

**Legislative Council—No 142**

As received from the House of Assembly and read a first time, 27 November 2019

South Australia

**Statutes Amendment (Legalisation of Same Sex  
Marriage Consequential Amendments) Bill 2019**

A BILL FOR

An Act to amend various Acts to remove gender specific language in relation to marriage.

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## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

### Part 2—Amendment of *Births, Deaths and Marriages Registration Act 1996*

- 4 Amendment of section 29I—Application to change sex or gender identity
- 5 Amendment of section 29O—Application for identity acknowledgement certificate

### Part 3—Amendment of *Criminal Law Consolidation Act 1935*

- 6 Amendment of section 78—Bigamy
- 7 Amendment of section 79—Defences in cases of bigamy

### Part 4—Amendment of *Electoral Act 1985*

- 8 Amendment of section 70—Errors etc in roll not to forfeit entitlement to vote

### Part 5—Amendment of *Evidence Act 1929*

- 9 Amendment of section 16—Parties and their spouses competent and compellable in civil proceedings

### Part 6—Amendment of *Family and Community Services Act 1972*

- 10 Amendment of section 6—Interpretation
- 11 Amendment of section 104—Order for payment of preliminary expenses
- 12 Amendment of section 140—Evidence of mother as to paternity of child born outside marriage etc not to be accepted without corroboration except in certain cases
- 13 Amendment of section 211—Power to make provisional order against person resident in reciprocating country
- 14 Amendment of section 245—Evidence of spouses

### Part 7—Amendment of *Family Relationships Act 1975*

- 15 Amendment of section 8—Presumption as to parentage
- 16 Amendment of section 10A—Interpretation
- 17 Amendment of section 10C—Rules relating to parentage
- 18 Amendment of section 10HA—Recognised surrogacy agreements
- 19 Insertion of Schedule 1

#### Schedule 1—Transitional provisions

- 1 Transitional provisions (*Statutes Amendment (Legalisation of Same Sex Marriage Consequential Amendments) Act 2019*)

### Part 8—Amendment of *Judges' Pensions Act 1971*

- 20 Amendment of section 9A—Spouse entitlement subject to any Family Law determination
- 21 Amendment of section 11—Minimum pensions
- 22 Amendment of section 17B—Purpose of this Part
- 23 Amendment of section 17K—Pension not payable to spouse or domestic partner on death of Judge if split has occurred

**Part 9—Amendment of *Law of Property Act 1936***

24 Amendment of section 100—Assurance policy by spouses

**Part 10—Amendment of *Limitation of Actions Act 1936***

25 Amendment of section 3—Interpretation

26 Amendment of section 32—Further provisions as to application of Act to trusts

**Part 11—Amendment of *Parliamentary Superannuation Act 1974***

27 Amendment of section 5—Interpretation

28 Amendment of section 7A—Putative spouses

**Part 12—Amendment of *Police Superannuation Act 1990***

29 Amendment of section 4A—Putative spouses

**Part 13—Amendment of *Real Property Act 1886***

30 Amendment of section 69—Title of registered proprietor indefeasible

31 Amendment of section 111—Transfer by registered proprietor to spouse etc

**Part 14—Amendment of *Relationships Register Act 2016***

32 Insertion of section 13A

13A Certain registered relationships revoked on recognition of same sex marriages

**Part 15—Amendment of *Settled Estates Act 1880***

33 Amendment of section 44—Tenants for life etc may grant leases for 21 years

34 Amendment of section 45—Against whom such leases shall be valid

**Part 16—Amendment of *Solicitor-General Act 1972***

35 Amendment of section 9—Leave on retirement

36 Amendment of section 10—Pension rights of Solicitor-General and application of *Judges' Pensions Act 1971*

**Part 17—Amendment of *Southern State Superannuation Act 2009***

37 Amendment of section 7—Putative spouses

**Part 18—Amendment of *Stamp Duties Act 1923***

38 Amendment of Schedule 2—Stamp duties and exemptions

**Part 19—Amendment of *Superannuation Act 1988***

39 Amendment of section 4A—Putative spouses

**Part 20—Amendment of *Terrorism (Preventative Detention) Act 2005***

40 Amendment of section 35—Contacting family members etc

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Statutes Amendment (Legalisation of Same Sex Marriage Consequential Amendments) Act 2019*.

