

# Married Persons (Equality of Status) Act 1996 No 96

[1996-96]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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# Married Persons (Equality of Status) Act 1996 No 96



New South Wales

An Act to make further provision with regard to the equality of legal status of married persons; to repeal the *Married Persons (Property and Torts) Act 1901*; to amend consequentially the *Supreme Court Act 1970*; and for related purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Married Persons (Equality of Status) Act 1996*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Notes

Notes in this Act do not form part of the Act.

## Part 2 Equality of status

### Division 1 General rule

#### 4 Spouses have legal capacity as if they were not married

(1) A married person:

- (a) has legal capacity for all purposes and in all respects as if that person were unmarried, and
- (b) has a legal personality that is independent, separate and distinct from that of the person's spouse.

(2) This section does not affect any specific laws in relation to a minor.

## **Division 2 Specific examples**

### **5 Spouses can sue each other in tort**

Spouses (including a husband and wife) each have a right of action in tort against the other as if they were not married.

### **6 Criminal and civil action in respect of spouse's property**

A married person is entitled to civil and criminal redress against the person's spouse for the protection of his or her property as if that person were not married.

### **7 Married person has no authority to act as agent of necessity**

A married person does not, by reason only of the person's status as a spouse, have the authority to pledge the credit of the other spouse for necessities or to act as agent for the other spouse for the purchase of necessities.

### **8 Married person not liable for debts of spouse incurred before marriage**

Subject to any agreement to the contrary, a married person is not liable for any debt incurred by the person's spouse before their marriage.

### **9 Spouses as beneficiaries**

Spouses (including a husband and wife) are to be treated as two separate persons for the purposes of the construction of a will, trust, or other instrument in relation to a gift or other disposition of real or personal property to the spouses, unless a contrary intention appears.

### **10 Instruments restricting anticipation or alienation are void**

An instrument executed after the commencement of this section is void to the extent that it purports to attach any restriction on anticipation or alienation to the enjoyment of property by a woman that could not have been attached to the enjoyment of property by a man.

### **11 Effect of Division**

Nothing in this Division affects the generality of Division 1.

## **Division 3 Other matters**

### **12 Housekeeping payments and allowances held as joint tenants**

If a married person makes a payment or allowance to the person's spouse to pay their joint household expenses or for similar purposes, any property bought with the payment or allowance and any money not spent from the payment or allowance is, in the absence of any agreement to the contrary between the person and his or her spouse, taken to

belong to the person and the person's spouse as joint tenants.

### **13 Fraudulent investment of spouse's money**

- (1) If a married person invests money belonging to the person's spouse without obtaining the consent of the spouse, the spouse can apply to the Supreme Court to have the money transferred to him or her.
- (2) The Supreme Court has jurisdiction to order such a transfer and to make any ancillary orders.

## **Part 3 Miscellaneous**

### **14 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **15 Repeals**

The Acts listed in Schedule 1 are repealed to the extent specified in the Schedule.

### **16 (Repealed)**

### **17 Savings and transitional provisions**

Schedule 3 has effect.

### **18 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Repeals**

(Section 15)

### **1.1 Married Persons (Property and Torts) Act 1901 No 45**

The whole Act is repealed.

## **1.2 Conveyancing Act 1919 No 6**

The following are repealed:

- (a) The words “but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence” in section 134.
- (b) The proviso to section 148 (1).
- (c) Sections 148 (2), 149, 150 and 151.

## **1.3 Wills, Probate and Administration Act 1898 No 13**

Section 5 (2) is repealed.

### **Schedule 2 (Repealed)**

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

(Section 17)

## **Part 1 General**

### **1 Regulations**

- (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.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, 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.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Abolition of common law and dispositions not affected**

- (1) The repeal or amendment of an Act by this Act does not revive any rule of the common law or equity abolished or otherwise affected by this Act.

- (2) Subsection (1) does not affect the generality of section 30 of the *Interpretation Act 1987*.

**Note—**

Section 30 of the *Interpretation Act 1987* preserves certain rights, privileges, obligations and liabilities arising under a repealed Act.

**3 Time of marriage irrelevant**

A provision of this Act applies to married persons whether married before or after the commencement of the provision.

**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*.