



Australian Capital Territory

Civil Partnerships Act 2008

A2008-14

Republication No 3

Effective: 19 November 2009 – 17 December 2009

Republication date: 19 November 2009

Last amendment made by A2009-41

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Civil Partnerships Act 2008* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 19 November 2009. It also includes any amendment, repeal or expiry affecting the republished law to 19 November 2009.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

Civil Partnerships Act 2008

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R3
19/11/09

Civil Partnerships Act 2008
Effective: 19/11/09-17/12/09

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Australian Capital Territory

Civil Partnerships Act 2008

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

Part 1 Preliminary

1 Name of Act

This Act is the *Civil Partnerships Act 2008*.

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 6.' 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 partnerships**

Division 2.1 **General**

5 **Civil partnerships—general**

- (1) A civil partnership is a legally recognised relationship that, subject to this Act, may be entered into by any 2 adults, regardless of their sex.
- (2) A civil partnership terminates only as provided by division 2.4.
Note Div 2.4 provides for termination by death, marriage, notice by parties or court order.
- (3) The 2 parties to a civil partnership are taken, for all purposes under territory law, to be in a domestic partnership.

Division 2.2 **Eligibility**

6 **Eligibility criteria**

A person may enter into a civil partnership only if—

- (a) the person is not married or in a civil partnership; and
- (b) the person does not have any of the following relationships (a *prohibited relationship*) with the person's proposed civil partner:
 - (i) lineal ancestor;
 - (ii) lineal descendent;
 - (iii) sister;
 - (iv) half-sister;
 - (v) brother;

- (vi) half-brother; and
- (c) the person or the person's proposed civil partner, or both of them, live in the ACT.

Division 2.3 Entering into civil partnership

6A How civil partnership is entered into

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

- (a) having their relationship registered under section 8; or
- (b) unless the couple may marry under the *Marriage Act 1961* (Cwlth), making a declaration before a civil partnership notary under section 8B (Declaration of civil partnership).

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

7 Application for registration

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

Note If a form is approved under s 19 for an application, the form must be used.

- (2) The application must be accompanied by—
 - (a) a statutory declaration made by each person stating—
 - (i) that the person wishes to enter into a civil partnership with the other person; and

- (ii) that the person is not married or in a civil partnership; and
 - (iii) that the person believes the person and the other person do not have a prohibited relationship; and
 - (iv) where the person lives; and
- (b) the evidence required by section 13 of each person's identity and age; and
 - (c) anything else prescribed by regulation.
- (3) The registrar-general may require the applicants to give the registrar-general additional information or documents the registrar-general reasonably needs to decide the application.
 - (4) If a requirement under subsection (3) is not complied with, the registrar-general may refuse to consider the application further.

8 Decision on application

- (1) On application in accordance with section 7, the registrar-general must—
 - (a) register the relationship as a civil partnership by making an endorsement to that effect on the application; or
 - (b) refuse to register the relationship as a civil partnership.
- (2) The registrar-general must register the relationship as a civil partnership unless satisfied that 1 or both of the parties do not meet the eligibility criteria in section 6.

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

8A Notice of intention to enter into civil partnership

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

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

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

- (2) The notice must be accompanied by—
- (a) a statutory declaration made by each person stating—
 - (i) that the person wishes to enter into a civil partnership with the other person; and
 - (ii) that the person is not married or in a civil partnership; and
 - (iii) that the person believes the person and the other person do not have a prohibited relationship; and
 - (iv) where the person lives; and
 - (b) the evidence required by section 13 of each person's identity and age; and
 - (c) anything else prescribed by regulation.
- (3) As soon as practicable after receiving the notice and statutory declarations, the civil partnership notary must give each person a written notice setting out the legal effect of a civil partnership.

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

8B Declaration of civil partnership

- (1) Two people who have given notice to a civil partnership notary in accordance with section 8A may enter into a civil partnership by making a declaration before the civil partnership notary and at least 1 other witness.

- (2) The declaration must be made not earlier than 5 days, and not later than 18 months, after the day the notice was given to the civil partnership notary.
- (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 partnership with each other.

8C When civil partnership has effect

- (1) A civil partnership entered into as mentioned in section 6A (a) has effect when the registrar-general registers the relationship under section 8 (1) (a).
- (2) A civil partnership entered into as mentioned in section 6A (b) has effect when the 2 people make a declaration before the civil partnership notary in accordance with section 8B.

Division 2.4 Termination

9 How civil partnership is terminated

- (1) A civil partnership is terminated on—
 - (a) the death of either party; or
 - (b) the marriage of either party.
- (2) A civil partnership may also be terminated by—
 - (a) a party (or both parties) under section 10; or
 - (b) a court order under section 11.

10 Termination by parties

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

Note 1 A fee may be determined under s 18 for this provision.

Note 2 If a form is approved under s 19 for a notice, the form must be used.

- (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 14.

- (3) The termination notice may be withdrawn by written notice (a **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 19 for a notice, the form must be used.

Note 2 A fee may be determined under s 18 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 14.

- (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 partnership 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 partnership; or
 - (c) the operation of the termination notice is stayed under subsection (7); or
 - (d) the civil partnership has already terminated under section 9 (1).
- (6) On application by a party to the civil partnership, 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 partnership.
- (7) If an application mentioned in subsection (6) has been made but not decided before the end of 12 months after the day the termination notice is given, the application stays the operation of the termination notice until the application is decided.
- (8) 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.

