1) A civil partnership notary commits an offence if—
- (a) the notary allows a civil partnership, or purported civil partnership, to be entered into before the notary; and
- (b) the notice required under section 8A (Notice of intention to enter into civil partnership) (including the statutory declaration and anything else required under that section) for the civil partnership—
- (i) has not been given to the notary; or

1 (ii) was not given to the notary within the period allowed by  
2 section 8B (2) (Declaration of civil partnership).

3 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
4 both.

5 (2) A civil partnership notary commits an offence if—

6 (a) the notary allows a civil partnership, or purported civil  
7 partnership, to be entered into before the notary; and

8 (b) the notary has reasonable grounds to believe that the civil  
9 partnership would be void under section 12.

10 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
11 both.

12 (3) A person commits an offence if—

13 (a) the person makes a declaration mentioned in section 8B with  
14 the intention of entering into a civil partnership with someone  
15 else (the person's *partner*); and

16 (b) the declaration is made before a person (the *third person*) who  
17 is not a civil partnership notary; and

18 (c) the person knows the third person is not a civil partnership  
19 notary; and

20 (d) the person has reasonable grounds to believe that their partner  
21 believes that the third person is a civil partnership notary.

22 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
23 both.

24 *Note* The Criminal Code includes offences for—

- 25 • giving false or misleading information etc to a person exercising a  
26 function under a territory law (see pt 3.4 (False or misleading  
27 statements, information and documents)); and
- 28 • making false statements in statutory declarations (see s 336A); and
- 29 • impersonating territory public officials (see s 360).

1 **12 Dictionary, new definition of *civil partnership notary***

2 *insert*

3 *civil partnership notary* means—

4 (a) the registrar-general; or

5 (b) a person who is registered under this Act as a civil partnership  
6 notary.

**Schedule 1      Other amendments**

(see s 3)

**Part 1.1                      Births, Deaths and Marriages  
Registration Act 1997**

**[1.1]      Section 32A**

*substitute*

**32A      Registration of civil partnership**

(1) This section applies if—

- (a) the registrar-general registers a relationship as a civil partnership under the *Civil Partnerships Act 2008*, section 7 (Application for registration); or
- (b) a civil partnership is entered into in the ACT under the *Civil Partnerships Act 2008*, section 8B (Declaration of civil partnership).

(2) The civil partnership must be registered under this Act.

**32AA      How civil partnerships are registered**

(1) Subsection (2) applies if—

- (a) the registrar-general registers a relationship as a civil partnership under the *Civil Partnerships Act 2008*, section 8 (Decision on application); or
- (b) a civil partnership is entered into before the registrar-general under the *Civil Partnerships Act 2008*, section 8B (Declaration of civil partnership).

- 1           (2) The registrar-general must register the civil partnership by including  
2           in the register the particulars of the civil partnership prescribed by  
3           regulation.
- 4           (3) If a civil partnership is entered into before another civil partnership  
5           notary under the *Civil Partnerships Act 2008*, section 8B, the notary  
6           must give the following to the registrar-general not later than  
7           2 weeks after the day the civil partnership is entered into:
- 8               (a) written notice of the civil partnership;
- 9               (b) the notice given to the notary under the *Civil Partnerships*  
10              *Act 2008*, section 8A (Notice of intention to enter into civil  
11              partnership) for the civil partnership.
- 12           Maximum penalty: 5 penalty units.
- 13           *Note*     If a form is approved under s 69 for this provision, the form must be  
14           used.
- 15           (4) If a notice is given to the registrar-general under subsection (3), the  
16           registrar-general must register the civil partnership by including in  
17           the register the particulars of the civil partnership prescribed by  
18           regulation.
- 19           (5) An offence against this section is a strict liability offence.

20   **[1.2]     Dictionary, note 2, new dot point**

21           *insert*

- 22                   • civil partnership notary

## **Part 1.2                      Births, Deaths and Marriages Registration Regulation 1998**

### **[1.3]        Section 8A (1)**

*omit*

section 32A

*insert*

section 32AA (2) and (4)

### **[1.4]        Section 8A (1) (a)**

*substitute*

(a) the date and place of the entry into the civil partnership;

### **[1.5]        New section 8A (1) (c)**

*insert*

(c) if the partnership was entered into under the *Civil Partnerships Act 2008*, section 8B—the full name of at least 1 witness to the civil partnership.

### **[1.6]        New section 8A (1A)**

*insert*

(1A) For the Act, section 32AA (4), the following particulars are also prescribed:

(a) the civil partnership notary's full name;

(b) details of the notary's registration as a civil partnership notary under the *Civil Partnership Act 2008*, part 2A (Civil partnership notaries).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2008.

**2 Notification**

Notified under the Legislation Act on 2008.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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