



New South Wales

Miscellaneous Acts Amendment (Marriages) Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to provide for the following consequent on the commencement of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth (the *Commonwealth Act*):

- (a) to update terminology relating to marriage and parentage across a number of Acts and instruments (Schedules 1, 2 and 6),
- (b) to provide that exceptions to the hearsay rule and the entitlement to register a change of sex apply to any married persons (Schedules 3 and 4),
- (c) to set out the effect to certain enduring guardianship appointments and registered relationships (Schedules 5 and 7).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of certain legislation dealing with terms relating to marriage

Schedule 1 updates the terminology of the definitions of *spouse*, *relatives*, *dependants* and other terms relating to marriage, consequent on the commencement of the Commonwealth Act, in the following Acts and instruments:

- *Aboriginal Land Rights Regulation 2014*,
- *Anatomy Act 1977*,
- *Anti-Discrimination Act 1977*,
- *Assisted Reproductive Technology Act 2007*,
- *Children and Young Persons (Care and Protection) Act 1998*,
- *Civil and Administrative Tribunal Regulation 2013*,
- *Civil Liability Act 2002*,
- *Compensation to Relatives Act 1897*,
- *Coroners Act 2009*,
- *Crimes Act 1900*,
- *Health Records and Information Privacy Act 2002*,
- *Human Tissue Act 1983*,
- *Independent Commission Against Corruption Regulation 2017*,
- *Judges' Pensions Act 1953*,
- *Law Enforcement Conduct Commission Regulation 2017*,
- *Local Government and Other Authorities (Superannuation) Act 1927*,
- *Lord Howe Island Regulation 2014*,
- *Mental Health Act 2007*,
- *Motor Accident Injuries Act 2017*,
- *Motor Accidents Act 1988*,
- *Motor Accidents Compensation Act 1999*,
- *NSW Trustee and Guardian Act 2009*,
- *Parliamentary Electorates and Elections Act 1912*,
- *Partnership Act 1892*,
- *Police Association Employees (Superannuation) Act 1969*,
- *Police Regulation (Superannuation) Act 1906*,
- *Powers of Attorney Act 2003*,
- *Privacy Code of Practice (General) 2003*,
- *Property (Relationships) Act 1984*,
- *Road Transport Act 2013*,
- *State Authorities Non-contributory Superannuation Act 1987*,
- *State Authorities Superannuation Act 1987*,
- *State Authorities Superannuation (Ex-Snowy Mountains Hydro-Electric Authority Superannuation Fund Transfer) Regulation 2003*,
- *Succession Act 2006*,
- *Superannuation Act 1916*,
- *Transport Employees Retirement Benefits Act 1967*,

- *Trustee Act 1925*,
- *Uniform Civil Procedure Rules 2005*,
- *Water Management (General) Regulation 2011*,
- *Workers Compensation Act 1987*,
- *Workers' Compensation (Dust Diseases) Act 1942*,
- *Workplace Injury Management and Workers Compensation Act 1998*.

The Schedule makes further minor amendments to the following Acts to remove redundant references to spouses and de facto partners being of either the same or opposite sex:

- *Building Professionals Act 2005*,
- *Coal and Oil Shale Mine Workers (Superannuation) Act 1941*,
- *Property (Relationships) Act 1984*,
- *Succession Act 2006*.

Schedule 2 Amendment of certain legislation dealing with terms relating to parentage

Amendment of the Adoption Act 2000 No 75 and Adoption Regulation 2015

Schedule 2.1 [1] amends the Act to update the definition of *married*. **Schedule 2.1 [2]** clarifies that parents who are in a same sex marriage are not considered step parents of their children for the purposes of the definition of *step parent* in the Act. **Schedule 2.1 [3]** updates references to parents. **Schedule 2.2** updates references to couples in the Regulation.

Amendment of the Guardianship of Infants Act 1916 No 41

Schedule 2.3 [1] updates references to parents in section 13 of the Act. Section 13 deals with the rights of a surviving parent as to guardianship of their child on the death of a parent.

Schedule 2.3 [2] consolidates and updates references to parents in section 14 of the Act. Section 14 deals with the power of parents to appoint guardians of their children after their death. **Schedule 2.3 [3]–[5]** make consequential amendments.