### **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

### **3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## **Part 2—Amendment of *Births, Deaths and Marriages Registration Act 1996***

### **4—Amendment of section 29I—Application to change sex or gender identity**

Section 29I(3)—delete subsection (3)

### **5—Amendment of section 29O—Application for identity acknowledgement certificate**

Section 29O(3)—delete subsection (3)

## **Part 3—Amendment of *Criminal Law Consolidation Act 1935***

### **6—Amendment of section 78—Bigamy**

Section 78—delete "his or her wife or husband shall be" and substitute:  
the person's spouse is

### **7—Amendment of section 79—Defences in cases of bigamy**

Section 79(a)—delete "husband or wife" and substitute:  
spouse

## **Part 4—Amendment of *Electoral Act 1985***

### **8—Amendment of section 70—Errors etc in roll not to forfeit entitlement to vote**

Section 70(2)—delete subsection (2) and substitute:

- (2) No elector is disqualified from voting under the name appearing in the roll because the elector's name has been changed by marriage.

## **Part 5—Amendment of *Evidence Act 1929***

### **9—Amendment of section 16—Parties and their spouses competent and compellable in civil proceedings**

Section 16—delete "husbands and wives" and substitute:

5 spouses

## **Part 6—Amendment of *Family and Community Services Act 1972***

### **10—Amendment of section 6—Interpretation**

Section 6(2)—delete subsection (2) and substitute:

10 (2) For the purposes of this Act, where a marriage exists between 2 persons, whether the marriage is monogamous or polygamous, the persons will, if the marriage is lawful and valid in the place in which it was solemnised, be regarded as spouses.

### **11—Amendment of section 104—Order for payment of preliminary expenses**

15 Section 104(1)(a)—delete "husband" wherever occurring and substitute in each case:  
spouse

### **12—Amendment of section 140—Evidence of mother as to paternity of child born outside marriage etc not to be accepted without corroboration except in certain cases**

20 Section 140—delete "husband" wherever occurring and substitute in each case:  
spouse

### **13—Amendment of section 211—Power to make provisional order against person resident in reciprocating country**

Section 211(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:

25 (a) against a person for the maintenance of the person's spouse; or

### **14—Amendment of section 245—Evidence of spouses**

Section 245—delete "wife or husband" and substitute:

spouse

## **Part 7—Amendment of *Family Relationships Act 1975***

### **15—Amendment of section 8—Presumption as to parentage**

(1) Section 8(1)—after "her marriage" insert:  
or qualifying relationship

(2) Section 8(1)—after "the marriage" insert:

or qualifying relationship

(3) Section 8(1)—delete "husband or domestic partner or former husband or domestic partner" and substitute:

5 spouse or partner or former spouse or partner

(4) Section 8(2)—delete subsection (2) and substitute:

(2) In this section—

*qualifying relationship* has the same meaning as in Part 2A.

### 16—Amendment of section 10A—Interpretation

10 (1) Section 10A(1), definition of *married woman* or *wife*—delete the definition

(2) Section 10A(1), definition of *qualifying relationship*—after "identity" insert:

, and includes a relationship that is registered under the *Relationships Register Act 2016*

(3) Section 10A(2)—delete subsection (2) and substitute:

15 (2) A reference in this Part to the *spouse* of a woman is, where the woman has a lawful spouse but is living with another person as that person's partner on a genuine domestic basis, to be construed as a reference to the person with whom she is living and not the lawful spouse.

20 (4) Section 10A(3)—delete "domestic" wherever occurring

### 17—Amendment of section 10C—Rules relating to parentage

(1) Section 10C(3)—delete "husband or domestic" wherever occurring and substitute in each case:

spouse or

25 (2) Section 10C(3)(b)(i)—delete "husband or male domestic" and substitute:

male spouse or

(3) Section 10C(3a)—delete subsection (3a)

(4) Section 10C(4)(b)—delete "husband" and substitute:

spouse

30 (5) Section 10C(4)(b)—delete "domestic"

(6) Section 10C(5)(b)—delete "husband" and substitute:

spouse

(7) Section 10C(6)—delete "husband or domestic partner" and substitute:

woman's spouse, or partner with whom she is in a qualifying relationship,

35 (8) Section 10C(6)—delete "a woman" and substitute:

the woman

## 18—Amendment of section 10HA—Recognised surrogacy agreements

- (1) Section 10HA(1), definition of *husband*—delete the definition
- (2) Section 10HA(1), definition of *married woman*—delete the definition
- (3) Section 10HA(1), definition of *Minister*—delete the definition and substitute:

5                    *qualifying relationship* has the same meaning as in Part 2A.

