

2006

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Attorney-General)

## Civil Partnerships Bill 2006

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## **Civil Partnerships Bill 2006**

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### **A Bill for**

An Act to provide for civil partnerships, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Civil Partnerships Act 2006*.

4 **2 Commencement**

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

7 *Note 1* The naming and commencement provisions automatically commence on  
8 the notification day (see Legislation Act, s 75 (1)).

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

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

15 **3 Dictionary**

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

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

20 For example, the signpost definition '*prohibited relationship*—see  
21 section 9.' means that the term '*prohibited relationship*' is defined in  
22 that section.

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

1   **4**       **Notes**

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

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

5   **5**       **Offences against Act—application of Criminal Code etc**

6           Other legislation applies in relation to offences against this Act.

7       *Note 1*   *Criminal Code*

8           The Criminal Code, ch 2 applies to all offences against this Act (see  
9           Code, pt 2.1).

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

14       *Note 2*   *Penalty units*

15          The Legislation Act, s 133 deals with the meaning of offence penalties  
16          that are expressed in penalty units.

1 **Part 2 Civil partnerships**

2 **Division 2.1 General**

3 **6 Civil partnerships—general**

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

7 (2) A civil partnership terminates only as provided by division 2.4.

8 *Note* Div 2.4 provides for termination by death, marriage, notice by parties or  
9 court order.

10 (3) The 2 parties to a civil partnership are taken, for all purposes under  
11 territory law, to be in a domestic partnership.

12 **Division 2.2 Eligibility for entering into civil**  
13 **partnership**

14 **7 Person not to be under 16**

15 A person may not enter into a civil partnership if the person is  
16 younger than 16 years old.

17 **8 Person not to be married or in civil partnership**

18 A person may not enter into a civil partnership if the person is  
19 married or in a civil partnership.

20 **9 Parties not to be in prohibited relationship**

21 A person may not enter into a civil partnership with someone who  
22 has any of the following relationships (a *prohibited relationship*)  
23 with the person:

24 (a) lineal ancestor;



- 1 (b) lineal descendent;  
2 (c) sister;  
3 (d) half-sister;  
4 (e) brother;  
5 (f) half-brother.

6 **10 Authorisation and consents required for 16 or 17-year**  
7 **olds**

- 8 (1) A person who is 16 or 17 years old may enter into a civil partnership  
9 only if—  
10 (a) the Childrens Court, by order, gives an authorisation for the  
11 person to enter into the civil partnership; and  
12 (b) each person with responsibility to make long-term decisions  
13 for the person (for example, a parent or guardian) gives written  
14 consent to the person entering into the civil partnership, or the  
15 requirement for the consent is waived under subsection (4).
- 16 *Note 1* If a form is approved under s 28 for a consent, the form must be  
17 used.
- 18 *Note 2* An example is part of the Act, is not exhaustive and may extend,  
19 but does not limit, the meaning of the provision in which it  
20 appears (see Legislation Act, s 126 and s 132).
- 21 (2) In deciding whether to give an authorisation under subsection (1) (a)  
22 in relation to a person, the Childrens Court must regard the best  
23 interests of the person as the paramount consideration.
- 24 (3) Each consent required under subsection (1) (b) must—  
25 (a) be witnessed by someone before whom a statutory declaration  
26 may be made; and  
27 (b) state that the witness is satisfied on reasonable grounds about  
28 the identity of the person giving the consent.

- 1 (4) If a consent required under subsection (1) (b) is not given, the  
2 Childrens Court may, by order, waive the requirement for the  
3 consent.
- 4 (5) However, the court may act under subsection (4) only if the court  
5 considers that exceptional circumstances exist to justify the waiver.
- 6 (6) The authorisation and consents or waivers required under this  
7 section must be given not earlier than 3 months before the day the  
8 notice of intention to enter into the civil partnership is given.

9 **Division 2.3 Entering into civil partnership**

10 **11 Notice of intention to enter into civil partnership**

- 11 (1) Before 2 people enter into a civil partnership, they must give notice  
12 to a civil partnership notary of their intention to enter into a civil  
13 partnership.

14 *Note 1* If a form is approved under s 28 for a notice, the form must be used.

