



Australian Capital Territory

Marriage Equality (Same Sex) Act 2013

A2013-39

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Australian Capital Territory

Marriage Equality (Same Sex) Act 2013

A2013-39

An Act to provide for marriage equality by allowing for marriage between 2 adults of the same sex, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Marriage Equality (Same Sex) Act 2013*.

2 Commencement

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

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

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

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

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*separated*, for part 4 (Ending of marriages under this Act)—see section 22.' means that the term 'separated' is defined in that section for part 4.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

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

Note 2 *Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Marriages under this Act

Division 2.1 Preliminary

6 Application—pt 2

This part applies—

- (a) in relation to all marriages between 2 adults of the same sex that are not marriages within the meaning of the *Marriage Act 1961* (Cwlth), solemnised, or intended to be solemnised, in the ACT; and
- (b) despite any common law rule of private international law.

Division 2.2 Eligibility

7 Eligibility for marriage under this Act

- (1) Two people of the same sex may be married under this Act only if—
 - (a) each person is an adult; and
 - (b) each person is not—
 - (i) legally married; or
 - (ii) in a civil union or civil partnership with someone other than the person's proposed spouse under the *Civil Unions Act 2012* (repealed) or the *Civil Partnerships Act 2008* (repealed) or a law of another jurisdiction that substantially corresponds to those territory laws; and
 - (c) each person cannot marry the person's proposed spouse under the *Marriage Act 1961* (Cwlth) because it is not a marriage within the meaning of that Act; and

- (d) each person does not have any of the following relationships (a *prohibited relationship*) with the person's proposed spouse:
- (i) lineal ancestor;
 - (ii) lineal descendant;
 - (iii) sister;
 - (iv) half-sister;
 - (v) brother;
 - (vi) half-brother.
- (2) For this section, a *prohibited relationship*—
- (a) includes a relationship traced through, or to, a person who is or was an adopted child; and
 - (b) the relationship between the adopted child and adoptive parent, or each of the adoptive parents, is taken to be, or have been, the relationship of child and parent.
- (3) For subsection (2)—
- (a) a person who has at any time been adopted by someone else is taken to remain the adopted child of the other person despite—
 - (i) the adoption order (however described) being annulled, cancelled or discharged; or
 - (ii) the adoption no longer being effective for any other reason; and
 - (b) a person who has been adopted on more than 1 occasion is taken to be the adopted child of each person by whom he or she has been adopted.
- (4) In this section:
- adopted* means adopted under the law of a place (whether in or outside Australia) relating to the adoption of people.

Division 2.3 Solemnisation

8 Solemnisation of marriage under this Act

A marriage under this Act must be solemnised by an authorised celebrant.

9 Notice of intention to marry under this Act

- (1) Before 2 people marry under this Act, they must give written notice (a *notice of intention to marry*) to the authorised celebrant by whom their marriage is intended to be solemnised of their intention to marry.

Note If a form is approved under s 49 for this provision, the form must be used.

- (2) The notice of intention to marry must be given to the authorised celebrant not earlier than 18 months, and not later than 1 month, before the day the marriage is solemnised.
- (3) The notice of intention to marry must be accompanied by—
 - (a) a statutory declaration made by each person stating—
 - (i) that the person wishes to marry the other person; and
 - (ii) that the person is not—
 - (A) married; or
 - (B) in a civil union or civil partnership with someone other than the other person under the *Civil Unions Act 2012* (repealed) or the *Civil Partnerships Act 2008* (repealed) or a law of another jurisdiction that substantially corresponds to those territory laws; and

- (iii) that the person believes the person and the other person do not have a prohibited relationship; and

Note 1 The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

Note 2 The *Criminal Code* includes an offence for making false statements in statutory declarations (see s 336A).

- (b) the evidence required under section 10 of each person's identity and age; and
 - (c) anything else prescribed by regulation.
- (4) As soon as practicable after receiving the notice of intention to marry and statutory declarations, the authorised celebrant must give each person a written notice setting out the nature and effect of marriage under this Act.

10 Evidence of identity and age

- (1) For section 9 (3) (b) (Notice of intention to marry under this Act), the evidence of identity and age required for each person is—
- (a) the person's birth certificate; or
 - (b) the person's citizenship certificate; or
 - (c) the person's current passport; or
 - (d) a statutory declaration made by the person stating—
 - (i) that it is impracticable to provide a document mentioned in paragraph (a), (b) or (c); and

- (ii) to the best of the person's knowledge and belief, and as accurately as the person has been able to find out, when and where the person was born.

Note 1 The [Statutory Declarations Act 1959](#) (Cwlth) applies to the making of statutory declarations under ACT laws.

Note 2 The [Criminal Code](#) includes an offence for making false statements in statutory declarations (see s 336A).

- (2) In this section:

birth certificate, for a person, means the person's birth certificate, or a certified extract about the person's birth from the register, under the [Births, Deaths and Marriages Registration Act 1997](#) or a law of another jurisdiction that substantially corresponds to that Act.

citizenship certificate, for a person, means a certificate, declaration, notice or other instrument of a person's nationality under the [Australian Citizenship Act 2007](#) (Cwlth) or the [Australian Citizenship Act 1948](#) (Cwlth) (repealed).

11 **When authorised celebrant must not solemnise marriage under this Act**

An authorised celebrant to whom a notice of intention to marry is given in relation to a marriage under this Act must not solemnise the marriage—

- (a) unless the celebrant is satisfied on reasonable grounds that the parties are the people who are getting married; and
- (b) if the celebrant believes on reasonable grounds that any of the following documents in relation to the marriage contains a false statement or error, or is defective:
 - (i) the notice of intention to marry;
 - (ii) a statutory declaration accompanying the notice of intention to marry; and

- (c) unless there are at least 2 witnesses who are, or appear to the celebrant to be, adults.

