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**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

CIVIL PARTNERSHIPS BILL 2006

EXPLANATORY STATEMENT

Circulated by authority of
Mr Simon Corbell MLA
Attorney General

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OVERVIEW

The purpose of the Civil Partnerships Bill 2006 (the Bill) is to provide a mechanism for two people, regardless of their sex, to enter a formally recognised relationship, known as a civil partnership. A civil partnership is a type of domestic relationship. Two people who are in a civil partnership are to be taken, for all purposes under territory law, to be in a domestic partnership.

The Bill sets out eligibility to enter a civil partnership, a process for entering a civil partnership and a process for ending a civil partnership.

SUMMARY OF CLAUSES

Part 1 - Preliminary

Clause 1 sets out the name of the Act.

Clause 2 provides for commencement of the Act on a day to be fixed by the Minister.

Clause 3 provides that the dictionary is part of the Act.

Clause 4 provides that notes included in the Act are explanatory only.

Clause 5 mentions other legislation that applies to offences against the Act. The Criminal Code relates to offences and the *Legislation Act 2001* sets out what penalty units are.

Part 2 – Civil Partnerships

General

Clause 6 sets out the general nature of a civil partnership as a legally recognised relationship. Consistent with the *Human Rights Act 2004*, any two people may enter into a civil partnership regardless of their sex. Where two people are in a civil partnership, they will be taken to be in a domestic partnership for all purposes under territory law.

Eligibility for entering into a civil partnership

Clause 7 provides that a person may only enter a civil partnership if they are over 16 years of age. This clause should be read in conjunction with clause 10 which requires certain authorisations and consents before a person who is 16 or 17 years old may enter a civil partnership. There is currently no prohibition on a two people who are 16 but not yet 18 forming a domestic partnership, only in having that domestic partnership formally recognised. To deny such a couple equal access to the law solely on the basis of their age is

discriminatory. Allowing such a couple access to the law also promotes the right to equal protection of the law in accordance with the *Human Rights Act 2004*.

Clause 8 provides that a person may not enter a civil partnership if they are married or already in a civil partnership. This requirement recognises that there can only be one primary relationship at any given time. Similarly, where a person who is in a civil partnership subsequently marries, the civil partnership is automatically terminated.

Clause 9 provides that a person may not enter a civil partnership with someone with whom they have a prohibited relationship. This qualification reflects the incest offences specified in the *Crimes Act 1900* for the sexual component of any such relationship.

Clause 10 requires that where a person who is 16 or 17 wishes to enter a civil partnership, then they may only do so with firstly, an authorisation from the Childrens Court, and secondly, with the written consent of each person with responsibility to make long-term decisions for the person. The court must have regard to the best interests of the person in giving an authorisation. The court may waive the requirement for consent but only if there are exceptional circumstances as would justify the waiver.

Entering into civil partnership

Clause 11 requires the parties to a proposed civil partnership to give notice of their intention to enter a civil partnership. The notice must be accompanied by a statutory declaration that goes to the eligibility requirements for entering a civil partnership. As soon as practicable after the notice is given, the civil partnerships notary must give the parties a notice of information about the effect of a civil partnership. The intention of this notice is to ensure that the parties are aware of the nature of the relationship they are creating.

Clause 12 sets out the formal process for entering a civil partnership. The parties must make a declaration that they intend to enter into a civil partnership and that they are doing so of their own free will. The declaration must be made not earlier than 5 days, and not later than 18 months, after the day the notice referred to in clause 11 has been given. The clause also contains witnessing requirements.

Termination of civil partnership

Clause 13 specifies how a civil partnership is terminated. A civil partnership will be automatically terminated on the death or marriage of one of the parties. A civil partnership may also be terminated by the parties or the Supreme Court using the processes under clauses 14 and 15.

Clause 14 sets out the procedure for the parties to a civil partnership to terminate the civil partnership. A civil partnership may be terminated by notice given to the Registrar-General. If only one party is seeking to terminate the civil partnership, a copy of the termination notice must also be served

personally on the other party. Requirements for personal service are specified in clause 24. A termination notice, unless it is withdrawn, takes effect 12 months after it has been given to the Registrar-General.

