



Australian Capital Territory

# Civil Unions Act 2006

A2006-22

## Contents

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	Page
Preamble	2
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 3
2	Commencement 3
3	Dictionary 3
4	Notes 4
<b>Part 2</b>	<b>Civil unions</b>
<b>Division 2.1</b>	<b>General</b>
5	Civil unions—general 5
<b>Division 2.2</b>	<b>Eligibility for entering into civil union</b>
6	Person not to be under 16 5
7	Person not to be married or in civil union 5
8	Parties not to be in prohibited relationship 5

---

J2005-6

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	Page
<b>Division 2.3      Entering into civil union</b>	
9      Notice of intention to enter into civil union	6
10     Authorisation and consents required for 16 or 17-year olds	7
11     How civil union is entered into	8
<b>Division 2.4      Termination of civil union</b>	
12     How civil union is terminated	9
13     Termination by parties	9
14     Termination by court order	11
<b>Part 3              Civil union celebrants</b>	
15     Registration of civil union celebrants	12
16     Register of civil union celebrants	13
17     Cancellation of registration	14
18     Review of decisions	14
19     Notice of reviewable decisions	14
<b>Part 4              Miscellaneous</b>	
20     Void civil unions	15
21     Noncompliance with certain requirements	15
22     Evidence of identity and age	15
23     Personal service of termination notices and withdrawal notices	16
24     Civil unions under corresponding laws etc	17
25     Offences	18
26     Determination of fees	19
27     Approved forms	20
28     Regulation-making power	20
29     Legislation amended—sch 1	20
<b>Schedule 1      Consequential amendments</b>	21
<b>Part 1.1          Administration and Probate Act 1929</b>	21
<b>Part 1.2          Adoption Act 1993</b>	23
<b>Part 1.3          Adoption Regulation 1993</b>	23

---

		Page
<b>Part 1.4</b>	<b>Births, Deaths and Marriages Registration Act 1997</b>	24
<b>Part 1.5</b>	<b>Births, Deaths and Marriages Registration Regulation 1998</b>	26
<b>Part 1.6</b>	<b>Civil Law (Wrongs) Act 2002</b>	27
<b>Part 1.7</b>	<b>Crimes Act 1900</b>	27
<b>Part 1.8</b>	<b>Crimes (Restorative Justice) Act 2004</b>	28
<b>Part 1.9</b>	<b>Discrimination Act 1991</b>	28
<b>Part 1.10</b>	<b>Domestic Relationships Act 1994</b>	29
<b>Part 1.11</b>	<b>Domestic Violence and Protection Orders Act 2001</b>	32
<b>Part 1.12</b>	<b>Duties Act 1999</b>	33
<b>Part 1.13</b>	<b>Evidence Act 1971</b>	36
<b>Part 1.14</b>	<b>Family Provision Act 1969</b>	36
<b>Part 1.15</b>	<b>First Home Owner Grant Act 2000</b>	38
<b>Part 1.16</b>	<b>Guardianship and Management of Property Act 1991</b>	38
<b>Part 1.17</b>	<b>Instruments Act 1933</b>	38
<b>Part 1.18</b>	<b>Land (Planning and Environment) Act 1991</b>	39
<b>Part 1.19</b>	<b>Land Titles Act 1925</b>	39
<b>Part 1.20</b>	<b>Legal Aid Act 1977</b>	39
<b>Part 1.21</b>	<b>Legislation Act 2001</b>	40
<b>Part 1.22</b>	<b>Married Persons Property Act 1986</b>	40
<b>Part 1.23</b>	<b>Parentage Act 2004</b>	45
<b>Part 1.24</b>	<b>Perpetuities and Accumulations Act 1985</b>	47
<b>Part 1.25</b>	<b>Powers of Attorney Act 1956</b>	47
<b>Part 1.26</b>	<b>Rates Act 2004</b>	47
<b>Part 1.27</b>	<b>Sale of Motor Vehicles Act 1977</b>	49
<b>Part 1.28</b>	<b>Testamentary Guardianship Act 1984</b>	49
<b>Part 1.29</b>	<b>Wills Act 1968</b>	51

Contents

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<b>Part 1.30</b>	<b>Witness Protection Act 1996</b>	Page 56
<b>Dictionary</b>		57



Australian Capital Territory

# Civil Unions Act 2006

**A2006-22**

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An Act to provide for civil unions, and for other purposes

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J2005-6

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## **Preamble**

- 1 The ACT is the first jurisdiction in Australia to enshrine human rights in legislation.
- 2 The *Human Rights Act 2004*, section 8 sets out ‘non-discrimination’ rights derived from the International Covenant on Civil and Political Rights.
- 3 The ACT government is systematically rationalising territory law to remove institutionalised discrimination and protect other human rights (for example, privacy and the protection of the family and children).
- 4 This Act continues the process of rationalisation by allowing 2 people who choose not to be married, or would not be entitled to be married, to enter into a legally recognised relationship that is to be treated under territory law in the same way as marriage.

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Civil Unions Act 2006*.

### 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 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*prohibited relationship*—see section 8.' means that the term '*prohibited relationship*' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

**4 Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.



## **Part 2**                      **Civil unions**

### **Division 2.1**              **General**

#### **5**                      **Civil unions—general**

- (1) A civil union is a legally recognised relationship that, subject to this Act, may be entered into by any 2 people, regardless of their sex.
- (2) A civil union is different to a marriage but is to be treated for all purposes under territory law in the same way as a marriage.

*Note 1*    **Marriage** is defined in the *Marriage Act 1961* (Cwlth) to mean the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

*Note 2*    **Territory law** includes the common law (see Legislation Act, dict pt 1, def *law*).