Amendment of the Status of Children Act 1996 No 76

Schedule 2.4 [1] clarifies that a spouse includes a spouse under a void or voidable marriage. This is consistent with the meaning of husband and wife under the Act.

Schedule 2.4 [2] amends section 3 (2) of the Act. The subsection deals with references to children born in or outside a marriage. The amendment updates references to parents in the subsection to reflect any marriage to which parents are party or not party.

Schedule 2.4 [3] amends section 5 (1) of the Act. The subsection ensures that for the purposes of New South Wales law, an exnuptial child has the same legal rights as a child born to married people. The amendment updates references to parents in the subsection to reflect any marriage to which parents are party or not party.

Schedule 2.4 [4] amends section 9 of the Act. The section sets out rebuttable parentage presumptions arising from marriage. The amendment updates references for spouses in the section to reflect any marriage to which a woman is party.

Schedule 2.4 [5] amends section 14 (1) and (6) of the Act. The subsections establish a presumption of parentage for a heterosexual married or de facto couple arising out of the use of fertilisation procedures. The amendment updates references to a married woman to clarify that the subsections apply to a woman married to, or in a de facto relationship with, a man.

Schedule 2.4 [6] amends section 14 (1A) of the Act. The subsection establishes a presumption of parentage for women in a de facto relationship with one another arising out of the use of

fertilisation procedures. The amendment updates references in the subsection so that the presumption also applies to women who are married to each other. **Schedule 2.4 [7]** makes a consequential amendment.

Schedule 3 Amendment of Births, Deaths and Marriages Registration Act 1995 No 62

Schedule 3 removes restrictions from the *Births, Deaths and Marriages Registration Act 1995* so that persons who change their sex and are married may have that change of sex recorded on the Births, Deaths and Marriages Register.

Schedule 4 Amendment of Evidence Act 1995 No 25

Schedule 4 [1] ensures that the exception to the hearsay rule with respect to reputation concerning whether a man and a woman, cohabiting at a particular time, were married to each other at that time, applies equally to any 2 people. This will apply in relation to evidence adduced on and from the commencement of the proposed Act for proceedings that have been commenced before, on or after the commencement of the proposed Act, as provided by **Schedule 4 [2]**.

Schedule 5 Amendment of Guardianship Act 1987 No 257

On the commencement of Part 5 of Schedule 1 to the Commonwealth Act on 9 December 2017, certain enduring guardian appointments were automatically revoked by the operation of section 6HA of the *Guardianship Act 1987* where those appointments were made by persons whose same sex marriages were recognised on the commencement.

Schedule 5 [3] provides that an enduring guardian appointment made by a person who at the time of making the appointment was party to a solemnised same sex marriage (which was later recognised) is taken not to have been revoked and continues, unless the person has made a subsequent appointment before the commencement of the proposed Act. It also ensures that, between 9 December 2017 and the commencement of the proposed Act, any actions or omissions by an enduring guardian whose appointment is taken not to have been revoked by the proposed amendment were lawful at the time. **Schedule 5 [2]** makes a consequential amendment.

Schedule 5 [1] updates the terminology of the definition of *spouse* consequential on the commencement of the Commonwealth Act.

Schedule 6 Amendment of Married Persons (Equality of Status) Act 1996 No 96

Schedule 6 [1] and [2] update references to spouses in sections 5 and 9 of the Act consequent on the commencement of the Commonwealth Act. Section 5 provides that spouses may sue each other in tort and section 9 provides that, unless a contrary intention is shown, spouses are to be treated as 2 separate persons when receiving a gift or other disposition of property under an instrument.

Schedule 6 [5] enables regulations of a savings and transitional nature to be made under an Act amended by the proposed Act, or an Act under which an instrument is made if that instrument is amended by the proposed Act consequent on the commencement of the proposed Act. The proposed amendment does not limit any power to make regulations under an Act. **Schedule 6 [3] and [4]** make consequential amendments.

Schedule 7 Amendment of Relationships Register Act 2010 No 19

On the commencement of Part 5 of Schedule 1 to the Commonwealth Act on 9 December 2017, the registration of a registered relationship was automatically revoked by the operation of section 10 of the *Relationships Register Act 2010* if a person who was in a registered relationship had their same sex marriage recognised on the commencement.

