

TASMANIA

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**JUSTICE AND RELATED LEGISLATION  
(MARRIAGE AMENDMENTS) BILL 2018**

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## **JUSTICE AND RELATED LEGISLATION (MARRIAGE AMENDMENTS) BILL 2018**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*  
20 November 2018

*(Brought in by the Minister for Justice, the Honourable Elise  
Nicole Archer)*

### **A BILL FOR**

**An Act to amend the *Adoption Act 1988*, the *Anti-Discrimination Act 1998*, the *Births, Deaths and Marriages Registration Act 1999*, the *Civil Liability Act 2002*, the *Conveyancing and Law of Property Act 1884*, the *Criminal Code Act 1924* and the *Status of Children Act 1974***

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

### **PART 1 – PRELIMINARY**

#### **1. Short title**

This Act may be cited as the *Justice and Related Legislation (Marriage Amendments) Act 2018*.

#### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

*Justice and Related Legislation (Marriage Amendments) Act  
2018  
Act No. of 2018*

s. 3

Part 2 – Adoption Act 1988 Amended

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**PART 2 – ADOPTION ACT 1988 AMENDED**

**3. Principal Act**

In this Part, the *Adoption Act 1988*\* is referred to as the Principal Act.

**4. Section 20 amended (Persons in whose favour adoption orders may be made)**

Section 20(3)(b) of the Principal Act is amended by omitting “section 29(3)” and substituting “section 29(2) or (3)”.

**5. Section 29 amended (Consents required to adoption)**

Section 29 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “parents were married to each other” and substituting “mother was married to a man”;
- (b) by inserting in subsection (4A) “married to, or” after “mother was”;
- (c) by omitting from subsection (4A) “with” first occurring and substituting “with,”;

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\*No. 41 of 1988

*Justice and Related Legislation (Marriage Amendments) Act 2018*  
*Act No. of 2018*

Part 2 – Adoption Act 1988 Amended

s. 6

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- (d) by inserting in subsection (4A) “marriage or” after “that”;
- (e) by inserting in subsection (4A)(a) “marriage or” after “in the”.

**6. Section 104 amended (Taking away, &c., adopted child by natural parent)**

Section 104 of the Principal Act is amended as follows:

- (a) by omitting “the father, mother, or a guardian” and substituting “a parent or guardian”;
- (b) by omitting “the father, mother,” second occurring and substituting “the parent”.

**7. Section 109 amended (Restriction on publication of identity of parties)**

Section 109(1)(c) of the Principal Act is amended by omitting “the father, mother,” and substituting “a parent”.

*Justice and Related Legislation (Marriage Amendments) Act  
2018  
Act No. of 2018*

s. 8

Part 3 – Anti-Discrimination Act 1998 Amended

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**PART 3 – ANTI-DISCRIMINATION ACT 1998  
AMENDED**

**8. Principal Act**

In this Part, the *Anti-Discrimination Act 1998*\* is referred to as the Principal Act.

**9. Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *family responsibilities*:

***gender expression*** means any personal physical expression, appearance (whether by way of medical intervention or not), speech, mannerisms, behavioural patterns, names and personal references that manifest or express gender or gender identity;

- (b) by inserting “including gender expression” after “individual” in the definition of *gender identity*;
- (c) by omitting “includes transsexualism and transgenderism” from the definition of *gender identity* and substituting “may

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\*No. 46 of 1998



*Justice and Related Legislation (Marriage Amendments) Act 2018*  
*Act No. of 2018*

Part 3 – Anti-Discrimination Act 1998 Amended

s. 9

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include being transgender or transsexual”;

- (d) by omitting the definition of *intersex*;
- (e) by inserting the following definition after the definition of *services*:
  - sex characteristics*** means a person’s physical, hormonal or genetic features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, genes, hormones, and secondary sex characteristics;
- (f) by omitting “gender;” from paragraph (b) of the definition of *transgender* and substituting “gender; or”;
- (g) by inserting the following paragraph after paragraph (b) in the definition of *transgender*:
  - (c) identifies themselves as a member of another gender, and lives or seeks to live as a member of that gender;
- (h) by omitting the definition of *transgenderism*;
- (i) by omitting the definition of *transsexualism*.