12 When and where marriage under this Act may be solemnised

- (1) A marriage under this Act may be solemnised—
 - (a) on any day; and
 - (b) at any time; and
 - (c) at any place in the ACT.
- (2) However, a minister of religion is not required to make a place (for example a church or other place of public worship) available for solemnising a marriage under this Act.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

13 Form of ceremony of marriage under this Act

- (1) If a marriage under this Act is solemnised by an authorised celebrant who is a minister of religion of a religious body, it may be solemnised according to any form or ceremony recognised by the religious body.
- (2) If a marriage under this Act is solemnised by an authorised celebrant who is not a minister of religion, each party to the marriage must say to the other, in the presence of the authorised celebrant and the witnesses, the following words (or words to the same effect):

‘I call on the people here to witness that I, [*name of party*], take you, [*name of other party*], to be my lawful wedded [spouse, husband or wife] (*whichever is preferred by the parties*).’.

14 Authorised celebrant to explain nature of relationship of marriage under this Act

Before a marriage under this Act is solemnised by an authorised celebrant, the authorised celebrant must say to the parties to the marriage, in the presence of the witnesses, the following words:

‘I am authorised under the *Marriage Equality (Same Sex) Act 2013* to solemnise marriages under that Act.

Before you are joined in marriage in my presence and the presence of these witnesses, I remind you of the solemn and binding nature of the relationship into which you are about to enter.

Under the law, this wedding recognises that you are voluntarily entering into a lawful and binding union, for life, to the exclusion of all others.’.

15 Marriage certificates under this Act—general

(1) If an authorised celebrant solemnises a marriage under this Act, the authorised celebrant must prepare—

- (a) a certificate of marriage under this Act to give to the parties to the marriage; and
- (b) two official certificates of marriage under this Act.

Note If a form is approved under s 49 for this provision, the form must be used.

(2) However, an authorised celebrant who is the registrar-general need prepare only 1 official certificate of marriage under this Act.

(3) The following must sign each certificate immediately after the solemnisation of the marriage under this Act:

- (a) the parties to the marriage;
- (b) two witnesses of the marriage who are, or appear to the authorised celebrant to be, adults;

- (c) the authorised celebrant.
- (4) The authorised celebrant must hand the certificate mentioned in subsection (1) (a) to 1 of the parties to the marriage on behalf of the parties.
- (5) If 2 official certificates have been prepared, the authorised celebrant must—
 - (a) give the following to the registrar-general within 14 days after the solemnisation of marriage under this Act:
 - (i) one of the official certificates;
 - (ii) the notice of intention to marry;
 - (iii) any statutory declarations relating to the marriage that are in the celebrant's possession; and
 - (b) keep the other official certificate and deal with it in accordance with a regulation.

16 Marriage certificates under this Act—celebrant not able to sign

- (1) The registrar-general may, if satisfied that a marriage under this Act was properly solemnised, prepare and sign the certificates of marriage under this Act with the changes that the registrar-general considers appropriate if—
 - (a) the authorised celebrant dies without having prepared and signed the certificates; or
 - (b) there are other special circumstances and the registrar-general considers it necessary to do so.
- (2) A certificate prepared and signed by the registrar-general under subsection (1) has the same effect as if it had been prepared and signed by the authorised celebrant.

17 Interpreter at ceremony of marriage under this Act

If the authorised celebrant by whom a marriage under this Act is to be solemnised considers it appropriate, the celebrant may use an interpreter who is not a party to the marriage in relation to the ceremony to solemnise the marriage.

18 Second ceremony of marriage under this Act

- (1) Subsection (2) applies if—
 - (a) two people have gone through a form or ceremony of marriage under this Act with each other; and
 - (b) there is doubt whether—
 - (i) the people are validly married to each other; or
 - (ii) their marriage could be proved in a legal proceeding.
- (2) The people may go through a form or ceremony of marriage under this Act with each other as if they had not previously gone through a form or ceremony of marriage under this Act with each other.
- (3) The people must give the authorised celebrant by whom the form or ceremony is to be performed—
 - (a) a statutory declaration by them stating that they have previously gone through a form or ceremony of marriage under this Act with each other, and stating the date when, the place where and the circumstances in which they went through the form or ceremony; and
 - (b) a certificate by an Australian legal practitioner, endorsed on the statutory declaration, that, on the facts stated in the declaration, there is, in the practitioner's opinion, a doubt about 1 of the matters mentioned in subsection (1) (b).

Note 1 The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

Note 2 The [Criminal Code](#) includes an offence for making false statements in statutory declarations (see s 336A).

- (4) The authorised celebrant by whom a form or ceremony of marriage under this Act is performed under subsection (2) must make an endorsement in accordance with a regulation on each certificate issued in relation to the ceremony.
- (5) A marriage under subsection (2) is not void only because a requirement of subsection (3) or (4) was not complied with.
- (6) In this section:

Australian legal practitioner—see the [Legal Profession Act 2006](#), section 8 (Terms relating to legal practitioners).

19 Later religious ceremony of marriage under this Act

- (1) This Act does not prevent 2 people who are already parties to a valid marriage under this Act with each other from going through a religious ceremony of marriage under this Act with each other if the people have—
 - (a) given to the person by whom the ceremony is to be performed a certificate of their existing marriage under this Act; and
 - (b) given that person a statement in writing, signed by them and witnessed by that person, that—
 - (i) they have previously gone through a form or ceremony of marriage under this Act with each other; and
 - (ii) they are the parties mentioned in the certificate of marriage under this Act produced with the statement; and
 - (iii) they have no reason to believe that they are not parties to a marriage under this Act with each other.

