2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002

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Legislation (Gay, Lesbian and Transgender) Amendment Bill 2002

A Bill for

An Act to amend various Territory laws in relation to same sex relationships and transgender people, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:
Part 1  Preliminary

Section 1

1 Part 1  Preliminary

2 1 Name of Act

This Act is the Legislation (Gay, Lesbian and Transgender) Amendment Act 2002.

2 Commencement

This Act commences on the day after its notification day.

Note  The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).
Part 2 Legislation Act 2001

3 Act amended—pt 2
This part amends the Legislation Act 2001.

4 New sections 169 and 169A

169 References to domestic partner and domestic partnership
(1) In an Act or statutory instrument, a reference to a person’s domestic partner is a reference to someone who lives with the person in a domestic partnership, and includes a spouse.
(2) In an Act or statutory instrument, a domestic partnership is the relationship between 2 people, whether of a different or the same sex, living together as a couple on a genuine domestic basis.

169A References to transgender people
(1) A transgender person is a person who—
(a) identifies as a member of the opposite sex by living, or seeking to live, as a member of the opposite sex; or
(b) has identified as a member of the opposite sex by living as a member of the opposite sex; or
(c) is of indeterminate sex and identifies as a member of a particular sex by living as a member of that sex;
whether or not the person is a recognised transgender person.
(2) A transgender person includes a person who is thought of as a transgender person, whether or not the person is a recognised transgender person.
Part 2  Legislation Act 2001

Section 5

(3) A recognised transgender person is a person the record of whose sex is altered under the Births, Deaths and Marriages Registration Act 1997, part 4 or the corresponding provisions of a law of a State or another Territory.

5 Dictionary, part 1, new definitions

insert

domestic partner—see section 169 (1).

domestic partnership—see section 169 (2).

recognised transgender person—see section 169A (3).

transgender person—see section 169A (1) and (2).
Part 3 Additional amendments

6 Additional amendments—sch 1

Schedule 1 amends the Acts and regulations mentioned in it.
### Schedule 1 Additional amendments
(see s 6)

#### Part 1.1 Agents Act 1968

**[1.1] Section 64 (1)**

<table>
<thead>
<tr>
<th>omit</th>
</tr>
</thead>
</table>
| (1) A licensed agent
| substitute |
| A licensed agent |

**[1.2] Section 64 (1) (b)**

| substitute |
| (b) who is an employee, a partner, the domestic partner, a child, a parent, or a brother or sister, of the licensed agent; or
| Note  
For the meaning of **domestic partner**, see Legislation Act, s 169. |

**[1.3] Section 64 (2)**

| omit |

#### Part 1.2 Bail Act 1992

**[1.4] Section 3 (1), definition of de facto spouse**

| omit |

**[1.5] Section 3 (1), definition of relative, paragraph (b)**

| substitute |
| (b) if the original person has or had a domestic partner (other than a spouse)—includes someone who would have been a relative |
of a kind mentioned in paragraph (a) if the original person had been legally married to the domestic partner; and

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

**[1.6] Section 3 (1), definition of *relevant person*, paragraph (a)**

*substitute*

(a) a domestic partner or former domestic partner of the original person; or

**[1.7] Section 3 (1), definition of *relevant person*, paragraph (c)**

*substitute*

(c) a child of a domestic partner or former domestic partner of the original person; or

**[1.8] Section 3 (1), definition of *spouse***

*omit*

**Part 1.3  Casino Control Act 1988**

**[1.9] New section 108 (5)**

*insert*

(5) In this section:

*same sex*, for a transgender person, means the same sex as the sex with which the transgender person identifies.

*Note*  For the meaning of *transgender person*, see Legislation Act, s 169A.
Part 1.4 Children and Young People Act 1999

[1.10] New section 400 (7)

(insert)

(7) In this section:

*opposite sex*, for a transgender person, means the opposite sex to the sex with which the transgender person identifies.

