

2002

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Attorney-General)

## Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002

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## **Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002**

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### **A Bill for**

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

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

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1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Legislation (Gay, Lesbian and Transgender)*  
4 *Amendment Act 2002*.

5 **2 Commencement**

6 This Act commences on the day after its notification day.

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

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## 1 Part 2 Legislation Act 2001

### 2 3 Act amended—pt 2

3 This part amends the *Legislation Act 2001*.

### 4 4 New sections 169 and 169A

5 *insert*

#### 6 169 References to *domestic partner* and *domestic partnership*

- 7 (1) In an Act or statutory instrument, a reference to a person's *domestic*  
8 *partner* is a reference to someone who lives with the person in a  
9 domestic partnership, and includes a spouse.
- 10 (2) In an Act or statutory instrument, a *domestic partnership* is the  
11 relationship between 2 people, whether of a different or the same  
12 sex, living together as a couple on a genuine domestic basis.

#### 13 169A References to transgender people

- 14 (1) A *transgender person* is a person who—
- 15 (a) identifies as a member of the opposite sex by living, or seeking  
16 to live, as a member of the opposite sex; or
- 17 (b) has identified as a member of the opposite sex by living as a  
18 member of the opposite sex; or
- 19 (c) is of indeterminate sex and identifies as a member of a  
20 particular sex by living as a member of that sex;
- 21 whether or not the person is a recognised transgender person.
- 22 (2) A *transgender person* includes a person who is thought of as a  
23 transgender person, whether or not the person is a recognised  
24 transgender person.

1        (3) A *recognised transgender person* is a person the record of whose  
2            sex is altered under the *Births, Deaths and Marriages Registration*  
3            *Act 1997*, part 4 or the corresponding provisions of a law of a State  
4            or another Territory.

5        **5 Dictionary, part 1, new definitions**

6            *insert*

7            *domestic partner*—see section 169 (1).

8            *domestic partnership*—see section 169 (2).

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

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

1 **Part 3 Additional amendments**

2 **6 Additional amendments—sch 1**

3 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 (5)**

*insert*

- (5) In this section:

*same sex*, for a transgender person, means the same sex as the sex with which the transgender person identifies.

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

## Part 1.4 Children and Young People Act 1999

### [1.10] New section 400 (7)

*insert*

(7) In this section:

*opposite sex*, for a transgender person, means the opposite sex to the sex with which the transgender person identifies.

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

*same sex*, for a transgender person, means the same sex as the sex with which the transgender person identifies.

## Part 1.5 Civil Law (Wrongs) Act 2002

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

*substitute*

(a) a domestic partner; or

### [1.12] Section 20, definition of *member*

*renumber paragraphs when Act next republished under Legislation Act 2001*

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

*substitute*

(a) a domestic partner;

### [1.14] Section 29, definition of *family member*

*renumber paragraphs when Act next republished under Legislation Act 2001*

**[1.15] 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.

**[1.16] Dictionary, note 2**

*insert*

- domestic partner (see s 169)

## **Part 1.6                      Confiscation of Criminal Assets Act 2002**

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

*omit*

**[1.18] Section 210 (4), definition of *transgender person***

*omit*

**[1.19] Dictionary, note 2**

*insert*

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

## Part 1.7 Cooperatives Act 2002

### [1.20] Section 155 (d)

*omit*

spouse

*substitute*

domestic partner

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

*omit*

spouse

*substitute*

domestic partner

### [1.22] Section 276 (1) (b)

*omit*

spouse

*substitute*

domestic partner

### [1.23] Dictionary, definition of *spouse*

*omit*

### [1.24] Dictionary, note 2

*insert*

- domestic partner

## Part 1.8 Coroners Act 1997

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

*omit*

spouse

*substitute*

domestic partner

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

*insert*

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

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

*omit*

## Part 1.9 Crimes Act 1900

### [1.28] Section 185, new definitions

*insert*

*opposite sex*, for a transgender person, means the opposite sex to the sex with which the transgender person identifies.