15 *Note 2* The notice must be given not earlier than 18 months and not later than  
16 5 days before the civil partnership is entered into (see s 12 (2)).

- 17 (2) The notice must be accompanied by—
- 18 (a) a statutory declaration made by each person stating that—
- 19 (i) the person wishes to enter into a civil partnership with the  
20 other person; and
- 21 (ii) the person is not married or in a civil partnership; and
- 22 (iii) the person believes the person and the other person do not  
23 have a prohibited relationship; and
- 24 (b) the evidence required by section 23 of each person's identity  
25 and age; and

- 1 (c) if either or both of them are 16 or 17 years old, a copy of—  
2 (i) the authorisation (or each authorisation) required under  
3 section 10 (1) (a); and  
4 (ii) each consent required under section 10 (1) (b) or, for any  
5 consent not given, the waiver given under section 10 (4);  
6 and  
7 (d) anything else prescribed by regulation.

- 8 (3) As soon as practicable after receiving the notice and statutory  
9 declarations, the civil partnership notary must give each person a  
10 written notice setting out the legal effect of a civil partnership.

11 *Note* If a form is approved under s 28 for a notice, the form must be used.

12 **12 How civil partnership is entered into**

- 13 (1) Two people who have given notice to a civil partnership notary in  
14 accordance with section 11 may enter into a civil partnership by  
15 making a declaration before the civil partnership notary and at least  
16 1 other witness.  
17 (2) The declaration must be made not earlier than 5 days, and not later  
18 than 18 months, after the day the notice was given to the civil  
19 partnership notary.  
20 (3) The declaration must be made by each person to the other and must  
21 contain a clear statement that—  
22 (a) names both parties; and  
23 (b) acknowledges that they are freely entering into a civil  
24 partnership with each other.

1 **Division 2.4 Termination of civil partnership**

2 **13 How civil partnership is terminated**

- 3 (1) A civil partnership is terminated on—  
4 (a) the death of either party; or  
5 (b) the marriage of either party.  
6 (2) A civil partnership may also be terminated by—  
7 (a) a party (or both parties) under section 14; or  
8 (b) a court order under section 15.

9 **14 Termination by parties**

- 10 (1) If a party (or both parties) to a civil partnership wish to terminate the  
11 civil partnership, the party (or parties) may give the registrar-general  
12 a written notice of intention to terminate the civil partnership (a  
13 ***termination notice***).

14 *Note 1* A fee may be determined under s 27 for this provision.

15 *Note 2* If a form is approved under s 28 for a notice, the form must be used.

- 16 (2) However, if the termination notice is given by only 1 party, the  
17 notice is effective only if—  
18 (a) a copy of the termination notice has been served personally on  
19 the other party; and  
20 (b) a statutory declaration is given to the registrar-general with the  
21 termination notice that—  
22 (i) is made by the person who served the termination notice;  
23 and

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

4 *Note* For provision about service of notices, see s 24.

5 (3) The termination notice may be withdrawn by written notice (a  
6 ***withdrawal notice***) given to the registrar-general by the party (or  
7 parties) who gave the notice, before the end of 12 months after the  
8 day the termination notice was given to the registrar-general.

9 *Note 1* If a form is approved under s 28 for a notice, the form must be used.

10 *Note 2* A fee may be determined under s 27 for this provision.

11 (4) However, if the withdrawal notice is given by only 1 party, the  
12 notice is effective to withdraw the termination notice only if—

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

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

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

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

22 *Note* For provision about service of notices, see s 24.

23 (5) At the end of 12 months after the day the termination notice is given  
24 to the registrar-general in accordance with this section, the civil  
25 partnership is terminated unless—

26 (a) the termination notice has been withdrawn under this section;  
27 or

28 (b) the Supreme Court makes an order that the termination notice  
29 is not effective to terminate the civil partnership; or