*Note* For the meaning of *transgender person*, see Legislation Act, s 169A.

*same sex*, for a transgender person, means the same sex as the sex with which the transgender person identifies.

Part 1.5 Civil Law (Wrongs) Act 2002

[1.11] Section 20, definition of *member*, paragraphs (a) and (b)

(substitute)

(a) a domestic partner; or

[1.12] Section 20, definition of *member*

(renumber paragraphs when Act next republished under Legislation Act 2001)

[1.13] Section 29, definition of *family member*, paragraphs (a) and (b)

(substitute)

(a) a domestic partner;

[1.14] Section 29, definition of *family member*

(renumber paragraphs when Act next republished under Legislation Act 2001)
[1.15] Section 31 (1) (b), (c) and (d)

substitute

(b) a domestic partner of A; or

(c) another family member of A, if A was killed, injured or put in danger within the sight or hearing of the other family member.

[1.16] Dictionary, note 2

insert

- domestic partner (see s 169)

Part 1.6  Confiscation of Criminal Assets Act 2002

[1.17] Section 37 (5), definitions of domestic partner and domestic partnership

omit

[1.18] Section 210 (4), definition of transgender person

omit


insert

- domestic partner (see s 169)
- transgender person (see s169A)
### Part 1.7 Cooperatives Act 2002

#### [1.20] Section 155 (d)

<table>
<thead>
<tr>
<th><strong>omit</strong> spouse</th>
</tr>
</thead>
<tbody>
<tr>
<td>substitute domestic partner</td>
</tr>
</tbody>
</table>

#### [1.21] Section 232 (1), definition of *associate*

<table>
<thead>
<tr>
<th><strong>omit</strong> spouse</th>
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<tbody>
<tr>
<td>substitute domestic partner</td>
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</tbody>
</table>

#### [1.22] Section 276 (1) (b)

<table>
<thead>
<tr>
<th><strong>omit</strong> spouse</th>
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<tbody>
<tr>
<td>substitute domestic partner</td>
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</tbody>
</table>

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

| **omit** |

#### [1.24] Dictionary, note 2

<table>
<thead>
<tr>
<th><strong>insert</strong></th>
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<tbody>
<tr>
<td>• domestic partner</td>
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</table>
Part 1.8  Coroners Act 1997

[1.25] Section 3 (1), definition of immediate family, paragraph (a)

omit
spouse
substitute
domestic partner

[1.26] Section 3 (1), definition of immediate family, new note

insert

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

[1.27] Section 3 (1), definition of spouse

omit

Part 1.9  Crimes Act 1900

[1.28] Section 185, new definitions

insert

opposite sex, for a transgender person, means the opposite sex to the sex with which the transgender person identifies.

same sex, for a transgender person, means the same sex as the sex with which the transgender person identifies.
Schedule 1
Additional amendments
Part 1.9
Crimes Act 1900
Amendment [1.29]

[1.29] Section 397 (1)

omit
spouse

substitute
domestic partner

[1.30] Dictionary, note 2

insert

- domestic partner (see s 169)
- transgender person (see s169A)

[1.31] Dictionary, definition of de facto spouse

omit

[1.32] Dictionary, new definition of domestic partner and opposite sex

insert

domestic partner includes former domestic partner.

opposite sex, for a transgender person and part 10 (Criminal investigation)—see section 185.

[1.33] Dictionary, definition of relative, paragraph (b)

substitute

(b) if the original person has or had a domestic partner (other than a spouse)—includes someone who would have been a relative of a kind mentioned in paragraph (a) if the original person had been legally married to the domestic partner; and

[1.34] Dictionary, definition of relevant person, paragraph (a)

substitute

(a) a domestic partner of the original person; or
Additional amendments
Crimes (Forensic Procedures) Act 2000
Part 1.10
Amendment [1.35]

[1.35] Dictionary, definition of relevant person, paragraph (c)
substitute
(c) a child of a domestic partner of the original person; or

[1.36] Dictionary, new definition of same sex
same sex, for a transgender person and part 10 (Criminal investigation)—see section 185.

