



New South Wales

# Miscellaneous Acts Amendment (Marriages) Bill 2018

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Council*  
2018

*Clerk of the Parliaments*



New South Wales

## **Miscellaneous Acts Amendment (Marriages) Bill 2018**

Act No , 2018

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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.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

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

**2 Commencement**

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

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

### **1.1 Aboriginal Land Rights Regulation 2014**

**[1] Clause 61 Errors not to forfeit vote**

Omit “A female elector” from clause 61 (2). Insert instead “An elector”.

**[2] Clause 61 (2)**

Omit “her”. Insert instead “the elector’s”.

### **1.2 Anatomy Act 1977 No 126**

**Section 4 Definitions**

Omit section 4 (2) (d) (i). Insert instead:

- (i) a person to whom the person is legally married (including a husband or wife of the person), or

### **1.3 Anti-Discrimination Act 1977 No 48**

**Section 49S Meaning of “responsibilities as a carer”**

Omit paragraph (a) of the definition of *spouse* in section 49S (3). Insert instead:

- (a) a person to whom the person is legally married (including a husband or wife of the person), or

### **1.4 Assisted Reproductive Technology Act 2007 No 69**

**Section 4 Definitions**

Omit paragraph (a) of the definition of *spouse* in section 4 (1). Insert instead:

- (a) a person to whom the person is legally married (including a husband or wife of the person), or

### **1.5 Building Professionals Act 2005 No 115**

**[1] Sections 68 (e) and 83 (4)**

Omit “(whether of the same or the opposite sex)” wherever occurring.

**[2] Section 83 Disclosure and misuse of information**

Insert at the end of the section:

**Note.** *De facto partner* is defined in section 21C of the *Interpretation Act 1987*.

### **1.6 Children and Young Persons (Care and Protection) Act 1998 No 157**

**Section 3 Definitions**

Omit section 3 (2) (a). Insert instead:

- (a) a person to whom the person is legally married (including a husband or wife of the person), or

## **1.7 Civil and Administrative Tribunal Regulation 2013**

### **Clause 4 Definitions**

Omit paragraph (b) (i) of the definition of *eligible pensioner*. Insert instead:

- (i) the surviving spouse (including widow or widower) of a member of the Australian Defence Force or Peacekeeping Forces, or

## **1.8 Civil Liability Act 2002 No 22**

### **[1] Section 15B Damages for loss of capacity to provide domestic services**

Omit paragraph (a) (i) of the definition of *dependants* in section 15B (1). Insert instead:

- (i) the person to whom the claimant is legally married (including a husband or wife of the claimant),

### **[2] Section 30 Limitation on recovery for pure mental harm arising from shock**

Omit paragraph (a) of the definition of *spouse or partner* in section 30 (5). Insert instead:

- (a) the person to whom the victim is legally married (including the husband or wife of the victim), or

## **1.9 Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No 45**

### **Schedule 2 Savings and transitional provisions**

Omit “of the opposite sex” from clause 27 (9).

## **1.10 Compensation to Relatives Act 1897 No 31**

### **Section 7 Construction of Act**

Omit section 7 (4) (a). Insert instead:

- (a) the person to whom a person is legally married (including the husband or wife of a person), or

## **1.11 Coroners Act 2009 No 41**

### **[1] Section 4 Definitions**

Omit paragraph (a) of the definition of *spouse* in section 4 (1). Insert instead:

- (a) the person to whom a person is legally married (including the husband or wife of a person), or

### **[2] Section 75 Powers of coroner in relation to reports or proceedings concerning self-inflicted deaths**

Omit “her husband or his wife” from section 75 (3) (b). Insert instead “the person’s spouse”.

## **1.12 Crimes Act 1900 No 40**

### **Sections 92 and 93**

Omit “husband or wife” wherever occurring.

Insert instead “spouse (including husband or wife)”.

