



Australian Capital Territory

Sexuality Discrimination Legislation Amendment Act 2004

A2004-2

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2003 012B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Sexuality Discrimination Legislation Amendment Act 2004

A2004-2

An Act to amend the law to remove discrimination relating to sexuality and marital status, and for other purposes

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

2003 012B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Sexuality Discrimination Legislation Amendment Act 2004*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

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

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended—schs 1 and 2

This Act amends the legislation mentioned in schedules 1 and 2.

Schedule 1 Domestic partners

(see s 3)

Part 1.1 Administration and Probate Act 1929

[1.1] Section 44, definition of *eligible partner*

substitute

eligible partner, of an intestate, means someone, other than the spouse of the intestate, who—

- (a) was the intestate's domestic partner when the intestate died;
and
- (b) either—
 - (i) had been the intestate's domestic partner continuously for 2 or more years when the intestate died; or
 - (ii) is the parent of the intestate's child, if the child was under 18 years old when the intestate died.

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

[1.2] Section 44, definition of *legal spouse*

omit

[1.3] Section 44, new definition of *partner*

insert

partner—an intestate's *partner* is either of the following:

- (a) the spouse of the intestate when the intestate died;
- (b) the eligible partner of the intestate.

[1.4] Section 44, definition of *spouse*

omit

[1.5] Section 45A

substitute

45A Distribution between spouse and eligible partner

- (1) If an intestate is survived by both a spouse and an eligible partner, the entitlement of each to the partnership share of the intestate estate must be worked out as follows:
 - (a) if the eligible partner and the intestate had been domestic partners continuously for less than 5 years when the intestate died—the partnership share of the intestate estate must be distributed equally between the spouse and the eligible partner;
 - (b) if the eligible partner and the intestate had been domestic partners continuously for 5 years or more when the intestate died—the eligible partner is exclusively entitled to the partnership share.

- (2) In this section:

partnership share, in relation to an intestate, means the share of the estate to which the intestate's partner is entitled under this division.

[1.6] Section 49BA (1) (a)

omit

a spouse of such a person

substitute

an unentitled partner of such a person

[1.7] Section 49BA (3) and (4)

substitute

- (3) This section does not apply in relation to money or property given to or for the benefit of the intestate's partner.
- (4) If an intestate has made a gift to which this section applies, the ***unentitled partner*** of a person entitled to a share in the intestate's estate is, for subsection (1), someone who—
- (a) is not entitled to a share in the intestate's estate; and
 - (b) was the domestic partner of the entitled person at the time of the gift; and
 - (c) either—
 - (i) was the entitled person's spouse at that time; or
 - (ii) had been the entitled person's domestic partner continuously for 2 or more years at that time; or
 - (iii) was at that time the parent of a child of the entitled person, if the child was less than 18 years old at that time.

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

- (5) In this section:
- given***, in relation to money or property, means money or property paid, transferred, assigned or settled (otherwise than for valuable consideration).

[1.8] Further amendments, mentions of *spouse* etc

column 1 item	column 2 provision	column 3 omit	column 4 substitute
1	section 12	spouse	partner
2	section 12 (1) (c) and (d)	spouses	partners
3	section 12 (4), definition of <i>spouse</i>	<i>spouse</i>	<i>partner</i>
4	sections 49, 49A and 49AA	spouse	partner
5	section 49AA (4)	spouse's	partner's
6	section 49D	spouse	partner
7	division 3A.3 heading	spouses	partners
8	sections 49G and 49K to 49N	spouse	partner
9	section 49N (1)	spouse's	partner's
10	section 50	spouse	partner
11	section 50 (7), definition of <i>spouse</i>	<i>spouse</i>	<i>partner</i>
12	section 88	spouse	partner
13	section 88 (6), definition of <i>spouse</i>	<i>spouse</i>	<i>partner</i>
14	schedule 6	spouse	partner

Part 1.2 Births, Deaths and Marriages Registration Regulations 1998

[1.9] New regulation 5 (ia)

insert

- (ia) whether or not the parents of the child are in a domestic partnership;

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

[1.10] Regulation 5

renumber paragraphs when regulations next republished under the Legislation Act

[1.11] Regulation 9 (f) and (g)

substitute

- (f) whether or not the deceased was in a domestic partnership at the time of death;
- (g) if the deceased had been in a domestic partnership at any time—
- (i) if the deceased had been married—the date and place of each marriage; and
 - (ii) in any case—the name and any former name of each domestic partner.