### **Division 2.2**              **Eligibility for entering into civil union**

#### **6**                      **Person not to be under 16**

A person may not enter into a civil union if the person is younger than 16 years old.

#### **7**                      **Person not to be married or in civil union**

A person may not enter into a civil union if the person is married or in a civil union.

#### **8**                      **Parties not to be in prohibited relationship**

A person may not enter into a civil union with someone who has any of the following relationships (a *prohibited relationship*) with the person:

- (a) lineal ancestor;

- (b) lineal descendent;
- (c) sister;
- (d) half-sister;
- (e) brother;
- (f) half-brother.

## **Division 2.3 Entering into civil union**

### **9 Notice of intention to enter into civil union**

- (1) Before 2 people enter into a civil union, they must give notice to a civil union celebrant of their intention to enter into a civil union.

*Note 1* If a form is approved under s 27 for a notice, the form must be used.

*Note 2* The notice must be given not earlier than 18 months and not later than 1 month before the civil union is entered into (see s 11 (2)).

- (2) The notice must be accompanied by—
- (a) a statutory declaration made by each person stating that—
    - (i) the person wishes to enter into a civil union with the other person; and
    - (ii) the person is not married or in a civil union; and
    - (iii) the person believes the person and the person's proposed civil union partner do not have a prohibited relationship; and
  - (b) the evidence required by section 22 of each person's identity and age; and
  - (c) if either or both of them are 16 or 17 years old, a copy of—
    - (i) the authorisation (or each authorisation) required under section 10 (1) (a); and

- (ii) each consent required under section 10 (1) (b) or, for any consent not given, the waiver given under section 10 (4); and
  - (d) anything else prescribed by regulation.
- (3) As soon as practicable after receiving the notice and statutory declarations, the civil union celebrant must give each person a written notice setting out the nature and effect of a civil union.

*Note* If a form is approved under s 27 for a notice, the form must be used.

## **10 Authorisation and consents required for 16 or 17-year olds**

- (1) A person who is 16 or 17 years old may enter into a civil union only if—
  - (a) the Childrens Court, by order, gives an authorisation for the person to enter into the civil union; and
  - (b) each person with responsibility to make long-term decisions for the person (for example, a parent or guardian) gives written consent to the person entering into the civil union, or the requirement for the consent is waived under subsection (5).

*Note 1* If a form is approved under s 27 for a consent, the form must be used.

*Note 2* 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).

- (2) In deciding whether to give an authorisation under subsection (1) (a) in relation to a person, the Childrens Court must regard the best interests of the person as the paramount consideration.
- (3) Each consent required under subsection (1) (b) must—
  - (a) be witnessed by someone before whom a statutory declaration may be made; and

- (b) state that the witness is satisfied on reasonable grounds about the identity of the person giving the consent.
- (4) If a consent required under subsection (1) (b) is not given, the Childrens Court may, by order, waive the requirement for the consent.
- (5) However, the court may act under subsection (4) only if the court considers that exceptional circumstances exist to justify the waiver.
- (6) The authorisation and consents or waivers required under this section must be given not earlier than 3 months before the day the notice of intention to enter into the civil union is given.

## **11 How civil union is entered into**

- (1) Two people who have given notice to a civil union celebrant in accordance with section 9 of their intention to enter into a civil union with each other may enter into the civil union by making a declaration before the civil union celebrant and at least 1 other witness.
- (2) The declaration must be made not earlier than 1 month, and not later than 18 months, after the day the notice was given to the civil union celebrant.
- (3) The declaration must be made by each person to the other and must contain a clear statement that—
  - (a) names both parties; and
  - (b) acknowledges that they are freely entering into a civil union with each other.

*Note 1* For registration requirements see the *Births, Deaths and Marriages Registration Act 1997*, pt 5A (Registration of civil unions).

*Note 2* The *Discrimination Act 1991*, provides for exceptions from pt 3 (Unlawful discrimination) for religious bodies doing (or failing or refusing to do) certain acts (see that Act, s 4A and s 32).

## **Division 2.4            Termination of civil union**

### **12            How civil union is terminated**

- (1) A civil union is terminated on—
  - (a) the death of either party; or
  - (b) the marriage of either party.
- (2) A civil union may also be terminated by—
  - (a) a party (or both parties) under section 13; or
  - (b) a court order under section 14.

### **13            Termination by parties**

- (1) If a party (or both parties) to a civil union wish to terminate the civil union, the party (or parties) may give the registrar-general a written notice of intention to terminate the civil union (the ***termination notice***).

*Note 1*    If a form is approved under s 27 for a notice, the form must be used.

*Note 2*    A fee may be determined under s 26 for this provision.

- (2) However, if the termination notice is given by only 1 party, the notice is effective only if—
  - (a) a copy of the termination notice has been served personally on the other party; and
  - (b) a statutory declaration is given to the registrar-general with the termination notice that—
    - (i) is made by the person who served the termination notice; and

- (ii) states that the termination notice was served personally by the person on the other party on the date stated in the statutory declaration.

*Note* For provision about service of notices, see s 23.

- (3) The termination notice may be withdrawn by written notice (the ***withdrawal notice***) given to the registrar-general by the party (or parties) who gave the notice, before the end of 12 months after the day the termination notice was given to the registrar-general.

*Note 1* If a form is approved under s 27 for a notice, the form must be used.

*Note 2* A fee may be determined under s 26 for this provision.