## 1.13 Health Records and Information Privacy Act 2002 No 71

### Section 4 Definitions

Omit paragraph (a) of the definition of *spouse* in section 4 (1). Insert instead:

- (a) the person to whom a person is legally married (including the husband or wife of a person), or

## 1.14 Human Tissue Act 1983 No 164

### Section 4 Definitions

Omit paragraph (a) of the definition of *spouse* in section 4 (1). Insert instead:

- (a) the person to whom a person is legally married (including the husband or wife of a person), or

## 1.15 Independent Commission Against Corruption Regulation 2017

### Clause 3 Definitions

Omit paragraph (a) of the definition of *spouse* in clause 3 (1). Insert instead:

- (a) the person to whom a person is legally married (including the husband or wife of a person), or

## 1.16 Judges' Pensions Act 1953 No 41

### Section 7C Pension in respect of certain children where judge or retired judge dies without leaving a surviving spouse

Omit "husband, wife" wherever occurring.

Insert instead "spouse (including husband or wife)".

## 1.17 Law Enforcement Conduct Commission Regulation 2017

### Clause 4 Associated persons

Omit the definition of *spouse* from clause 4 (2). Insert instead:

*spouse* means:

- (a) the person to whom a person is legally married (including the husband or wife of a person), or
- (b) a de facto partner,

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

**Note.** *De facto partner* is defined in section 21C of the *Interpretation Act 1987*.

## 1.18 Local Government and Other Authorities (Superannuation) Act 1927 No 35

### Section 15AL Definitions

Omit the definition of *dependent widower* from section 15AL (1). Insert instead:

*dependent widower*, 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.

## **1.19 Lord Howe Island Regulation 2014**

### **[1] Clause 22 Identification of electors**

Omit “A female” from clause 22 (6). Insert instead “An elector”.

### **[2] Clause 22 (6)**

Omit “her”. Insert instead “the elector’s”.

## **1.20 Mental Health Act 2007 No 8**

### **Section 4 Definitions**

Omit paragraph (a) of the definition of *spouse* in section 4 (1). Insert instead:

- (a) the person to whom a person is legally married (including the husband or wife of a person), or

## **1.21 Motor Accident Injuries Act 2017 No 10**

### **[1] Section 1.4 Definitions**

Omit paragraph (a) of the definition of *spouse* in section 1.4 (1). Insert instead:

- (a) the person to whom a person is legally married (including the husband or wife of a person), or

### **[2] Section 3.26 Statutory benefits for loss of capacity to provide gratuitous domestic services**

Omit paragraph (a) (i) of the definition of *dependants* in section 3.26 (5). Insert instead:

- (i) a person to whom the claimant is legally married (including a husband or wife of the claimant),

## **1.22 Motor Accidents Act 1988 No 102**

### **Section 3 Definitions**

Omit paragraph (a) of the definition of *spouse* in section 3 (1). Insert instead:

- (a) the person to whom a person is legally married (including the husband or wife of a person), or

## **1.23 Motor Accidents Compensation Act 1999 No 41**

### **Section 3 Definitions**

Omit paragraph (a) of the definition of *spouse*. Insert instead:

- (a) the person to whom a person is legally married (including the husband or wife of a person), or

## **1.24 NSW Trustee and Guardian Act 2009 No 49**

### **Section 3 Definitions**

Omit paragraph (a) of the definition of *spouse* in section 3 (1). Insert instead:

- (a) the person to whom a person is legally married (including the husband or wife of a person), or

## **1.25 Parliamentary Electorates and Elections Act 1912 No 41**

### **[1] Section 101 Errors not to forfeit vote**

Omit “female”.

### **[2] Section 101**

Omit “her”. Insert instead “the elector’s”.

## **1.26 Partnership Act 1892 (55 Vic No 12)**

### **Section 2 Rules for determining existence of partnership**

Omit “the widow, widower” from section 2 (1) (3) (c).

Insert instead “the surviving spouse (including widow or widower)”.

## **1.27 Police Association Employees (Superannuation) Act 1969 No 33**

### **Section 2 Definitions**

Omit the definition of *spouse* from section 2 (1). Insert instead:

*spouse* of a prescribed person (within the meaning of section 3) who has died means the surviving spouse of the prescribed person.