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

Part 1.3 Casino Control Act 1988

[1.12] New section 3E

in part 1, insert

3E Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to offences against s 68 (Exclusion of children) (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

[1.13] Section 68

substitute

68 Exclusion of children

- (1) The casino licensee must not permit a child to enter or remain in any part of the casino.

Maximum penalty: 50 penalty units.

Note **Child** means a person who is under 18 years old (see Legislation Act, dict, pt 1).

- (2) A child must not enter or remain in any part of the casino.

Maximum penalty: 5 penalty units.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the child—

- (a) was at least 16 years old; and
- (b) had shown a prescribed identity document.

(4) Subsections (1) and (2) do not apply in relation to a child if—

- (a) the child enters a part of the casino other than a gaming area; and
- (b) the child is with an adult who is the child's domestic partner or parent.

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

(5) Subsections (1) and (2) do not apply in relation to a child who is a casino employee.

(6) A person must not use someone else's identification, or a form of identification that is forged, to enter or remain in a gaming area.

Maximum penalty: 10 penalty units.

(7) An offence against this section is a strict liability offence.

(8) In this section:

gaming area means any part of the casino—

- (a) where gaming takes place; or
- (b) from where it is possible to see gaming take place.

Part 1.4 Credit Act 1985

[1.14] Section 5 (1), definitions of *commission charge* and *guarantor*

omit

spouse

substitute

domestic partner

[1.15] Section 5 (1), definitions of *commission charge* and *guarantor*, new note

insert

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

Part 1.5 Debits Tax Act 1997

[1.16] Section 16 (1), definition of *pensioner*, paragraph (e)

substitute

- (e) a person who is (or was) in a domestic partnership who would be eligible as a pensioner mentioned in paragraph (a) because of that partnership if the person's domestic partner were (or had been) the person's partner within the meaning of the *Social Security Act 1991* (Cwlth), section 4; or
- (f) a person who is (or was) in a domestic partnership who would be eligible as a pensioner mentioned in paragraph (b) because of that partnership if the person's domestic partner were (or had been) the person's partner within the meaning of the *Veterans' Entitlements Act 1986* (Cwlth), section 5E; or

- (g) a person who was in a domestic partnership until the death of his or her domestic partner who would be eligible as a pensioner mentioned in paragraph (d) (i) because of the domestic partner's death if the person were the domestic partner's dependant within the meaning of the *Veterans' Entitlements Act 1986* (Cwlth), section 11; or
- (h) a person prescribed under the regulations for this paragraph.

Note for pars (e), (f) and (g)

The Legislation Act, s 169, def *domestic partner* and def *domestic partnership* apply to partners irrespective of their sex, while the *Social Security Act 1991* (Cwlth), s 4, def *partner* and the *Veterans' Entitlements Act 1986* (Cwlth), s 5E, def *partner* and s 11, def *dependant* only apply to partners (or former partners) of the opposite sex to each other.

Part 1.6 Duties Act 1999

[1.17] Section 72

substitute

72 Transfer to partner of interest in principal place of residence

- (1) Duty of \$20 is payable for a transfer by someone to his or her partner of dutiable property consisting of an interest in property that is, at the date of the transfer of the interest, used as their principal place of residence.

Note The dictionary defines *partner* as a person's spouse or someone with whom the person has a domestic relationship. *Domestic relationship* is defined in the dictionary to have the same meaning as in the *Domestic Relationships Act 1994*, s 3 (1).

- (2) However, subsection (1) only applies if the transfer results in the property being held by the partners as—
- (a) joint tenants; or

- (b) tenants in common in equal shares; or
- (c) tenants in common in shares that are proportionate to the contributions of the partners towards the purchase and improvement of the property; or
- (d) tenants in common in shares that are in proportions prescribed under the regulations.

[1.18] Sections 74B (1) (b), 115H (1) (b) and 213 (1) (b)

omit

spouses

substitute

partners

[1.19] Sections 74B (1) (b), 115H (1) (b) and 213 (1) (b), new note

insert

Note The dictionary defines *partner* as a person's spouse or someone with whom the person has a domestic relationship. *Domestic relationship* is defined in the dictionary to have the same meaning as in the *Domestic Relationships Act 1994*, s 3 (1).

[1.20] Dictionary, definition of *domestic partner*

omit

[1.21] Dictionary, new definition of *partner*

insert

partner—a person's *partner* is either of the following:

- (a) the person's spouse;
- (b) someone with whom the person has a domestic relationship.