[1.37] Dictionary, definition of spouse
omit

Part 1.10 Crimes (Forensic Procedures) Act 2000

[1.38] Section 6, note
omit

[1.39] Section 17
substitute

17 Application of Act to transgender people
In this Act:

opposite sex, for a transgender person, means the opposite sex to the sex with which the transgender person identifies.

same sex, for a transgender person, means the same sex as the sex with which the transgender person identifies.

[1.40] Dictionary, note 2
insert
• transgender person (see s 169A)

Legislation (Gay, Lesbian and Transgender) page 13
Amendment Bill 2002

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au
[1.41] Dictionary, definition of opposite sex
omit
(4)

[1.42] Dictionary, definition of recognised transgender person
omit

[1.43] Dictionary, definition of same sex
omit
(4)

[1.44] Dictionary, definition of transgender person
omit

Part 1.11 Custodial Escorts Regulations 2002

[1.45] Regulation 6 (8), new definitions
insert

opposite sex, for a transgender person, means the opposite sex to the sex with which the transgender person identifies.

Note  For the meaning of transgender person, see Legislation Act, s 169A.

same sex, for a transgender person, means the same sex as the sex with which the transgender person identifies.
Part 1.12 Dangerous Goods Act 1975

[1.46] Section 42 (2)
substitute

(2) A search of a person under this section must be conducted by a person of the same sex as the person being searched.

(3) In this section:

same sex, for a transgender person, means the same sex as the sex with which the transgender person identifies.

[1.47] Section 43 (3)
substitute

(3) A search of a person under this section must be conducted by a person of the same sex as the person being searched.

(4) In this section:

same sex—see section 42 (3).

[1.48] Dictionary, note 2
insert

• transgender person (see s 169A)


[1.49] Section 4 (1), definitions of domestic partner and domestic partnership
omit

[1.50] Section 4 (1), definition of relationship status
insert

Note For the meaning of domestic partner, see Legislation Act, s 169.
[1.51] Section 35, new note

*insert*

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

**Part 1.14 Domestic Relationships Act 1994**

[1.52] Section 3 (1), definition of *domestic relationship*

*substitute*

*domestic relationship* means a personal relationship between 2 adults in which one provides personal or financial commitment and support of a domestic nature for the material benefit of the other and includes a domestic partnership but does not include a legal marriage.

[1.53] Section 3 (1), definition of *domestic relationship*, new note

*insert*

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

**Part 1.15 Drugs of Dependence Act 1989**

[1.54] New section 189 (4)

*insert*

(4) In this section:

*same sex*, for a transgender person, means the same sex as the sex with which the transgender person identifies.

*Note* For the meaning of *transgender person*, see Legislation Act, s 169A.
Part 1.16  Firearms Act 1996

[1.55] New section 75 (3)
insert

(3) In this section:

same sex, for a transgender person, means the same sex as the sex with which the transgender person identifies.

Note  For the meaning of transgender person, see Legislation Act, s 169A.

Part 1.17  First Home Owner Grant Act 2000

[1.56] Section 6 (1)
substitute

(1) A person is the partner of the applicant if the person is the applicant’s domestic partner.

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

[1.57] Section 6 (3)
omit

Part 1.18  Gambling and Racing Control Act 1999

[1.58] Schedule 1, clause 2 (3) (a)
omit
spouse

substitute

domestic partner
### Schedule 1

#### Additional amendments


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<td><strong>[1.59] Schedule 1, clause 2 (3) (a), new note</strong></td>
</tr>
<tr>
<td><em>insert</em></td>
</tr>
<tr>
<td><em>Note</em> For the meaning of <em>domestic partner</em>, see Legislation Act, s 169.</td>
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**Part 1.19**  Guardianship and Management of Property Act 1991