## **1.28 Police Regulation (Superannuation) Act 1906 No 28**

### **[1] Section 1 Name of Act, commencement and definitions**

Omit “widow or widower, as the case may be,” from the definition of *spouse* in section 1 (2).

Insert instead “surviving spouse (including widow or widower)”.

### **[2] Sections 20 (5) and 23 (4)**

Omit “widow or widower” wherever occurring. Insert instead “surviving spouse”.

## **1.29 Powers of Attorney Act 2003 No 53**

### **Schedule 3 Prescribed expressions and authorisations for prescribed powers of attorney**

Omit “wife, husband” from paragraph (a) of the definition of *relative* in clause 1 (3).

Insert instead “spouse (including wife or husband)”.

## **1.30 Privacy Code of Practice (General) 2003**

### **Clause 17 Interpretation**

Omit paragraph (a) of the definition of *spouse* in clause 17 (1). Insert instead:

- (a) the person to whom a person is legally married (including the husband or wife of a person), or



### 1.31 Property (Relationships) Act 1984 No 147

#### [1] Section 3 Definitions

Insert after section 3 (4):

- (5) Notes included in this Act do not form part of this Act.

#### [2] Section 32 Cessation of order—generally

Insert at the end of the section:

**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 *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth.

#### [3] Section 62 Effect of Property (Relationships) Legislation Amendment Act 1999

Omit “, which by law must be between persons of the opposite sex,”.

### 1.32 Road Transport Act 2013 No 18

#### Section 212 Interlock exemption orders

Omit the note to section 212 (5) (c). Insert instead:

**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.

### 1.33 State Authorities Non-contributory Superannuation Act 1987 No 212

#### Section 3 Definitions

Omit the definition of *spouse* from section 3 (1). Insert instead:

*spouse* of a deceased employee or deceased former employee means the surviving spouse of the employee or former employee.

### 1.34 State Authorities Superannuation Act 1987 No 211

#### Section 3 Definitions

Omit the definition of *spouse* from section 3 (1). Insert instead:

*spouse* of a deceased contributor or deceased former contributor means the surviving spouse of the contributor or former contributor.

### 1.35 State Authorities Superannuation (Ex-Snowy Mountains Hydro-Electric Authority Superannuation Fund Transfer) Regulation 2003

#### Clause 3 Definitions

Omit “widow or widower” from the definition of *spouse*.

Insert instead “surviving spouse (including widow or widower)”.

### 1.36 Succession Act 2006 No 80

#### [1] Section 54 Persons entitled to inspect will of deceased person

Omit “(whether of the same or the opposite sex)” from section 54 (2) (c).

**[2] Section 57 Eligible persons**

Omit “wife or husband” wherever occurring. Insert instead “spouse”.

**1.37 Superannuation Act 1916 No 28**

**Section 3 Definitions**

Omit “widow or widower, as the case may be,” from the definition of *Spouse* in section 3 (1).

Insert instead “surviving spouse (including widow or widower)”.

**1.38 Transport Employees Retirement Benefits Act 1967 No 96**

**Section 51 Assignment of policies of assurance to the Board in certain cases**

Omit “husband or wife” from section 51 (1).

Insert instead “spouse (including husband or wife)”.

**1.39 Trustee Act 1925 No 14**

**Section 45 Protective trusts**

Omit paragraph (a) of the definition of *spouse* in section 45 (11). Insert instead:

- (a) the person to whom a person is legally married (including the husband or wife of a person), or

**1.40 Uniform Civil Procedure Rules 2005**

**Rule 1.19 Assignment of business to Equity Division**

Omit “husband and wife” from rule 1.19 (c).

Insert instead “spouses (including husband and wife)”.

**1.41 Water Management (General) Regulation 2011**

**Clause 211 Definitions**

Omit “widow or widower” from paragraph (b) (i) of the definition of *eligible pensioner* in clause 211 (1).

Insert instead “surviving spouse (including widow or widower)”.

**1.42 Workers Compensation Act 1987 No 70**

**[1] Section 85 Payments to NSW Trustee for benefit of beneficiary**

Omit “a widow or widower” from section 85 (3).

