



Australian Capital Territory

Civil Partnerships Amendment Act 2009

A2009-41

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Australian Capital Territory

Civil Partnerships Amendment Act 2009

A2009-41

An Act to amend the *Civil Partnerships Act 2008*, and for other purposes

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

1 Name of Act

This Act is the *Civil Partnerships Amendment Act 2009*.

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)).

3 Legislation amended

This Act amends the *Civil Partnerships Act 2008*.

Note This Act also amends the following legislation (see sch 1):

- *Births, Deaths and Marriages Registration Act 1997*
- *Births, Deaths and Marriages Registration Regulation 1998*.

**4 Civil partnerships—general
Section 5 (1)**

substitute

- (1) A civil partnership is a legally recognised relationship that, subject to this Act, may be entered into by any 2 adults, regardless of their sex.

5 Division 2.3 heading

substitute

Division 2.3 Entering into civil partnership

6 New section 6A

in division 2.3, insert

6A How civil partnership is entered into

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

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

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

**7 Application for registration
Section 7 (1), except note**

substitute

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

8 New sections 8A, 8B and 8C

in division 2.3, insert

8A Notice of intention to enter into civil partnership

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

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

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

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

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

8B Declaration of civil partnership

- (1) Two people who have given notice to a civil partnership notary in accordance with section 8A may enter into a civil partnership by making a declaration before the civil partnership notary and at least 1 other witness.
- (2) The declaration must be made not earlier than 5 days, and not later than 18 months, after the day the notice was given to the civil partnership notary.
- (3) The declaration must be made by each person to the other and must contain a clear statement that—
 - (a) names both parties; and
 - (b) acknowledges that they are freely entering into a civil partnership with each other.

8C When civil partnership has effect

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

9 New parts 2A and 2B

insert

Part 2A Civil partnership notaries

11A Registration of civil partnership notaries

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

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

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

- (2) On application by a person under subsection (1), the registrar-general may register the applicant if satisfied that the applicant—
- (a) is an individual aged 18 years or older; and
 - (b) has the knowledge and the skills or experience necessary to exercise the functions of a civil partnership notary under this Act; and
 - (c) is a suitable person to be registered as a civil partnership notary.
- (3) If the registrar-general is not satisfied under subsection (2), the registrar-general must refuse to register the applicant.
- (4) In deciding whether a person is a suitable person to be registered as a civil partnership notary, the registrar-general must have regard to the following:
- (a) whether the person has been convicted, or found guilty, in Australia of an offence punishable by imprisonment for 1 year or longer;

- (b) whether the person has been convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would have been punishable by imprisonment for 1 year or longer;
 - (c) whether the person has been convicted, or found guilty, of an offence against, or has otherwise contravened, this Act;
 - (d) whether the person is or has been an undischarged bankrupt, has executed a personal insolvency agreement or has otherwise applied to take the benefit of any law for the relief of bankrupt or insolvent debtors;
 - (e) whether the person has a physical or mental incapacity that may affect the exercise of the person's functions as a civil partnership notary.
- (5) In deciding whether a person is a suitable person to be a civil partnership notary, the registrar-general may have regard to anything else the registrar-general considers relevant.

11B Register of civil partnership notaries

- (1) The registrar-general must keep a register of people registered as civil partnership notaries under this Act.
- (2) The register may be kept in any form, including electronically, that the registrar-general decides.
- (3) The register must include the following information for each person registered as a civil partnership notary:
 - (a) the person's full name;
 - (b) the person's address and contact details;
 - (c) the date the person was registered;
 - (d) if the person's registration is cancelled or the person otherwise ceases to be registered—the date the registration ceases.

- (4) The register must be available for public inspection at reasonable times.