Schedule 7 clarifies that the registration of a registered relationship was revoked on 9 December 2017 if, on that day, a person in a registered relationship was party to a recognised same sex marriage (not necessarily to the person with whom they were in a registered relationship).



New South Wales

Miscellaneous Acts Amendment (Marriages) Bill 2018

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New South Wales

Miscellaneous Acts Amendment (Marriages) Bill 2018

No. , 2018

A Bill for

An Act to amend certain legislation consequent on the commencement of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth; and for related purposes.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Miscellaneous Acts Amendment (Marriages) Act 2018*.

3

2 Commencement

4

This Act commences on the date of assent to this Act.

5

Schedule 1	Amendment of certain legislation dealing with terms relating to marriage	1
		2
1.1	Aboriginal Land Rights Regulation 2014	3
[1]	Clause 61 Errors not to forfeit vote	4
	Omit “A female elector” from clause 61 (2). Insert instead “An elector”.	5
[2]	Clause 61 (2)	6
	Omit “her”. Insert instead “the elector’s”.	7
1.2	Anatomy Act 1977 No 126	8
	Section 4 Definitions	9
	Omit section 4 (2) (d) (i). Insert instead:	10
	(i) a person to whom the person is legally married (including a husband or wife of the person), or	11
		12
1.3	Anti-Discrimination Act 1977 No 48	13
	Section 49S Meaning of “responsibilities as a carer”	14
	Omit paragraph (a) of the definition of <i>spouse</i> in section 49S (3). Insert instead:	15
	(a) a person to whom the person is legally married (including a husband or wife of the person), or	16
		17
1.4	Assisted Reproductive Technology Act 2007 No 69	18
	Section 4 Definitions	19
	Omit paragraph (a) of the definition of <i>spouse</i> in section 4 (1). Insert instead:	20
	(a) a person to whom the person is legally married (including a husband or wife of the person), or	21
		22
1.5	Building Professionals Act 2005 No 115	23
[1]	Sections 68 (e) and 83 (4)	24
	Omit “(whether of the same or the opposite sex)” wherever occurring.	25
[2]	Section 83 Disclosure and misuse of information	26
	Insert at the end of the section:	27
	Note. <i>De facto partner</i> is defined in section 21C of the <i>Interpretation Act 1987</i> .	28
1.6	Children and Young Persons (Care and Protection) Act 1998 No 157	29
	Section 3 Definitions	30
	Omit section 3 (2) (a). Insert instead:	31
	(a) a person to whom the person is legally married (including a husband or wife of the person), or	32
		33

1.7 Civil and Administrative Tribunal Regulation 2013	1
Clause 4 Definitions	2
Omit paragraph (b) (i) of the definition of <i>eligible pensioner</i> . Insert instead:	3
(i) the surviving spouse (including widow or widower) of a member of the Australian Defence Force or Peacekeeping Forces, or	4 5
1.8 Civil Liability Act 2002 No 22	6
[1] Section 15B Damages for loss of capacity to provide domestic services	7
Omit paragraph (a) (i) of the definition of <i>dependants</i> in section 15B (1). Insert instead:	8
(i) the person to whom the claimant is legally married (including a husband or wife of the claimant),	9 10
[2] Section 30 Limitation on recovery for pure mental harm arising from shock	11
Omit paragraph (a) of the definition of <i>spouse or partner</i> in section 30 (5). Insert instead:	12
(a) the person to whom the victim is legally married (including the husband or wife of the victim), or	13 14
1.9 Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No 45	15
Schedule 2 Savings and transitional provisions	16
Omit “of the opposite sex” from clause 27 (9).	17
1.10 Compensation to Relatives Act 1897 No 31	18
Section 7 Construction of Act	19
Omit section 7 (4) (a). Insert instead:	20
(a) the person to whom a person is legally married (including the husband or wife of a person), or	21 22
1.11 Coroners Act 2009 No 41	23
[1] Section 4 Definitions	24
Omit paragraph (a) of the definition of <i>spouse</i> in section 4 (1). Insert instead:	25
(a) the person to whom a person is legally married (including the husband or wife of a person), or	26 27
[2] Section 75 Powers of coroner in relation to reports or proceedings concerning self-inflicted deaths	28 29
Omit “her husband or his wife” from section 75 (3) (b). Insert instead “the person’s spouse”.	30
1.12 Crimes Act 1900 No 40	31
Sections 92 and 93	32
Omit “husband or wife” wherever occurring.	33
Insert instead “spouse (including husband or wife)”.	34

