

2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Sexuality Discrimination Legislation Amendment Bill 2003

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(Attorney-General)

Sexuality Discrimination Legislation Amendment Bill 2003

A Bill for

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:

1 **1 Name of Act**

2 This Act is the *Sexuality Discrimination Legislation Amendment Act*
3 *2003*.

4 **2 Commencement**

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

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

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

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

15 **3 Legislation amended—schs 1 and 2**

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

1 **Schedule 1 Domestic partners**

2 (see s 3)

3 **Part 1.1 Administration and Probate**
4 **Act 1929**

5 **[1.1] Section 44, definition of *eligible partner***

6 *substitute*

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

9 (a) was the intestate's domestic partner when the intestate died;
10 and

11 (b) either—

12 (i) had been the intestate's domestic partner continuously for
13 2 or more years when the intestate died; or

14 (ii) is the parent of the intestate's child, if the child was under
15 18 years old when the intestate died.

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

17 **[1.2] Section 44, definition of *legal spouse***

18 *omit*

19 **[1.3] Section 44, new definition of *partner***

20 *insert*

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

22 (a) the spouse of the intestate when the intestate died;

23 (b) the eligible partner of the intestate.

1 **[1.4] Section 44, definition of *spouse***

2 *omit*

3 **[1.5] Section 45A**

4 *substitute*

5 **45A Distribution between spouse and eligible partner**

6 (1) If an intestate is survived by both a spouse and an eligible partner,
7 the entitlement of each to the partnership share of the intestate estate
8 must be worked out as follows:

9 (a) if the eligible partner and the intestate had been domestic
10 partners continuously for less than 5 years when the intestate
11 died—the partnership share of the intestate estate must be
12 distributed equally between the spouse and the eligible partner;

13 (b) if the eligible partner and the intestate had been domestic
14 partners continuously for 5 years or more when the intestate
15 died—the eligible partner is exclusively entitled to the
16 partnership share.

17 (2) In this section:

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

20 **[1.6] Section 49BA (1) (a)**

21 *omit*

22 a spouse of such a person

23 *substitute*

24 an unentitled partner of such a person

1 **[1.7] Section 49BA (3) and (4)**

2 *substitute*

3 (3) This section does not apply in relation to money or property given to
4 or for the benefit of the intestate's partner.

5 (4) If an intestate has made a gift to which this section applies, the
6 ***unentitled partner*** of a person entitled to a share in the intestate's
7 estate is, for subsection (1), someone who—

8 (a) is not entitled to a share in the intestate's estate; and

9 (b) was the domestic partner of the entitled person at the time of
10 the gift; and

11 (c) either—

12 (i) was the entitled person's spouse at that time; or

13 (ii) had been the entitled person's domestic partner
14 continuously for 2 or more years at that time; or

15 (iii) was at that time the parent of a child of the entitled
16 person, if the child was less than 18 years old at that time.

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

18 (5) In this section:

19 ***given***, in relation to money or property, means money or property
20 paid, transferred, assigned or settled (otherwise than for valuable
21 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

1 **Part 1.2** **Births, Deaths and Marriages**
2 **Registration Regulations 1998**

3 **[1.9] New regulation 5 (ia)**

4 *insert*

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

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

9 **[1.10] Regulation 5**

10 *renumber paragraphs when regulations next republished under the*
11 *Legislation Act*

12 **[1.11] Regulation 9 (f) and (g)**

13 *substitute*

14 (f) whether or not the deceased was in a domestic partnership at
15 the time of death;

16 (g) if the deceased had been in a domestic partnership at any
17 time—

18 (i) if the deceased had been married—the date and place of
19 each marriage; and

20 (ii) in any case—the name and any former name of each
21 domestic partner.