- (4) However, if the withdrawal notice is given by only 1 party, the notice is effective to withdraw the termination notice only if—
  - (a) a copy of the withdrawal notice has been served personally on the other party; and
  - (b) a statutory declaration is given to the registrar-general with the withdrawal notice that—
    - (i) is made by the person who served the withdrawal notice; and
    - (ii) states that the withdrawal notice was served personally by the person on the other party on the date stated in the statutory declaration.

*Note* For provision about service of notices, see s 23.

- (5) At the end of 12 months after the day the termination notice is given to the registrar-general in accordance with this section, the civil union is terminated unless—
  - (a) the termination notice has been withdrawn under this section; or
  - (b) the Supreme Court makes an order that the termination notice is not effective to terminate the civil union; or

- (c) the civil union has already terminated under section 12 (1).
- (6) On application by a party to the civil union, the Supreme Court may make an order mentioned in subsection (5) (b) if the court considers that it is not the intention, or is no longer the intention, of the party or parties who gave the termination notice to terminate the civil union.
- (7) If the Supreme Court makes an order mentioned in subsection (5) (b), the court must give a copy of the order to the registrar-general.

#### **14 Termination by court order**

- (1) On application by a party to a civil union, the Supreme Court may make an order terminating the civil union if the court considers that—
  - (a) the civil union cannot be terminated under section 13; but
  - (b) it is not the intention, or is no longer the intention, of both parties to be in the civil union.
- (2) If the Supreme Court makes an order under subsection (1), the court must give a copy of the order to the registrar-general no later than 28 days after the day the order is made.

## Part 3 Civil union celebrants

### 15 Registration of civil union celebrants

- (1) A person may apply, in writing, to the registrar-general to be registered as a civil union celebrant.

*Note 1* If a form is approved under s 27 for this provision, the form must be used.

*Note 2* A fee may be determined under s 26 for this provision.

- (2) On application by a person under subsection (1), the registrar-general may register the applicant if satisfied that the applicant—
- (a) is an individual aged 18 years or older; and
  - (b) has the knowledge and the skills or experience necessary to exercise the functions of a civil union celebrant under this Act; and
  - (c) is a suitable person to be registered as a civil union celebrant.
- (3) If the registrar-general is not satisfied under subsection (2), the registrar-general must refuse to register the applicant.
- (4) In deciding whether a person is a ***suitable person*** to be registered as a civil union celebrant, the registrar-general must have regard to the following:
- (a) whether the person has been convicted, or found guilty, in Australia of an offence punishable by imprisonment for 1 year or longer;
  - (b) whether the person has been convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would have been punishable by imprisonment for 1 year or longer;



- (c) whether the person has been convicted, or found guilty, of an offence against, or otherwise contravened, this Act or the *Births, Deaths and Marriages Act 1997*, part 5A (Registration of civil unions);
  - (d) whether the person is or has been an undischarged bankrupt or has executed a personal insolvency agreement;
  - (e) whether the person has a physical or mental incapacity that may affect the exercise of the person's functions as a civil union celebrant.
- (5) In deciding whether a person is a *suitable person* to be a civil union celebrant, the registrar-general may have regard to anything else the registrar-general considers relevant.

## **16 Register of civil union celebrants**

- (1) The registrar-general must keep a register of people registered as civil union celebrants under this Act.
- (2) The register may be kept in any form, including electronically, that the registrar-general decides.
- (3) The register must include the following information for each person registered as a civil union celebrant:
  - (a) the person's full name;
  - (b) the person's address and contact details;
  - (c) the date the person was registered;
  - (d) if the person's registration is cancelled or the person otherwise ceases to be registered—the date the registration ceases.
- (4) The register may also include any other information the registrar-general considers appropriate.
- (5) The register must be available for public inspection at reasonable times.

- (6) However, a person's address and contact details and any other information included in the register about the person under subsection (4) must only be available for public inspection if the person consents.

**17 Cancellation of registration**

The registrar-general may cancel a person's registration as a civil union celebrant if the registrar-general considers that the person does not satisfy, or no longer satisfies, the criteria for registration under section 15 (2).

**18 Review of decisions**

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

- (a) to refuse to register a person as a civil union celebrant under section 15; or
- (b) to cancel a person's registration as a civil union celebrant under section 17.

**19 Notice of reviewable decisions**

- (1) If the registrar-general makes a decision mentioned in section 18, the registrar-general must give a written notice of the decision to 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).

## Part 4                      Miscellaneous

### 20                      Void civil unions

A civil union is void if—

- (a) either party may not enter into the civil union under division 2.2 (Eligibility for entering into civil union); or
- (b) either party did not freely enter into the civil union because—
  - (i) the party's agreement to enter into the civil union was obtained by duress or fraud; or
  - (ii) the party was mistaken about the identity of the other party or the nature of the declaration under section 11; or
  - (iii) the party was mentally incapable of understanding the nature and effect of the civil union.

### 21                      Noncompliance with certain requirements

- (1) A civil union is not invalid only because a requirement of section 9 or section 10 was not complied with.
- (2) A civil union is not invalid only because the person to whom the parties gave notice under section 9, or before whom the parties made the declaration under section 11, was not a civil union celebrant if either party believed, when giving the notice or making the declaration, that the person was a civil union celebrant.

### 22                      Evidence of identity and age

- (1) For section 9 (2) (b), the evidence of identity and age required for each person is—
  - (a) the person's birth certificate; or
  - (b) the person's citizenship certificate; or

- (c) the person's current passport; or
- (d) a statutory declaration made by the person stating—
  - (i) that it is impracticable to obtain a document mentioned in paragraph (a), (b) or (c); and
  - (ii) to the best of the person's knowledge and belief, and as accurately as the person has been able to find out, when and where the person was born.