*Justice and Related Legislation (Marriage Amendments) Act  
2018  
Act No. of 2018*

s. 10

Part 3 – Anti-Discrimination Act 1998 Amended

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**10. Section 16 amended (Discrimination on ground of attribute)**

Section 16(eb) of the Principal Act is amended by inserting “variations of sex characteristics” after “intersex”.

**11. Section 19 amended (Inciting hatred)**

Section 19 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (d) “group.” and substituting “group; or”;
- (b) by inserting the following paragraph after paragraph (d):
  - (e) the gender identity or intersex variations of sex characteristics of the person or any member of the group.

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**PART 4 – BIRTHS, DEATHS AND MARRIAGES  
REGISTRATION ACT 1999 AMENDED**

**12. Principal Act**

In this Part, the *Births, Deaths and Marriages Registration Act 1999*\* is referred to as the Principal Act.

**13. Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definitions after the definition of *funeral director*:

***gender*** means –

- (a) the apparent sex of an infant specified by the parent; or
- (b) the gender identity of the person as specified on a ***gender affirmation declaration***;

***gender affirmation declaration*** means a statutory declaration in which the declarant affirms the declarant's gender identity;

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\*No. 58 of 1999

*Justice and Related Legislation (Marriage Amendments) Act  
2018  
Act No. of 2018*

s. 13            Part 4 – Births, Deaths and Marriages Registration Act 1999 Amended

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- (b) by omitting the definition of *recognition certificate* and substituting the following definition:

***recognition certificate*** means a certificate that –

- (a) is issued under a law of another State or territory that recognises that a person may have changed sex or gender; and
  - (b) is issued in respect of a person who has changed sex or gender; and
  - (c) states the sex or gender of that person as so changed;
- (c) by omitting the definition of *sexual reassignment surgery* and substituting the following definition:

***sex characteristics*** means a person's physical, hormonal or genetic features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, genes, hormones, and secondary sexual characteristics;

**14. Section 11 amended (Notification of births)**

Section 11(3) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (aa) in the case of a live birth where variations of sex characteristics do not allow an easy assignment of gender, within 120 days of birth; or

**15. Section 15 amended (Obligation to have birth registered)**

Section 15 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) A person responsible for having the birth of a child registered must ensure that a birth registration statement is lodged with the Registrar –
  - (a) within 60 days after the date of the birth; or
  - (b) in the case of a live birth where variations of sex characteristics do not allow for an easy assignment of gender, within 120 days of birth.

Penalty: Fine not exceeding 10 penalty units.

*Justice and Related Legislation (Marriage Amendments) Act  
2018  
Act No. of 2018*

**s. 16** Part 4 – Births, Deaths and Marriages Registration Act 1999 Amended

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**16. Section 16 amended (Registration)**

Section 16 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) The Registrar may only collect information about sex or gender under section 50 of this Act, except as otherwise allowed under Part 4A.

**17. Section 17 amended (Registration of parentage details)**

Section 17(1)(a) of the Principal Act is amended by omitting “father and the mother” and substituting “parents”.

**18. Section 23 amended (Application to register change of adult’s name)**

Section 23 of the Principal Act is amended by omitting “An adult person” and substituting “A person of 16 years or over”.

**19. Section 24 amended (Application to register change of child’s name)**

Section 24 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “under the age of 16 years” after “child”;

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Part 4 – Births, Deaths and Marriages Registration Act 1999 Amended

s. 20

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- (b) by inserting in subsection (2) “under subsection (1)” after “one parent”;
- (c) by omitting from subsection (3) “if satisfied that the change is in the child’s best interests” and substituting “under subsection (1) if satisfied that the change is consistent with the child’s will and preferences”.

**20. Section 26 amended (Registration of change of name)**

Section 26 of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (4) If a change of name is registered under this Part in any respect of any person, a birth certificate issued by the Registrar for the person is to show the person’s name as registered without any notation or indication that the person was previously registered as having another name unless a request is made under subsection (5).
- (5) If requested by the person whose details are registered, the Registrar may issue an extract from the Register which shows the person’s name as registered with a notation that the person was previously registered as having another name.