Insert instead “a surviving spouse (including widow or widower)”.

**[2] Section 85 (3) and (4)**

Omit “the widow or widower” wherever occurring. Insert instead “the surviving spouse”.

**[3] Schedule 6 Savings, transitional and other provisions**

Omit “wife or husband” from clause 4 (1) (b) (i) in Part 4.

Insert instead “spouse (including wife or husband)”.

### **1.43 Workers' Compensation (Dust Diseases) Act 1942 No 14**

**[1] Section 3 Definitions**

Omit “a husband or wife of the person” from paragraph (a) of the definition of *Spouse* in section 3 (1).

Insert instead “a person to whom the person is legally married”.

**[2] Section 3 (1), definition of “Spouse”**

Omit paragraph (b) (i). Insert instead:

- (i) a person to whom the person is legally married, or

### **1.44 Workplace Injury Management and Workers Compensation Act 1998 No 86**

**[1] Section 4 Definitions**

Omit “wife or husband” from the definition of *member of a family* in section 4 (1).

Insert instead “spouse (including wife or husband)”.

**[2] Section 4 (1), definition of “spouse”**

Omit “a husband or wife of the person” from paragraph (a).

Insert instead “a person to whom the person is legally married (including a husband or wife)”.

**[3] Section 4 (1), definition of “spouse”**

Omit paragraph (b) (i). Insert instead:

- (i) a person to whom the person is legally married (including a husband or wife), or

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

### **2.1 Adoption Act 2000 No 75**

#### **[1] Dictionary**

Omit the definition of *married*. Insert instead:

*married* means:

- (a) two persons who are legally married to one another, or
- (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.

#### **[2] Dictionary, definition of “step parent”**

Omit “birth parent or adoptive parent” from paragraph (a).

Insert instead “birth parent, parent or adoptive parent”.

#### **[3] Sections 68 (c), 72 (3) (c) and 73 (4) (c)**

Omit “the mother, the father” wherever occurring.

Insert instead “the parent (including the mother or father)”.

### **2.2 Adoption Regulation 2015**

#### **[1] Clause 46 Assessment of applicants for adoption**

Omit “a husband and wife or by de facto partners” from clause 46 (6).

Insert instead “a couple”.

#### **[2] Clause 46 (6)**

Omit “either of them”. Insert instead “a person of the couple”.

### **2.3 Guardianship of Infants Act 1916 No 41**

#### **[1] Section 13**

Omit the section. Insert instead:

##### **13 Rights of surviving parent as to guardianship**

- (1) On the death of a parent of a minor (the *deceased parent*), 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.
- (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.

**[2] Section 14 Power of parents to appoint guardians**

Omit section 14 (1) and (2). Insert instead:

- (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] Section 14 (3)**

Omit “the mother or father, as the case may be,”.

Insert instead “the surviving parent (including the mother or father, as the case may be)”.

**[4] Section 14 (3)**

Omit “the mother or father” where secondly and thirdly occurring.

Insert instead “the surviving parent”.

**[5] Section 14 (4)**

Omit “the mother or father” wherever occurring. Insert instead “the surviving parent”.

**2.4 Status of Children Act 1996 No 76**

**[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*spouse* includes a spouse under a void or voidable marriage.

**[2] Section 3 (2)**

Omit “father and mother” wherever occurring.

Insert instead “parents (including father and mother)”.

**[3] Section 5 All children are of equal status**

Omit “the person’s father and mother (or either of them)” from section 5 (1).

Insert instead “the person’s parents (or either of the person’s parents)”.

**[4] Section 9 Presumptions of parentage arising from marriage**

Omit “husband” wherever occurring. Insert instead “spouse”.

**[5] Section 14 Presumptions of parentage arising out of use of fertilisation procedures**

Omit “married woman” wherever occurring in section 14 (1) and (6).

Insert instead “woman who is married to a man”.

**[6] Section 14 (1A)**

Insert “who is married to or” after “a woman”.

**[7] Section 14 (5A)**

Insert “spouse or” after “pregnancy of her”.