[1.22] Dictionary, definition of *related person*, paragraph (a) (i)

substitute

- (i) they are partners, or they have been partners and the partnership has ended (whether the partnership ended in Australia or elsewhere); or

[1.23] Dictionary, definition of *spouse*

omit

Part 1.7 Family Provision Act 1969

[1.24] Section 4 (1), definitions of *domestic partner*, *domestic relationship*, *eligible partner*, *legal spouse* and *spouse*

omit

[1.25] Section 7 (1) (a) and (b)

substitute

- (a) a partner of the deceased person;
- (b) a person (other than a partner of the deceased person) who was in a domestic relationship with the deceased person for 2 or more years continuously at any time;

[1.26] Section 7 (4) (b)

omit

any spouse

substitute

any partner

[1.27] New section 7 (9)

insert

(9) In this section:

domestic relationship—see the *Domestic Relationships Act 1994*, section 3 (1).

partner, of a deceased person, means someone who—

- (a) was the domestic partner of the person at any time; and
- (b) either—
 - (i) was the person’s spouse at any time; or
 - (ii) was the person’s domestic partner continuously for 2 or more years at any time; or
 - (iii) is the parent of a child of the person.

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

Part 1.8 Instruments Act 1933

[1.28] Section 12 (1)

omit

married

substitute

in a domestic partnership

[1.29] Section 12 (1)

omit

wife or husband

substitute

domestic partner

[1.30] Section 12 (2)

substitute

(2) This section does not apply after—

- (a) the death of the domestic partner of the person making or giving the bill of sale; or
- (b) the permanent separation of the domestic partners since the bill of sale was made or given.

Note 1 If a form is approved under s 38 for the endorsement under this section of a bill of sale, the form must be used.

Note 2 For the meanings of *domestic partner* and *domestic partnership*, see Legislation Act, s 169.

Part 1.9 **Land (Planning and Environment) Act 1991**

[1.31] Section 180 (1) (b)

substitute

- (b) the transfer or assignment is made under any of the following orders:
 - (i) an order of the Family Court;
 - (ii) an order of another court having jurisdiction under the *Family Law Act 1975 (Cwlth)*;

- (iii) an order under the *Domestic Relationships Act 1994*, part 3.2 adjusting the property interests of the parties in a domestic relationship; or

Part 1.10 Married Persons Property Act 1986

[1.32] Section 4 (2)

substitute

- (2) Subsection (1) applies to 2 people in a domestic partnership who are not married to each other in the same way as it applies to a husband and wife who are living together.

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

Part 1.11 Nature Conservation Act 1980

[1.33] Section 74AG heading

substitute

74AG Extension of time to pay penalty

[1.34] Section 74AG (1)

omit

pensioner

substitute

person

[1.35] Section 74AG (6)

omit

Part 1.12 NRMA–ACT Road Safety Trust Act 1992

[1.36] Section 2, definition of *deed of trust*, paragraph (a)

substitute

- (a) the document executed as mentioned in section 3, as modified in its effect under section 4; or

[1.37] New section 4

insert

4 Modification of effect of deed

The deed of trust has effect as if a reference in the deed to a person's spouse were a reference to a domestic partner of the person.

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

Part 1.13 Public Trustee Act 1985

[1.38] Section 4 (1), new definition of *domestic partner*

insert

domestic partner, for part 5 (Unclaimed property)—see section 33A.

[1.39] New section 33A

in part 5, insert

33A Meaning of *domestic partner* for pt 5

In this part:

domestic partner, of the owner of property, means the domestic partner of the owner when the owner was last known to be alive.

Note This definition qualifies the meaning of *domestic partner* given by the Legislation Act, s 169.

[1.40] Section 38 (1) (e)

substitute

- (e) apply the property, or any money received by the public trustee as manager of the property, for the maintenance, education, advancement or benefit of the domestic partner, children or other dependants of the owner of the property; and

[1.41] Section 39 (2) (b)

substitute

- (b) the domestic partner, a child, or any other dependant of the owner of the property; or

[1.42] Section 39 (5) (d)

substitute

- (d) the interest of the domestic partner, a child, or any other dependant of the owner of the property; and

[1.43] Section 39 (6) (c) (iii)

substitute

- (iii) the interest of the domestic partner, a child, or any other dependant of the owner of the property; or

Part 1.14 Rates and Land Rent (Relief) Act 1970

[1.44] Section 2, definition of *domestic partner*

omit

[1.45] Section 2, new definitions

insert

domestic relationship—see the *Domestic Relationships Act 1994*, section 3 (1).

eligible person, for part 3—see section 21A (1).

partner—a person's *partner* is either of the following:

- (a) the person's spouse;
- (b) someone with whom the person has a domestic relationship.

partnership means the relationship between 2 partners.