*same sex*, for a transgender person, means the same sex as the sex with which the transgender person identifies.

**[1.29] Section 397 (1)**

*omit*

spouse

*substitute*

domestic partner

**[1.30] Dictionary, note 2**

*insert*

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

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

*omit*

**[1.32] Dictionary, new definition of *domestic partner* and *opposite sex***

*insert*

*domestic partner* includes former domestic partner.

*opposite sex*, for a transgender person and part 10 (Criminal investigation)—see section 185.

**[1.33] 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

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

*substitute*

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

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

*substitute*

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

**[1.36] Dictionary, new definition of *same sex***

*same sex*, for a transgender person and part 10 (Criminal investigation)—see section 185.

**[1.37] Dictionary, definition of *spouse***

*omit*

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

**[1.38] Section 6, note**

*omit*

**[1.39] Section 17**

*substitute*

### **17 Application of Act to transgender people**

In this Act:

*opposite sex*, for a transgender person, means the opposite sex to the sex with which the transgender person identifies.

*same sex*, for a transgender person, means the same sex as the sex with which the transgender person identifies.

**[1.40] Dictionary, note 2**

*insert*

- transgender person (see s 169A)

**[1.41] Dictionary, definition of *opposite sex***

*omit*

(4)

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

*omit*

**[1.43] Dictionary, definition of *same sex***

*omit*

(4)

**[1.44] Dictionary, definition of *transgender person***

*omit*

## **Part 1.11 Custodial Escorts Regulations 2002**

**[1.45] Regulation 6 (8), new definitions**

*insert*

***opposite sex***, for a transgender person, means the opposite sex to the sex with which the transgender person identifies.

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

***same sex***, for a transgender person, means the same sex as the sex with which the transgender person identifies.

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## Part 1.12 Dangerous Goods Act 1975

### [1.46] Section 42 (2)

*substitute*

- (2) A search of a person under this section must be conducted by a person of the same sex as the person being searched.
- (3) In this section:  
*same sex*, for a transgender person, means the same sex as the sex with which the transgender person identifies.

### [1.47] Section 43 (3)

*substitute*

- (3) A search of a person under this section must be conducted by a person of the same sex as the person being searched.
- (4) In this section:  
*same sex*—see section 42 (3).

### [1.48] Dictionary, note 2

*insert*

- transgender person (see s 169A)

## Part 1.13 Discrimination Act 1991

### [1.49] Section 4 (1), definitions of *domestic partner* and *domestic partnership*

*omit*

### [1.50] Section 4 (1), definition of *relationship status*

*insert*

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

**[1.51] Section 35, new note**

*insert*

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

## **Part 1.14 Domestic Relationships Act 1994**

**[1.52] 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.

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

*insert*

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

## **Part 1.15 Drugs of Dependence Act 1989**

**[1.54] New section 189 (4)**

*insert*

(4) In this section:

*same sex*, for a transgender person, means the same sex as the sex with which the transgender person identifies.

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

## **Part 1.16                      Firearms Act 1996**

### **[1.55] New section 75 (3)**

*insert*

(3) In this section:

*same sex*, for a transgender person, means the same sex as the sex with which the transgender person identifies.

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

## **Part 1.17                      First Home Owner Grant Act 2000**

### **[1.56] 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.

### **[1.57] Section 6 (3)**

*omit*

## **Part 1.18                      Gambling and Racing Control Act 1999**

### **[1.58] Schedule 1, clause 2 (3) (a)**

*omit*

spouse

*substitute*

domestic partner

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

*insert*

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

**Part 1.19** **Guardianship and  
Management of Property Act  
1991**

**[1.60] Sections 10 (5) and 35 (1) (b)**

*omit*

spouse

*substitute*

domestic partner

**[1.61] Dictionary, note 2**

*insert*

- domestic partner (see s 169)