1.13 Health Records and Information Privacy Act 2002 No 71	1
Section 4 Definitions	2
Omit paragraph (a) of the definition of <i>spouse</i> in section 4 (1). Insert instead:	3
(a) the person to whom a person is legally married (including the husband or wife of a person), or	4 5
1.14 Human Tissue Act 1983 No 164	6
Section 4 Definitions	7
Omit paragraph (a) of the definition of <i>spouse</i> in section 4 (1). Insert instead:	8
(a) the person to whom a person is legally married (including the husband or wife of a person), or	9 10
1.15 Independent Commission Against Corruption Regulation 2017	11
Clause 3 Definitions	12
Omit paragraph (a) of the definition of <i>spouse</i> in clause 3 (1). Insert instead:	13
(a) the person to whom a person is legally married (including the husband or wife of a person), or	14 15
1.16 Judges' Pensions Act 1953 No 41	16
Section 7C Pension in respect of certain children where judge or retired judge dies without leaving a surviving spouse	17 18
Omit "husband, wife" wherever occurring.	19
Insert instead "spouse (including husband or wife)".	20
1.17 Law Enforcement Conduct Commission Regulation 2017	21
Clause 4 Associated persons	22
Omit the definition of <i>spouse</i> from clause 4 (2). Insert instead:	23
<i>spouse</i> means:	24
(a) the person to whom a person is legally married (including the husband or wife of a person), or	25 26
(b) a de facto partner,	27
but where more than one person would so qualify as a spouse, means only the last person so to qualify.	28 29
Note. <i>De facto partner</i> is defined in section 21C of the <i>Interpretation Act 1987</i> .	30
1.18 Local Government and Other Authorities (Superannuation) Act 1927 No 35	31 32
Section 15AL Definitions	33
Omit the definition of <i>dependent widower</i> from section 15AL (1). Insert instead:	34
<i>dependent widower</i> , in relation to a person who dies while a contributor or pensioner, means the person's widower if he satisfies and continues (except during any period he is married) to satisfy the prescribed dependency test.	35 36 37

1.19 Lord Howe Island Regulation 2014	1
[1] Clause 22 Identification of electors	2
Omit “A female” from clause 22 (6). Insert instead “An elector”.	3
[2] Clause 22 (6)	4
Omit “her”. Insert instead “the elector’s”.	5
1.20 Mental Health Act 2007 No 8	6
Section 4 Definitions	7
Omit paragraph (a) of the definition of <i>spouse</i> in section 4 (1). Insert instead:	8
(a) the person to whom a person is legally married (including the husband or wife of a person), or	9 10
1.21 Motor Accident Injuries Act 2017 No 10	11
[1] Section 1.4 Definitions	12
Omit paragraph (a) of the definition of <i>spouse</i> in section 1.4 (1). Insert instead:	13
(a) the person to whom a person is legally married (including the husband or wife of a person), or	14 15
[2] Section 3.26 Statutory benefits for loss of capacity to provide gratuitous domestic services	16 17
Omit paragraph (a) (i) of the definition of <i>dependants</i> in section 3.26 (5). Insert instead:	18
(i) a person to whom the claimant is legally married (including a husband or wife of the claimant),	19 20
1.22 Motor Accidents Act 1988 No 102	21
Section 3 Definitions	22
Omit paragraph (a) of the definition of <i>spouse</i> in section 3 (1). Insert instead:	23
(a) the person to whom a person is legally married (including the husband or wife of a person), or	24 25
1.23 Motor Accidents Compensation Act 1999 No 41	26
Section 3 Definitions	27
Omit paragraph (a) of the definition of <i>spouse</i> . Insert instead:	28
(a) the person to whom a person is legally married (including the husband or wife of a person), or	29 30
1.24 NSW Trustee and Guardian Act 2009 No 49	31
Section 3 Definitions	32
Omit paragraph (a) of the definition of <i>spouse</i> in section 3 (1). Insert instead:	33
(a) the person to whom a person is legally married (including the husband or wife of a person), or	34 35