- 1 (c) the civil partnership has already terminated under  
2 section 13 (1).
- 3 (6) On application by a party to the civil partnership, the Supreme Court  
4 may make an order mentioned in subsection (5) (b) if the court  
5 considers that it is not the intention, or is no longer the intention, of  
6 the party or parties who gave the termination notice to terminate the  
7 civil partnership.
- 8 (7) If the Supreme Court makes an order mentioned in  
9 subsection (5) (b), the court must give a copy of the order to the  
10 registrar-general.
- 11 **15 Termination by court order**
- 12 (1) On application by a party to a civil partnership, the Supreme Court  
13 may make an order terminating the civil partnership if the court  
14 considers that—
- 15 (a) the civil partnership cannot be terminated under section 14; but  
16 (b) it is not the intention, or is no longer the intention, of both  
17 parties to be in the civil partnership.
- 18 (2) If the Supreme Court makes an order under subsection (1), the court  
19 must give a copy of the order to the registrar-general no later than  
20 28 days after the day the order is made.

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## 1 Part 3 Civil partnership notaries

### 2 16 Registration of civil partnership notaries

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

5 *Note 1* A fee may be determined under s 27 for this provision.

6 *Note 2* If a form is approved under s 28 for this provision, the form must be  
7 used.

- 8 (2) On application by a person under subsection (1), the  
9 registrar-general may register the applicant if satisfied that the  
10 applicant—

11 (a) is an individual aged 18 years or older; and

12 (b) has the knowledge and the skills or experience necessary to  
13 exercise the functions of a civil partnership notary under this  
14 Act; and

15 (c) is a suitable person to be registered as a civil partnership  
16 notary.

- 17 (3) If the registrar-general is not satisfied under subsection (2), the  
18 registrar-general must refuse to register the applicant.

- 19 (4) In deciding whether a person is a suitable person to be registered as  
20 a civil partnership notary, the registrar-general must have regard to  
21 the following:

22 (a) whether the person has been convicted, or found guilty, in  
23 Australia of an offence punishable by imprisonment for 1 year  
24 or longer;

- 1 (b) whether the person has been convicted, or found guilty, outside  
2 Australia of an offence that, if it had been committed in the  
3 ACT, would have been punishable by imprisonment for 1 year  
4 or longer;
- 5 (c) whether the person has been convicted, or found guilty, of an  
6 offence against, or otherwise contravened, this Act;
- 7 (d) whether the person is or has been an undischarged bankrupt or  
8 has executed a personal insolvency agreement;
- 9 (e) whether the person has a physical or mental incapacity that  
10 may affect the exercise of the person's functions as a civil  
11 partnership notary.
- 12 (5) In deciding whether a person is a suitable person to be a civil  
13 partnership notary, the registrar-general may have regard to  
14 anything else the registrar-general considers relevant.

15 **17 Register of civil partnership notaries**

- 16 (1) The registrar-general must keep a register of people registered as  
17 civil partnership notaries under this Act.
- 18 (2) The register may be kept in any form, including electronically, that  
19 the registrar-general decides.
- 20 (3) The register must include the following information for each person  
21 registered as a civil partnership notary:
- 22 (a) the person's full name;
- 23 (b) the person's address and contact details;
- 24 (c) the date the person was registered;
- 25 (d) if the person's registration is cancelled or the person otherwise  
26 ceases to be registered—the date the registration ceases.
- 27 (4) The register must be available for public inspection at reasonable  
28 times.



1   **18           Cancellation of registration**

2           The registrar-general may cancel a person's registration as a civil  
3           partnership notary if the registrar-general considers that the person  
4           does not satisfy, or no longer satisfies, the criteria for registration  
5           under section 16 (2).

6   **19           Review of decisions**

7           Application may be made to the administrative appeals tribunal for  
8           review of a decision of the registrar-general—

- 9           (a) to refuse to register a person as a civil partnership notary under  
10          section 16; or
- 11          (b) to cancel a person's registration as a civil partnership notary  
12          under section 18.

13   **20           Notice of reviewable decisions**

14          (1) If the registrar-general makes a decision mentioned in section 19,  
15          the registrar-general must give a written notice of the decision to  
16          each person affected by the decision.

17          (2) The notice must be in accordance with the requirements of the code  
18          of practice in force under the *Administrative Appeals Tribunal*  
19          *Act 1989*, section 25B (1).