- (2) The following provisions do not apply in relation to a religious ceremony of marriage under this Act performed in accordance with this section:
- (a) section 9 (Notice of intention to marry under this Act);
 - (b) section 15 (Marriage certificates under this Act—general);
 - (c) section 20 (Incorrect marriage certificate under this Act);
 - (d) section 21 (Grounds on which marriage under this Act is void).
- (3) The person who performs the religious ceremony must not—
- (a) prepare or give a certificate of marriage under this Act in relation to the ceremony; or
 - (b) give any other document to the parties in relation to the ceremony unless the parties are described in the document as already being parties to a valid marriage under this Act with each other.
- (4) A minister of religion is not required to make a place (for example a church or other place of public worship) available for the religious ceremony.

Note 1 A person does not commit an offence against s 41 (1) only because the person performed a religious ceremony of marriage under this Act under this section (see s 41 (2)).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

20 Incorrect marriage certificate under this Act

- (1) If the registrar-general is satisfied, by statutory declaration or otherwise, that a matter in a certificate mentioned in section 15 (Marriage certificates under this Act—general) is incorrect, the registrar-general may correct the certificate.

Note 1 The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

Note 2 The *Criminal Code* includes an offence for making false statements in statutory declarations (see s 336A).

- (2) The registrar-general may, by written notice given to a party to the marriage under this Act or authorised celebrant, require the party or celebrant to give the certificate to the registrar-general within the period stated in the notice.
- (3) If a marriage under this Act has been solemnised, or purports to have been solemnised, under this part, and the marriage is void, the registrar-general may, by written notice given to a party to the marriage, require the party to give the registrar-general, within the period stated in the notice, the certificate mentioned in section 15 (4).
- (4) The period stated in a notice mentioned in subsection (2) or (3) must not be less than 7 days after the notice is given.

Part 3 Void marriages under this Act

21 Grounds on which marriage under this Act is void

- (1) A marriage under this Act is void if—
 - (a) either party did not meet the eligibility criteria under section 7 (Eligibility for marriage under this Act) when the marriage was entered into; or
 - (b) the marriage was solemnised other than in accordance with part 2 (Marriages under this Act); or
 - (c) either party did not freely enter into the marriage because—
 - (i) the party's agreement to enter into the marriage was obtained by duress or fraud; or
 - (ii) the party was mistaken about the identity of the other party or the nature of the ceremony performed; or
 - (iii) the party was mentally incapable of understanding the nature and effect of the marriage.
- (2) However, a marriage mentioned in subsection (1) (b) is not void—
 - (a) only because a requirement of section 9 (Notice of intention to marry under this Act) was not complied with; or
 - (b) only because the person to whom the parties gave notice under section 9, or who solemnised the marriage, was not an authorised celebrant if either party believed, when giving the notice or when the marriage was solemnised, that the person was an authorised celebrant.

Part 4 Ending of marriages under this Act

22 Definitions—pt 4

For this part, the parties to a marriage under this Act may be taken to be—

- (a) *separated* despite the fact that they stopped living together because of the action or conduct of only 1 of the parties; or
- (b) *living separately and apart* despite the fact that—
 - (i) they continue to live in the same home; or
 - (ii) either party provides some household services to the other.

23 Jurisdiction of Supreme Court

- (1) A proceeding under this part for a relevant order—
 - (a) must be started in the Supreme Court; and
 - (b) may be started by either party to a marriage under this Act or jointly by both parties to a marriage under this Act.
- (2) In this section:
relevant order means—
 - (a) a dissolution order in relation to a marriage under this Act; or
 - (b) a decree of nullity of a marriage under this Act; or
 - (c) a declaration about the validity of—
 - (i) a marriage under this Act; or
 - (ii) a dissolution order in relation to a marriage under this Act; or
 - (iii) the annulment of a marriage under this Act.

24 Additional requirement for application for dissolution order

- (1) An application for a dissolution order in relation to a marriage under this Act must not be made within 2 years after the date of the marriage unless the application is accompanied by a certificate—
 - (a) stating that the parties to the marriage have considered reconciliation, with the help of a counsellor or counselling organisation; and
 - (b) signed by the counsellor or a person on behalf of the organisation.
- (2) However, the Supreme Court may give leave for the application to be made without the certificate if satisfied that there are special circumstances.

25 Dissolution of marriage under this Act

- (1) An application for a dissolution order in relation to a marriage under this Act must be based only on the ground that the marriage has broken down irretrievably.
- (2) The ground is taken to have been established, and the dissolution order may be made, only if the Supreme Court is satisfied that the parties to the marriage under this Act—
 - (a) have separated; and
 - (b) have lived separately and apart for a continuous period of at least 12 months immediately before the application for the order is made.
- (3) However, if the Supreme Court is satisfied that there is a reasonable likelihood that the parties to a marriage under this Act will resume living together, the court must not make a dissolution order in relation to the marriage.

26 Effect of resuming living together

- (1) This section applies in relation to a proceeding for a dissolution order in relation to a marriage under this Act, if—
 - (a) after the parties to the marriage separated and lived separately and apart, they resumed living together on 1 occasion; and
 - (b) within 3 months after they resumed living together, they again separated (the *last separation*); and
 - (c) after the last separation, the parties lived separately and apart up to the day the application for the dissolution order was made.
- (2) The periods of living separately and apart before and after the period of living together is taken to be 1 continuous period.
- (3) The period of living together is not to be taken to be part of the period of living separately and apart.
- (4) For subsection (1), a period of living together is taken to have continued during any time that the parties did not live together that, in the Supreme Court's opinion, was not substantial.

