



Marriage Amendment (Definition and Religious Freedoms) Act 2017

No. 129, 2017

Compilation No. 2

Compilation date: 1 September 2021

Includes amendments up to: Act No. 13, 2021

Registered: 9 November 2021

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* that shows the text of the law as amended and in force on 1 September 2021 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to amend the law relating to the definition of marriage and protect religious freedoms, and for related purposes

1 Short title

This Act is the *Marriage Amendment (Definition and Religious Freedoms) Act 2017*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	8 December 2017
2. Schedule 1, Parts 1 and 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 28 days beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	9 December 2017 (F2017N00098)
3. Schedule 1, Part 3	At the same time as the provisions covered by table item 2. However, if Schedule 9 to the <i>Civil Law and Justice Legislation Amendment Act 2018</i> commences at or before that time, the provisions covered by this table item do not commence at all.	9 December 2017

Marriage Amendment (Definition and Religious Freedoms) Act 2017

1

Compilation No. 2

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
4. Schedule 1, Part 4	The later of: (a) the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of Schedule 9 to the <i>Civil Law and Justice Legislation Amendment Act 2018</i> . However, if Schedule 9 to the <i>Civil Law and Justice Legislation Amendment Act 2018</i> does not commence, the provisions covered by this table item do not commence at all.	26 October 2018 (paragraph (b) applies)
5. Schedule 1, Part 5	At the same time as the provisions covered by table item 2.	9 December 2017
6. Schedule 2	The day after the end of the period of 12 months starting on the day the provisions covered by table item 2 commence.	9 December 2018
7. Schedules 3 and 4	At the same time as the provisions covered by table item 2.	9 December 2017

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Main amendments

Marriage Act 1961

1 After section 2

Insert:

2A Objects of this Act

It is an object of this Act to create a legal framework:

- (a) to allow civil celebrants to solemnise marriage, understood as the union of 2 people to the exclusion of all others, voluntarily entered into for life; and
- (b) to allow ministers of religion to solemnise marriage, respecting the doctrines, tenets and beliefs of their religion, the views of their religious community or their own religious beliefs; and
- (c) to allow equal access to marriage while protecting religious freedom in relation to marriage.

2 Subsection 5(1) (definition of *authorised celebrant*)

Repeal the definition, substitute:

authorised celebrant means:

- (a) in relation to a marriage proposed to be solemnised in Australia:
 - (i) a minister of religion registered under Subdivision A of Division 1 of Part IV; or
 - (ii) a person authorised to solemnise marriages under Subdivision B of Division 1 of Part IV; or
 - (iii) a marriage celebrant; or
 - (iv) a religious marriage celebrant; or
- (b) in relation to a marriage proposed to be solemnised in accordance with Division 3 of Part V:
 - (i) a chaplain; or

- (ii) an officer (within the meaning of the *Defence Act 1903*), other than a chaplain, authorised by the Chief of the Defence Force under section 71A to solemnise marriages under that Division.

3 Subsection 5(1) (definition of *marriage*)

Omit “a man and a woman”, substitute “2 people”.

4 Subsection 5(1) (paragraph (c) of the definition of *prescribed authority*)

Omit “a chaplain”, substitute “a chaplain or an officer (within the meaning of the *Defence Act 1903*), other than a chaplain, authorised by the Chief of the Defence Force under section 71A to solemnise marriages under that Division”.

5 Subsection 5(1)

Insert:

religious marriage celebrant means a person identified as a religious marriage celebrant on the register of marriage celebrants under Subdivision D of Division 1 of Part IV.

6 Paragraph 21(2)(b)

Omit “the chaplain”, substitute “the authorised celebrant”.

7 Paragraph 23B(2)(b)

Omit “a brother and a sister”, substitute “2 siblings”.

8 After section 39D

Insert:

Subdivision D—Religious marriage celebrants

39DA Entitlement to be identified as a religious marriage celebrant on the register of marriage celebrants

A person is entitled to be identified as a religious marriage celebrant on the register of marriage celebrants if:

- (a) the person is registered as a marriage celebrant under Subdivision C of this Division; and
- (b) the person is a minister of religion.