11 Termination by court order

- (1) On application by a party to a civil partnership, the Supreme Court may make an order terminating the civil partnership if the court considers that—
 - (a) the civil partnership cannot be terminated under section 10; but
 - (b) it is not the intention, or is no longer the intention, of both parties to be in the civil partnership.
- (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 2A Civil partnership notaries

11A Registration of civil partnership notaries

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

Note 1 A fee may be determined under s 18 for this provision.

Note 2 If a form is approved under s 19 for this provision, the form must be used.

- (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 partnership notary under this Act; and
 - (c) is a suitable person to be registered as a civil partnership notary.
- (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 partnership notary, 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 has otherwise contravened, this Act;
 - (d) whether the person is or has been an undischarged bankrupt, has executed a personal insolvency agreement or has otherwise applied to take the benefit of any law for the relief of bankrupt or insolvent debtors;
 - (e) whether the person has a physical or mental incapacity that may affect the exercise of the person's functions as a civil partnership notary.
- (5) In deciding whether a person is a suitable person to be a civil partnership notary, the registrar-general may have regard to anything else the registrar-general considers relevant.

11B Register of civil partnership notaries

- (1) The registrar-general must keep a register of people registered as civil partnership notaries 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 partnership notary:
 - (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 must be available for public inspection at reasonable times.

11C Cancellation of registration

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

Part 2B Notification and review of decisions

11D Meaning of *reviewable decision*—pt 2B

In this part:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

11E Reviewable decision notices

If the registrar-general makes a reviewable decision, the registrar-general must give a reviewable decision notice to each entity mentioned in schedule 1 in relation to the decision.

Note 1 The registrar-general must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

11F Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

Part 3 Miscellaneous

12 Void civil partnerships

A civil partnership is void if—

- (a) either party did not meet the eligibility criteria in section 6 when the relationship was registered as a civil partnership; or
- (b) either party did not freely enter into the civil partnership because—
 - (i) the party's agreement to enter into the civil partnership 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 7; or
 - (iii) the party was mentally incapable of understanding the nature and effect of the civil partnership.

12A Noncompliance with certain requirements

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

13 Evidence of identity and age

- (1) For section 7 (2) (b) and section 8A (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 registers).

14 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 partnership under section 10 (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 10, 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.

15 Civil partnerships under corresponding laws

- (1) A regulation may provide that a relationship under a corresponding law is a civil partnership for the purpose of territory law.
- (2) In this section:

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

15A Offences

- (1) A civil partnership notary commits an offence if—
 - (a) the notary allows a civil partnership, or purported civil partnership, to be entered into before the notary; and
 - (b) the notice required under section 8A (Notice of intention to enter into civil partnership) (including the statutory declaration and anything else required under that section) for the civil partnership—
 - (i) has not been given to the notary; or
 - (ii) was not given to the notary within the period allowed by section 8B (2).

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

- (2) A civil partnership notary commits an offence if—
 - (a) the notary allows a civil partnership, or purported civil partnership, to be entered into before the notary; and

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

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 8B (Declaration of civil partnership) with the intention of entering into a civil partnership with someone else (the person's *partner*); and
 - (b) the declaration is made before a person (the *third person*) who is not a civil partnership notary; and
 - (c) the person knows the third person is not a civil partnership notary; and
 - (d) the person has reasonable grounds to believe that their partner believes that the third person is a civil partnership notary.

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
- making false statements in statutory declarations (see s 336A); and
- impersonating territory public officials (see s 360).

18 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.

19 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.

20 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.

Schedule 1 Reviewable decisions

(see pt 2B)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	8 (1) (b)	refuse to register a relationship as a civil partnership	parties to the relationship
2	11A (3)	refuse to register a person as a civil partnership notary	applicant for registration
3	11C	cancel a person's registration as a civil partnership notary	person whose registration is cancelled

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:

- ACAT
- Executive
- Minister (see s 162)
- registrar-general
- reviewable decision notice
- statutory declaration
- under.

civil partnership notary means—

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

prohibited relationship—see section 6.

reviewable decision, for part 2B (Notification and review of decisions)—see section 11D.

termination notice means a notice given under section 10 (1).

withdrawal notice means a notice given under section 10 (3).

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Civil Partnerships Act 2008 A2008-14

notified LR 15 May 2008

s 1, s 2 commenced 15 May 2008 (LA s 75 (1))

remainder commenced 19 May 2008 (s 2 and CN2008-8)

as amended by

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.19

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.19 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

Civil Partnerships Amendment Act 2009 A2009-41

notified LR 18 November 2009

s 1, s 2 commenced 18 November 2009 (LA s 75 (1))

remainder commenced 19 November 2009 (s 2)

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Civil partnerships—general

s 5 am A2009-41 s 4

Entering into civil partnership

div 2.3 hdg sub A2009-41 s 5

How civil partnership is entered into

s 6A ins A2009-41 s 6

Application for registration

s 7 am A2009-41 s 7

Notice of intention to enter into civil partnership

s 8A ins A2009-41 s 8

Declaration of civil partnership

s 8B ins A2009-41 s 8

When civil partnership has effect

s 8C ins A2009-41 s 8

Civil partnership notaries	
pt 2A hdg	ins A2009-41 s 9
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sch 1	om LA s 89 (3) ins A2009-41 s 15

Endnotes

5 Earlier republications

Dictionary

dict

am A2008-37 amdt 1.70

def **civil partnership notary** ins A2009-41 s 16

def **reviewable decision** ins A2009-41 s 16

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 19 May 2008	19 May 2008– 1 Feb 2009	not amended	new Act
R2 2 Feb 2009	2 Feb 2009– 18 Nov 2009	A2008-37	amendments by A2008-37

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