



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).