

2006

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

CIVIL UNIONS BILL 2006

EXPLANATORY STATEMENT

Circulated by authority of
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OVERVIEW

The intention of the Civil Unions Bill 2006 (the Bill) is to provide a scheme for two people, regardless of their sex, to enter into a formally recognised union (a civil union) that attracts the same rights and obligations as would attach to married spouses under Territory law.

The civil union scheme will deliver functional equality under ACT law for couples who either do not have access to marriage under the Commonwealth *Marriage Act 1961* or who prefer not to marry. The purpose of the civil union scheme is to provide a mechanism for people to establish their relationship by making a formal declaration of their intention to enter a civil union. A civil union is then given the same legal recognition under ACT law as marriage.

Like marriage, a civil union is a particular form of domestic partnership. Because of the formal nature of civil union in providing a clear statement of the intention of the parties, where ACT laws still differentiate between marriage and domestic partnerships, then a civil union would be treated in the same way as a marriage.

The Bill sets out eligibility to enter a civil union, a process for entering a civil union and a process for ending a civil union.

SUMMARY OF CLAUSES

The preamble sets out the human rights context of the Bill.

Clause 1 sets out the name of the Act.

Clause 2 provides for commencement of the Act on a day to be fixed by the Minister.

Clause 3 provides that the dictionary is part of the Act.

Clause 4 provides that notes included in the Act are explanatory only.

Clause 5 establishes the core elements of a civil union. Consistent with the *Human Rights Act 2004*, any two people may enter into a civil union regardless of their sex. A civil union is to be treated in the same way as a marriage for all purposes under Territory law.

Eligibility for entering into a civil union

Clause 6 provides that a person may only enter a civil union if they are over 16 years of age. A person who is 16 but not yet 18 may enter into a civil union only with the relevant consent under clause 10. This reflects the age of consent specified in the *Crimes Act 1900*

for the sexual component of any such relationship. The age eligibility requirements in the Bill are slightly different to those in the Commonwealth *Marriage Act 1961* which provides that while a person who is 16 but not 18 years of age may get married with the relevant consents and authorisations, only one of the parties may be under 18 years of age. There is currently no prohibition on a two people who are 16 but not yet 18 forming a domestic partnership, only in having that domestic partnership formally recognised. To deny such a couple equal access to the law solely on the basis of their age is discriminatory. Allowing such a couple access to the law also promotes the right to equal protection of the law in accordance with the *Human Rights Act 2004*.

Clause 7 provides that a person may not enter a civil union if they are married or already in a civil union. The rights and obligations flowing from a civil union are premised on a primary relationship and this requirement recognises that there can only be one primary relationship at any given time. Similarly, where a person who is in a civil union subsequently marries, the civil union is automatically terminated.

Clause 8 provides that a person may not enter a civil union with whom they are in a prohibited relationship. This qualification reflects the incest offences specified in the *Crimes Act 1900* for the sexual component of any such relationship. This qualification is also consistent with Commonwealth *Marriage Act 1961* requirements.

Entering into a civil union

Clause 9 requires the parties to a proposed civil union to give notice of their intention to enter a civil union. The notice must be accompanied by a statutory declaration that goes to the eligibility requirements for entering a civil union. As soon as practicable after the notice is given, the authorised celebrant must give the parties a notice of information about the nature and effect of a civil union. The intention of this notice is to ensure that the parties are aware of the nature of the relationship they are creating. This clause should be read in conjunction with clause 11 which provides that the notice must be given no later than 1 month and not earlier than 18 months before entering the civil union. This time requirement is intended as a cooling off period.

Clause 10 requires that where a person who is 16 or 17 wishes to enter a civil union, then they may only do so with the consent of each person with responsibility to make long-term decisions for the person, or alternatively, with an order of the Childrens Court. The clause also contains witnessing requirements.

Clause 11 sets out the formal process for entering a civil union. The parties must make a declaration that they intend to enter into a civil union and that they are doing so of their own free will. The clause also contains witnessing requirements.

Termination of civil union

Clause 12 specifies how a civil union is terminated. A civil union will be automatically terminated on the death or marriage of one of the parties. A civil union may also be terminated by the parties or the Supreme Court under clause s 13 and 14.

Clause 13 sets out the procedure for the parties to a civil union to terminate the civil union. A civil union may be terminated by notice given to the registrar-general. If only one party is seeking to terminate the civil union, a copy of the termination notice must also be served personally on the other party. Requirements for personal service are specified in clause 18. A termination notice, unless it is withdrawn, takes effect 12 months after it has been given to the registrar-general.