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2018  
Act No. of 2018*

s. 21            Part 4 – Births, Deaths and Marriages Registration Act 1999 Amended

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**21. Part 4A substituted**

Part 4A of the Principal Act is repealed and the following Part is substituted:

**PART 4A – INCLUSION OF GENDER  
INFORMATION, CHANGE OR DELETION OF  
GENDER**

**28A. Inclusion of gender information**

- (1) A person aged 16 years or more, on providing their gender affirmation declaration to the Registrar, may apply to the Registrar for inclusion of gender information under section 50 of this Act.
- (2) The parents of a child aged under 16 years whose birth is registered in the State may apply to the Registrar, in a form approved by the Registrar, for inclusion of gender information under section 50 of this Act.
- (3) An application for inclusion of gender information for a child under the age of 16 years may be made by one parent or guardian if –
  - (a) the applicant is the sole parent named in the registration of the child's birth under this Act or any other law; or



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s. 21

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- (b) the applicant is the sole guardian of the child; or
  - (c) there is no other surviving parent of the child; or
  - (d) a magistrate approves the proposed collection and retention of gender under subsection (4).
- (4) A magistrate may, on application by a parent of a child under 16 years, approve inclusion of gender information for the child if satisfied that the change is in accordance with the requirements under section 28B(a).

**28B. Child’s consent to the gender included**

For the purposes of section 28A, gender information of a person under the age of 16 years must not be included unless –

- (a) the gender to be included is consistent with the will and preferences of the person; or
- (b) the person is unable to understand the meaning and implications of the gender to be included.

**28C. Application to register change or removal of sex or gender from the Register**

- (1) A person aged 16 years or more whose birth is entered in the Register who has

*Justice and Related Legislation (Marriage Amendments) Act  
2018  
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s. 21            Part 4 – Births, Deaths and Marriages Registration Act 1999 Amended

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made a gender affirmation declaration and provided it to the Registrar may apply to the Registrar for a change of that person's registered sex or gender to record current gender, or removal of sex or gender information from the Register.

- (2) The parent of a person under 16 years whose birth is registered in the State may apply to the Registrar, in a form approved by the Registrar, for registration of a change of the person's sex or gender to record current gender or removal of sex or gender information from the Register.
- (3) An application for registration of a change or deletion of the sex or gender information of a person under 16 years may be made by one parent if –
  - (a) the applicant is the sole parent named in the registration of the person's birth under this Act or any other law; or
  - (b) the applicant is the sole guardian of the person; or
  - (c) there is no other surviving parent of the person; or
  - (d) a magistrate approves the proposed change of gender under subsection (4).

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- (4) A magistrate may, on application by a parent of a person under 16 years, approve a proposed –
- (a) change of registered sex to current gender; or
  - (b) change of registered gender; or
  - (c) removal of sex or gender information –

for the person if satisfied that the change is in accordance with the person's will and preferences.

- (5) For the purposes of subsection (4), the will and preferences of the person are to be ascertained by the Magistrate from the person's gender affirmation declaration or by the Magistrate asking the person.

**28D. Application to be accompanied by documents**

An application under section 28A or 28C is to be accompanied by –

- (a) for a person aged 16 years or over, a gender affirmation declaration; or
- (b) from a parent or guardian for a person aged under 16 years –

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2018  
Act No. of 2018*

s. 21            Part 4 – Births, Deaths and Marriages Registration Act 1999 Amended

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- (i) an application in a form approved by the Registrar; and
- (ii) where the person is able to make a gender affirmation declaration, that gender affirmation declaration;
- (c) any other document or information that the Registrar reasonably requires, but the Registrar must not require any form of medical certificates or other medical documentation relating to sex or gender.

**28E. Registration of inclusion or change of gender information**

- (1) On receipt of an application under section 28A or 28C, the Registrar must –
  - (a) ensure gender information is collected under section 50; or
  - (b) register the change of registered sex or gender to the current gender by making an entry of the change in the Register; or
  - (c) refuse to register the change.

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Part 4 – Births, Deaths and Marriages Registration Act 1999 Amended

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(2) Should the Registrar refuse the application under subsection (1)(c), the reason for refusal must be documented, and the decision may subsequently be –

(a) reconsidered by the Registrar; or

(b) reviewed by a magistrate under section 53 –

on receipt of a request for review from the applicant.