27 Nullity of marriage under this Act

An application under this part for a decree of nullity of a marriage under this Act must be based on the ground that the marriage is void.

28 Court not to make dissolution order if application for decree of nullity before it

- (1) This section applies if the following applications are both before the Supreme Court:
 - (a) an application for a dissolution order in relation to marriage under this Act;
 - (b) an application for a decree of nullity of the marriage.

- (2) The court must not make a dissolution order in relation to the marriage unless it has dismissed the application for the decree.

29 When dissolution order takes effect

- (1) A dissolution order in relation to a marriage under this Act takes effect 1 month after the order is made.
- (2) However, a dissolution order does not take effect if either of the parties to the marriage dies before the dissolution order takes effect.
- (3) Also, if an appeal is started before a dissolution order takes effect, the order takes effect on the later of the following:
 - (a) one month after the appeal is finally decided or discontinued;
 - (b) on the day the dissolution order would have taken effect under subsection (1) if no appeal had been started.
- (4) In this section:
appeal includes an application for a rehearing.

30 Rescission of dissolution order if parties reconcile

- (1) This section applies if—
 - (a) a dissolution order has been made in relation to a marriage under this Act; and
 - (b) the order has not taken effect.
- (2) The parties to the marriage may apply to the Supreme Court for the order to be rescinded on the ground that they have reconciled.
- (3) The court may rescind the order on that ground.

31 Rescission of dissolution order on ground of miscarriage of justice

- (1) This section applies if—
 - (a) a dissolution order has been made in relation to a marriage under this Act in a proceeding under this part; and
 - (b) the order has not taken effect.
- (2) The Supreme Court may—
 - (a) rescind the order if it is satisfied that there has been a miscarriage of justice because of fraud, perjury, suppression of evidence or anything else; and
 - (b) order that the proceeding be reheard if the court considers it appropriate.
- (3) A rescission order may be made—
 - (a) on the application of a party to the proceeding; or
 - (b) on the intervention of the Attorney-General.

32 Remarriage under this Act

If a dissolution order in relation to a marriage under this Act has taken effect, a party to the marriage may marry again under this Act.

33 Ending of marriage under this Act on later other marriage

A marriage under this Act ends if either of the parties to the marriage later marries someone else under—

- (a) a Commonwealth law (including a marriage in another jurisdiction that is recognised by the Commonwealth as a valid marriage); or
- (b) a law of another jurisdiction that substantially corresponds to this Act.

Part 5 Authorised celebrants

Division 5.1 Registrar-general

34 Authorisation of registrar-general

The registrar-general is authorised to solemnise a marriage under this Act.

Division 5.2 Registered celebrants

35 Registration of celebrant

- (1) A person may apply, in writing, to the registrar-general to be registered as a celebrant for this Act (a *registered celebrant*).

Note 1 If a form is approved under s 49 for this provision, the form must be used.

Note 2 A fee may be determined under s 48 for this provision.

- (2) On application, the registrar-general may register the applicant as a registered celebrant.
- (3) However, the registrar-general must only register a person as a registered celebrant if satisfied that the applicant—
- (a) is an adult; and
 - (b) has the knowledge and the skills or experience necessary to exercise the functions of a registered celebrant under this Act; and
 - (c) is a suitable person to be registered as a registered celebrant.

- (4) In deciding whether a person is a suitable person to be registered as a registered celebrant, the registrar-general must take into account 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 otherwise contravened, this Act or the *Births, Deaths and Marriages Registration Act 1997* in relation to the registration of a civil union;
 - (d) whether the person is or has been bankrupt or personally insolvent;
 - (e) whether the person has a physical or mental incapacity that may affect the exercise of the person's functions as a celebrant under this Act.
- (5) In deciding whether a person is a suitable person to be registered as a registered celebrant, the registrar-general may take into account anything else the registrar-general considers relevant.

36 Register of registered celebrants

- (1) The registrar-general must keep a register of people registered as registered celebrants 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 registered celebrant:
 - (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 stops being registered—the date the registration stops.
- (4) The register may also include any other information the registrar-general considers appropriate.
- (5) The register must be available for public inspection at reasonable times.
- (6) However, a person's address and contact details and any other information included in the register about the person under subsection (3) must only be available for public inspection if the person consents.

37 Obligations of registered celebrants

A registered celebrant must tell the registrar-general, in writing, within 30 days about—

- (a) a change that results in the details entered in the register in relation to the person no longer being correct; or
- (b) an event that might have caused the registrar-general not to register the person as a registered celebrant if the event had happened before the person was registered.

38 Cancellation of registration of celebrant

The registrar-general may cancel a person's registration as a registered celebrant if the registrar-general is satisfied that the person does not meet, or no longer meets, the registration criteria under section 35 (3).

**39 Registered celebrant who is minister of religion—
additional conditions for solemnisation of marriage under
this Act**

Part 2 (Marriages under this Act) does not prevent a registered celebrant who is a minister of religion from making it a condition of the celebrant's solemnising a marriage under this Act that—

- (a) longer notice of intention to marry than that required by this Act is given; or
- (b) a requirement additional to those under this Act is complied with.

Note A minister of religion is not required to make a place (eg a church) available for solemnising a marriage under this Act (see s 12 (2)).