Clause 14 provides that a party to a civil union may also apply to the Supreme Court for an order terminating a civil union. This provision is included to cover situations where the party is unable to use the termination procedures in clause 13 – eg. the whereabouts of other party is unknown.

Miscellaneous

Clause 15 sets out the circumstances in which a civil union will be void. These circumstances are linked to the eligibility to enter a civil union and circumstances where either of the parties did not freely enter into the civil union because of fraud, mistake, of incapacity.

Clause 16 provides that a civil union is not invalid only because of a failure to comply with formalities.

Clause 17 sets out the required evidence of identity and age that is required for the notice under clause 9

Clause 18 sets out how the personal service requirement in clause 13 must be met.

Clause 19 recognises as civil unions same sex marriages solemnised in a foreign country that are precluded from being recognised as marriage because of the operation of section 88EA of the Commonwealth *Marriage Act 1961*. Clause 19 also provides that the regulations may specify that a relationship under a corresponding law of another State or Territory, or of a foreign country, is to be treated as a civil union.

Clause 20 sets out offences for the Act. These offences are intended to maintain the integrity of the civil union scheme.

Clause 21 provides that the Minister may determine fees for the Act.

Clause 22 provides that the registrar-general may approve forms for the Act.

Clause 23 is a regulation making power.

Clause 24 provides for consequential amendments as set out in schedule 1.

Schedule 1 Consequential amendments

A large number of the consequential amendments are made as a consequence of clause 5 of the Bill and amendments to the *Legislation Act 2001* made by part 1.21 of schedule 1. Clause 5 of the Bill provides that a civil union is to be treated for all purposes under territory law in the same way as marriage. The amendments the *Legislation Act 2001* support clause 5 by providing that in an Act or statutory instrument, a reference to a *spouse* includes a reference to a civil union partner, a reference to *marriage* includes a reference to a civil union, and a reference to being *married* includes a reference to being in a civil union. There are a large number of amendments that simply insert notes in legislation that is currently expressed to have specific application to marriage, spouses or the state of being married. The purpose of the notes, which are explanatory, is to draw the attention of the reader to the fact that this legislation also now has specific application to civil unions, civil union partners, and the state of being in a civil union.

There are also a number of amendments that are made as a consequence of the amendments to the *Domestic Relationships Act 1994* in part 1.11 of schedule 1. In summary, the amendments to in part 1.11 change the terminology used in that Act so that the term *domestic relationship* is replaced by *personal relationship*. *Personal relationship* is used to avoid potential confusion between the very similar terms *domestic partnership* and *domestic relationship*. The name of the Act is also changed to *Relationships Act 1994*.

Part 1.1 Administration and Probate Act 1929

Amendments 1.1 to 1.5 insert new notes regarding the new definitions of *spouse* and *married* in the *Legislation Act 2001*.

Part 1.2 Adoption Act 1993

Amendments 1.6 to 1.8 insert new notes regarding the new definitions of *spouse* and *married* in the *Legislation Act 2001*.

Part 1.3 Adoption Regulation 1993

Amendment 1.9 rephrases section 11(b)(ix) of the Adoption Regulation 1993 so that it refers to the standard *domestic partnership* rather than “de facto relationship”. The amendment also inserts a new note regarding the new definitions of *married* in the *Legislation Act 2001*.

Part 1.4 Births, Deaths and Marriages Registration Act 1997

Amendment 1.10 inserts a new note regarding the new definition of *married* in the *Legislation Act 2001*.

Amendment 1.11 omits section 24(1)(d) of the *Births, Deaths and Marriages Registration Act 1997*. The effect of section 24(1)(d) is that a person who is married may not apply to the registrar-general for alteration of the record of the person's sex in the registration of the person's birth. Section 24(1)(d) was originally included in the Act as part of a nationally agreed model. The provision is discriminatory (on the basis of marital status) and is not consistent with the underlying principles of the civil union legislation. Rather than extending the discriminatory effect of section 24(1)(d) to civil unions, this amendment omits the provision.

Amendment 1.12 inserts a new section 29A, the effect of which is to limit the application of part 5 of the *Births, Deaths and Marriages Registration Act 1997* to marriage. This new provision is necessary because of the amendments the *Legislation Act 2001* which provide that a reference to *marriage* includes a reference to a civil union. Part 5 deals with the registration of marriages. New part 5A will deal specifically with the registration of civil unions.

Amendment 1.13 inserts new part 5A to provide for the registration of civil unions. New part 5A requires all civil unions entered under the *Civil Unions Act 2006* to be registered with the registrar-general. Where a civil union is terminated by either a court or by the parties, this must also be included in the register.

