

**2008**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**CIVIL PARTNERSHIPS BILL 2006**

**Amendments to be moved by Attorney-General**

**SUPPLEMENTARY EXPLANATORY STATEMENT**

Presented by  
Mr Simon Corbell MLA  
Attorney General

## CIVIL PARTNERSHIPS BILL 2006

### Amendments to be moved by Attorney-General

#### Overview of Bill

The amendments moved by the Attorney-General amend the Civil Partnerships Bill 2006 to remove provisions that allow people to solemnise by a ceremony, rather than merely register, their relationship as a couple. The amendments respond to the advice of the Commonwealth Government that it will move to disallow the Bill if it provides for the creation, rather than the recognition and registration of an existing relationship, or if it describes ceremonial confirmation of a couple's civil partnership.

The amendments also require that at least one of the parties to a civil partnership must normally reside within the Australian Capital Territory, and that both parties must be over 18 years of age.

The amendments also make a number of consequential amendments to other ACT legislation to ensure that legislation referring to people who are married or in another type of domestic partnership also appropriately refers to people in a civil partnership.

The *Civil Unions Act 2006*, which allowed two people to enter into a civil partnership by making a declaration to each other in the presence of a celebrant and one other witness, was disallowed on 14 June 2006 under section 35 of the *Australian Capital Territory (Self-Government) Act 1988*.

On 12 December 2006, the ACT Attorney General introduced into the Legislative Assembly the Civil Partnerships Bill 2006, to provide a mechanism for two people, regardless of their sex, to come before a civil partnership notary to enter a formally recognised relationship, known as a civil partnership.

Prior to the federal election in October 2007, the then Commonwealth Government indicated that it would move for disallowance of the Civil Partnerships Bill 2006 if it were passed. The Bill was not debated before the election. After the federal election, the new Government indicated it was for the ACT to make laws for its citizenry, but it has since taken a different stance.

### Human Rights Act 2004

Section 28 of the *Human Rights Act 2004* provides that human rights may be subject only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society.

Section 8 of the Act provides that:

- (1) everyone has the right to recognition as a person before the law;
- (2) everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind; and
- (3) everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

The Civil Partnerships Bill 2006 gives strong recognition to those rights by enabling people in partnerships other than marriage to have their relationship recognised and protected by the law.

The Human Rights Act also provides (at section 17) that every citizen has the right, and is to have the opportunity, to take part in the conduct of public affairs, directly or through freely chosen representatives. The directly elected representatives of the people of the Australian Capital Territory have attempted to maximise the opportunity for ACT citizens to enjoy this right, but have been restricted in their attempt to do so by the archaic strictures placed on them by the Commonwealth at the time of 'self-government'.

---

## Clause Notes

**Clause 1** **Clause 5, page 3, line 5** – the clause is omitted because the Bill, as amended, will no longer contain offence provisions.

**Clause 2** **Clause 6(1), page 4, line 4** – replaces clause 6(1) to make it clear that this Bill does not provide for the creation of civil partnerships, but for the registration of them. Only an adult may enter into a civil partnership.

**Clause 3** **Division 2.2, page 4, line 12** – substitutes a new division 2.2 – Eligibility.

Clause 7 – Eligibility criteria – sets out the criteria for eligibility to enter into a civil partnership. A person may only enter into a civil partnership if:

- the person is not married or in a civil partnership; and
- the person does not have a prohibited relationship with the person's proposed civil partner; and
- one of the people lives in the ACT, or both of them live in the ACT.

**Clause 4** **Division 2.3, page 6, line 9** – omits all of division 2.3 and substitutes a new division 2.3 – Registration – containing clauses 11 and 12.

Clause 11 – Application for registration – states that any two adults, regardless of their sex, who are in a relationship as a couple, may apply to the registrar-general for registration of their relationship as a civil partnership. Subclause (2) requires an application to be accompanied by a statutory declaration by each person, and sets out what that declaration must state. Under subclause (3), the registrar-general may require the applicants to provide additional information or documents that the registrar-general needs to decide the application. If subclause (3) is not complied with, the registrar-general may refuse to consider the application.

Clause 12 – Decision on application – states that the registrar-general must, on receiving an application under section 11, either register the relationship by making an endorsement on the application, or refuse to register the relationship. The registrar-general may only refuse to register the relationship if satisfied that 1 or both of the parties does not meet the eligibility requirements in division 2.2.

**Clause 5** **Division 2.4 heading, page 8, line 1** – substitutes a new heading for the division – Termination.

**Clause 6** **Clause 14(1), page 8, line 10** – makes a grammatical change to clause 14(1).

**Clause 7 Clause 14(5)(ba), page 9, line 29** – inserts new paragraph 14(5)(ba), to provide that a civil partnership is not terminated at the end of 12 months after notice is given if the operation of the termination is stayed under subsection (6A). The amendment ensures that a partnership will not automatically terminate after 12 months while the termination notice is being considered by the court.

**Clause 8 New clause 14(6A), page 10, line 7** – inserts a new clause 14(6A) to provide that, if an application has been made under subsection 14(6), but the application has not been 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.

**Clause 9 Part 3, page 11, line 1** – omits Part 3 of the Bill, which relates to civil partnership notaries.

**Clause 10 Clause 21(a), page 14, line 4** – substitutes a new clause 21(a), to make it clear that a civil partnership is void if either party did not meet the eligibility criteria in section 7 when the relationship was registered under this Act.