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

1 **Part 1.3 Casino Control Act 1988**

2 **[1.12] New section 3E**

3 *in part 1, insert*

4 **3E Offences against Act—application of Criminal Code etc**

5 Other legislation applies in relation to offences against this Act.

6 *Note 1 Criminal Code*

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

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

13 *Note 2 Penalty units*

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

16 **[1.13] Section 68**

17 *substitute*

18 **68 Exclusion of children**

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

21 Maximum penalty: 50 penalty units.

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

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

25 Maximum penalty: 5 penalty units.

- 1 (3) It is a defence to a prosecution for an offence against subsection (1)
2 if the defendant proves that the child—
3 (a) was at least 16 years old; and
4 (b) had shown a prescribed identity document.
- 5 (4) Subsections (1) and (2) do not apply in relation to a child if—
6 (a) the child enters a part of the casino other than a gaming area;
7 and
8 (b) the child is with an adult who is the child's domestic partner or
9 parent.
- 10 *Note* For the meaning of *domestic partner*, see Legislation Act, s 169.
- 11 (5) Subsections (1) and (2) do not apply in relation to a child who is a
12 casino employee.
- 13 (6) A person must not use someone else's identification, or a form of
14 identification that is forged, to enter or remain in a gaming area.
15 Maximum penalty: 10 penalty units.
- 16 (7) An offence against this section is a strict liability offence.
- 17 (8) In this section:
- 18 ***gaming area*** means any part of the casino—
19 (a) where gaming takes place; or
20 (b) from where it is possible to see gaming take place.

1 **Part 1.4 Credit Act 1985**

2 **[1.14] Section 5 (1), definitions of *commission charge* and**
3 ***guarantor***

4 *omit*

5 spouse

6 *substitute*

7 domestic partner

8 **[1.15] Section 5 (1), definitions of *commission charge* and**
9 ***guarantor*, new note**

10 *insert*

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

12 **Part 1.5 Debits Tax Act 1997**

13 **[1.16] Section 16 (1), definition of *pensioner*, paragraph (e)**

14 *substitute*

15 (e) a person who is (or was) in a domestic partnership who would
16 be eligible as a pensioner mentioned in paragraph (a) because
17 of that partnership if the person's domestic partner were (or
18 had been) the person's partner within the meaning of the *Social*
19 *Security Act 1991* (Cwlth), section 4; or

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

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

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

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

14 Part 1.6 Duties Act 1999

15 [1.17] Section 72

16 *substitute*

17 72 Transfer to partner of interest in principal place of 18 residence

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

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

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

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

7 **[1.18] Sections 74B (1) (b), 115H (1) (b) and 213 (1) (b)**

- 8 *omit*
9 spouses
10 *substitute*
11 partners

12 **[1.19] Sections 74B (1) (b), 115H (1) (b) and 213 (1) (b), new note**

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

18 **[1.20] Dictionary, definition of *domestic partner***

- 19 *omit*

20 **[1.21] Dictionary, new definition of *partner***

- 21 *insert*
22 *partner*—a person's *partner* is either of the following:
23 (a) the person's spouse;
24 (b) someone with whom the person has a domestic relationship.

1 **[1.22] Dictionary, definition of *related person*, paragraph (a) (i)**

2 *substitute*

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

6 **[1.23] Dictionary, definition of *spouse***

7 *omit*

8 **Part 1.7 Family Provision Act 1969**

9 **[1.24] Section 4 (1), definitions of *domestic partner*, *domestic*
10 *relationship*, *eligible partner*, *legal spouse* and *spouse***

11 *omit*

12 **[1.25] Section 7 (1) (a) and (b)**

13 *substitute*

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

18 **[1.26] Section 7 (4) (b)**

19 *omit*

20 any spouse

21 *substitute*

22 any partner

1 **[1.27] New section 7 (9)**

2 *insert*

3 (9) In this section:

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

6 ***partner***, of a deceased person, means someone who—

7 (a) was the domestic partner of the person at any time; and

8 (b) either—

9 (i) was the person's spouse at any time; or

10 (ii) was the person's domestic partner continuously for 2 or
11 more years at any time; or

12 (iii) is the parent of a child of the person.

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

14 **Part 1.8 Instruments Act 1933**

15 **[1.28] Section 12 (1)**

16 *omit*

17 married

18 *substitute*

19 in a domestic partnership

1 **[1.29] Section 12 (1)**

2 *omit*

3 wife or husband

4 *substitute*

5 domestic partner

6 **[1.30] Section 12 (2)**

7 *substitute*

8 (2) This section does not apply after—

9 (a) the death of the domestic partner of the person making or
10 giving the bill of sale; or

11 (b) the permanent separation of the domestic partners since the bill
12 of sale was made or given.