Amendment 1.14 inserts new notes in the Dictionary regarding the new definitions of *civil union* and *marriage* in the *Legislation Act 2001*.

Amendment 1.15 amends the definition of *registrable event* to include civil union. The effect of this amendment is that the provisions relating to registrable events in part 7 of the *Births, Deaths and Marriages Registration Act 1997* will also apply to civil unions.

Part 1.5 Births, Deaths and Marriages Registration Regulation 1998

Amendment 1.16 inserts a new note regarding the new definitions of *marriage* and *married* in the *Legislation Act 2001*.

Amendment 1.17 omits section 6(1)(e) as a consequence of Amendment 1.11 to remove section 24(1)(d) of the *Births, Deaths and Marriages Registration Act 1997*.

Amendments 1.18 and 1.19 insert new notes regarding the new definitions of *spouse*, *marriage* and *married* in the *Legislation Act 2001*.

Part 1.6 Civil Law (Property) Act 2006

Amendments 1.20 and 1.21 insert new notes regarding the new definitions of *marriage* in the *Legislation Act 2001*.

Part 1.17 Civil Law (Wrongs) Act 2002

Amendment 1.22 inserts a new note regarding the new definition of *spouse* in the *Legislation Act 2001*.

Part 1.8 Crimes Act 1900

Amendment 1.23 inserts a new note regarding the new definition of *marriage* in the *Legislation Act 2001*.

Amendment 1.24 omits the definition of *relative* from the dictionary. This term is not used in the Act and is redundant.

Part 1.9 Crimes (Restorative Justice) Act 2004

Amendments 1.25 and 1.26 are made as a consequence of the amendments to the *Domestic Relationships Act 1994* in part 1.11 of schedule 1.

Part 1.10 Discrimination Act 1991

Amendment 1.27 inserts new notes in the Dictionary regarding the new definitions of *civil union* and *marriage* in the *Legislation Act 2001*.

Amendment 1.28 inserts a new definition of *affinity*. The definition should be read in conjunction with the definition of *relative*.

Amendment 1.29 inserts two new paragraphs in the definition of *relationship status* to refer specifically to the relationship status of being in a civil union.

Amendment 1.30 omits “marriage” from the definition of *relative* as it is covered by the new definition of *affinity*.

Part 1.11 Domestic Relationships Act 1994

Amendment 1.31 substitutes a new long title for the Act that reflects the change in terminology from domestic relationships to personal relationships.

Amendment 1.32 provides for a change in the name of the Act to the *Relationships Act 1994*.

Amendment 1.33 omits the definitions of *domestic relationship* and *domestic relationship agreement*. These definitions are replaced by Amendment 1.34.

Amendment 1.34 inserts new definitions of *personal relationship* to replace *domestic relationship* and term *personal relationship agreement* to replace *domestic relationship agreement*. The new definition of *personal relationship* includes a civil union and consistently with the age criteria for a civil union, is a relationship between 2 people who are at least 16 years old. This is different to the current definition of *domestic relationship*

which is defined to be a relationship between 2 adults. Restricting the definition to adults means that while there is no prohibition on 2 people who are at least 16 years forming a personal relationship, they are unable to make use of the Act to settle a property dispute in the event that the personal relationship ends. There is no logical reason to deny a person access to this law on the basis of their age.

Amendment 1.35 is a drafting amendment.

Amendment 1.36 amends section 12(1) so that the prerequisite for relief that the parties have been in a personal relationship for at least 2 years does not apply in the case of a civil union. Parties to a civil union may obtain relief under the Act immediately.

Amendment 1.37 is a drafting amendment.

Amendment 1.38 follows on from Amendments 1.33 and 1.34 and substitutes *personal relationship* for *domestic relationship* where it occurs in the Act.

Part 1.12 Domestic Violence and Protection Orders Act 2001

Amendment 1.39 omits the term “legally” from married to remove any inference that it does not apply to a civil union.

Amendment 1.40 inserts a new note regarding the new definition of *married* in the *Legislation Act 2001*.

Part 1.13 Duties Act 1999

Amendments 1.41 and 1.42 insert new notes regarding the new definitions of *spouse* in the *Legislation Act 2001* and *personal relationship* in the *Relationships Act 1994*.

Amendment 1.43 substitutes a new provision so that the commissioner may have regard to the termination procedures for civil unions in deciding whether a transfer of dutiable property is consequent on the end of a relationship.

Amendment 1.44 inserts a new note regarding the new definitions of *spouse* in the *Legislation Act 2001* and *personal relationship* in the *Relationships Act 1994*.