Part 6 Recognition of certain marriages solemnised in other jurisdictions

40 Certain marriages under corresponding laws

- (1) A regulation may provide that a same-sex relationship under a law of another jurisdiction (a *corresponding law*) is a marriage under this Act for territory law.
- (2) However, a regulation must not provide that a relationship under a corresponding law is a marriage under this Act for territory law unless, under the corresponding law, the relationship—
 - (a) must be between 2 adults of the same sex; and
 - (b) must be entered into consensually; and
 - (c) must not be entered into by people who are in a prohibited relationship with each other; and
 - (d) must not be entered into by people who are legally married; and
 - (e) is not—
 - (i) a marriage within the meaning of the *Marriage Act 1961* (Cwlth); or
 - (ii) a marriage in another jurisdiction that is recognised by the Commonwealth as a valid marriage.
- (3) In this section:
prohibited relationship—see section 7 (Eligibility for marriage under this Act).

Part 7 Offences

41 Offences—solemnising marriage under this Act

- (1) A person commits an offence if the person—
 - (a) is not an authorised celebrant; and
 - (b) knows he or she is not an authorised celebrant; and
 - (c) exercises a function of an authorised celebrant under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (2) A person does not commit an offence against subsection (1) only because the person performed a religious ceremony of marriage under this Act under section 19 (Later religious ceremony of marriage under this Act).
- (3) An authorised celebrant commits an offence if—
 - (a) the celebrant solemnises a marriage under this Act; and
 - (b) the solemnisation is not in accordance with part 2 (Marriages under this Act).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (4) An authorised celebrant commits an offence if the celebrant—
 - (a) solemnises, or purports to solemnise, a marriage under this Act; and
 - (b) has reasonable grounds to believe that—
 - (i) there is a legal impediment to the marriage; or

- (ii) the marriage would be void under section 21 (1) (b) (Grounds on which marriage under this Act is void).

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

- (5) An authorised celebrant commits an offence if—
 - (a) the celebrant purports to solemnise a marriage under this Act between people who—
 - (i) have told the celebrant that they are already married to each other; or
 - (ii) the celebrant knows, or believes on reasonable grounds, are already married to each other; and
 - (b) the solemnisation is not under section 18 (Second ceremony of marriage under this Act).

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

- (6) A person commits an offence if the person—
 - (a) goes through a form or ceremony of marriage under this Act with someone else; and
 - (b) knows that the person solemnising the marriage is not authorised to solemnise it; and
 - (c) believes on reasonable grounds that the other party to the marriage believes that the person solemnising the marriage is authorised to solemnise it.

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

42 Offence—interpreter at ceremony of marriage under this Act

- (1) A person commits an offence if the person—
- (a) is an interpreter in relation to a ceremony to solemnise a marriage under this Act performed by an authorised celebrant; and
 - (b) fails to give the celebrant a certificate signed by the person of the faithful performance of the person's services as interpreter.

Maximum penalty: 10 penalty units.

Note If a form is approved under s 49 for this provision, the form must be used.

- (2) An offence against this section is a strict liability offence.

43 Offence—incorrect marriage certificate

A person commits an offence if the person fails to comply with a notice given to the person by the registrar-general under section 20 (Incorrect marriage certificate under this Act).

Maximum penalty: 10 penalty units.

Part 8 Notification and review of decisions

44 Meaning of *reviewable decision*—pt 8

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.

45 Reviewable decision notices

If the registrar-general makes a reviewable decision, the registrar must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 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](#).

46 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.

Part 9 Miscellaneous

47 Evidentiary certificates

- (1) The registrar-general may give a signed certificate stating that on a stated date or during a stated period a named person was or was not registered as a registered celebrant.
- (2) A certificate under this section is evidence of the matters stated in it.
- (3) Unless the contrary is proved, a document that purports to be a certificate under this section is taken to be a certificate.

48 Determination of fees

- (1) The Minister may determine fees for this Act.

Note The [Legislation Act](#) contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

49 Approved forms

- (1) The registrar-general may approve forms for this Act.
- (2) If the registrar-general approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

50 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) A regulation may make provision in relation to the following:
- (a) replacing lost, damaged or destroyed certificates of marriage under this Act;
 - (b) amendments of the register;
 - (c) the keeping of records by the registrar-general about registered celebrants and the register;
 - (d) additional functions of the registrar-general;
 - (e) a complaints resolution procedure to resolve complaints about the solemnisation of marriage under this Act by registered celebrants.

Part 10 Repeals and consequential amendments

51 Legislation repealed

- (1) The *Civil Unions Act 2012* (A2012-40) is repealed.
- (2) All legislative instruments under the *Civil Unions Act 2012* are repealed.

52 Legislation amended—sch 2

This Act amends the legislation mentioned in schedule 2.

Part 20 Transitional

100 Existing civil union celebrants

- (1) This section applies to a person who was registered as a civil union celebrant under the *Civil Unions Act 2012* (repealed), section 15 immediately before the day this section commences.
- (2) The civil union celebrant is taken to be registered as a registered celebrant under this Act, section 35.

101 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

102 Expiry—pt 20

This part expires 1 year after the day this section commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

Schedule 1 Reviewable decisions

(see pt 8)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	35	refuse to register person as registered celebrant	applicant for registration
2	38	cancel person's registration as registered celebrant	person whose registration is cancelled

Schedule 2 Consequential amendments

(see s 52)

Part 2.1 Adoption Regulation 1993

[2.1] Dictionary, note 2

insert

- marriage

Part 2.2 Births, Deaths and Marriages Registration Act 1997

[2.2] Long title

omit

civil unions,

[2.3] Section 31

after

(Cwlth)

insert

or the *Marriage Equality (Same Sex) Act 2013*

[2.4] Sections 32A to 32C

substitute

32A Particulars of end of civil union

- (1) This section applies if a civil union ends under the [Domestic Relationships Act 1994](#), section 37PD (Ending civil union by parties) or section 37PF (Ending civil union by court order).