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

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

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

19 **[1.31] Section 180 (1) (b)**

20 *substitute*

21 (b) the transfer or assignment is made under any of the following
22 orders:

23 (i) an order of the Family Court;

24 (ii) an order of another court having jurisdiction under the
25 *Family Law Act 1975 (Cwlth)*;

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

4 **Part 1.10 Married Persons Property**
5 **Act 1986**

6 **[1.32] Section 4 (2)**

7 *substitute*

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

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

12 **Part 1.11 Nature Conservation Act 1980**

13 **[1.33] Section 74AG heading**

14 *substitute*

15 **74AG Extension of time to pay penalty**

16 **[1.34] Section 74AG (1)**

17 *omit*

18 pensioner

19 *substitute*

20 person

1 **[1.35] Section 74AG (6)**

2 *omit*

3 **Part 1.12 NRMA–ACT Road Safety Trust**
4 **Act 1992**

5 **[1.36] Section 2, definition of *deed of trust*, paragraph (a)**

6 *substitute*

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

9 **[1.37] New section 4**

10 *insert*

11 **4 Modification of effect of deed**

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

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

16 **Part 1.13 Public Trustee Act 1985**

17 **[1.38] Section 4 (1), new definition of *domestic partner***

18 *insert*

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

1 **[1.39] New section 33A**

2 *in part 5, insert*

3 **33A Meaning of *domestic partner* for pt 5**

4 In this part:

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

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

9 **[1.40] Section 38 (1) (e)**

10 *substitute*

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

15 **[1.41] Section 39 (2) (b)**

16 *substitute*

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

19 **[1.42] Section 39 (5) (d)**

20 *substitute*

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

23 **[1.43] Section 39 (6) (c) (iii)**

24 *substitute*

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

1 **Part 1.14** **Rates and Land Rent (Relief)**
2 **Act 1970**

3 **[1.44] Section 2, definition of *domestic partner***

4 *omit*

5 **[1.45] Section 2, new definitions**

6 *insert*

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

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

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

11 (a) the person's spouse;

12 (b) someone with whom the person has a domestic relationship.

13 *partnership* means the relationship between 2 partners.

14 **[1.46] Section 2, definition of *pensioner*, paragraph (d)**

15 *omit*

16 by the person

17 *substitute*

18 by the person; or

1 **[1.47] Section 2, definition of *pensioner*, new paragraphs (e), (f)**
2 **and (g)**

3 *insert*

4 (e) a person who is (or was) in a partnership who would be eligible
5 as a pensioner mentioned in paragraph (a) or (b) because of
6 that partnership if the person's partner were (or had been) the
7 person's partner within the meaning of the *Social Security Act*
8 *1991* (Cwlth), section 4; or

9 (f) a person who is (or was) in a partnership who would be eligible
10 as a pensioner mentioned in paragraph (c) because of that
11 partnership if the person's partner were (or had been) the
12 person's partner within the meaning of the *Veterans'*
13 *Entitlements Act 1986* (Cwlth), section 5E; or

14 (g) a person who was in a partnership until the death of his or her
15 partner who would be eligible under the *Veteran's Entitlements*
16 *Act 1986* (Cwlth), section 86 to be given treatment mentioned
17 in paragraph (d) because of the partner's death if the person
18 were the partner's dependant within the meaning of the
19 *Veterans' Entitlements Act 1986* (Cwlth), section 11.

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

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

28 **[1.48] Section 3 (1) (c)**

29 *substitute*

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

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

3 *substitute*

4 (b) a non-pensioner who is the partner of a special rate pensioner
5 and is not separated from the pensioner; or

6 (c) a non-pensioner who—

7 (i) was the partner of a special rate pensioner until the
8 pensioner's death; and

9 (ii) was not separated from the pensioner immediately before
10 the death; and

11 (iii) has not subsequently formed a partnership with anyone
12 else.

13 **Part 1.15 Supreme Court Act 1933**

14 **[1.50] Section 37U (2)**

15 *substitute*

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

19 **[1.51] Section 37U (3) (g)**

20 *omit*

21 tribunal.