Amendment 1.45 substitutes a new provision so that the commissioner may have regard to the termination procedures for civil unions in deciding whether a transaction under a personal relationship agreement is consequent on the end of a relationship.

Amendment 1.46 inserts a new note regarding the new definitions of *spouse* in the *Legislation Act 2001* and *personal relationship* in the *Relationships Act 1994*.

Amendment 1.47 substitutes a new provision so that the commissioner may have regard to the termination procedures for civil unions in deciding whether a transaction to transfer registration of a motor vehicle is consequent on the end of a relationship.

Amendment 1.48 inserts a new note regarding the new definition of *civil union* in the *Legislation Act 2001*.

Amendments 1.49 and 1.50 omit references to *domestic relationship* consequent on the amendments to the *Domestic Relationships Act 1994*.

Amendments 1.51 to 1.53 insert new notes regarding the new definitions of *marriage* and *spouse* in the *Legislation Act 2001*.

Amendments 1.54 inserts a new definition of *personal relationship* consequent on the amendments to the *Domestic Relationships Act 1994*.

Amendment 1.55 substitutes *personal relationship* for *domestic relationship* consequent on the amendments to the *Domestic Relationships Act 1994*.

Amendment 1.56 substitutes references to the *Relationships Act 1994* consequent on the change in name in the amendments to the *Domestic Relationships Act 1994*.

Part 1.14 Evidence Act 1971

Amendment 1.57 omits section 13 which provides for proof of birth, death or marriage. This provision is no longer operative because of the operation of the Commonwealth *Evidence Act 1995*.

Part 1.15 Family Provision Act 1969

Amendment 1.58 substitutes *personal relationship* for *domestic relationship* consequent on the change in name in the amendments to the *Domestic Relationships Act 1994*.

Amendment 1.59 omits the definition of *domestic relationship* consequent on the amendments to the *Domestic Relationships Act 1994*.

Amendment 1.60 inserts a new note regarding the new definition of *spouse* in the *Legislation Act 2001*.

Amendments 1.61 and 1.62 substitute references to the *Relationships Act 1994* consequent on the change in name in the amendments to the *Domestic Relationships Act 1994*.

Part 1.16 First Home Owner Grant Act 2000

Amendment 1.63 omits the term “legally” from married to remove any inference that it does not apply to a civil union.

Amendment 1.64 inserts a new note regarding the new definition of *married* in the *Legislation Act 2001*.

Part 1.17 Guardianship and Management of Property Act 1991

Amendment 1.64 inserts a new note regarding the new definition of *marriage* in the *Legislation Act 2001*.

Part 1.18 Instruments Act 1933

Amendment 1.66 inserts a new note regarding the new definition of *marriage* in the *Legislation Act 2001*.

Part 1.19 Land (Planning and Environment) Act 1991

Amendment 1.67 substitutes *personal relationship* for *domestic relationship* consequent on the amendments to the *Domestic Relationships Act 1994*.

Part 1.20 Land Titles Act 1925

Amendment 1.68 inserts a new note regarding the new definition of *marriage* in the *Legislation Act 2001*.

Part 1.21 Legal Aid Act 1977

Amendment 1.69 substitutes references to the more inclusive “relationship counsellors” for “marriage counsellors” in the functions of the Legal Aid Commission.

Part 1.22 Legislation Act 2001

Amendment 1.70 inserts the new interpretative provisions in the *Legislation Act 2001*. As is noted above, clause 5 of the Bill provides that a civil union is to be treated for all purposes under territory law in the same way as marriage. The amendments the *Legislation Act 2001* support clause 5 by providing that in an Act or statutory instrument, a reference to a *spouse* includes a reference to a civil union partner, a reference to *marriage* includes a reference to a civil union, and a reference to being *married* includes a reference to being in a civil union.

Amendment 1.71 inserts a new note regarding the new definition of *spouse*.

Amendment 1.72 clarifies that a reference to *domestic partnership* includes a marriage under the Commonwealth *Marriage Act 1961* and a civil union.

Amendment 1.73 inserts new definitions of *civil union*, *marriage*, *married* and *spouse* in the Dictionary under the *Legislation Act 2001*. These definitions are universal definitions that apply to all Acts and statutory instruments.

Part 1.23 Married Persons Property Act 1986

Amendment 1.74 amends the language of the provision so that it refers to person and spouse rather than husband and wife. The provision will have application to civil unions.

Amendments 1.75 to 1.77 insert new notes regarding the new definitions of *marriage*, *spouse* and *married* in the *Legislation Act 2001*.

Amendment 1.78 amends the language of the provision so that it refers to person and spouse rather than husband and wife. The provision will have application to civil unions.