(2) In this section:

*birth certificate*, for a person, means the person's birth certificate, or a certified extract about the person's birth from the register, under the *Births, Deaths and Marriages Registration Act 1997* or a corresponding law of a State, external territory or foreign country.

*citizenship certificate*, for a person, means the person's citizenship certificate issued under the *Australian Citizenship Act 1948* (Cwlth), section 46 (Issue and proof of certificates of Australian citizenship) or a certified copy of the entry in the register about the person under that Act, section 44 (Evidence of entries in register).

## **23                      Personal service of termination notices and withdrawal notices**

- (1) This section applies to a termination notice or withdrawal notice required to be served personally on a party to a civil union under section 13 (Termination by parties).
- (2) To serve the notice personally on the party, the person serving the notice must—
  - (a) give the party a copy of the notice; or
  - (b) if the party does not accept the copy—put the copy down in the party's presence and tell the party in general terms what it is; or

- (c) if the person serving the document is prevented from approaching the party by violence or threat of violence—put the copy down as near as practicable to, but in the sight of, the party.
- (3) However, a person may apply to the Supreme Court for an order allowing the notice to be served in another way (the *alternative way*).
- (4) The Supreme Court may make the order if satisfied that—
  - (a) it is impracticable, for any reason, for the notice to be served personally as mentioned in subsection (2); and
  - (b) the alternative way is reasonably likely to bring the notice to the attention of the party.
- (5) If the Supreme Court makes the order, the court may, in the order, provide that the notice is taken to have been served on the happening of a stated event, at a stated time or at the end of a stated period.
- (6) The Supreme Court may make an order under subsection (4) even though the party is not in the ACT or Australia.
- (7) For section 13, if a notice is served on a party in accordance with an order under subsection (4), the notice is taken to have been served personally on the party.

## **24 Civil unions under corresponding laws etc**

- (1) A union entered into by any 2 people under the law of a foreign country and that cannot be recognised as a marriage in Australia because of the *Marriage Act 1961* (Cwlth), section 88EA is a civil union for the purpose of territory law.

*Note* The *Marriage Act 1961*, s 88EA provides as follows:

A union solemnised in a foreign country between:

- (a) a man and another man; or
- (b) a woman and another woman;

must not be recognised as a marriage in Australia.

(2) A regulation may provide that a relationship under a corresponding law is a civil union for the purpose of territory law.

(3) In this section:

*corresponding law* means a law of a State, another Territory or a foreign country prescribed by regulation for this definition (whether or not the law corresponds, or substantially corresponds, to this Act).

## 25            Offences

(1) A civil union celebrant commits an offence if—

- (a) the celebrant allows a civil union, or purported civil union, to be entered into before the celebrant; and
- (b) the notice required under section 9 (including the statutory declaration and anything else required under that section) for the civil union—
  - (i) has not been given to the celebrant; or
  - (ii) was not given to the celebrant within the period allowed by section 11 (2).

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

(2) A civil union celebrant commits an offence if—

- (a) the celebrant allows a civil union, or purported civil union, to be entered into before the celebrant; and

- (b) the celebrant has reasonable grounds to believe that the civil union would be void under section 20.

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

- (3) A person commits an offence if—
- (a) the person makes a declaration mentioned in section 11 with the intention of entering into a civil union with someone else (the person's *partner*); and
  - (b) the declaration is made before a person (the *celebrant*) who is not a civil union celebrant; and
  - (c) the person knows the celebrant is not a civil union celebrant; and
  - (d) the person has reasonable grounds to believe that their partner believes that the celebrant is a civil union celebrant.

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

*Note* The Criminal Code includes offences for—

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

## 26 Determination of fees

- (1) The Minister may determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**27            Approved forms**

- (1) The registrar-general may approve forms for this Act.
- (2) If the registrar-general approves a form for a particular purpose, the approved form must be used for that purpose.

*Note*        For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note*        A notifiable instrument must be notified under the Legislation Act.

**28            Regulation-making power**

The Executive may make regulations for this Act.

*Note*        A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**29            Legislation amended—sch 1**

This Act amends the legislation mentioned in schedule 1.



## **Schedule 1      Consequential amendments**

(see s 29)

### **Part 1.1                      Administration and Probate Act 1929**

**[1.1]      Section 44 (1), definition of *eligible partner***

*after*

spouse

*insert*

or civil union partner

**[1.2]      Section 44 (1), definition of *partner*, paragraph (a)**

*after*

spouse

*insert*

or civil union partner

**[1.3]      Section 45A (1)**

*after*

spouse

*insert*

or civil union partner

**[1.4] Section 46 (1)**

*after*

married

*insert*

or in a civil union

**[1.5] Section 46 (1)**

*after*

marrying

*insert*

or entering into a civil union

**[1.6] Section 46 (2) and (3)**

*after*

married

*insert*

or entered into a civil union

**[1.7] Section 49BA (4) (c) (i)**

*after*

spouse

*insert*

or civil union partner

## **Part 1.2                      Adoption Act 1993**

### **[1.8]            Section 13 heading**

*substitute*

### **13              Child married or in civil union**

#### **[1.9]            Section 13**

*after*

married

*insert*

or in a civil union

#### **[1.10]          Section 18 (1) (b)**

*omit*

, whether married or not,

*substitute*

, whether or not married or in a civil union,

#### **[1.11]          Section 18 (4) (a)**

*substitute*

- (a) married or in a civil union and not living separately and apart from his or her spouse or civil union partner; or

## **Part 1.3                      Adoption Regulation 1993**

### **[1.12]          Section 11 (b) (viii) and (ix)**

*substitute*

- (viii) if married or in a civil union—date and place of marriage or civil union;
- (ix) if not married or in a civil union—whether in another domestic partnership or single;

## Part 1.4 Births, Deaths and Marriages Registration Act 1997

### [1.13] Long title

*after*

marriages

*insert*

, civil unions

### [1.14] Section 4, definition of *adult*, paragraph (b)

*after*

married

*insert*

or in a civil union

### [1.15] Section 16 (3) (b)

*after*

marriage

*insert*

or civil union

### [1.16] Section 24 (1) (d)

*omit*

**[1.17] New part 5A**

*insert*

**Part 5A Registration of civil unions**

**32A When registration of civil union is required**

If a civil union is entered into under the *Civil Unions Act 2006*, section 11, the civil union must be registered under this Act.