22 *substitute*

23 tribunal; and

1 **[1.52] New section 37U (3) (h)**

2 *insert*

3 (h) a reference in the *Judges' Pensions Act 1968* (Cwlth) to a
4 ***marital relationship*** included a reference to a relationship
5 between 2 people of the same sex, subject otherwise to that
6 Act, section 4AB (Marital relationship); and

7 (i) a reference in the *Judges (Long Leave Payments) Act 1979*
8 (Cwlth) to a ***widow or widower*** of a judge who has died
9 included a reference to anyone else who was the domestic
10 partner of the judge when the judge died.

11 **[1.53] Section 37U (3), note**

12 *substitute*

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

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

16 **Part 1.16 Transplantation and Anatomy**
17 **Act 1978**

18 **[1.54] Section 4 (1), definition of *child*, paragraph (b)**

19 *substitute*

20 (b) is not in a domestic partnership.

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

1 Part 1.17 Trustee Act 1925

2 [1.55] Section 45 (6) (a) and (b)

3 *omit*

4 spouse

5 *substitute*

6 domestic partner

7 [1.56] Section 45 (6), new note

8 *insert*

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

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

11 *insert*

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

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

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

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

20 *commencement day* means the day the *Sexuality Discrimination*
21 *Legislation Amendment Act 2003*, schedule 1, amendment 1.55
22 commenced.

23 *Note* The *Sexuality Discrimination Legislation Amendment Act 2003*, sch 1
24 amended the Act, s 45 (6) (a) and (b) by omitting ‘spouse’ and
25 substituting ‘domestic partner’.

1 **Part 1.18 Trustee Companies Act 1947**

2 **[1.58] Section 21 (1)**

3 *omit*
4 wife, husband,
5 *substitute*
6 domestic partner,

7 **[1.59] Section 21 (1), new note**

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

10 **Part 1.19 Workers Compensation Act**
11 **1951**

12 **[1.60] Section 163 (4)**

13 *omit*
14 or the person's spouse

15 **[1.61] Dictionary, definition of *child***

16 *substitute*
17 *child*, of a worker, means a child of the worker who is—
18 (a) not in a domestic partnership; and
19 (b) under 16 years old or a full-time student.

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

1 **[1.62] Dictionary, new definition of *domestic partner***

2 *insert*

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

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

7 **[1.63] Dictionary, definition of *member of the family***

8 *omit*

9 spouse

10 *substitute*

11 domestic partner

12 **[1.64] Dictionary, definition of *member of the family*, new note**

13 *insert*

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

18 **[1.65] Dictionary, definition of *spouse***

19 *omit*

1 **Schedule 2 Other amendments**

2 (see s 3)

3 **Part 2.1 Crimes Act 1900**

4 **[2.1] New section 13 (2A)**

5 *insert*

6 (2A) However, conduct of the deceased consisting of a non-violent sexual
7 advance (or advances) towards the accused—

8 (a) is taken not to be sufficient, by itself, to be conduct to which
9 subsection (2) (b) applies; but

10 (b) may be taken into account together with other conduct of the
11 deceased in deciding whether there has been an act or omission
12 to which subsection (2) applies.

13 **[2.2] Section 13**

14 *renumber subsections when Act next republished under Legislation*
15 *Act*

16 **Part 2.2 Disability Services Act 1991**

17 **[2.3] Schedule 2, clause 5**

18 *substitute*

19 5 Programs and services should be designed and administered to meet
20 the needs of people with disabilities who may experience additional
21 disadvantage because of their sex, sexuality, ethnic origin, physical
22 isolation or Aboriginality.