11C Cancellation of registration

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

Part 2B Notification and review of decisions

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

In this part:

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

11E Reviewable decision notices

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

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

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

11F Applications for review

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

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

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

10 New section 12A

insert

12A Noncompliance with certain requirements

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

**11 Evidence of identity and age
Section 13 (1)**

after

section 7 (2) (b)

insert

and section 8A (2) (b)

**12 Civil partnerships under corresponding laws
Section 15 (2), definition of *corresponding law***

omit

or another Territory

substitute

, another Territory or another country

13 New section 15A

insert

15A Offences

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

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

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

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

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

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

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

Note The Criminal Code includes offences for—

- giving false or misleading information etc to a person exercising a function under a territory law (see pt 3.4 (False or misleading statements, information and documents)); and
- making false statements in statutory declarations (see s 336A); and
- impersonating territory public officials (see s 360).

14 Sections 16 and 17

omit

15 New schedule 1*insert***Schedule 1 Reviewable decisions**

(see pt 2B)

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

16 Dictionary, new definitions*insert****civil partnership notary*** means—

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

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

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Births, Deaths and Marriages Registration Act 1997

[1.1] Section 32A

substitute

32A Registration of civil partnership

- (1) This section applies if—
 - (a) the registrar-general registers a relationship as a civil partnership under the *Civil Partnerships Act 2008*, section 8 (Decision on application); or
 - (b) a civil partnership is entered into in the ACT under the *Civil Partnerships Act 2008*, section 8B (Declaration of civil partnership).
- (2) The civil partnership must be registered under this Act.

32AA How civil partnerships are registered

- (1) Subsection (2) applies if—
 - (a) the registrar-general registers a relationship as a civil partnership under the *Civil Partnerships Act 2008*, section 8 (Decision on application); or
 - (b) a civil partnership is entered into before the registrar-general under the *Civil Partnerships Act 2008*, section 8B (Declaration of civil partnership).

- (2) The registrar-general must register the civil partnership by including in the register the particulars of the civil partnership prescribed by regulation.
- (3) If a civil partnership is entered into before another civil partnership notary under the *Civil Partnerships Act 2008*, section 8B, the notary must give the following to the registrar-general not later than 2 weeks after the day the civil partnership is entered into:
 - (a) written notice of the civil partnership;
 - (b) the notice given to the notary under the *Civil Partnerships Act 2008*, section 8A (Notice of intention to enter into civil partnership) for the civil partnership.

Maximum penalty: 5 penalty units.

Note If a form is approved under s 69 for this provision, the form must be used.

- (4) If a notice is given to the registrar-general under subsection (3), the registrar-general must register the civil partnership by including in the register the particulars of the civil partnership prescribed by regulation.
- (5) An offence against this section is a strict liability offence.
- (6) In this section:
civil partnership notary—see the *Civil Partnerships Act 2008*, dictionary.

Part 1.2 **Births, Deaths and Marriages Registration Regulation 1998**

[1.2] Section 8A (1)

omit

section 32A

insert

section 32AA (2) and (4)

[1.3] Section 8A (1) (a)

substitute

- (a) if the civil partnership was entered into by registration under the *Civil Partnerships Act 2008*, section 8—the date and place of registration;
- (ab) if the civil partnership was entered into before a civil partnership notary under the *Civil Partnerships Act 2008*, section 8B—
 - (i) the date and place of the declaration before the notary;
and
 - (ii) the full name of at least 1 witness to the civil partnership;

[1.4] New section 8A (1A)

insert

- (1A) For the Act, section 32AA (4), the following particulars are also prescribed:
 - (a) the civil partnership notary's full name;
 - (b) details of the notary's registration as a civil partnership notary under the *Civil Partnerships Act 2008*, part 2A (Civil partnership notaries).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 26 August 2009.

2 Notification

Notified under the Legislation Act on 18 November 2009.

3 Republications of amended laws

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

I certify that the above is a true copy of the Civil Partnerships Amendment Bill 2009, which was passed by the Legislative Assembly on 11 November 2009.

Clerk of the Legislative Assembly

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