[1.46] Section 2, definition of *pensioner*, paragraph (d)

omit

by the person

substitute

by the person; or

[1.47] Section 2, definition of *pensioner*, new paragraphs (e), (f) and (g)

insert

- (e) a person who is (or was) in a partnership who would be eligible as a pensioner mentioned in paragraph (a) or (b) because of that partnership if the person's partner were (or had been) the person's partner within the meaning of the *Social Security Act 1991* (Cwlth), section 4; or
- (f) a person who is (or was) in a partnership who would be eligible as a pensioner mentioned in paragraph (c) because of that partnership if the person's partner were (or had been) the person's partner within the meaning of the *Veterans' Entitlements Act 1986* (Cwlth), section 5E; or
- (g) a person who was in a partnership until the death of his or her partner who would be eligible under the *Veteran's Entitlements Act 1986* (Cwlth), section 86 to be given treatment mentioned in paragraph (d) because of the partner's death if the person were the partner's dependant within the meaning of the *Veterans' Entitlements Act 1986* (Cwlth), section 11.

Note for pars (e), (f) and (g)

This Act, def **partner** and def **partnership** apply to spouses, but also extend to unmarried partners (irrespective of their sex) in **domestic relationships** within the meaning of the *Domestic Relationships Act 1994*, s 3 (1). The *Social Security Act 1991* (Cwlth), s 4, def **partner** and the *Veterans' Entitlements Act 1986* (Cwlth), s 5E, def **partner** and s 11, def **dependant** only apply to partners (or former partners) of the opposite sex to each other in married or marriage-like relationships.

[1.48] Section 3 (1) (c)

substitute

- (c) that the owners are a pensioner and his or her partner, if the partner is not a pensioner; or

[1.49] Section 21A (1), definition of *eligible person*, paragraphs (b) and (c)

substitute

- (b) a non-pensioner who is the partner of a special rate pensioner and is not separated from the pensioner; or
- (c) a non-pensioner who—
 - (i) was the partner of a special rate pensioner until the pensioner's death; and
 - (ii) was not separated from the pensioner immediately before the death; and
 - (iii) has not subsequently formed a partnership with anyone else.

Part 1.15 Supreme Court Act 1933

[1.50] Section 37U (2)

substitute

- (2) Subject to subsection (3), a person to whom this section applies is entitled to the same remuneration, allowances and entitlements as judges of the Federal Court are entitled to from time to time.

[1.51] Section 37U (3) (g)

omit

tribunal.

substitute

tribunal; and

[1.52] New section 37U (3) (h)

insert

- (h) a reference in the *Judges' Pensions Act 1968* (Cwlth) to a **marital relationship** included a reference to a relationship between 2 people of the same sex, subject otherwise to that Act, section 4AB (Marital relationship); and
- (i) a reference in the *Judges (Long Leave Payments) Act 1979* (Cwlth) to a **widow or widower** of a judge who has died included a reference to anyone else who was the domestic partner of the judge when the judge died.

[1.53] Section 37U (3), note

substitute

Note 1 A reference to a Cwlth Act includes a reference to the Act as originally made and as amended (see Legislation Act, s 102).

Note 2 For the meaning of **domestic partner**, see Legislation Act, s 169.

Part 1.16 Transplantation and Anatomy Act 1978

[1.54] Section 4 (1), definition of *child*, paragraph (b)

substitute

- (b) is not in a domestic partnership.

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

Part 1.17 Trustee Act 1925

[1.55] Section 45 (6) (a) and (b)

omit

spouse

substitute

domestic partner

[1.56] Section 45 (6), new note

insert

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

[1.57] New section 45 (10), (11) and (12)

insert

(10) Subsection (6) (a) and (b), as in force immediately before the commencement day, continue to apply if the trust of the income fails or determines during the trust period and before that day.

(11) Subsection (10), this subsection and subsection (12) expire 2 years after the commencement day.

Note The expiry of transitional provisions does not end their effect (see Legislation Act, s 88).

(12) In subsections (10) and (11):

commencement day means the day the *Sexuality Discrimination Legislation Amendment Act 2004*, schedule 1, amendment 1.55 commenced.