1.25 Parliamentary Electorates and Elections Act 1912 No 41	1
[1] Section 101 Errors not to forfeit vote	2
Omit “female”.	3
[2] Section 101	4
Omit “her”. Insert instead “the elector’s”.	5
1.26 Partnership Act 1892 (55 Vic No 12)	6
Section 2 Rules for determining existence of partnership	7
Omit “the widow, widower” from section 2 (1) (3) (c).	8
Insert instead “the surviving spouse (including widow or widower)”.	9
1.27 Police Association Employees (Superannuation) Act 1969 No 33	10
Section 2 Definitions	11
Omit the definition of <i>spouse</i> from section 2 (1). Insert instead:	12
<i>spouse</i> of a prescribed person (within the meaning of section 3) who has died means the surviving spouse of the prescribed person.	13 14
1.28 Police Regulation (Superannuation) Act 1906 No 28	15
[1] Section 1 Name of Act, commencement and definitions	16
Omit “widow or widower, as the case may be,” from the definition of <i>spouse</i> in section 1 (2).	17 18
Insert instead “surviving spouse (including widow or widower)”.	19
[2] Sections 20 (5) and 23 (4)	20
Omit “widow or widower” wherever occurring. Insert instead “surviving spouse”.	21
1.29 Powers of Attorney Act 2003 No 53	22
Schedule 3 Prescribed expressions and authorisations for prescribed powers of attorney	23 24
Omit “wife, husband” from paragraph (a) of the definition of <i>relative</i> in clause 1 (3).	25
Insert instead “spouse (including wife or husband)”.	26
1.30 Privacy Code of Practice (General) 2003	27
Clause 17 Interpretation	28
Omit paragraph (a) of the definition of <i>spouse</i> in clause 17 (1). Insert instead:	29
(a) the person to whom a person is legally married (including the husband or wife of a person), or	30 31

1.31 Property (Relationships) Act 1984 No 147	1
[1] Section 3 Definitions	2
Insert after section 3 (4):	3
(5) Notes included in this Act do not form part of this Act.	4
[2] Section 32 Cessation of order—generally	5
Insert at the end of the section:	6
Note. Certain marriages other than those between a man and woman were legally recognised on 9 December 2017 because of Part 5 of Schedule 1 to the <i>Marriage Amendment (Definition and Religious Freedoms) Act 2017</i> of the Commonwealth.	7 8 9
[3] Section 62 Effect of Property (Relationships) Legislation Amendment Act 1999	10
Omit “, which by law must be between persons of the opposite sex,”.	11
1.32 Road Transport Act 2013 No 18	12
Section 212 Interlock exemption orders	13
Omit the note to section 212 (5) (c). Insert instead:	14
Note. For example, the offender's spouse is the registered operator of the only vehicle to which the offender has access and the spouse refuses consent to installation of an interlock device in it; the offender owns a chauffeur-driven limousine business and seeks exemption from installing an interlock device in cars used in the business.	15 16 17 18
1.33 State Authorities Non-contributory Superannuation Act 1987 No 212	19
Section 3 Definitions	20
Omit the definition of <i>spouse</i> from section 3 (1). Insert instead:	21
<i>spouse</i> of a deceased employee or deceased former employee means the surviving spouse of the employee or former employee.	22 23
1.34 State Authorities Superannuation Act 1987 No 211	24
Section 3 Definitions	25
Omit the definition of <i>spouse</i> from section 3 (1). Insert instead:	26
<i>spouse</i> of a deceased contributor or deceased former contributor means the surviving spouse of the contributor or former contributor.	27 28
1.35 State Authorities Superannuation (Ex-Snowy Mountains Hydro-Electric Authority Superannuation Fund Transfer) Regulation 2003	29 30 31
Clause 3 Definitions	32
Omit “widow or widower” from the definition of <i>spouse</i> .	33
Insert instead “surviving spouse (including widow or widower)”.	34
1.36 Succession Act 2006 No 80	35
[1] Section 54 Persons entitled to inspect will of deceased person	36
Omit “(whether of the same or the opposite sex)” from section 54 (2) (c).	37