1 **Part 2.3** **Discrimination Act 1991**

2 **[2.4] New section 6A**

3 *in part 1, insert*

4 **6A Offences against Act—application of Criminal Code etc**

5 Other legislation applies in relation to offences against this Act.

6 *Note 1 Criminal Code*

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

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

13 *Note 2 Penalty units*

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

16 **[2.5] Part 6 heading and section 65 heading**

17 *substitute*

18 **Part 6** **Racial, sexuality and HIV/AIDS** 19 **vilification**

20 **65 Definitions for pt 6**

21 **[2.6] Section 65, new definition**

22 *insert*

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

- 1 **[2.7] Sections 66 and 67**
2 *substitute*
- 3 **66 Unlawful vilification—race, sexuality etc**
- 4 (1) It is unlawful for a person, by a public act, to incite hatred towards,
5 serious contempt for, or severe ridicule of, a person or group of
6 people on the ground of any of the following characteristics of the
7 person or members of the group:
- 8 (a) race;
9 (b) sexuality;
10 (c) transsexuality;
11 (d) HIV/AIDS status.
- 12 (2) This section does not make unlawful—
- 13 (a) a fair report of an act mentioned in subsection (1); or
14 (b) a communication or the distribution or dissemination of any
15 matter consisting of a publication that is subject to a defence of
16 absolute privilege in a proceeding for defamation; or
17 (c) a public act, done reasonably and honestly, for academic,
18 artistic, scientific or research purposes or for other purposes in
19 the public interest, including discussion or debate about and
20 presentations of any matter.
- 21 **67 Serious vilification offence—race, sexuality etc**
- 22 (1) A person commits an offence if—
- 23 (a) the person intentionally carries out an act; and
24 (b) the person is reckless about whether the act is a public act; and
25 (c) the act is a threatening act; and

- 1 (d) the person is reckless about whether the act incites hatred
2 towards, serious contempt for, or severe ridicule of, a person or
3 group of people on the ground of any of the following
4 characteristics of the person or members of the group:
- 5 (i) race;
6 (ii) sexuality;
7 (iii) transsexuality;
8 (iv) HIV/AIDS status.
- 9 Maximum penalty: 50 penalty units.
- 10 (2) For subsection (1) (c), an act is a **threatening act** only if the person
11 carrying it out—
- 12 (a) by the act, intentionally threatens physical harm towards, or
13 towards any property of, the person, or members of the group,
14 mentioned in subsection (1) (d); or
- 15 (b) is reckless about whether the act incites others to threaten such
16 physical harm.

17 **[2.8] Dictionary, new definition of *HIV/AIDS status***

18 *insert*

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

21 **[2.9] Dictionary, definition of *public act***

22 *substitute*

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

1 **Part 2.4 Evidence Act 1971**

2 **[2.10] Sections 54, 55, 57 and 74**

3 *omit*

4 **Part 2.5 Evidence (Miscellaneous**
5 **Provisions) Act 1991**

6 **[2.11] New division 4.7**

7 *insert*

8 **Division 4.7 Family objections**

9 **74 Application of div 4.7**

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

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

5 **75 Family objections to giving evidence**

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

10 (a) to give evidence; or

11 (b) to give evidence of a communication between the person and
12 the defendant.

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

14 **76 Time to make family objection**

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

18 **77 Person to be made aware of right to make family
19 objection**

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

23 **78 Family objections to be heard in absence of jury**

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

- 1 **79 Matters court may consider in deciding family objection**
- 2 (1) A court must not require a person who makes a family objection to
3 give the evidence if the court finds that—
- 4 (a) there is a likelihood that harm would or might be caused
5 (directly or indirectly) to the person, or to the relationship
6 between the person and the defendant, if the person gives the
7 evidence; and
- 8 (b) the nature and extent of that harm outweighs the desirability of
9 having the evidence given.
- 10 (2) In making a decision under subsection (1), the court must take into
11 account matters including the following:
- 12 (a) the nature and seriousness of the offence for which the
13 defendant is being prosecuted;
- 14 (b) the substance and importance of any evidence that the person
15 might give and the weight likely to be attached to it;
- 16 (c) whether any other evidence about the matters to which the
17 evidence of the person would relate is reasonably available to
18 the prosecution;
- 19 (d) the nature of the relationship between the defendant and the
20 person;
- 21 (e) whether, in giving the evidence, the person would have to
22 disclose something that was received by the person in
23 confidence from the defendant.

24 **80 Prosecution not to comment about family objections**

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

- 27 (a) the objection;

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

3 **81 Comments by judge and parties about failure to give**
4 **evidence by family members**

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

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

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

25 **[2.12] Sections 74 and 75**

26 *renumber as sections 82 and 83*

1 **[2.13] Dictionary, new definitions of *family objection***

2 *insert*

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

5 **Part 2.6 Magistrates Court Act 1930**

6 **[2.14] Section 58**

7 *omit*

8 **Part 2.7 Public Baths and Public**
9 **Bathing Act 1956**

10 **[2.15] Sections 18 and 30**

11 *omit*

Endnote

Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.