Note The *Sexuality Discrimination Legislation Amendment Act 2004*, sch 1 amended the Act, s 45 (6) (a) and (b) by omitting ‘spouse’ and substituting ‘domestic partner’.

Part 1.18 Trustee Companies Act 1947

[1.58] Section 21 (1)

omit

wife, husband,

substitute

domestic partner,

[1.59] Section 21 (1), new note

insert

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

Part 1.19 Workers Compensation Act 1951

[1.60] Section 163 (4)

omit

or the person's spouse

[1.61] Dictionary, definition of *child*

substitute

child, of a worker, means a child of the worker who is—

- (a) not in a domestic partnership; and
- (b) under 16 years old or a full-time student.

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

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

insert

domestic partner, of a worker who has died, means the person who was the worker's domestic partner when the worker died.

Note This definition qualifies the meaning of *domestic partner* given by the Legislation Act, s 169.

[1.63] Dictionary, definition of *member of the family*

omit

spouse

substitute

domestic partner

[1.64] Dictionary, definition of *member of the family*, new note

insert

Note For the meaning of *domestic partner*, see the Legislation Act, s 169. If a worker has died, the definition of *domestic partner* elsewhere in the dictionary provides that the term refers to the person who was the worker's domestic partner when the worker died.

[1.65] Dictionary, definition of *spouse*

omit

Schedule 2 Other amendments

(see s 3)

Part 2.1 Crimes Act 1900

[2.1] New section 13 (2A)

insert

- (2A) However, conduct of the deceased consisting of a non-violent sexual advance (or advances) towards the accused—
- (a) is taken not to be sufficient, by itself, to be conduct to which subsection (2) (b) applies; but
 - (b) may be taken into account together with other conduct of the deceased in deciding whether there has been an act or omission to which subsection (2) applies.

[2.2] Section 13

renumber subsections when Act next republished under Legislation Act

Part 2.2 Disability Services Act 1991

[2.3] Schedule 2, clause 5

substitute

- 5 Programs and services should be designed and administered to meet the needs of people with disabilities who may experience additional disadvantage because of their sex, sexuality, ethnic origin, physical isolation or Aboriginality.

Part 2.3 Discrimination Act 1991

[2.4] New section 6A

in part 1, insert

6A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to offences against pt 6 (see the Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

[2.5] Part 6 heading and section 65 heading

substitute

Part 6 Racial, sexuality and HIV/AIDS vilification

65 Definitions for pt 6

[2.6] Section 65, new definition

insert

HIV/AIDS status means status as a person who has the Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome.

[2.7] Sections 66 and 67

substitute

66 Unlawful vilification—race, sexuality etc

- (1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of people on the ground of any of the following characteristics of the person or members of the group:
- (a) race;
 - (b) sexuality;
 - (c) transsexuality;
 - (d) HIV/AIDS status.
- (2) This section does not make unlawful—
- (a) a fair report of an act mentioned in subsection (1); or
 - (b) a communication or the distribution or dissemination of any matter consisting of a publication that is subject to a defence of absolute privilege in a proceeding for defamation; or
 - (c) a public act, done reasonably and honestly, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and presentations of any matter.

67 Serious vilification offence—race, sexuality etc

- (1) A person commits an offence if—
- (a) the person intentionally carries out an act; and
 - (b) the person is reckless about whether the act is a public act; and
 - (c) the act is a threatening act; and

- (d) the person is reckless about whether the act incites hatred towards, serious contempt for, or severe ridicule of, a person or group of people on the ground of any of the following characteristics of the person or members of the group:
- (i) race;
 - (ii) sexuality;
 - (iii) transsexuality;
 - (iv) HIV/AIDS status.

Maximum penalty: 50 penalty units.

- (2) For subsection (1) (c), an act is a ***threatening act*** only if the person carrying it out—
- (a) by the act, intentionally threatens physical harm towards, or towards any property of, the person, or members of the group, mentioned in subsection (1) (d); or
 - (b) is reckless about whether the act incites others to threaten such physical harm.

[2.8] Dictionary, new definition of *HIV/AIDS status*

insert

HIV/AIDS status, for part 6 (Racial, sexuality and HIV/AIDS vilification)—see section 65.

[2.9] Dictionary, definition of *public act*

substitute

public act, for part 6 (Racial, sexuality and HIV/AIDS vilification)—see section 65.