[2] Section 57 Eligible persons	1
Omit “wife or husband” wherever occurring. Insert instead “spouse”.	2
1.37 Superannuation Act 1916 No 28	3
Section 3 Definitions	4
Omit “widow or widower, as the case may be,” from the definition of <i>Spouse</i> in section 3 (1).	5
Insert instead “surviving spouse (including widow or widower)”.	6
1.38 Transport Employees Retirement Benefits Act 1967 No 96	7
Section 51 Assignment of policies of assurance to the Board in certain cases	8
Omit “husband or wife” from section 51 (1).	9
Insert instead “spouse (including husband or wife)”.	10
1.39 Trustee Act 1925 No 14	11
Section 45 Protective trusts	12
Omit paragraph (a) of the definition of <i>spouse</i> in section 45 (11). Insert instead:	13
(a) the person to whom a person is legally married (including the husband or wife of a person), or	14
1.40 Uniform Civil Procedure Rules 2005	15
Rule 1.19 Assignment of business to Equity Division	16
Omit “husband and wife” from rule 1.19 (c).	17
Insert instead “spouses (including husband and wife)”.	18
1.41 Water Management (General) Regulation 2011	19
Clause 211 Definitions	20
Omit “widow or widower” from paragraph (b) (i) of the definition of <i>eligible pensioner</i> in clause 211 (1).	21
Insert instead “surviving spouse (including widow or widower)”.	22
1.42 Workers Compensation Act 1987 No 70	23
[1] Section 85 Payments to NSW Trustee for benefit of beneficiary	24
Omit “a widow or widower” from section 85 (3).	25
Insert instead “a surviving spouse (including widow or widower)”.	26
[2] Section 85 (3) and (4)	27
Omit “the widow or widower” wherever occurring. Insert instead “the surviving spouse”.	28
[3] Schedule 6 Savings, transitional and other provisions	29
Omit “wife or husband” from clause 4 (1) (b) (i) in Part 4.	30
Insert instead “spouse (including wife or husband)”.	31

1.43 Workers' Compensation (Dust Diseases) Act 1942 No 14	1
[1] Section 3 Definitions	2
Omit "a husband or wife of the person" from paragraph (a) of the definition of <i>Spouse</i> in section 3 (1).	3
Insert instead "a person to whom the person is legally married".	4
[2] Section 3 (1), definition of "Spouse"	5
Omit paragraph (b) (i). Insert instead:	6
(i) a person to whom the person is legally married, or	7
1.44 Workplace Injury Management and Workers Compensation Act 1998 No 86	8
[1] Section 4 Definitions	9
Omit "wife or husband" from the definition of <i>member of a family</i> in section 4 (1).	10
Insert instead "spouse (including wife or husband)".	11
[2] Section 4 (1), definition of "spouse"	12
Omit "a husband or wife of the person" from paragraph (a).	13
Insert instead "a person to whom the person is legally married (including a husband or wife)".	14
[3] Section 4 (1), definition of "spouse"	15
Omit paragraph (b) (i). Insert instead:	16
(i) a person to whom the person is legally married (including a husband or wife), or	17
	18
	19
	20
	21

Schedule 2	Amendment of certain legislation dealing with terms relating to parentage	1
		2
2.1	Adoption Act 2000 No 75	3
[1]	Dictionary	4
	Omit the definition of <i>married</i> . Insert instead:	5
	<i>married</i> means:	6
	(a) two persons who are legally married to one another, or	7
	(b) two Aboriginal or Torres Strait Islander persons who are living together in a relationship that is recognised as a marriage according to the traditions of an Aboriginal community or Aboriginal or Torres Strait Islander group to which they belong.	8 9 10 11
[2]	Dictionary, definition of “step parent”	12
	Omit “birth parent or adoptive parent” from paragraph (a).	13
	Insert instead “birth parent, parent or adoptive parent”.	14
[3]	Sections 68 (c), 72 (3) (c) and 73 (4) (c)	15
	Omit “the mother, the father” wherever occurring.	16
	Insert instead “the parent (including the mother or father)”.	17
2.2	Adoption Regulation 2015	18
[1]	Clause 46 Assessment of applicants for adoption	19
	Omit “a husband and wife or by de facto partners” from clause 46 (6).	20
	Insert instead “a couple”.	21
[2]	Clause 46 (6)	22
	Omit “either of them”. Insert instead “a person of the couple”.	23
2.3	Guardianship of Infants Act 1916 No 41	24
[1]	Section 13	25
	Omit the section. Insert instead:	26
	13 Rights of surviving parent as to guardianship	27
	(1) On the death of a parent of a minor (the <i>deceased parent</i>), a surviving parent of the minor is, subject to the provisions of this Act, to be a guardian of the minor, either alone or jointly with any guardian appointed by the deceased parent.	28 29 30 31
	(2) Where no guardian has been appointed by the deceased parent, or if the guardian or guardians appointed by the deceased parent is or are dead or refuses or refuse to act, the court may, if it thinks fit, appoint a guardian to act jointly with the surviving parent of the minor.	32 33 34 35