- (2) The registrar-general must include in the register the particulars of the termination prescribed by regulation.
- (3) Also, for a civil union that ends under the *Domestic Relationships Act 1994*, section 37PD, the registrar-general must give each party to the civil union written notice that the civil union ends on the date stated in the notice.

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

- (4) For subsection (3), it is sufficient if the registrar-general sends the notice to the address for each party that is last known to the registrar.

[2.5] Dictionary, note 2

omit

- civil union partner

[2.6] Dictionary, note 2

insert

- marriage

[2.7] Dictionary, definition of *registrable event*

omit

civil union,

Part 2.3 Births, Deaths and Marriages Registration Regulation 1998

[2.8] Sections 8A and 8B

substitute

8A Particulars of end of civil union—Act, s 32A (2)

The following particulars are prescribed:

- (a) for a civil union ended under the *Domestic Relationships Act 1994*, section 37PD (Ending civil union by parties)—
 - (i) the date the termination notice was given to the registrar-general under that Act, section 37PD (1); and
 - (ii) the date the civil union ended;
- (b) for a civil union ended under the *Domestic Relationships Act 1994*, section 37PF (Ending civil union by court order)—
 - (i) the date the order was made; and
 - (ii) the date the civil union ended.

Part 2.4 Civil Law (Property) Act 2006

[2.9] Dictionary, note 2

insert

- marriage

Part 2.5 Civil Law (Wrongs) Act 2002

[2.10] Dictionary, note 2

insert

- marriage
- spouse

Part 2.6 Corrections Management Act 2007

[2.11] Section 87 (2) (b)

omit

, civil union

[2.12] Dictionary, note 2

omit

- civil union

[2.13] Dictionary, note 2

insert

- marriage

Part 2.7 Crimes Act 1900

[2.14] Dictionary, note 2

insert

- marriage

Part 2.8 Dangerous Goods (Road Transport) Act 2009

[2.15] Section 127 (1) (a)

omit

spouse

substitute

domestic partner

[2.16] Dictionary, note 2

insert

- domestic partner (see s 169 (1))

Part 2.9 Discrimination Act 1991

[2.17] Dictionary, note 2

insert

- marriage
- spouse

Part 2.10 Domestic Relationships Act 1994

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

omit

and includes a domestic partnership but does not include a legal marriage.

substitute

and—

- (a) includes a domestic partnership and marriage under the *Marriage Equality (Same Sex) Act 2013*; but
- (b) does not include any other legal marriage.

[2.19] Section 37H (1) (c)

substitute

- (c) if the parties to the civil partnership enter into a marriage under the *Marriage Equality (Same Sex) Act 2013* with each other—the end of that marriage.

[2.20] New part 4AB

insert

Part 4AB Civil unions

Division 4AB.1 Preliminary

37PA Application—pt 4AB

This part applies to a civil union that—

- (a) was entered into before the day the *Marriage Equality (Same Sex) Act 2013* commences; and

- (b) immediately before that day, had not ended under the *Civil Unions Act 2012* (repealed).

37PB Definitions—pt 4AB

In this part:

termination notice—see section 37PD (1).

withdrawal notice—see section 37PD (3).

Division 4AB.2 Ending civil union

37PC How civil union ends

- (1) A civil union ends on—
- (a) the death of either party; or
 - (b) the marriage of either party; or
 - (c) if the parties to the civil union enter into a marriage under the *Marriage Equality (Same Sex) Act 2013* with each other—the end of that marriage.
- (2) A civil union also ends if it is ended by—
- (a) a party (or both parties) under section 37PD; or
 - (b) a court order under section 37PF.

37PD Ending civil union by parties

- (1) If a party to a civil union wishes, or both parties to a civil union wish, to end the civil union, the party (or parties) may give the registrar-general written notice of intention to end the civil union (a **termination notice**).

Note 1 If a form is approved under s 40B for a notice, the form must be used.

Note 2 A fee may be determined under s 40A for this provision.

- (2) However, if a termination notice is given by only 1 party, the notice is effective only if—

(a) a copy of the notice has been served personally on the other party; and

(b) a statutory declaration is given to the registrar-general with the notice that—

(i) is made by the person who served the notice; and

(ii) states that the notice was served personally by the person on the other party on the date stated in the statutory declaration.

Note 1 For provision about service of notices, see s 37PG and s 37PH.

Note 2 The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

Note 3 The *Criminal Code* includes an offence for making false statements in statutory declarations (see s 336A).

- (3) A termination notice may, within 12 months after the day it was given to the registrar-general, be withdrawn by written notice (a **withdrawal notice**) given to the registrar-general by the party (or parties) who gave the termination notice.

Note 1 If a form is approved under s 40B for a notice, the form must be used.

Note 2 A fee may be determined under s 40A for this provision.

- (4) However, if a withdrawal notice is given by only 1 party, the notice is effective only if—
 - (a) a copy of the notice has been served personally on the other party; and
 - (b) a statutory declaration is given to the registrar-general with the notice that—
 - (i) is made by the person who served the notice; and
 - (ii) states that the notice was served personally by the person on the other party on the date stated in the statutory declaration.
- (5) A civil union ends 12 months after the day the termination notice is given to the registrar-general in accordance with this section, unless—
 - (a) the notice has been withdrawn under this section; or
 - (b) the Supreme Court makes an order under section 37PE (2); or
 - (c) the operation of the notice is stayed under section 37PE (3); or
 - (d) the civil union has already ended under section 37PC (1).