**32B How civil unions are registered**

- (1) If a civil union is entered into before the registrar-general, the registrar-general must register the civil union by including in the register the particulars of the civil union prescribed by regulation.
- (2) If a civil union is entered into before another civil union celebrant, the celebrant must give the following to the registrar-general not later than 2 weeks after the day the civil union is entered into:
  - (a) written notice of the civil union;
  - (b) the notice given to the celebrant under the *Civil Unions Act 2006*, section 9 (Notice of intention to enter into civil union) for the civil union.

Maximum penalty: 5 penalty units.

*Note* If a form is approved under s 69 for this provision, the form must be used.

- (3) If a notice is given to the registrar-general under subsection (2), the registrar-general must register the civil union by including in the register the particulars of the civil union prescribed by regulation.
- (4) An offence against this section is a strict liability offence.

**32C Termination of civil union**

- (1) This section applies if a civil union is terminated—

- (a) by notice given under the *Civil Unions Act 2006*, section 13 (Termination by parties); or
  - (b) by court order made under that Act, section 14 (Termination by court order).
- (2) The registrar-general must include in the register the particulars of the termination prescribed by regulation.
  - (3) Also, for a civil union terminated as mentioned in subsection (1) (a), the registrar-general must give each party to the civil union written notice that the civil union terminated on the date stated in the notice.
  - (4) For subsection (3), it is sufficient if the registrar-general sends the notice to the address for each party that is last known to the registrar.

**[1.18] Dictionary, note 2, new dot point**

*insert*

- civil union

**[1.19] Dictionary, definition of *registrable event***

*after*

marriage,

*insert*

civil union,

## **Part 1.5 Births, Deaths and Marriages Registration Regulation 1998**

**[1.20] Section 5 (k)**

*substitute*

- (k) if the parents of the child are married or in a civil union—the date and place of the marriage or civil union;

---

**[1.21] Section 6 (1) (e)**

*omit*

**[1.22] Section 7 (b)**

*substitute*

- (b) a spouse or civil union partner, or former spouse or civil union partner, of the transsexual person;

**[1.23] Section 9 (g) (i)**

*substitute*

- (i) if the deceased had been married or in a civil union—the date and place of each marriage and civil union; and

## **Part 1.6 Civil Law (Wrongs) Act 2002**

**[1.24] Section 23, definition of *member*, paragraph (g)**

*after*

spouse

*insert*

or civil union partner

## **Part 1.7 Crimes Act 1900**

**[1.25] Section 395 (2) (a)**

*after*

marriage

*insert*

, civil union

**[1.26] Dictionary, note 2, new dot point**

*insert*

- civil union

**[1.27] Dictionary, definition of *relative***

*omit*

## **Part 1.8 Crimes (Restorative Justice) Act 2004**

**[1.28] Section 44 (1) (d)**

*omit*

domestic relationship

*substitute*

personal relationship

**[1.29] Section 44 (4), definition of *domestic relationship***

*substitute*

*personal relationship*—see the *Relationships Act 1994*, section 3.

## **Part 1.9 Discrimination Act 1991**

**[1.30] Dictionary, note 2, new dot point**

*insert*

- civil union

**[1.31] Dictionary, new definition of *affinity***

*insert*



*affinity* means affinity derived through marriage, civil union or any other domestic partnership.

**[1.32] Dictionary, definition of *relationship status*, new paragraphs (ca) and (cb)**

*insert*

(ca) in a civil union; or

(cb) in a civil union but living separately and apart from one's civil union partner; or

**[1.33] Dictionary, definition of *relationship status*, paragraph (f)**

*after*

spouse

*insert*

or civil union partner

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

*omit*

marriage,

## **Part 1.10 Domestic Relationships Act 1994**

**[1.35] Long title**

*substitute*

An Act to make provision in relation to certain personal relationships

**[1.36] Section 1**

*substitute*

**1 Name of Act**

This Act is the *Relationships Act 1994*.

**[1.37] Section 3 (1), definitions of *domestic relationship* and *domestic relationship agreement***

*omit*

**[1.38] Section 3 (1), new definitions of *personal relationship* and *personal relationship agreement***

*insert*

***personal relationship*** means a relationship between 2 people who are at least 16 years old 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 other than a marriage.

*Note* For the meaning of ***domestic partnership***, see the Legislation Act, s 169. It includes a civil union.

***personal relationship agreement*** means—

- (a) an agreement between 2 people that—
  - (i) is made in contemplation of their entering into a personal relationship or while they are in a personal relationship; and
  - (ii) makes provision in relation to financial matters; or
- (b) an agreement that varies an agreement mentioned in paragraph (a);

regardless of when it is made, whether there are other parties to it or whether it makes provision in relation to non-financial matters.

**[1.39] Section 3 (2) (a) and (b)**

*omit*

personal

**[1.40] Section 12 (1)**

*substitute*

- (1) A court must not make an order under this part in relation to a personal relationship (other than a civil union) unless satisfied that the personal relationship has existed between the applicant and respondent for not less than 2 years.