39DB Request to be identified as a religious marriage celebrant on the register of marriage celebrants

- (1) A person may, in writing, give the Registrar of Marriage Celebrants notice that the person wishes to be identified as a religious marriage celebrant on the register of marriage celebrants.
- (2) The notice must be in a form approved by the Registrar, and include all of the information required by the form.

39DC Identification as a religious marriage celebrant

The Registrar of Marriage Celebrants must identify a person as a religious marriage celebrant on the register of marriage celebrants if:

- (a) the person has given the Registrar notice in accordance with section 39DB that the person wishes to be identified as a religious marriage celebrant on the register; and
- (b) the person is entitled to be identified as a religious marriage celebrant on the register.

39DD Transitional provisions for existing marriage celebrants

Marriage celebrants who are ministers of religion, but not ministers of religion of a recognised denomination

- (1) The Registrar of Marriage Celebrants must identify a person as a religious marriage celebrant on the register of marriage celebrants if:
 - (a) the person was registered as a marriage celebrant under Subdivision C of this Division immediately before Part 1 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* commenced; and
 - (b) the person is a minister of religion.

Marriage celebrants who wish to be religious marriage celebrants on the basis of their religious beliefs

- (2) The Registrar of Marriage Celebrants must identify a person as a religious marriage celebrant on the register of marriage celebrants if:
 - (a) the person was registered as a marriage celebrant under Subdivision C of this Division immediately before Part 1 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* commenced; and
 - (b) the person gives the Registrar notice that the person wishes to be identified as a religious marriage celebrant on the register:
 - (i) in writing; and
 - (ii) in a form approved by the Registrar; and
 - (iii) within 90 days after Part 1 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* commences; and
 - (c) the choice is based on the person's religious beliefs.

39DE Process of identification on the register as a religious marriage celebrant

- (1) The Registrar identifies a person as a religious marriage celebrant on the register of marriage celebrants by annotating the register to include that detail.
- (2) If the Registrar identifies a person as a religious marriage celebrant on the register of marriage celebrants, the Registrar must, as soon as practicable, give the person written notice of that fact.
- (3) If the Registrar decides not to identify a person as a religious marriage celebrant on the register of marriage celebrants, the Registrar must, as soon as practicable, inform the person in writing of:
 - (a) the decision; and
 - (b) the reasons for it; and
 - (c) the person's right under section 39J to apply for a review of the decision.

Subdivision E—General provisions relating to all marriage celebrants

9 After paragraph 39G(1)(c)

Insert:

- ; and (d) disclose that the celebrant is a marriage celebrant, and whether or not the celebrant is a religious marriage celebrant, in any document relating to the performance of services as a marriage celebrant (including advertisements) by the celebrant.

10 After paragraph 39I(1)(a)

Insert:

- (aa) is satisfied that the marriage celebrant is no longer entitled to be identified as a religious marriage celebrant on the register of marriage celebrants; or

11 At the end of subsection 39I(1)

Add:

- ; or (f) is satisfied that the marriage celebrant's notice under section 39DB or paragraph 39DD(2)(b) (notice requesting to be identified as a religious marriage celebrant) was known by the marriage celebrant to be false or misleading in a material particular.

12 After paragraph 39I(2)(d)

Insert:

- ; or (e) if the marriage celebrant is identified as a religious marriage celebrant on the register of marriage celebrants:
 - (i) remove the identification of the marriage celebrant as a religious marriage celebrant from the register for a period (the *suspension period*) of up to 6 months by annotating the register of marriage celebrants to include a statement that the celebrant is not identified as a religious marriage celebrant, and the dates of the start and end of the suspension period; or

- (ii) remove the identification of the marriage celebrant as a religious marriage celebrant permanently from the register.

13 After subsection 39I(3)

Insert:

- (3A) If the Registrar removes the identification of a marriage celebrant as a religious marriage celebrant for any period under paragraph (2)(e), section 47A does not apply in respect of the celebrant during that period.

14 Subsection 39I(4)

After “disciplinary measures against a marriage celebrant”, insert “(including a religious marriage celebrant)”.

15 At the end of subsection 39J(1)

Add:

- ; or (d) not to identify a person as a religious marriage celebrant on the register of marriage celebrants; or
- (e) to remove the identification of a person as a religious marriage celebrant from the register of marriage celebrants, either for a specified period or permanently.

