



New South Wales

Miscellaneous Acts Amendment (Marriages) Act 2018 No 28

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New South Wales

Miscellaneous Acts Amendment (Marriages) Act 2018 No 28

Act No 28, 2018

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. [Assented to 15 June 2018]

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.

[Second reading speech made in—
Legislative Council on 23 May 2018
Legislative Assembly on 6 June 2018]