#### [1.60] Sections 10 (5) and 35 (1) (b)

*omit*  
*spouse*  
*substitute*  
*domestic partner*

#### [1.61] Dictionary, note 2

*insert*  
- *domestic partner* (see s 169)

#### [1.62] Dictionary, definition of *spouse*

*omit*

**Part 1.20**  Health Records (Privacy and Access) Act 1997

#### [1.63] Section 4, definition of *immediate family member*, paragraph (a) (ii)

*substitute*  
(ii)  a domestic partner of the consumer; or
[1.64] Section 4, definition of *immediate family member*, paragraph (a), new note

Insert

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

Part 1.21 Land (Planning and Environment) Act 1991

[1.65] Section 186D (5) (a)

Omit

Partner

Substitute

domestic partner

[1.66] Section 186D (7)

Substitute

(7) In this section:

*child*, of a lessee, includes a child of the lessee’s domestic partner.

[1.67] Dictionary, note 2

Insert

- domestic partner (see s 169)
Part 1.22 Land Titles Act 1925

[1.68] Section 79

*omit*

spouse

*substitute*

domestic partner

[1.69] Section 79, new note

*insert*

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

Part 1.23 Legal Practitioners Act 1970

[1.70] Section 102 (1) (c)

*substitute*

(c) is the domestic partner of the solicitor by whom the records are kept; or

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

[1.71] Section 102 (2) (b) (ii)

*substitute*

(ii) the domestic partner of the solicitor by whom the records are kept; or
[1.72] Section 113 (2)

omit
spouse or de facto spouse
substitute
domestic partner

[1.73] Section 113 (2), new note

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

Part 1.24 Liquor Act 1975

[1.74] Section 151, definition of responsible adult, paragraph (a)

omit
spouse
substitute
domestic partner

[1.75] Section 151, definition of responsible adult, new note

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

[1.76] Section 151, definition of spouse

omit
Schedule 1
Part 1.25
Mental Health (Treatment and Care) Act 1994

Amendment [1.77]

**Part 1.25** Mental Health (Treatment and Care) Act 1994

[1.77] Section 4, definition of *relative*

*omit*

spouse

*substitute*

domestic partner

[1.78] Section 4, definition of *relative*, new note

*insert*

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

[1.79] Section 4, definition of *spouse*

*omit*

**Part 1.26** Periodic Detention Act 1995

[1.80] Section 50 (7), new definitions

*insert*

*opposite sex*, for a transgender person, means the opposite sex to the sex with which the transgender person identifies.

*Note* For the meaning of *transgender person*, see Legislation Act, s 169A.

*same sex*, for a transgender person, means the same sex as the sex with which the transgender person identifies.
Part 1.27  Periodic Detention Regulations 1995

[1.81] Schedule 2, clause 1

*omit*

An officer

*substitute*

(1) An officer

[1.82] Schedule 2, clause 1

*insert*

(2) In this clause:

*same sex*, for a transgender person, means the same sex as the sex with which the transgender person identifies.

*Note*  For the meaning of *transgender person*, see Legislation Act, s 169A.

Part 1.28  Perpetuities and Accumulations Act 1985

[1.83] Section 14 (1) (c)

*omit*

spouses

*substitute*

spouses, de facto spouses, domestic partners

[1.84] Section 14 (1) (c), new note

*insert*

*Note*  For the meaning of *domestic partner*, see Legislation Act, s 169.
Part 1.29 Pharmacy Act 1931

[1.85] Section 9A (2), definition of specified relative

substitute

specified relative means a domestic partner, parent, child or
grandchild.

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

Part 1.30 Powers of Attorney Act 1956

[1.86] Section 2 (1), definition of relative, paragraph (b)

substitute

(b) a domestic partner.