37PE Order that termination notice not effective

- (1) This section applies if a party (or parties) to a civil union give the registrar-general a termination notice.
- (2) On application by a party to the civil union, the Supreme Court may make an order that the termination notice is not effective if the court considers that it is not the intention, or is no longer the intention, of the party (or parties) who gave the notice to end the civil union.
- (3) If an application mentioned in subsection (2) has been made but not decided within 12 months after the day the termination notice is given, the application stays the operation of the notice until the application is decided.

- (4) If the Supreme Court makes an order under this section, the court must give a copy of the order to the registrar-general.

37PF Ending civil union by court order

- (1) On application by a party to a civil union, the Supreme Court may make an order ending the civil union if the court considers that—
- (a) the civil union cannot be ended under section 37PD; but
 - (b) it is not the intention, or is no longer the intention, of both parties to be in the civil union.
- (2) If the Supreme Court makes an order under subsection (1), the court must give a copy of the order to the registrar-general not later than 28 days after the day the order is made.

37PG Personal service of termination and withdrawal notices

- (1) This section applies if a termination notice or withdrawal notice must be served personally on a party to a civil union under section 37PD (Ending civil union by parties).
- (2) To serve the notice personally on the party, the person serving the notice must—
- (a) give the party a copy of the notice; or
 - (b) if the party does not accept the copy—put the copy down in the party's presence and tell the party in general terms what it is; or
 - (c) if the person serving the notice is prevented from approaching the party by violence or threat of violence—put the copy down as near as practicable to, but in the sight of, the party.

37PH If personal service impracticable or impossible

- (1) This section applies if—
 - (a) a termination notice or withdrawal notice must be served personally on a party to a civil union under section 37PD; and
 - (b) personal service of the notice is not practicable.
- (2) The person serving the notice may apply to the Supreme Court for an order allowing the notice to be served in another way (the *alternative way*).
- (3) The Supreme Court may make an order if satisfied that—
 - (a) it is not practicable, for any reason, for the notice to be served personally under section 37PG; and
 - (b) the alternative way is reasonably likely to bring the notice to the attention of the party.
- (4) If the Supreme Court makes an order, the court may, in the order, provide that the notice is taken to have been served on the happening of a stated event, at a stated time or at the end of a stated period.
- (5) The Supreme Court may make an order under subsection (3) even though the party is not in the ACT or Australia.
- (6) For section 37PD, if a notice is served on a party in accordance with an order under subsection (3), the notice is taken to have been served personally on the party.

[2.21] Dictionary, new definition of *marriage*

insert

marriage means a marriage under the *Marriage Act 1961* (Cwlth).

[2.22] Dictionary, definitions of *termination notice* and *withdrawal notice*

substitute

termination notice—

- (a) for part 4A (Civil partnerships)—see section 37I; and
- (b) for part 4AB (Civil unions)—see section 37PB.

withdrawal notice—

- (a) for part 4A (Civil partnerships)—see section 37I; and
- (b) for part 4AB (Civil unions)—see section 37PB.

Part 2.11 Domestic Violence and Protection Orders Act 2008

[2.23] Section 15A (b), note

substitute

Note *Domestic partner*—see the [Legislation Act](#), s 169 (1).

[2.24] Dictionary, note 2

insert

- marriage
- spouse

Part 2.12 Duties Act 1999

[2.25] Section 74B (7) (b) and (c)

substitute

- (b) if the relationship is a civil union or civil partnership—the party has given, or intends to give, a termination notice to the registrar-general under the *Domestic Relationships Act 1994*.

[2.26] Section 115H (7) (b) and (c)

substitute

- (b) if the relationship is a civil union or civil partnership—the party has given, or intends to give, a termination notice to the registrar-general under the *Domestic Relationships Act 1994*.

[2.27] Section 213 (7) (b) and (c)

substitute

- (b) if the relationship is a civil union or civil partnership—the party has given, or intends to give, a termination notice to the registrar-general under the *Domestic Relationships Act 1994*.

[2.28] Dictionary, definition of *marriage*

substitute

marriage—

- (a) includes a void marriage; but
- (b) does not include a marriage under the *Marriage Equality (Same Sex) Act 2013*.

Part 2.13 Evidence Act 2011

[2.29] Section 73 (1) (b)

substitute

- (b) whether 2 people cohabiting at a particular time were married to each other at the time; or

Note This paragraph differs from the [Commonwealth Act](#) and [NSW Act](#).

Part 2.14 Evidence (Miscellaneous Provisions) Act 1991

[2.30] Section 38BA (b), note

substitute

Note *Domestic partner*—see the [Legislation Act](#), s 169 (1).

[2.31] Dictionary, note 2

insert

- marriage
- spouse

Part 2.15 Guardianship and Management of Property Act 1991

[2.32] Section 7B (d)

omit

or civil union

[2.33] Dictionary, note 2

omit

- civil union

[2.34] Dictionary, note 2

insert

- marriage

Part 2.16 Land Titles Act 1925

[2.35] Dictionary, note 2

insert

- marriage

Part 2.17 Legislation Act 2001

[2.36] Section 169 (1), note

omit

[2.37] Dictionary, part 1, definition of *civil union*

substitute

civil union means a civil union under the [Civil Unions Act 2012](#) (repealed).