**[1.41] Section 12 (2)**

*omit*

If

*substitute*

However, if

**[1.42] Further amendments, references to *domestic relationship***

*omit*

domestic relationship

*substitute*

personal relationship

*in*

- section 3 (1), definition of *financial matters*
- section 3 (1), definition of *financial resources*
- section 3 (1), definition of *property*
- section 3 (1), definition of *termination agreement*
- section 3 (2), (3), (4) and (5)
- section 4
- section 5
- section 6 (1) (a)
- section 11 (1) (a)

- section 13 (1)
- section 14
- section 15 (1)
- section 16
- section 18
- section 19 (1)
- section 20
- section 21
- section 22 (3) (b)
- section 24 (2)
- part 4 heading
- section 31
- section 33 (1) (a) and (2)
- section 38
- section 40 (1) and (3)

## **Part 1.11 Domestic Violence and Protection Orders Act 2001**

### **[1.43] Section 10A (b)**

*after*

spouse

*insert*

or civil union partner

### **[1.44] Section 10A (b)**

*omit*

legally married to

*substitute*

married to or in a civil union with

**[1.45] Section 10A (b), note**

*substitute*

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

For ACT law, a person acquires relatives through civil union in the same way as they acquire them through marriage (see the *Civil Unions Act 2006*).

## **Part 1.12 Duties Act 1999**

**[1.46] Section 72 (1), note**

*substitute*

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

**[1.47] Section 74B (1), note**

*substitute*

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

**[1.48] Section 74B (5)**

*substitute*

(5) For subsection (3) (c), in deciding whether a transfer under a personal relationship agreement is consequent on the end of a relationship, the commissioner must have regard to any statutory declaration made by a party to the relationship to the effect that—

(a) the relationship has ended; or

- (b) if the relationship is a civil union—the party has given, or intends to give, a termination notice to the registrar-general under the *Civil Unions Act 2006*, section 13.

**[1.49] Section 115H (1), note**

*substitute*

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

**[1.50] Section 115H (5)**

*substitute*

- (5) For subsection (3) (c), in deciding whether a transaction under a personal relationship agreement is consequent on the end of a relationship, the commissioner must have regard to any statutory declaration made by a party to the relationship to the effect that—
- (a) the relationship has ended; or
- (b) if the relationship is a civil union—the party has given, or intends to give, a termination notice to the registrar-general under the *Civil Unions Act 2006*, section 13.

**[1.51] Section 213 (1), note**

*substitute*

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

**[1.52] Section 213 (5)**

*substitute*

- (5) For subsection (3) (c), in deciding whether a transfer under a personal relationship agreement is consequent on the end of a

relationship, the commissioner must have regard to any statutory declaration made by a party to the relationship to the effect that—

- (a) the relationship has ended; or
- (b) if the relationship is a civil union—the party has given, or intends to give, a termination notice to the registrar-general under the *Civil Unions Act 2006*, section 13.

**[1.53] Dictionary, note 2, new dot point**

*insert*

- civil union

**[1.54] Dictionary, note 2**

*omit*

- domestic relationship (see s 169 (2))

**[1.55] Dictionary, definition of *domestic relationship***

*omit*

**[1.56] Dictionary, new definition of *personal relationship***

*insert*

*personal relationship*—see the *Relationships Act 1994*, section 3.

**[1.57] Further amendments, references to *domestic relationship***

*omit*

domestic relationship

*substitute*

personal relationship

*in*

- section 17 (7)
- section 74A (b)
- section 74B (3)

**Schedule 1** Consequential amendments  
**Part 1.13** Evidence Act 1971

Amendment [1.58]

---

- section 115H (3)
- section 213 (3)
- section 252 (1) (e), (i) and (x)
- dictionary, definition of *partner*, paragraph (b)
- dictionary, definition of *relationship property*

**[1.58] Further amendments, references to *Domestic Relationships Act 1994***

*omit*

*Domestic Relationships Act 1994*

*substitute*

*Relationships Act 1994*

*in*

- section 17 (7)
- section 74A (b)
- section 74B (3)
- section 115H (3)
- section 213 (3)

**Part 1.13 Evidence Act 1971**

**[1.59] Section 13**

*omit*

**Part 1.14 Family Provision Act 1969**

**[1.60] Section 7 (1) (b)**

*omit*

domestic relationship



*substitute*

personal relationship

**[1.61] Section 7 (9), definition of *domestic relationship***

*omit*

**[1.62] Section 7 (9), definition of *partner*, paragraph (b) (i)**

*after*

spouse

*insert*

or civil union partner

**[1.63] Section 7 (9), new definition of *personal relationship***

*insert*

*personal relationship*—see the *Relationships Act 1994*, section 3.

**[1.64] Section 8 (3) (i)**

*omit*

*Domestic Relationships Act 1994*

*substitute*

*Relationships Act 1994*

## Part 1.15 First Home Owner Grant Act 2000

### [1.65] Section 6 (2)

*omit*

the person to whom an applicant is legally married

*substitute*

if the applicant is married or in a civil union, the applicant's spouse or civil union partner

### [1.66] Dictionary, note 2, new dot point

*insert*

- civil union

## Part 1.16 Guardianship and Management of Property Act 1991

### [1.67] Section 7B (d)

*after*

marriage

*insert*

or civil union

## Part 1.17 Instruments Act 1933

### [1.68] Section 8, definition of *bill of sale*

*after*

marriage

*insert*

or civil union

## **Part 1.18 Land (Planning and Environment) Act 1991**

### **[1.69] Section 180 (1) (b) (iii)**

*substitute*

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

## **Part 1.19 Land Titles Act 1925**

### **[1.70] Section 6 (1), definition of *transmission***

*omit*

or marriage

*substitute*

, marriage or civil union

## **Part 1.20 Legal Aid Act 1977**

### **[1.71] Section 10 (1) (i)**

*omit*

marriage counsellors

*substitute*

relationship counsellors

## Part 1.21 Legislation Act 2001

### [1.72] Section 169 (1)

*after*

spouse

*insert*

or civil union partner

### [1.73] New section 169 (3)

*insert*

- (3) In an Act or statutory instrument, a reference to a *domestic partnership* includes a reference to a marriage and a civil union.