[2] Section 14 Power of parents to appoint guardians	1
Omit section 14 (1) and (2). Insert instead:	2
(1) The parent (including a mother or father) of a minor may by deed or will appoint any person to be guardian of the minor after his or her death.	3 4
[3] Section 14 (3)	5
Omit “the mother or father, as the case may be,”.	6
Insert instead “the surviving parent (including the mother or father, as the case may be)”.	7
[4] Section 14 (3)	8
Omit “the mother or father” where secondly and thirdly occurring.	9
Insert instead “the surviving parent”.	10
[5] Section 14 (4)	11
Omit “the mother or father” wherever occurring. Insert instead “the surviving parent”.	12
2.4 Status of Children Act 1996 No 76	13
[1] Section 3 Definitions	14
Insert in alphabetical order in section 3 (1):	15
<i>spouse</i> includes a spouse under a void or voidable marriage.	16
[2] Section 3 (2)	17
Omit “father and mother” wherever occurring.	18
Insert instead “parents (including father and mother)”.	19
[3] Section 5 All children are of equal status	20
Omit “the person’s father and mother (or either of them)” from section 5 (1).	21
Insert instead “the person’s parents (or either of the person’s parents)”.	22
[4] Section 9 Presumptions of parentage arising from marriage	23
Omit “husband” wherever occurring. Insert instead “spouse”.	24
[5] Section 14 Presumptions of parentage arising out of use of fertilisation procedures	25
Omit “married woman” wherever occurring in section 14 (1) and (6).	26
Insert instead “woman who is married to a man”.	27
[6] Section 14 (1A)	28
Insert “who is married to or” after “a woman”.	29
[7] Section 14 (5A)	30
Insert “spouse or” after “pregnancy of her”.	31

Schedule 3	Amendment of Births, Deaths and Marriages Registration Act 1995 No 62	1 2
[1]	Section 32B Application to alter register to record change of sex Omit “and” at the end of section 32B (1) (b) and omit section 32B (1) (c).	3 4
[2]	Section 32B Omit “and” at the end of section 32B (2) (b) and omit section 32B (2) (c).	5 6
[3]	Section 32D Alteration of register Omit section 32D (3).	7 8
[4]	Section 32DA Application to register change of sex Omit section 32DA (1) (d).	9 10
[5]	Section 32DA (2) (d) Omit the paragraph.	11 12
[6]	Section 32DC Decision to register change of sex Omit section 32DC (3).	13 14

Schedule 4	Amendment of Evidence Act 1995 No 25	1
[1]	Section 73 Exception: reputation as to relationships and age	2
	Omit “a man and a woman” from section 73 (1) (b). Insert instead “2 people”.	3
[2]	Schedule 2 Savings, transitional and other provisions	4
	Insert after Part 4:	5
Part 5	Provisions consequent on the enactment of the Miscellaneous Acts Amendment (Marriages) Act 2018	6 7 8
26	Application of amendment to section 73—exception to the hearsay rule for evidence concerning relationship	9 10
	The amendment to section 73 made by the <i>Miscellaneous Acts Amendment (Marriages) Act 2018</i> applies in relation to evidence adduced on or after the commencement of this Part, whether the proceedings are commenced before, on or after that commencement.	11 12 13 14