[2.38] Dictionary, part 1, new definitions

insert

marriage includes a marriage under the *Marriage Equality (Same Sex) Act 2013*.

spouse, in relation to a party to a marriage, means the other party to the marriage.

Part 2.18 **Married Persons Property Act 1986**

[2.39] Section 4 (2), except note

substitute

- (2) Subsection (1) applies to the following in the same way as it applies to a husband and wife who are living together:
- (a) two people who are married under the *Marriage Equality (Same Sex) Act 2013*;
 - (b) two people in a domestic partnership who are not married to each other.

[2.40] Section 7

omit

his or her

substitute

the person's

[2.41] Section 10 heading

substitute

10 Purchase or transfer of property before marriage or civil partnership

[2.42] Section 10 (1)

omit everything before paragraph (a), substitute

- (1) If property or an interest in property paid for by a person with the person's money or owned by the person (the *transferor*) is, in the transferor's contemplation of the transferor's marriage to, or civil partnership with, another person (the *transferee*) vested in or transferred to the transferee then, unless the contrary intention appears—

[2.43] Section 10 (1) (a) and (b)

omit

, civil union

[2.44] Section 10 (2)

omit everything before paragraph (a), substitute

- (2) If property or an interest in property paid for by a person with the person's money or owned by the person (the *transferor*) is, in the transferor's contemplation of the transferor's marriage to, or civil partnership with, another person (the *transferee*), vested jointly in or transferred jointly to the transferor and the transferee then, unless the contrary intention appears—

[2.45] Section 10 (2) (a) and (b)

omit

, civil union

[2.46] Section 10 (3) (a)

omit

or civil union

[2.47] Section 10 (3) (c) and (d)

omit

, civil union

[2.48] Sections 11 to 13

omit

his or her

substitute

the person's

[2.49] Dictionary, note 2

insert

- marriage
- spouse

Part 2.19 Parentage Act 2004

[2.50] Dictionary, note 2

insert

- marriage
- spouse

Part 2.20 Powers of Attorney Act 2006

[2.51] Section 36 (e)

substitute

(e) consenting to the principal's marriage or entry into a civil partnership.

[2.52] Section 58 heading

substitute

58 Enduring power of attorney sometimes revoked by marriage or civil partnership

[2.53] Section 58 (1) (b)

omit

civil union or

[2.54] Dictionary, note 2

insert

- marriage

Part 2.21 Retirement Villages Act 2012

[2.55] Dictionary, note 2

insert

- marriage

Part 2.22 Road Transport (Mass, Dimensions and Loading) Act 2009

[2.56] Section 191 (1), definition of *associate*, paragraph (a)

omit

spouse

substitute

domestic partner

[2.57] Dictionary, note 2

insert

- domestic partner (see s 169 (1))

Part 2.23 Sale of Motor Vehicles Act 1977

[2.58] Dictionary, note 2

insert

- marriage

Part 2.24 Wills Act 1968

[2.59] Section 8 (2)

omit

or in a civil union

[2.60] Section 8 (3)

substitute

- (3) A will made by a child who may marry and that is made in contemplation of a marriage is, on the solemnisation of the marriage contemplated, valid.

[2.61] Sections 8 (6) and 8B (1)

omit

or in a civil union

[2.62] Section 20 heading

substitute

20 Revocation of will by testator's marriage or civil partnership

[2.63] Section 20 (1)

omit

civil union or

[2.64] Section 20 (1)

omit

, civil union

[2.65] Section 20 (2)

omit

civil union or

[2.66] Section 20 (2)

omit

, civil union

[2.67] Section 20 (3)

omit

civil union or

[2.68] Section 20 (3) (a) and (b)

omit

, civil union

[2.69] New section 20A (4) (a) (iv)

insert

- (iv) the marriage is under the *Marriage Equality (Same Sex) Act 2013* and ends under that Act, part 4 (Ending of marriages under this Act); and

[2.70] Section 20A (4) (b)

substitute

- (b) a civil union is taken to be **terminated** if the civil union ends under the *Domestic Relationships Act 1994*, division 4AB.2 (otherwise than on the death of a party to the civil union); and

[2.71] Dictionary, note 2

insert

- marriage
- spouse

Part 2.25 Witness Protection Act 1996

[2.72] Section 10 (c)

omit

, civil union

[2.73] Dictionary, note 2

omit

- civil union

[2.74] Dictionary, note 2

insert

- marriage

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- adult
- bankrupt or personally insolvent
- body
- exercise (a function)
- function
- Minister (see s 162)
- registrar-general
- statutory declaration.

authorised celebrant means—

- (a) a registered celebrant; or
- (b) the registrar-general.

legally married includes married under a law of another jurisdiction that substantially corresponds to this Act.

living separately and apart, for part 4 (Ending of marriages under this Act)—see section 22.

marriage, under this Act, means—

- (a) the union of 2 people of the same sex to the exclusion of all others, voluntarily entered into for life; but
- (b) does not include a marriage within the meaning of the [Marriage Act 1961](#) (Cwlth).

notice of intention to marry—see section 9 (1).

register means the register of registered celebrants under section 36.

registered celebrant—see section 35 (1).

reviewable decision, for part 8 (Notification and review of decisions)—see section 44.

separated, for part 4 (Ending of marriages under this Act)—see section 22.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 19 September 2013.

2 Notification

Notified under the [Legislation Act](#) on 4 November 2013.

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 Marriage Equality (Same Sex) Bill 2013, which originated in the Legislative Assembly as the Marriage Equality Bill 2013 and was passed by the Assembly on 22 October 2013.

Clerk of the Legislative Assembly

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