Amendment 1.79 inserts a new note regarding the new definition of *spouse* in the *Legislation Act 2001*.

Amendment 1.80 amends the language of the provision so that it refers to person and spouse rather than husband and wife. The provision will have application to civil unions. The provision is generally redrafted in accordance with current drafting practice.

Amendment 1.81 omits a redundant reference to “married”.

Part 1.24 Parentage Act 2004

Amendment 1.82 amends the language of the provision so that it refers to a spouse rather than a husband. The presumptions about parentage that arise from marriage will have equal application where a woman is in a civil union.

Amendment 1.83 inserts a new note regarding the new definitions of *married* and *spouse* in the *Legislation Act 2001*.

Amendments 1.84 to 1.86 amend the language of the section so that the presumptions about parentage that arise from marriage will have equal application where a woman is in a civil union.

Amendments 1.87 to 1.89 insert new notes regarding the new definitions of *married* and *marriage* in the *Legislation Act 2001*.

Part 1.25 Perpetuities and Accumulations Act 1985

Amendment 1.90 omits the reference to spouses and de facto spouses. The provision also refers to *domestic partners* and the operation of the *Legislation Act 2001* is sufficient to ensure that this provision has application to all types of domestic partners.

Part 1.26 Powers of Attorney Act 1956

Amendment 1.91 inserts a new note regarding the new definitions of *civil union* in the *Legislation Act 2001*.

Amendment 1.92 inserts a new definition of *affinity*. The definition should be read in conjunction with the definition of *relative*.

Amendment 1.93 omits “marriage” from the definition of *relative* as it is covered by the definition of *affinity*.

Part 1.27 Rates Act 2004

Amendments 1.94 to 1.99 substitute *personal relationship* for *domestic relationship* consequent on the amendments to the *Domestic Relationships Act 1994*.

Part 1.28 Sale of Motor Vehicles Act 1977

Amendment 1.100 inserts a new reference to civil union in the provision. The effect of this amendment is that a certificate of civil union issued by the registrar-general may be used as evidence of identity by a person applying for a licence under the Act.

Amendment 1.101 inserts a new note regarding the new definition of *civil union* in the *Legislation Act 2001*.

Part 1.29 Supreme Court (Admission of Legal Practitioners) Rules 1998

Amendment 1.102 inserts a new note regarding the new definition of *marriage* in the *Legislation Act 2001*.

Part 1.30 Testamentary Guardianship Act 1984

Amendment 1.103 inserts a new note regarding the new definition of *marriage* in the *Legislation Act 2001*.

Amendment 1.104 omits the definition of *exnuptial child* from the *Testamentary Guardianship Act 1984*. Section 4 of this Act draws a distinction between who may appoint a testamentary guardian of a child based on whether the child is an exnuptial child. Under the current Act, a parent of a child does not include the father of an exnuptial child whose parents have not subsequently married each other (section 2). The distinction between children born of married parents and children born of unmarried parents is contrary to the *Parentage Act 2004*. In particular, section 38 of the *Parentage Act 2004* provides that in determining the relationship of a person with his or her parents, or with either of them, the relationship must be decided without regard to whether the parents of the person are or have ever been married to each other. This provision is also inconsistent with the presumptions about parentage that arise where the parties are in a domestic partnership. The definition is thus omitted.

Amendment 1.105 omits the provision excluding the father of an exnuptial child from the definition of *parent* for the Act. The amendment restates the remaining provisions in accordance with modern drafting practice.

Part 1.31 Wills Act 1968

Amendment 1.106 inserts a new note regarding the new definition of *married* in the *Legislation Act 2001*.

Amendments 1.107 to 1.110 substitute the term *domestic partner* for *spouse* in sections 15 and 18 of the *Wills Act 1968*. These sections are similar in effect in providing that the fact that a person with an interest in a will has witnessed the execution of that will does not of itself affect the validity of the will. Consistently with the treatment of provisions about potential conflict of interest in other legislation, the term *spouse* is replaced with the more inclusive term *domestic partner*.

Amendments 1.111 and 1.112 insert new notes regarding the new definition of *marriage* in the *Legislation Act 2001*.

Amendments 1.113 and 1.114 insert a new provision to determine when the termination of a civil union occurs for the purposes of the provision.

Part 1.32 Witness Protection Act 1996

Amendment 1.115 inserts a new reference to civil union in the provision. The effect of this amendment is that if a civil union certificate is used to establish a new identity for a witness, then the chief police officer must maintain records showing details of the civil union certificate in the same way as for an original birth entry or an original marriage entry.