Schedule 5	Amendment of Guardianship Act 1987 No 257	1
[1] Section 3 Definitions		2
	Omit paragraph (a) of the definition of <i>spouse</i> in section 3 (1). Insert instead:	3
	(a) the person to whom a person is legally married (including the husband or wife of a person), or	4 5
[2] Section 6HA Automatic revocation of appointment by marriage of appointer		6
	Insert at the end of the section:	7
	Note. See section 6HC for certain appointments taken not to have been revoked on the recognition of same sex marriages.	8 9
[3] Section 6HC		10
	Insert after section 6HB:	11
6HC Certain appointments not revoked on recognition of same sex marriages		12
(1)	This section applies to an appointment of a person as an enduring guardian that:	13 14
	(a) was made by a person who at the time of making the appointment was party to a marriage that had been solemnised and that marriage was a recognised same sex marriage on the recognition day, and	15 16 17
	(b) was in force immediately before the recognition day, and	18
	(c) was revoked by the operation of section 6HA on the recognition day because of the recognised same sex marriage of the person who made the appointment.	19 20 21
(2)	An appointment to which this section applies is taken not to have been revoked by the operation of section 6HA.	22 23
(3)	However, subsection (2) does not apply if the appointment to which this section applies was made by a person who made a subsequent appointment on or after the recognition day but only from the day on which that subsequent appointment was made.	24 25 26 27
(4)	Anything done or omitted to be done by a person, whose appointment as an enduring guardian is an appointment to which subsection (2) applies, that would have been lawful if this section applied at the time concerned, is taken to be (and always to have been) lawful.	28 29 30 31
(5)	In this section:	32
	recognised same sex marriage means a marriage that:	33
	(a) was solemnised before the recognition day, and	34
	(b) was recognised in Australia as valid on the recognition day because of Part 5 of Schedule 1 to the <i>Marriage Amendment (Definition and Religious Freedoms) Act 2017</i> of the Commonwealth, and	35 36 37
	(c) would not have been recognised apart from that Part.	38
	recognition day means the day on which Part 5 of Schedule 1 to the <i>Marriage Amendment (Definition and Religious Freedoms) Act 2017</i> of the Commonwealth commenced.	39 40 41

Schedule 6	Amendment of Married Persons (Equality of Status) Act 1996 No 96	1
		2
[1]	Section 5 Spouses can sue each other in tort	3
	Omit “A husband and wife each has”.	4
	Insert instead “Spouses (including a husband and wife) each have”.	5
[2]	Section 9 Spouses as beneficiaries	6
	Omit “A husband and wife” and “the husband and wife”.	7
	Insert instead “Spouses (including a husband and wife)” and “the spouses”, respectively.	8
[3]	Schedule 3, heading	9
	Omit the heading. Insert instead:	10
	Schedule 3 Savings, transitional and other provisions	11
[4]	Schedule 3	12
	Omit clause 1 (1). Insert instead:	13
	(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	14
		15
[5]	Schedule 3	16
	Insert after Part 2:	17
	Part 3 Provisions consequent on enactment of the Miscellaneous Acts Amendment (Marriages) Act 2018	18
		19
		20
	4 Savings and transitional regulations for any amended instrument	21
	(1) The regulations under the following Acts may contain provisions of a savings or transitional nature consequent on the enactment of the amending Act:	22
		23
	(a) an Act amended by the amending Act,	24
	(b) an Act under which an instrument is made if that instrument is amended by the amending Act.	25
		26
	(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the amending Act or a later date.	27
		28
	(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	29
		30
	(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	31
		32
		33
		34
	(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	35
		36
		37
	(4) This clause does not limit any power under an Act to make regulations of a savings or transitional nature.	38
		39

- (5) In this clause, ***amending Act*** means the *Miscellaneous Acts Amendment (Marriages) Act 2018*.

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Schedule 7	Amendment of Relationships Register Act 2010	1
	No 19	2
Section 10A		3
Insert after section 10:		4
10A	Certain registrations revoked on recognition of same sex marriages	5
(1)	This section applies to a registered relationship existing immediately before the recognition day if a person in the registered relationship was party to a recognised same sex marriage on the recognition day.	6 7 8
(2)	To avoid doubt, the registration of a registered relationship to which this section applies was revoked on the recognition day.	9 10
(3)	In this section:	11
	<i>recognised same sex marriage</i> means a marriage that:	12
(a)	was solemnised before the recognition day, and	13
(b)	was recognised in Australia as valid on the recognition day because of Part 5 of Schedule 1 to the <i>Marriage Amendment (Definition and Religious Freedoms) Act 2017</i> of the Commonwealth, and	14 15 16
(c)	would not have been recognised apart from that Part.	17
	<i>recognition day</i> means the day on which Part 5 of Schedule 1 to the <i>Marriage Amendment (Definition and Religious Freedoms) Act 2017</i> of the Commonwealth commenced.	18 19 20