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

- [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).
- [2] Section 32B**  
Omit “and” at the end of section 32B (2) (b) and omit section 32B (2) (c).
- [3] Section 32D Alteration of register**  
Omit section 32D (3).
- [4] Section 32DA Application to register change of sex**  
Omit section 32DA (1) (d).
- [5] Section 32DA (2) (d)**  
Omit the paragraph.
- [6] Section 32DC Decision to register change of sex**  
Omit section 32DC (3).

## **Schedule 4 Amendment of Evidence Act 1995 No 25**

**[1] Section 73 Exception: reputation as to relationships and age**

Omit “a man and a woman” from section 73 (1) (b). Insert instead “2 people”.

**[2] Schedule 2 Savings, transitional and other provisions**

Insert after Part 4:

### **Part 5 Provisions consequent on the enactment of the Miscellaneous Acts Amendment (Marriages) Act 2018**

**26 Application of amendment to section 73—exception to the hearsay rule for  
evidence concerning relationship**

The amendment to section 73 made by the *Miscellaneous Acts Amendment (Marriages) Act 2018* 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.

## Schedule 5 Amendment of Guardianship Act 1987 No 257

### [1] Section 3 Definitions

Omit paragraph (a) of the definition of *spouse* in section 3 (1). Insert instead:

- (a) the person to whom a person is legally married (including the husband or wife of a person), or

### [2] Section 6HA Automatic revocation of appointment by marriage of appointer

Insert at the end of the section:

**Note.** See section 6HC for certain appointments taken not to have been revoked on the recognition of same sex marriages.

### [3] Section 6HC

Insert after section 6HB:

#### 6HC Certain appointments not revoked on recognition of same sex marriages

- (1) This section applies to an appointment of a person as an enduring guardian that:
  - (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
  - (b) was in force immediately before the recognition day, and
  - (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.
- (2) An appointment to which this section applies is taken not to have been revoked by the operation of section 6HA.
- (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.
- (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.
- (5) In this section:
  - recognised same sex marriage** means a marriage that:
    - (a) was solemnised before the recognition day, and
    - (b) was recognised in Australia as valid on the recognition day because of Part 5 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth, and
    - (c) would not have been recognised apart from that Part.
  - recognition day** means the day on which Part 5 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth commenced.



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

**[1] Section 5 Spouses can sue each other in tort**

Omit “A husband and wife each has”.

Insert instead “Spouses (including a husband and wife) each have”.

**[2] Section 9 Spouses as beneficiaries**

Omit “A husband and wife” and “the husband and wife”.

Insert instead “Spouses (including a husband and wife)” and “the spouses”, respectively.

**[3] Schedule 3, heading**

Omit the heading. Insert instead:

### **Schedule 3 Savings, transitional and other provisions**

**[4] Schedule 3**

Omit clause 1 (1). Insert instead:

- (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.

**[5] Schedule 3**

Insert after Part 2:

## **Part 3 Provisions consequent on enactment of the Miscellaneous Acts Amendment (Marriages) Act 2018**

### **4 Savings and transitional regulations for any amended instrument**

- (1) The regulations under the following Acts may contain provisions of a savings or transitional nature consequent on the enactment of the amending Act:
  - (a) an Act amended by the amending Act,
  - (b) an Act under which an instrument is made if that instrument is amended by the amending Act.
- (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.
- (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:
  - (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
  - (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.
- (4) This clause does not limit any power under an Act to make regulations of a savings or transitional nature.

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

## Schedule 7      Amendment of Relationships Register Act 2010 No 19

### Section 10A

Insert after section 10:

#### 10A    Certain registrations revoked on recognition of same sex marriages

- (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.
- (2) To avoid doubt, the registration of a registered relationship to which this section applies was revoked on the recognition day.
- (3) In this section:

***recognised same sex marriage*** means a marriage that:

- (a) was solemnised before the recognition day, and
- (b) was recognised in Australia as valid on the recognition day because of Part 5 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth, and
- (c) would not have been recognised apart from that Part.

***recognition day*** means the day on which Part 5 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth commenced.