

CLAUSE NOTES

Justice and Related Legislation (Marriage Amendments) Bill 2018

- Clause 1: Short Title.
- Clause 2: Commencement on Royal Assent.
- Clause 3: Principal Act – *Adoption Act 1988*.
- Clause 4: Amends section 20(3) of the Principal Act to include a woman married to the mother of the child and a man married to the mother of the child as persons ineligible for an adoption order.
- Clause 5: Amends section 29 to recognise a marriage between two women.
- Section 29 sets out the appropriate persons to give consent to the adoption of a child. Subsection (4A) provides that where the mother of a child born as a result of fertilisation was in a significant relationship with a woman at the time of the child's birth or at or after the time of its conception but before its birth, the appropriate persons to give consent to an adoption of that child are the parties to the significant relationship in specified circumstances.
- The proposed amendment extends this to include the situation where the mother was married to another woman at the time of the child's birth.
- Clause 6: Amends section 104 to replace the terms "father" and "mother" with the word 'parents' as a gender neutral term to recognise a woman married or in a significant relationship with the mother of the child.
- Clause 7: Amends section 109 to replace the terms "father" and "mother" with the word 'parents' as a gender neutral term to recognise a woman married or in a significant relationship with the mother of the child.
- Clause 8: Principal Act – *Anti-Discrimination Act 1998*.
- Clause 9: Inserts a new provision (the proposed new section 52A) to provide an exception allowing a minister for religion or a religious marriage celebrant to refuse to solemnise a marriage if the circumstances mentioned in section 47 or 47A of the *Commonwealth Marriage Act 1961* apply to that refusal.
- Clause 10: Principal Act – *Births, Deaths and Marriages Registration Act 1999*.

- Clause 11: Amends section 17 to replace the terms “father” and “mother” with the word ‘parents’ as a gender neutral term to include parents of the same-sex.
- Clause 12: Amends section 28A to remove the requirement that a person applying to register a change of sex ‘not be married’.
- Clause 13: Amends section 28C(3) to remove the requirement that a Registrar must not note in the Register particulars of the change of a person’s sex if the person is married.
- Clause 14: Principal Act – *Civil Liability Act 2002*.
- Clause 15: Amends section 28D to include same-sex marriage in the abolition of action for loss of consortium by replacing the term “husband and wife” with the term “spouses”.
- Clause 16: Principal Act - *Conveyancing and Law of Property Act 1884*.
- Clause 17: Amends section 62 to include persons in a same-sex marriage conveying freehold land or a thing in action, alone or jointly with another person.
- Clause 18: Principal Act – *Criminal Code Act 1924*.
- Clause 19: Amends section 232 to include same-sex marriage in the crime of assisting married persons to take property by replacing the term “a husband and wife” with “married persons”.
- Amends section 297 to include persons in a same-sex marriage as persons who are not criminally responsible for any conspiracy between themselves only by replacing the term “a husband and wife” with “married persons”.
- Clause 20: Principal Act - *Status of Children Act 1974*
- Clause 21: Amends section 3 to replace references to “mother and father” with the word ‘parents’ as a gender neutral term to include parents of the same-sex.
- Clause 22: Amends section 5 by replacing references to “husband” with the term “spouse” so that the provision provides for a mother married to another woman.
- Clause 23: Amends section 10C to extend the presumption of parenthood to a mother married to another woman.