1 **Part 4** **Miscellaneous**

2 **21** **Void civil partnerships**

3 A civil partnership is void if—

- 4 (a) either party may not enter into the civil partnership under  
5 division 2.2 (Eligibility for entering into civil partnership); or
- 6 (b) either party did not freely enter into the civil partnership  
7 because—
- 8 (i) the party's agreement to enter into the civil partnership  
9 was obtained by duress or fraud; or
- 10 (ii) the party was mistaken about the identity of the other  
11 party or the nature of the declaration under section 12; or
- 12 (iii) the party was mentally incapable of understanding the  
13 nature and effect of the civil partnership.

14 **22** **Noncompliance with certain requirements**

- 15 (1) A civil partnership is not invalid only because a requirement of  
16 section 10 or section 11 was not complied with.
- 17 (2) A civil partnership is not invalid only because the person to whom  
18 the parties gave notice under section 11, or before whom the parties  
19 made the declaration under section 12, was not a civil partnership  
20 notary if either party believed, when giving the notice or making the  
21 declaration, that the person was a civil partnership notary.

22 **23** **Evidence of identity and age**

- 23 (1) For section 11 (2) (b), the evidence of identity and age required for  
24 each person is—
- 25 (a) the person's birth certificate; or

- 1 (b) the person's citizenship certificate; or  
2 (c) the person's current passport; or  
3 (d) a statutory declaration made by the person stating—  
4 (i) that it is impracticable to obtain a document mentioned in  
5 paragraph (a), (b) or (c); and  
6 (ii) to the best of the person's knowledge and belief, and as  
7 accurately as the person has been able to find out, when  
8 and where the person was born.

9 (2) In this section:

10 *birth certificate*, for a person, means the person's birth certificate, or  
11 a certified extract about the person's birth from the register, under  
12 the *Births, Deaths and Marriages Registration Act 1997* or a  
13 corresponding law of a State, external territory or foreign country.

14 *citizenship certificate*, for a person, means the person's citizenship  
15 certificate issued under the *Australian Citizenship Act 1948* (Cwlth),  
16 section 46 (Issue and proof of certificates of Australian citizenship)  
17 or a certified copy of the entry in the register about the person under  
18 that Act, section 44 (Evidence of entries in registers).

## 19 **24 Personal service of termination notices and withdrawal** 20 **notices**

- 21 (1) This section applies to a termination notice or withdrawal notice  
22 required to be served personally on a party to a civil partnership  
23 under section 14 (Termination by parties).  
24 (2) To serve the notice personally on the party, the person serving the  
25 notice must—  
26 (a) give the party a copy of the notice; or  
27 (b) if the party does not accept the copy—put the copy down in the  
28 party's presence and tell the party in general terms what it is;  
29 or

- 1 (c) if the person serving the document is prevented from  
2 approaching the party by violence or threat of violence—put  
3 the copy down as near as practicable to, but in the sight of, the  
4 party.
- 5 (3) However, a person may apply to the Supreme Court for an order  
6 allowing the notice to be served in another way (the *alternative*  
7 *way*).
- 8 (4) The Supreme Court may make the order if satisfied that—
- 9 (a) it is impracticable, for any reason, for the notice to be served  
10 personally as mentioned in subsection (2); and
- 11 (b) the alternative way is reasonably likely to bring the notice to  
12 the attention of the party.
- 13 (5) If the Supreme Court makes the order, the court may, in the order,  
14 provide that the notice is taken to have been served on the  
15 happening of a stated event, at a stated time or at the end of a stated  
16 period.
- 17 (6) The Supreme Court may make an order under subsection (4) even  
18 though the party is not in the ACT or Australia.
- 19 (7) For section 14, if a notice is served on a party in accordance with an  
20 order under subsection (4), the notice is taken to have been served  
21 personally on the party.

22 **25 Civil partnerships under corresponding laws**

- 23 (1) A regulation may provide that a relationship under a corresponding  
24 law is a civil partnership for the purpose of territory law.
- 25 (2) In this section:
- 26 *corresponding law* means a law of a State, another Territory or a  
27 foreign country prescribed by regulation for this definition (whether  
28 or not the law corresponds, or substantially corresponds, to this  
29 Act).