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

Part 1.31 Protection Orders Act 2001

[1.87] Section 23 (2), example

omit
defacto spouses

substitute
domestic partners

[1.88] Dictionary, note 2

insert

• domestic partner (see s 169)

[1.89] Dictionary, definition of de facto spouse

omit
**[1.90] Dictionary, new definition of *domestic partner***

*insert*

*domestic partner* includes a former domestic partner.

**[1.91] Dictionary, definition of *relative*, paragraph (b)**

*substitute*

(b) if the original person has or had a domestic partner (other than a spouse)—includes someone who would have been a relative of a kind mentioned in paragraph (a) if the original person had been legally married to the domestic partner; and

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

**[1.92] Dictionary, definition of *relevant person*, paragraph (a)**

*substitute*

(a) a domestic partner of the original person; or

**[1.93] Dictionary, definition of *relevant person*, paragraph (c)**

*substitute*

(c) a child of a domestic partner of the original person; or

**[1.94] Dictionary, definition of *spouse***

*omit*

**Part 1.32 Remand Centres Regulations 1976**

**[1.95] Regulation 7 (3)**

*substitute*

(3) The search of a detainee or his or her quarters under subsection (1) or (2) must, if practicable, be carried out by a custodial officer of the same sex as the detainee.
Schedule 1  Additional amendments
Part 1.33  Sale of Motor Vehicles Act 1977

Amendment [1.96]

[1.96] New regulation 7 (8)

insert

(8) In this regulation:

same sex, for a transgender person, means the same sex as the sex with which the transgender person identifies.

Note For the meaning of transgender person, see Legislation Act, s 169A.

[1.97] New regulation 10 (5A)

insert

(5A) For subregulation (5), a transgender person is taken to be of the sex with which the transgender person identifies.

Note For the meaning of transgender person, see Legislation Act, s 169A.

[1.98] Regulation 10

renumber subregulations when regulations next republished under Legislation Act 2001

Part 1.33  Sale of Motor Vehicles Act 1977

[1.99] Section 42 (b)

substitute

(b) who is an employee of, or is the domestic partner of, the licensed dealer; or

Note For the meaning of domestic partner, see Legislation Act, s 169.
Part 1.34  Transplantation and Anatomy Act 1978

[1.100]  Section 4 (1), definition of next of kin

substitute

next of kin means—

(a) for a dead child—someone mentioned in the definition of senior available next of kin, paragraph (a) (i), (ii) or (iii); or

(b) for any other dead person—someone mentioned in that definition, paragraph (b) (i), (ii), (iii), (iv) or (v).

[1.101]  Section 4 (1), definition of senior available next of kin

substitute

senior available next of kin means—

(a) for a dead child—

(i) if a parent of the child is available—the parent; or

(ii) if a parent of the child is not available—an adult brother or sister of the child who is available; or

(iii) if no-one mentioned in subparagraph (i) or (ii) is available—someone who was the child’s guardian immediately before the child’s death and who is available; and

(b) for any other dead person—

(i) if the person was, immediately before his or her death, party to a domestic partnership and the person who was then his or her domestic partner is available—the domestic partner; or
\[\text{Note} \quad \text{For the meaning of } \text{domestic partner and domestic partnership, see Legislation Act, s 169.}\]

\[\text{[1.102] Section 26} \]
\[\text{omit}\]

\[\text{Part 1.35 Truck Act 1900}\]

\[\text{[1.103] Section 10 (1) (e)}\]
\[\text{omit}\]
spouse
\[\text{substitute}\]
domestic partner

\[\text{[1.104] Section 10 (1) (e), new note}\]
\[\text{insert}\]
\[\text{Note} \quad \text{For the meaning of } \text{domestic partner, see Legislation Act, s 169.}\]
Additional amendments
Victims of Crime (Financial Assistance) Act 1983
Part 1.36
Amendment [1.105]


[1.105] Section 2, definition of close family member, paragraph (a)

substitute

(a) the domestic partner of the victim; or

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

Endnote

Republications of amended laws

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

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