

2009

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CIVIL PARTNERSHIPS AMENDMENT BILL 2009 (No.2)

EXPLANATORY STATEMENT

Presented by
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Attorney General

CIVIL PARTNERSHIPS AMENDMENT BILL 2009 (No.2)

Overview of Bill

The amendments moved by the Attorney-General make several significant amendments to the *Civil Partnerships Act 2008* (the Act) including amendments to the provisions of the Act that allow same sex couples to enter into a civil partnership by making a declaration before a civil partnerships notary.

This Bill responds to the advice of the Commonwealth Government that, unless certain amendments were made to the Act, it would disallow the amendments made by the *Civil Partnerships Amendment Act 2009*. The amendments made by this Bill represent an agreement between the ACT and the Commonwealth in relation to the manner in which civil partnership ceremonies may be entered into.

Couples entering into a civil partnership by declaration before a civil notary will be required to give to the civil partnerships notary and the registrar-general prior notice of their intention to make a declaration, and the declaration will require registration by the registrar-general before it becomes effective. Once registered, the civil partnership may take effect on the day on which the declaration was made.

The Bill makes it clear that registration is required for any civil partnership to have legal effect.

The Bill also makes a number of minor and consequential amendments to the Act, by removing a number of references to a relationship being 'entered into before the notary' and replacing them with references to making 'a declaration before the notary'.

A number of amendments to the *Births, Deaths and Marriages Registration Act 1997* ensure the proper registration of all civil partnerships entered into under the Civil Partnerships Act.

Clause Notes

Clause 1 Name of Act – states that the name of the Act is the *Civil Partnerships Amendment Act 2009 (No.2)*.

Clause 2 Commencement – provides that this Act commences on the day after it is notified in the ACT Legislation Register.

Clause 3 Legislation amended – this bill amends the *Civil Partnerships Act 2008*. The note to this clause refers to Schedule 1 to the bill, which sets out a number of amendments to the *Births, Deaths and Marriages Registration Act 1997*.

Clause 4 How civil partnership is entered into – Section 6A (b) – substitutes a new paragraph 6A(b) that allows same sex couples to enter into a civil partnership by making a declaration and having their relationship registered. No civil partnership will have legal effect until it has been registered. Once registered, the date of effect of the partnership (where a declaration has been made) will be the date on which the declaration was made.

Clause 5 Notice of intention to enter into civil partnership – Section 8A(1) – inserts ‘and to the registrar-general’ after ‘civil partnership notary’, to ensure that a notice of intention to enter into a civil partnership must be provided to the registrar-general and a civil partnership notary. This amendment clarifies the role of the registrar-general in the registration of all civil partnerships.

Clause 6 Section 8A(1) (note 2) – omits “civil partnership is entered into” and substitutes “declaration of civil partnership is made”. This amendment to the note reflects the position that no civil partnership will have legal effect until it has been registered. Once registered, the date of effect of the partnership (where a declaration has been made) will be the date on which the declaration was made.

Clause 7 New section 8A(2A) – inserts a new subsection (2A), which requires the notice of intention to specify the day on which the couple intend to make a declaration of civil partnership. This is the day that the registrar-general will record when registering the civil partnership.

Clause 8 Declaration of civil partnership – Section 8B(1) – substitutes a new section 8B(1), which makes it clear that, while the making of a declaration occurs before a notary, a separate act of registration by the registrar-general is required to give legal effect to the partnership. Once registered, the date of effect of the partnership (where a declaration has been made) will be the date on which the declaration was made.

Clause 9 New section 8BA – inserts a new provision dealing with registration of a relationship after a declaration has been made under section 8B. The registrar-general must be satisfied that the couple have made the declaration of civil partnership. Registration occurs when the registrar-general endorses the notice of intention to that effect. The registrar-general must also specify the date of effect of the registration, which will generally be the date specified in the notice of intention. The registrar-general may, if satisfied that the declaration did not occur on the date specified, specify another date that the registrar-general considers appropriate. This gives the registrar-general flexibility to amend the actual date to take into account unforeseen circumstances.

Clause 10 When civil partnership has effect – Subsection 8C(2) – substitutes a new section 8C(2), which makes it clear that a civil partnership entered into by declaration before a notary takes effect on the date specified by the registrar-general when he or she endorses the notice of intention to the effect that the relationship is registered. This amendment ensures that registration is the act that gives legal effect to the relationship.

Clause 11 Offences – Section 15A(1)(a) – substitutes a new provision to make it clear that registration, not the declaration itself, is the act that gives legal effect to the relationship.

Clause 12 Offences – Section 15A(2)(a) – substitutes a new provision to make it clear that registration, not the declaration itself, is the act that gives legal effect to the relationship.

Clause 13 New section 21 – inserts a new section 21 (Application and saving) to clarify the status of matters that are being, or have been, dealt with under the Act on the day these amendments commence (the commencement day). The general position is that these amendments apply to declarations made under section 8B after the commencement day.

If a couple gave notice, before the commencement day, under section 8A as then in force, and have not made a declaration under section 8B, they may make a declaration under section 8B as amended by these amendments. A civil partnership entered into before the commencement day, by a couple making a declaration under section 8B as then in force, continues in effect as if:

- the registrar-general had been given the notice given under section 8A as then in force; and
- the registrar-general had registered the couple's relationship by endorsing their notice in accordance with section 8BA(2)(a) as amended by clause 9 of these amendments; and
- the civil partnership had come into effect, because of its registration, on the day specified in the notice.

Section 21 expires 1 year after it commences.

Clause 14 Reviewable decisions – Schedule 1, item 1, column 2 – inserts a reference to section 8BA(1) to make the registrar-general's decision, as to whether he or she is satisfied a declaration has taken place so that he or she must register the relationship, a reviewable decision.

Schedule 1 – , Deaths and Marriages Registration Act 1997

[1.1] **Section 32A(1)(b)** – substitutes a new provision to require that a civil partnership registered under the *Civil Partnerships Act 2008* to also be registered under this Act.

[1.2] **Section 32AA(1)(b)** – substitutes a new provision to apply the requirements of section 32AA when “the registrar-general registers a relationship as a civil partnership”, rather than when a civil partnership is entered into”, under the *Civil Partnerships Act 2008*.

[1.3] **Section 32AA(3)** – amends the provision to remove language that suggests the civil partnership is effective at the time of the declaration before the notary, rather than when it is registered.

[1.4] **Section 32AA(3)** – amends the provision to remove language that suggests the civil partnership is effective at the time of the declaration before the notary, rather than when it is registered.

[1.5] **Section 32AA(3)(a)** – amends the provision to remove language that suggests the civil partnership is effective at the time of the declaration before the notary, rather than when it is registered.

[1.6] **Section 32AA(4)** – is omitted, as its requirements are now addressed in the *Civil Partnerships Act 2008*, section 8BA.