**[1.62] Dictionary, definition of *spouse***

*omit*

**Part 1.20** **Health Records (Privacy and  
Access) Act 1997**

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

*substitute*

- (ii) a domestic partner of the consumer; or

**[1.64] 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 1.21 Land (Planning and Environment) Act 1991**

**[1.65] Section 186D (5) (a)**

*omit*

partner

*substitute*

domestic partner

**[1.66] Section 186D (7)**

*substitute*

(7) In this section:

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

**[1.67] Dictionary, note 2**

*insert*

- domestic partner (see s 169)

## Part 1.22 Land Titles Act 1925

### [1.68] Section 79

*omit*

spouse

*substitute*

domestic partner

### [1.69] Section 79, new note

*insert*

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

## Part 1.23 Legal Practitioners Act 1970

### [1.70] 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.

### [1.71] Section 102 (2) (b) (ii)

*substitute*

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

**[1.72] Section 113 (2)**

*omit*

spouse or de facto spouse

*substitute*

domestic partner

**[1.73] Section 113 (2), new note**

*insert*

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

## **Part 1.24                      Liquor Act 1975**

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

*omit*

spouse

*substitute*

domestic partner

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

*insert*

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

**[1.76] Section 151, definition of *spouse***

*omit*

## Part 1.25 Mental Health (Treatment and Care) Act 1994

### [1.77] Section 4, definition of *relative*

*omit*

spouse

*substitute*

domestic partner

### [1.78] Section 4, definition of *relative*, new note

*insert*

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

### [1.79] Section 4, definition of *spouse*

*omit*

## Part 1.26 Periodic Detention Act 1995

### [1.80] Section 50 (7), new definitions

*insert*

***opposite sex***, for a transgender person, means the opposite sex to the sex with which the transgender person identifies.

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

***same sex***, for a transgender person, means the same sex as the sex with which the transgender person identifies.

## **Part 1.27**                      **Periodic Detention Regulations 1995**

### **[1.81] Schedule 2, clause 1**

*omit*

An officer

*substitute*

- (1) An officer

### **[1.82] Schedule 2, clause 1**

*insert*

- (2) In this clause:

***same sex***, for a transgender person, means the same sex as the sex with which the transgender person identifies.

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

## **Part 1.28**                      **Perpetuities and Accumulations Act 1985**

### **[1.83] Section 14 (1) (c)**

*omit*

spouses

*substitute*

spouses, de facto spouses, domestic partners

### **[1.84] Section 14 (1) (c), new note**

*insert*

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

## Part 1.29 Pharmacy Act 1931

### [1.85] 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 1.30 Powers of Attorney Act 1956

### [1.86] 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 1.31 Protection Orders Act 2001

### [1.87] Section 23 (2), example

*omit*

de facto spouses

*substitute*

domestic partners

### [1.88] Dictionary, note 2

*insert*

- domestic partner (see s 169)

### [1.89] Dictionary, definition of *de facto spouse*

*omit*

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

*insert*

*domestic partner* includes a former domestic partner.

**[1.91] 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.

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

*substitute*

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

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

*substitute*

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

**[1.94] Dictionary, definition of *spouse***

*omit*

**Part 1.32 Remand Centres Regulations  
1976**

**[1.95] 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.

**[1.96] New regulation 7 (8)**

*insert*

(8) In this regulation:

*same sex*, for a transgender person, means the same sex as the sex with which the transgender person identifies.

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

**[1.97] New regulation 10 (5A)**

*insert*

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

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

**[1.98] Regulation 10**

*renumber subregulations when regulations next republished under Legislation Act 2001*

**Part 1.33 Sale of Motor Vehicles Act  
1977**

**[1.99] 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.

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## Part 1.34 Transplantation and Anatomy Act 1978

### [1.100] 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).

### [1.101] 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.

**[1.102] Section 26**

*omit*

**Part 1.35 Truck Act 1900**

**[1.103] Section 10 (1) (e)**

*omit*

spouse

*substitute*

domestic partner

**[1.104] Section 10 (1) (e), new note**

*insert*

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

**Part 1.36**                      **Victims of Crime (Financial Assistance) Act 1983**

**[1.105]            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.

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**Endnote**

**Republications of amended laws**

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