**Clause 11 Clause 22, page 14, line 14** – omits clause 22 – non-compliance with certain requirements – as it relates to civil partnership notaries and applicants who are 16 or 17 years old. Civil partnership notaries will no longer be appointed, and people younger than 18 years old may not, under the amended Bill, enter into a civil partnership.

**Clause 12 Clause 25(2), page 16, line 26** – amends the definition of “corresponding law” in clause 25(2) of the Bill, so that a relationship under a law of a foreign country will not be recognised as a civil partnership for the purpose of an Australian Capital Territory law, but a relationship under an Australian State or Territory law will be recognised.

**Clause 13 Clause 26, page 17, line 1** – omits clause 26 and substitutes new clauses 26 and 26A.

Clause 26 – Review of decision – provides that a person may apply to the administrative appeals tribunal for review of a decision under section 12(1)(b) to refuse to register a relationship as a civil partnership (a reviewable decision).

Clause 26A – Notice of reviewable decision – requires the registrar-general to give notice of a reviewable decision to each person affected by the decision. The notice must comply with the Code of Practice in force under section 25B of the *Administrative Appeals Tribunal Act 1989*.

**Clause 14 Schedule 1, page 20** – deletes Schedule 1 to the Bill and substitutes a new Schedule 1 – Consequential amendments.

---

Schedule 1 – Consequential amendments

Reference to civil partnership

The following enactments are amended to ensure that references in legislation to a person's partnership status also appropriately refer to people in a civil partnership:

- Part 1.1 Administration and Probate Act 1929
- Part 1.2 Adoption Regulation 1993
- Part 1.3 Births, Deaths and Marriages Registration Act 1997
- Part 1.4 Births, Deaths and Marriages Registration Regulation 1998
- Part 1.5 Civil Law (Wrongs) Act 2002
- Part 1.6 Corrections Management Act 2007
- Part 1.7 Crimes Act 1900
- Part 1.8 Discrimination Act 1991
- Part 1.9 Domestic Relationships Act 1994
- Part 1.10 Duties Act 1999
- Part 1.11 Evidence Act 1971
- Part 1.12 Family Provision Act 1969
- Part 1.13 First Home Owner Grant Act 2000
- Part 1.14 Instruments Act 1933
- Part 1.15 Land Titles Act 1925
- Part 1.16 Legal Aid Act 1977
- Part 1.17 Legislation Act 2001
- Part 1.18 Married Persons Property Act 1986
- Part 1.19 Parentage Act 2004
- Part 1.20 Perpetuities and Accumulations Act 1985
- Part 1.21 Powers of Attorney Act 2006
- Part 1.22 Rates Act 2004
- Part 1.23 Sale of Motor Vehicles Act 1977
- Part 1.24 Testamentary Guardianship Act 1984
- Part 1.25 Wills Act 1968
- Part 1.26 Witness Protection Act 1996

## Other amendments

### **Part 1.3 Births, Deaths and Marriages Registration Act 1997**

**[1.7] New part 5A** – inserts a new Part 5A – Civil partnerships – into the Act.

Section 32A – Civil partnership – particulars of relationship – requires the registrar-general to include in the register, for each civil partnership registered under the Civil Partnerships Act, the particulars that are prescribed by regulation.

Section 32B – Civil partnership – particulars of termination – applies to a termination of a civil partnership under section 14 or 15 of the Civil Partnerships Act.

The registrar-general must include in the register the particulars of the termination prescribed by regulation.

The registrar-general must also give notice, to each party to the civil partnership, that the partnership terminated on the date specified in the notice.

### **Part 1.4 Births, Deaths and Marriages Registration Regulation 1998**

**[1.13] New sections 8A and 8B** – inserts in to the regulation new sections 8A and 8B, prescribing particulars for the purpose of sections 32A and 32B, respectively, of the *Births, Deaths and Marriages Registration Act 1997*.

Section 8A – Civil partnership – prescribed particulars – prescribes the following particulars of civil partnerships to be included in the register:

- the date the relationship was registered as a civil partnership
- each person's full name
- each person's home address
- each person's date and place of birth
- each person's relationship status (defined in this regulation) before entering into the civil partnership
- each person's occupation, and
- the full name of the parents of each person.

Section 8B – Termination of civil partnership – prescribed particulars – prescribes the particulars to be included in the register when a civil partnership is terminated. If the partnership is terminated by the parties under section 14 of the Civil Partnerships Act, the registrar-general must include the date the termination notice was given to the registrar-general and the date of effect of the termination.

If the partnership was terminated by court order under section 15 of the Act, the registrar-general must include the date of the court order and the date of effect of the termination.

**Part 1.9 Domestic Relationships Act 1994**

- [1.26] **Section 12(1)** – amends section 12(1) of the *Domestic Relationships Act 1994* to make it clear that the requirement, that a domestic relationship must exist for the minimum period of two years before a court may make an order under part 3 of that Act in relation to property interests or maintenance, does not apply to a civil partnership.

**Part 1.17 Legislation Act 2001**

- [1.43] **New section 169(3)** – inserts a new section 169(3), stating that, in an Act or instrument, a reference to a “domestic partnership” includes a reference to a marriage and a civil partnership.
- [1.44] **Dictionary, part 1, new definitions** – inserts new definitions of “civil partner” and “civil partnership”.

---

**Clause 15 Dictionary – Definition of civil partnership notary, page 22, line 11** – omits the definition of “civil partnership notary”, as it is no longer required.