### [1.74] Dictionary, part 1, new definition of *civil union*

*insert*

*civil union* means a civil union under the *Civil Unions Act 2006*.

## Part 1.22 Married Persons Property Act 1986

### [1.75] Title

*omit*

married persons

*substitute*

people who are married or in a civil union

### [1.76] Section 9 heading

*substitute*

**9            Transfer of property to spouse, civil union partner or child**

**[1.77]    Section 9 (2) (a)**

*omit*

husband and his wife

*substitute*

person and the person's spouse or civil union partner

**[1.78]    Section 9 (2)**

*after*

spouse

*insert*

or civil union partner

**[1.79]    Section 10 heading**

*substitute*

**10           Purchase or transfer of property before marriage or civil union**

**[1.80]    Section 10 (1)**

*after*

marriage to

*insert*

or civil union with

**[1.81]    Section 10 (1) (a)**

*after*

marriage

*insert*

or civil union

**[1.82] Section 10 (1) (b)**

*omit*

marriage of the transferor to the transferee

*substitute*

marriage or civil union

**[1.83] Section 10 (2)**

*after*

marriage to

*insert*

or civil union with

**[1.84] Section 10 (2) (a)**

*after*

marriage

*insert*

or civil union

**[1.85] Section 10 (2) (b)**

*omit*

marriage of the transferor to the transferee

*insert*

marriage or civil union

**[1.86] Section 10 (3) (a)**

*after*

marriage to

*insert*

or civil union with

**[1.87] Section 10 (3) (c)**

*after*

marriage

*insert*

or civil union

**[1.88] Section 10 (3) (d)**

*omit*

marriage of those persons

*insert*

marriage or civil union

**[1.89] Section 11**

*omit*

married person

*substitute*

person who is married or in a civil union

**[1.90] Section 11**

*after*

spouse

*insert*

or civil union partner

**[1.91] Section 12 heading**

*substitute*

**12 Beneficiaries who are married or in civil union**

**[1.92] Section 12**

*omit*

husband and his wife

*substitute*

person and his or her spouse or civil union partner

**[1.93] Section 13**

*substitute*

**13 Applications to decide property disputes**

- (1) This section applies if any question arises between a person and his or her spouse or civil union partner in relation to the title to, or possession or disposition of, any property (including any question in relation to the investment by one of them of money of the other without the consent of the other).
- (2) The person, or a third party on whom conflicting claims are being or are expected to be made by the person and his or her spouse or civil union partner in relation to any property, may apply to the court to hear and decide the question.

**[1.94] Section 15 (5)**

*substitute*

- (5) If an application under section 13 relates to money of the spouse or civil union partner of a person that was invested by the person without the consent of the spouse or civil union partner, the court



may order that the amount of the money and any interest, dividend or other profit derived from the money be paid to the spouse or civil union partner.

## **Part 1.23                      Parentage Act 2004**

### **[1.95]      Section 7 heading**

*substitute*

### **7              Presumptions arising from marriage or civil union**

#### **[1.96]      Section 7 (1)**

*after*

married

*insert*

or in a civil union

#### **[1.97]      Section 7 (1)**

*omit*

husband

*substitute*

spouse or civil union partner

#### **[1.98]      Section 7 (2)**

*omit*

husband

*substitute*

spouse or civil union partner

**[1.99] Section 7 (3)**

*omit*

husband

*substitute*

spouse

**[1.100] Section 7 (4)**

*omit*

dissolution of her marriage

*substitute*

end of her marriage or civil union

**[1.101] Section 7 (4)**

*omit*

husband in that marriage

*substitute*

spouse or partner in that marriage or civil union

**[1.102] Section 38 (2)**

*after*

married to

*insert*

or in a civil union with

**[1.103] Section 38 (5), definition of *affinity***

*after*

marriage

*insert*

, civil union

## **Part 1.24 Perpetuities and Accumulations Act 1985**

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

*omit*

spouses, de facto spouses,

## **Part 1.25 Powers of Attorney Act 1956**

### **[1.105] Dictionary, note 2, new dot point**

*insert*

- civil union

### **[1.106] Dictionary, new definition of *affinity***

*insert*

***affinity*** means affinity derived through marriage, civil union or any other domestic partnership.

### **[1.107] Dictionary, definition of *relative*, paragraph (a)**

*omit*

blood, adoption or marriage

*substitute*

blood, affinity or adoption

## **Part 1.26 Rates Act 2004**

### **[1.108] Section 45, definition of *domestic relationship***

*omit*

**[1.109] Section 45, definition of *partner***

*substitute*

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

- (a) the person's spouse or civil union partner;
- (b) someone with whom the person has a personal relationship.

**[1.110] Section 45, definition of *pensioner*, note for par (d), (e) and (f)**

*after*

spouses

*insert*

or civil union partners

**[1.111] Section 45, definition of *pensioner*, note for par (d), (e) and (f)**

*omit*

*domestic relationships* within the meaning of the *Domestic Relationships Act 1994*, s 3 (1).