(3) In determining whether or not to note the particulars of a change of gender, the Registrar may require the person or persons who signed the application to provide further particulars as the Registrar reasonably requires, other than those excluded under section 28D(c).

**28F. Issue of birth certificate after change of gender**

(1) If the sex or gender information registered is changed under this Part in respect of any person, a birth certificate issued by the Registrar for the person is –

(a) not to show any sex or gender information; or

(b) at the request of the applicant, to show the person's gender as registered without any notation or indication that the person was

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2018  
Act No. of 2018*

s. 21            Part 4 – Births, Deaths and Marriages Registration Act 1999 Amended

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previously registered as of  
another sex or gender unless a  
request is made under  
subsection (2).

- (2) If requested by the person whose details are registered, the Registrar may issue an extract from the Register which shows the person's gender as registered with a notation that the person was previously registered as of another sex or gender.

**28G. Issue of birth certificate to those other than the person concerned or a person with parental authority**

The child of a person for whom the sex or gender information registered has been changed under this Part, or a prescribed person, may apply to the Registrar, in a form approved by the Registrar clearly stating the reasons for this request, for a birth certificate of the person that shows the person's sex or gender before the change of gender, and if –

- (a) the Registrar is satisfied that there is a valid reason for releasing private information; and
- (b) the Registrar is satisfied that the person is unable to consent to the disclosure due to death or incapacity; and

- (c) there are unlikely to be negative consequences to the person concerned –

the Registrar may issue the birth certificate to the child or prescribed person showing the person's sex or gender as previously registered with a notation that the person has been subsequently registered as of another gender.

**28H. Effect of recording of change of gender**

- (1) Where a person's change of gender is recorded under this Part, the person is, for the purposes of, but subject to, any law in force in this State, a person of the gender as so changed.
- (2) Any reference to a person's sex in any law in force in this State is deemed to be a reference to the person's gender as recorded under this Part.
- (3) A person's change of gender does not affect any relationship of that person arising by consanguinity or by operation of law.

**28I. Recognition of certificates issued outside Tasmania**

A person in respect of whom there is a recognition certificate is taken to be, for

*Justice and Related Legislation (Marriage Amendments) Act  
2018  
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s. 21            Part 4 – Births, Deaths and Marriages Registration Act 1999 Amended

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the purposes of, but subject to, any law in force in this State, a person of the sex or gender stated in the recognition certificate.

**28J. Saving for rights of persons who have changed or deleted their sex or gender information**

- (1) A person who is entitled as a beneficiary –
- (a) under a will; or
  - (b) under a trust; or
  - (c) otherwise by operation of law –

does not, except as may be otherwise provided under the will, the trust or by the law conferring the entitlement, forfeit any right or entitlement by reason only of the fact that he or she is a person whose change of sex or gender information to record current gender is registered or recognised under this Part.

- (2) Subsection (1) does not operate so as to confer any right or entitlement that would not exist apart from that subsection.



**28K. Historical records to be kept**

- (1) Historical records of information changed or removed under this Part are to be maintained in a manner determined by the Registrar.
- (2) Subsection (1) notwithstanding, the Registrar is to ensure that, as far as is practicable, historical records referred to in subsection (1) are recorded and managed in a way that makes it clear that they are not to be taken to be relevant to an individual's identity.

**22. Section 40 amended (The Register)**

Section 40 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) If required under Part 4A, sex or gender information may be included or changed or deleted on the Register, and may be included under section 50.

**23. Section 46 amended (Issue of certificate)**

Section 46 of the Principal Act is amended by inserting after subsection (1) the following subsections:

- (1A) Information about sex or gender may only be included on any certificate if requested –

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2018  
Act No. of 2018*

s. 24      Part 4 – Births, Deaths and Marriages Registration Act 1999 Amended

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- (a) by a person 16 years or over, to whom the certificate relates; or
  - (b) if the person is under 16 years, by a person referred to in section 28A(2) or (3) of this Act.
- (1B) The gender included is to be –
- (a) the gender as determined under section 28A or 28C of this Act; or
  - (b) if requested, the sex or gender previously listed on the Register or collected under section 50.