- (4) Section 10HA—after subsection (1) insert:

10                    (1a) A reference in this Part to the *spouse* of a woman is, where the woman has a lawful spouse but is living with another person as that person's partner on a genuine domestic basis, to be construed as a reference to the person with whom she is living and not the lawful spouse.

- (5) Section 10HA(2a)(a)(i)—delete "a married woman, her husband" and substitute:

                      married or in a qualifying relationship, her spouse or partner (as the case may be)

- (6) Section 10HA(2a)(g)(i)—delete "her husband or partner (if any)" and substitute:

                      , if she is married or in a qualifying relationship, her spouse or partner (as the case may be)

- (7) Section 10HA(2a)(k)—delete "her husband or partner (if any)" and substitute:

                      , if she is married or in a qualifying relationship, her spouse or partner (as the case may be)

- (8) Section 10HA(2a)(k)—delete "husband" second occurring and substitute:

                      spouse

- (9) Section 10HA(6)(c)—delete "relevant, her husband or partner" and substitute:

                      she is married or in a qualifying relationship, her spouse or partner (as the case may be)

## 19—Insertion of Schedule 1

After section 15 insert:

### Schedule 1—Transitional provisions

#### 1—Transitional provisions (*Statutes Amendment (Legalisation of Same Sex Marriage Consequential Amendments) Act 2019*)

- (1) A reference to a husband in section 10C(3) as in force immediately before the commencement of the amending Act will, during the prescribed period, be taken to have been a reference to a spouse.

(2) To avoid doubt, a partner of a woman who was taken to be a father or co-parent of a child born as a result of the woman's pregnancy in consequence of a fertilisation procedure under section 10C(3a) as in force immediately before the commencement of the amending Act will continue to be taken to be the father or co-parent (as the case may be) of that child notwithstanding the repeal of section 10C(3a) by the amending Act.

(3) A female spouse or partner of a surrogate mother may only be a party to a recognised surrogacy agreement for the purposes of section 10HA(2a)(a)(i) as amended by the amending Act if that agreement was entered into after the commencement of this clause.

(4) In this section—

*amending Act* means the *Statutes Amendment (Legalisation of Same Sex Marriage Consequential Amendments) Act 2019*;

*prescribed period* means the period commencing on the recognition day and ending on the day before the amending Act commenced;

*recognition day* means the day on which Part 1 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* of the Commonwealth commenced.

## **Part 8—Amendment of *Judges' Pensions Act 1971***

### **20—Amendment of section 9A—Spouse entitlement subject to any Family Law determination**

Section 9A—after "spouse" insert:

or domestic partner

### **21—Amendment of section 11—Minimum pensions**

Section 11(2)—delete "widow" and substitute:

surviving spouse or domestic partner

### **22—Amendment of section 17B—Purpose of this Part**

Section 17B—after "spouses" insert:

or domestic partners

### **23—Amendment of section 17K—Pension not payable to spouse or domestic partner on death of Judge if split has occurred**

Section 17K—after "spouse" wherever occurring insert:

or domestic partner



## Part 9—Amendment of *Law of Property Act 1936*

### 24—Amendment of section 100—Assurance policy by spouses

Section 100(1)—delete subsection (1) and substitute:

5 (1) A policy of assurance effected by a person on the person's own life, and expressed to be for the benefit of the person's spouse or children, or of the person's spouse and children, or any of them, creates a trust in favour of the objects named in the policy.

10 (1a) The money payable under a policy referred to in subsection (1) will not, so long as any of the trust remains unperformed, form part of the estate of the insured, or be subject to the insured's debts.