Part 2.4 Evidence Act 1971

[2.10] Sections 54, 55, 57 and 74

omit

Part 2.5 Evidence (Miscellaneous Provisions) Act 1991

[2.11] New division 4.7

insert

Division 4.7 Family objections

74 Application of div 4.7

- (1) This division applies in relation to criminal proceedings.
- (2) This division does not apply in relation to proceedings for any of the following offences:
 - (a) an offence against the *Crimes Act 1900*, part 2 (Offences against the person) or part 3 (Sexual offences), if the offence is against a person who is under 16 years old;
 - (b) an offence against any of the following provisions of the *Children and Young People Act 1999*:
 - section 374 (Dangerous employment)
 - section 375 (Regulation of employment of children and young people)
 - section 376 (Duty of employers of children and young people);

- (c) a *domestic violence offence* within the meaning of the *Protection Orders Act 2001*, section 9 (2), or an offence against that Act, section 34 (Offence for contravention of protection order).

75 Family objections to giving evidence

A person who, when required to give evidence, is the domestic partner, parent or child of a defendant may make an objection (a *family objection*) to being required, as a witness for the prosecution—

- (a) to give evidence; or
- (b) to give evidence of a communication between the person and the defendant.

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

76 Time to make family objection

A person may only make a family objection before giving evidence or, if the person has begun to give evidence, as soon as practicable after becoming aware of the right to object.

77 Person to be made aware of right to make family objection

If it appears to the court that a person may have a right to make a family objection, the court must satisfy itself that the person is aware of the effect of this division as it may apply to the person.

78 Family objections to be heard in absence of jury

If there is a jury, the court must hear and decide a family objection in the absence of the jury.

79 Matters court may consider in deciding family objection

- (1) A court must not require a person who makes a family objection to give the evidence if the court finds that—
 - (a) there is a likelihood that harm would or might be caused (directly or indirectly) to the person, or to the relationship between the person and the defendant, if the person gives the evidence; and
 - (b) the nature and extent of that harm outweighs the desirability of having the evidence given.
- (2) In making a decision under subsection (1), the court must take into account matters including the following:
 - (a) the nature and seriousness of the offence for which the defendant is being prosecuted;
 - (b) the substance and importance of any evidence that the person might give and the weight likely to be attached to it;
 - (c) whether any other evidence about the matters to which the evidence of the person would relate is reasonably available to the prosecution;
 - (d) the nature of the relationship between the defendant and the person;
 - (e) whether, in giving the evidence, the person would have to disclose something that was received by the person in confidence from the defendant.

80 Prosecution not to comment about family objections

If the court has made a decision on a family objection by a person, the prosecution must not comment on any of the following:

- (a) the objection;

- (b) the decision on the objection;
- (c) the failure of the person to give evidence.

81 Comments by judge and parties about failure to give evidence by family members

- (1) This section applies to a proceeding for an indictable offence in which a defendant's family member fails to give evidence.
- (2) The judge or a party (other than the prosecution) may comment on the failure to give evidence.
- (3) However, unless the comment is made by another defendant in the proceeding, the comment must not suggest that the family member failed to give evidence because—
 - (a) the defendant was guilty of the offence; or
 - (b) the family member believed the defendant to be guilty of the offence.
- (4) If 2 or more defendants are being tried together for the offence, and any defendant comments on the failure of any other defendant's family member to give evidence, the judge may do either or both of the following:
 - (a) comment on the failure to give evidence;
 - (b) comment on the defendant's comment.
- (5) In this section:

family member, of a defendant, means the defendant's domestic partner, parent or child at the time of the failure to give evidence.

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

[2.12] Sections 74 and 75

renumber as sections 82 and 83

[2.13] Dictionary, new definitions of *family objection*

insert

family objection, for division 4.7 (Family objections)—see section 75.

Part 2.6 Magistrates Court Act 1930

[2.14] Section 58

omit

Part 2.7 Public Baths and Public Bathing Act 1956

[2.15] Sections 18 and 30

omit

Endnotes

- 1 Presentation speech**
Presentation speech made in the Legislative Assembly on 20 November 2003.
 - 2 Notification**
Notified under the Legislation Act on 18 February 2004.
 - 3 Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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I certify that the above is a true copy of the Sexuality Discrimination Legislation Amendment Bill 2004, which originated in the Assembly as the Sexuality Discrimination Legislation Amendment Bill 2003 and was passed by the Legislative Assembly on 11 February 2004 a.m.

Clerk of the Legislative Assembly

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