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1   **26           Offences**

2           (1) A civil partnership notary commits an offence if—

3               (a) the notary allows a civil partnership, or purported civil  
4               partnership, to be entered into before the notary; and

5               (b) the notice required under section 11 (including the statutory  
6               declaration and anything else required under that section) for  
7               the civil partnership—

8                     (i) has not been given to the notary; or

9                     (ii) was not given to the notary within the period allowed by  
10                    section 12 (2).

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

13           (2) A civil partnership notary commits an offence if—

14               (a) the notary allows a civil partnership, or purported civil  
15               partnership, to be entered into before the notary; and

16               (b) the notary has reasonable grounds to believe that the civil  
17               partnership would be void under section 21.

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

20           (3) A person commits an offence if—

21               (a) the person makes a declaration mentioned in section 12 with  
22               the intention of entering into a civil partnership with someone  
23               else (the person's *partner*); and

24               (b) the declaration is made before a person (the *third person*) who  
25               is not a civil partnership notary; and

26               (c) the person knows the third person is not a civil partnership  
27               notary; and

1 (d) the person has reasonable grounds to believe that their partner  
2 believes that the third person is a civil partnership notary.

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

5 *Note* The Criminal Code includes offences for—

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

## 11 **27 Determination of fees**

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

13 *Note* The Legislation Act contains provisions about the making of  
14 determinations and regulations relating to fees (see pt 6.3).

15 (2) A determination is a disallowable instrument.

16 *Note* A disallowable instrument must be notified, and presented to the  
17 Legislative Assembly, under the Legislation Act.

## 18 **28 Approved forms**

19 (1) The registrar-general may approve forms for this Act.

20 (2) If the registrar-general approves a form for a particular purpose, the  
21 approved form must be used for that purpose.

22 *Note* For other provisions about forms, see the Legislation Act, s 255.

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

24 *Note* A notifiable instrument must be notified under the Legislation Act.

## 25 **29 Regulation-making power**

26 The Executive may make regulations for this Act.

27 *Note* A regulation must be notified, and presented to the Legislative  
28 Assembly, under the Legislation Act.

1 **30**      **Legislation amended—sch 1**

2              This Act amends the legislation mentioned in schedule 1.

## Schedule 1 Consequential amendments

(see s 30)

### Part 1.1 Domestic Relationships Act 1994

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

*omit*

2 adults

*substitute*

2 people who are at least 16 years old

#### [1.2] Section 3 (1), definition of *domestic relationship*, note

*substitute*

*Note* For the meaning of *domestic partnership*, see the Legislation Act, s 169. It includes a civil partnership.

#### [1.3] Section 12 (1)

*substitute*

- (1) A court must not make an order under this part in relation to a domestic relationship (other than a civil partnership) unless satisfied that the domestic relationship has existed between the applicant and respondent for not less than 2 years.

#### [1.4] Section 12 (2)

*omit*

If

*substitute*

However, if



## **Part 1.2                      Legislation Act 2001**

### **[1.5]            Section 169 (1)**

*after*

spouse

*insert*

or civil partner

### **[1.6]            New section 169 (3)**

*insert*

- (3) In an Act or statutory instrument, a reference to a ***domestic partnership*** includes a reference to a marriage and a civil partnership.

### **[1.7]            Dictionary, part 1, new definitions**

*insert*

***civil partner***—a person who is in a civil partnership with someone else is the ***civil partner*** of the other person.

***civil partnership*** means a civil partnership under the *Civil Partnerships Act 2006*.

## 1 Dictionary

2 (see s 3)

3 *Note 1* The Legislation Act contains definitions and other provisions relevant to  
4 this Act.

5 *Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- 6 • Executive
- 7 • Minister (see s 162)
- 8 • registrar-general
- 9 • statutory declaration
- 10 • under.

11 *civil partnership notary* means—

12 (a) the registrar-general; or

13 (b) a person who is registered under this Act as a civil partnership  
14 notary.

15 *prohibited relationship*—see section 9.

16 *termination notice* means a notice given under section 14 (1).

17 *withdrawal notice* means a notice given under section 14 (3).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2006.

**2 Notification**

Notified under the Legislation Act on 2006.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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