## Part 10—Amendment of *Limitation of Actions Act 1936*

### 25—Amendment of section 3—Interpretation

Section 3(1), definition of *person through whom another person claims*—delete "husband" and substitute:

15 spouse

### 26—Amendment of section 32—Further provisions as to application of Act to trusts

Section 32(1)(b)—delete "shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation, but"

## Part 11—Amendment of *Parliamentary Superannuation Act 1974*

### 27—Amendment of section 5—Interpretation

Section 5(1), definition of *spouse pension*, (a)—delete "widow or widower" and substitute:

25 surviving spouse

### 28—Amendment of section 7A—Putative spouses

(1) Section 7A(1)(a)—delete "he or she is, on that date, cohabitating with the other person as his or her wife or husband de facto" and substitute:

30 the person is, on that date, cohabiting with the other person as that person's de facto spouse

(2) Section 7A(1)(b)—delete paragraph (b)

## Part 12—Amendment of *Police Superannuation Act 1990*

### 29—Amendment of section 4A—Putative spouses

- (1) Section 4A(1)(a)—delete "he or she is, on that date, cohabiting with the other person as his or her wife or husband de facto" and substitute:

5                   the person is, on that date, cohabiting with the other person as that person's de facto spouse

- (2) Section 4A(1)(b)—delete paragraph (b)

## Part 13—Amendment of *Real Property Act 1886*

### 30—Amendment of section 69—Title of registered proprietor indefeasible

10                   Section 69(g)—delete paragraph (g)

### 31—Amendment of section 111—Transfer by registered proprietor to spouse etc

                  Section 111—delete "wife or husband" and substitute:  
                  spouse

## Part 14—Amendment of *Relationships Register Act 2016*

### 32—Insertion of section 13A

After section 13 insert:

#### 13A—Certain registered relationships revoked on recognition of same sex marriages

- 20                   (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) The registration of a registered relationship to which this section applies was, by force of this section, revoked on the recognition day.
- 25                   (3) If the Registrar becomes aware that a registered relationship was revoked under this section, the Registrar must note that fact in the Register.
- (4) In this section—
- recognised same sex marriage* means a marriage that—
- 30                   (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
- 35                   (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.

## **Part 15—Amendment of *Settled Estates Act 1880***

### 5 **33—Amendment of section 44—Tenants for life etc may grant leases for 21 years**

- (1) Section 44—delete ", either in his own right or in the right of his wife"
- (2) Section 44—delete "; and also any person entitled to the possession or to the receipt of the rents and profits of any unsettled estates in right of a wife who is seized in fee"

### 10 **34—Amendment of section 45—Against whom such leases shall be valid**

- (1) Section 45—delete "against the wife of any husband granting such lease of estates to which he is entitled in right of such wife, and"
- (2) Section 45—delete "wife or husband (as the case may be)" and substitute:  
spouse

## 15 **Part 16—Amendment of *Solicitor-General Act 1972***

### **35—Amendment of section 9—Leave on retirement**

Section 9(6), definition of *members of the family*—delete "widow or widower" and substitute:

surviving spouse

### 20 **36—Amendment of section 10—Pension rights of Solicitor-General and application of *Judges' Pensions Act 1971***

Section 10(2)—delete "widow" and substitute:

surviving spouse

## 25 **Part 17—Amendment of *Southern State Superannuation Act 2009***

### **37—Amendment of section 7—Putative spouses**

- (1) Section 7(1)(a)—delete "he or she is, on that date, cohabiting with the other person as his or her wife or husband de facto" and substitute:

the person is, on that date, cohabiting with the other person as that person's  
30 de facto spouse

- (2) Section 7(1)(b)—delete paragraph (b)

## **Part 18—Amendment of *Stamp Duties Act 1923***

### **38—Amendment of Schedule 2—Stamp duties and exemptions**

- (1) Schedule 2, Part 2, clause 16, item 23(2), definition of *prescribed person*, paragraph (e)—delete "widow" and substitute:

5 surviving spouse

- (2) Schedule 2, Part 2, clause 16, item 23(2), definition of *prescribed person*, paragraph (e)—delete "his" and substitute:

their

## **Part 19—Amendment of *Superannuation Act 1988***

### **10 39—Amendment of section 4A—Putative spouses**

- (1) Section 4A(1)(a)—delete "he or she is, on that date, cohabitating with the other person as his or her wife or husband de facto" and substitute:

the person is, on that date, cohabiting with the other person as that person's  
de facto spouse

- 15 (2) Section 4A(1)(b)—delete paragraph (b)

## **Part 20—Amendment of *Terrorism (Preventative Detention) Act 2005***

### **40—Amendment of section 35—Contacting family members etc**

- 20 Section 35(3), definition of *family member*, (a)—delete ", de facto spouse or same sex partner" and substitute:

or de facto spouse