Clause 15 provides that a party to a civil partnership may also apply to the Supreme Court for an order terminating a civil partnership. This provision is included to cover situations where the party is unable to use the termination procedures in clause 14 – eg. the whereabouts of the other party is unknown.

Part 3 – Civil partnership notaries

Clause 16 sets out the basis on which a person may be registered as a civil partnership notary. Registration of civil partnership notaries will be a function of the Registrar-General. Before registering a person as a civil partnership notary, the Registrar-General must be satisfied that the person has the necessary knowledge and skills or experience to exercise the functions of a civil partnership notary and that they are a suitable person to be registered. In deciding whether a person is suitable the Registrar-General is required to have regard to particular matters and these are listed in clause 16(4). While the Registrar-General must consider these matters, the Registrar-General may also have regard to any other matter that he or she considers relevant.

Clause 17 requires the Registrar-General to keep a register of people who are registered as civil partnership notaries. The register may be kept in an electronic form.

Clause 18 provides that the Registrar-General may cancel a person's registration if the Registrar-General considers that the person no longer meets the criteria for registration as a civil partnership notary.

Clause 19 provides a right of review of decisions of the Registrar-General. Review of decisions will be undertaken by the Administrative Appeals Tribunal.

Clause 20 requires the Registrar-General to give a notice about a decision under clause 16 or 18 to the person affected by a decision advising them of their right to have the decision reviewed.

Part 4 – Miscellaneous

Clause 21 sets out the circumstances in which a civil partnership will be void. These circumstances are linked to the eligibility to enter a civil partnership and circumstances where either of the parties did not freely enter into the civil partnership because of fraud, mistake, or incapacity.

Clause 22 provides that a civil partnership is not invalid only because of a failure to comply with formalities.

Clause 23 sets out the required evidence of identity and age that is required for the notice under clause 11.

Clause 24 sets out how the personal service requirement for termination of a civil partnership under clause 14 must be met.

Clause 25 provides that the regulations may specify that a relationship under a corresponding law of another State or Territory, or of a foreign country, is to be treated as a civil partnership for the purposes of territory law.

Clause 26 sets out offences for the Act. These offences are intended to maintain the integrity of the civil partnership scheme.

Clause 27 provides that the Minister may determine fees for the Act.

Clause 28 provides that the Registrar-General may approve forms for the Act.

Clause 29 is a regulation making power.

Clause 30 provides for consequential amendments as set out in schedule 1.

Schedule 1

Part 1.1 *Domestic Relationships Act 1994*

Amendment 1.1 amends the definition of domestic relationship so that it refers to a relationship between 2 people who are at least 16 years old. This is different to the current definition of *domestic relationship* which is defined to be a relationship between 2 adults. Restricting the definition to adults means that while there is no prohibition on 2 people who are at least 16 years forming a domestic partnership, they are unable to make use of the Act to settle a property dispute in the event that the relationship ends. This change is also consistent with the age requirements for a person to enter a civil partnership.

Amendment 1.2 substitutes a new note which notes that the term *domestic partnership* includes a civil partnership.

Amendment 1.3 substitutes new section 12(1). The substituted provision effectively provides that where the domestic relationship is a civil partnership, the requirement that the court may only make an order if satisfied that the relationship has existed for not less than 2 years does not apply. That is, where the parties seeking relief are in a civil partnership, the court may make an order regardless of the length of time the parties have been in a civil partnership.

Amendment 1.4 is a formal drafting amendment.

Part 1.2 *Legislation Act 2001*

Amendment 1.5 inserts a reference to *civil partner* in the definition of domestic partner in section 169 of the *Legislation Act 2001* so that a reference to a domestic partner includes a civil partner.

Amendment 1.6 inserts a new section 169(3) which makes it clear that in an Act or statutory instrument, a reference to a *domestic partnership* includes a reference to a marriage and a civil partnership.

Amendment 1.7 inserts new definitions of *civil partner* and *civil partnership* in the dictionary of commonly used terms that apply to all Acts and statutory instruments.