**24. Section 51 amended (Additional services)**

Section 51 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Despite anything contrary in the Act, the Registrar may provide information about the gender of a person as registered or collected under section 50 –
- (a) in respect of a living person, to a person eligible to make an application under section 44; or
  - (b) in respect of a deceased person born at least 100 years earlier.

**PART 5 – CIVIL LIABILITY ACT 2002 AMENDED**

**25. Principal Act**

In this Part, the *Civil Liability Act 2002*\* is referred to as the Principal Act.

**26. Section 28D amended (Abolition of action for loss of consortium)**

Section 28D of the Principal Act is amended by omitting “a husband and wife” and substituting “spouses”.

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\*No. 54 of 2002

*Justice and Related Legislation (Marriage Amendments) Act  
2018  
Act No. of 2018*

s. 27

Part 6 – Conveyancing and Law of Property Act 1884 Amended

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**PART 6 – CONVEYANCING AND LAW OF PROPERTY  
ACT 1884 AMENDED**

**27. Principal Act**

In this Part, the *Conveyancing and Law of Property Act 1884\** is referred to as the Principal Act.

**28. Section 62 amended (Conveyance by person to himself: Bodies corporate, joint tenancies)**

Section 62(1) of the Principal Act is amended as follows:

- (a) by omitting “wife” first occurring and substituting “spouse”;
- (b) by omitting “husband” second occurring and substituting “spouse”.

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\*No. 19 of 1884

**PART 7 – CRIMINAL CODE ACT 1924 AMENDED**

**29. Principal Act**

In this Part, the *Criminal Code Act 1924\** is referred to as the Principal Act.

**30. Principal Act amended**

Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting from section 232 “a husband and wife” and substituting “married persons”;
- (b) by omitting from section 297(2) “A husband and wife” and substituting “Married persons”.

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\*No. 69 of 1924

*Justice and Related Legislation (Marriage Amendments) Act  
2018  
Act No. of 2018*

s. 31

Part 8 – Status of Children Act 1974 Amended

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**PART 8 – STATUS OF CHILDREN ACT 1974  
AMENDED**

**31. Principal Act**

In this Part, the *Status of Children Act 1974\** is referred to as the Principal Act.

**32. Section 3 amended (All children to be of equal status)**

Section 3 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “his father and mother” and substituting “the person’s parents (or either of the person’s parents)”;
- (b) by omitting from subsection (1) “father and mother” second occurring and substituting “person’s parents”;
- (c) by omitting from subsection (4) “his father or mother has” and substituting “either of the person’s parents has”.

**33. Section 5 amended (Presumption of parentage arising from marriage)**

Section 5 of the Principal Act is amended as follows:

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\*No. 36 of 1974

*Justice and Related Legislation (Marriage Amendments) Act 2018*  
*Act No. of 2018*

Part 8 – Status of Children Act 1974 Amended

s. 34

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- (a) by omitting from subsection (1) “husband” and substituting “spouse”;
- (b) by omitting from subsection (2) “husband” twice occurring and substituting “spouse”;
- (c) by omitting from subsection (3) “husband” and substituting “spouse”.

**34. Section 10C amended (Presumptions as to parenthood)**

Section 10C of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “to,” after “married”;
- (b) by omitting from subsection (1) “with” first occurring and substituting “with,”;
- (c) by omitting from subsection (1) “her husband or the other party to that relationship” and substituting “that man”;
- (d) by omitting from subsection (1) “husband or other party” and substituting “consenting man”;
- (e) by omitting from subsection (1A) “is” first occurring and substituting “who is married to, or”;
- (f) by omitting from subsection (1A) “with” first occurring and substituting “with,”;

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**s. 34**

Part 8 – Status of Children Act 1974 Amended

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- (g) by omitting from subsection (1A) “and”;
- (h) by omitting from subsection (5) “subsection (1)” and substituting “subsection (1) or (1A)”;
- (i) by omitting from subsection (5) “husband” and substituting “spouse”.



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*Act No. of 2018*

Part 9 – Repeal of Act

s. 35

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**PART 9 – REPEAL OF ACT**

**35. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.