*substitute*

*personal relationships* within the meaning of the *Relationships Act 1994*, s 3.

**[1.112] Section 45, new definition of *personal relationship***

*insert*

*personal relationship*—see the *Relationships Act 1994*, section 3.

**[1.113] Dictionary, definition of *domestic relationship***

*omit*

**[1.114] Dictionary, new definition of *personal relationship***

*insert*

*personal relationship*, for part 7 (Deferral and rebates)—see section 45.

## **Part 1.27                      Sale of Motor Vehicles Act 1977**

### **[1.115]    Section 11A (2) (e)**

*omit*

or marriage

*substitute*

, marriage or civil union

### **[1.116]    Dictionary, note 2, new dot point**

*insert*

- civil union

## **Part 1.28                      Testamentary Guardianship Act 1984**

### **[1.117]    Section 2 (1), definition of *child***

*after*

married

*insert*

or in a civil union

### **[1.118]    Section 2 (1), definition of *exnuptial child***

*omit*

### **[1.119]    Section 2 (2) and (3)**

*substitute*

- (2) In this Act, a reference to a *parent* of a child does not include a reference to a parent whose guardianship of the child has been abrogated by—
- (a) a judgment, decree or other order of a federal court or a court of a State or Territory that is in force; or
  - (b) a judgment, decree or other order of a court in a foreign country that—
    - (i) is in force; and
    - (ii) would be recognised by a territory court in accordance with the common law rules of private international law.
- (3) In this Act, a reference to a *guardian* of a child (other than a reference to a testamentary guardian) is a reference to a guardian of the child appointed—
- (a) in accordance with this Act or a law of a State or another Territory; or
  - (b) by a judgment, decree or other order of a federal court or a court of a State or Territory; or
  - (c) in accordance with a law of a foreign country or part of a foreign country or by a judgment, decree or other order of a court in a foreign country, if the appointment would be recognised by a territory court in accordance with the common law rules of private international law;

but does not include a reference to the C&YP chief executive or to a Minister of the Commonwealth or a State or Territory who, under a law of the Commonwealth, State or Territory in his or her capacity as Minister is the guardian of the child.

## **Part 1.29                      Wills Act 1968**

### **[1.120]    Section 8 (2)**

*after*

married

*insert*

or in a civil union

### **[1.121]    Section 8 (3)**

*after*

marry

*insert*

or enter into a civil union

### **[1.122]    Section 8 (3)**

*after*

a marriage

*insert*

or civil union

### **[1.123]    Section 8 (3)**

*omit*

solemnisation of the marriage contemplated

*substitute*

solemnisation of the marriage or entry into the civil union

**[1.124] Section 8 (6)**

*after*

married

*insert*

or in a civil union

**[1.125] Section 8B (1)**

*after*

married

*insert*

or in a civil union

**[1.126] Section 15**

*after*

spouse

*insert*

or civil union partner

**[1.127] Section 18**

*after*

spouse

*insert*

or civil union partner

**[1.128] Section 15**

*omit*

spouse

*substitute*



domestic partner

**[1.129] Section 15, new note**

*insert*

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

**[1.130] Section 18**

*omit*

spouse

*substitute*

domestic partner

**[1.131] Section 18, new note**

*insert*

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

**[1.132] Section 20 heading**

*substitute*

**20 Revocation of will by testator's marriage or civil union**

**[1.133] Section 20 (1)**

*after*

marries

*insert*

or enters into a civil union

**[1.134] Section 20 (1)**

*after*

marriage

*insert*

or civil union

**[1.135] Section 20 (2)**

*after*

marries

*insert*

or enters into a civil union

**[1.136] Section 20 (2)**

*after*

marriage

*insert*

or civil union

**[1.137] Section 20 (3)**

*after*

marriage

*insert*

or civil union

**[1.138] Section 20A heading**

*substitute*

**20A Effect of termination of marriage or civil union**

**[1.139] Section 20A (1)**

*after*

marriage

*insert*

or civil union

**[1.140] Section 20A (1)**

*after*

former spouse

*insert*

or civil union partner

**[1.141] Section 20A (2)**

*after*

marriage

*insert*

or civil union

**[1.142] Section 20A (3)**

*after*

former spouse

*insert*

or civil union partner

**[1.143] New section 20A (4A)**

*insert*

- (4A) For this section, the termination of a civil union happens on the termination of the civil union under the *Civil Unions Act 2006*, division 2.4 (otherwise than on the death of a party to the civil union).

**[1.144] Section 20A (5), definition of *former spouse***

*substitute*

*former spouse or civil union partner*, in relation to a testator, means the person who, immediately before the termination of the testator's marriage or civil union, was the testator's spouse or civil union partner, or, for a purported marriage or civil union of the testator that is void, was the other party to the purported marriage or civil union.

**Part 1.30 Witness Protection Act 1996**

**[1.145] Section 10 (c)**

*after*

marriage

*insert*

or civil union

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- Executive
- Minister (see s 162)
- registrar-general
- statutory declaration
- under.

*civil union celebrant* means—

- (a) the registrar-general; or
- (b) a person who is registered under this Act as a civil union celebrant.

*prohibited relationship*—see section 8.

*termination notice* means a notice given under section 13 (1).

*withdrawal notice* means a notice given under section 13 (3).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 28 March 2006.

**2 Notification**

Notified under the Legislation Act on 19 May 2006.

**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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I certify that the above is a true copy of the Civil Unions Bill 2006, which was passed by the Legislative Assembly on 11 May 2006.

Clerk of the Legislative Assembly

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