16 After subsection 39J(2)

Insert:

- (2A) For the purposes of both the making of an application under subsection (1) and the operation of the *Administrative Appeals Tribunal Act 1975* in relation to such an application, if:
 - (a) a person has given notice under section 39DB or paragraph 39DD(2)(b) (notice requesting to be identified as a religious marriage celebrant); and
 - (b) at the end of 3 months after the day on which the notice was given, the person has not been:
 - (i) identified as a religious marriage celebrant on the register of marriage celebrants; or

- (ii) notified by the Registrar that the Registrar has decided not to identify the person as a religious marriage celebrant on the register of marriage celebrants;
- the Registrar is taken to have decided, on the last day of the 3 month period, not to identify that person as a religious marriage celebrant on the register of marriage celebrants.

17 After paragraph 39M(c)

Insert:

- or (d) a person was identified as a religious marriage celebrant on the register of marriage celebrants; or
- (e) a person was not identified as a religious marriage celebrant on the register of marriage celebrants;

18 Subsection 45(2)

After “*or husband*”, insert “, *or spouse*”.

19 Subsection 46(1)

Omit “a man and a woman”, substitute “2 people”.

20 Section 47

Repeal the section, substitute:

47 Ministers of religion may refuse to solemnise marriages

Refusing to solemnise a marriage despite this Part

- (1) A minister of religion may refuse to solemnise a marriage despite anything in this Part.
- (2) In particular, nothing in this Part prevents a minister of religion from:
 - (a) making it a condition of solemnising a marriage that:
 - (i) notice of the intended marriage is given to the minister earlier than this Act requires; or
 - (ii) additional requirements to those provided by this Act are complied with; and

- (b) refusing to solemnise the marriage if the condition is not observed.

Refusing to solemnise a marriage on the basis of religious beliefs etc.

- (3) A minister of religion may refuse to solemnise a marriage despite anything in this Part, if any of the following applies:
 - (a) the refusal conforms to the doctrines, tenets or beliefs of the religion of the minister's religious body or religious organisation;
 - (b) the refusal is necessary to avoid injury to the religious susceptibilities of adherents of that religion;
 - (c) the minister's religious beliefs do not allow the minister to solemnise the marriage.

Grounds for refusal not limited by this section

- (4) This section does not limit the grounds on which a minister of religion may refuse to solemnise a marriage.

21 Before section 48

Insert:

47A Religious marriage celebrants may refuse to solemnise marriages

- (1) A religious marriage celebrant may refuse to solemnise a marriage despite anything in this Part, if the celebrant's religious beliefs do not allow the celebrant to solemnise the marriage.

Grounds for refusal not limited by this section

- (2) This section does not limit the grounds on which a religious marriage celebrant may refuse to solemnise a marriage.

47B Bodies established for religious purposes may refuse to make facilities available or provide goods or services

- (1) A body established for religious purposes may refuse to make a facility available, or to provide goods or services, for the purposes of the solemnisation of a marriage, or for purposes reasonably incidental to the solemnisation of a marriage, if the refusal:
 - (a) conforms to the doctrines, tenets or beliefs of the religion of the body; or
 - (b) is necessary to avoid injury to the religious susceptibilities of adherents of that religion.
- (2) Subsection (1) applies to facilities made available, and goods and services provided, whether for payment or not.
- (3) This section does not limit the grounds on which a body established for religious purposes may refuse to make a facility available, or to provide goods or services, for the purposes of the solemnisation of a marriage, or for purposes reasonably incidental to the solemnisation of a marriage.
- (4) To avoid doubt, a reference to a ***body established for religious purposes*** has the same meaning in this section as it has in section 37 of the *Sex Discrimination Act 1984*.
- (5) For the purposes of subsection (1), a purpose is ***reasonably incidental*** to the solemnisation of marriage if it is intrinsic to, or directly associated with, the solemnisation of the marriage.

22 Subsection 71(1)

Omit “a chaplain”, substitute “an authorised celebrant”.

23 After section 71

Insert:

71A Marriage officers

The Chief of the Defence Force may, by instrument in writing, authorise an officer (within the meaning of the *Defence Act 1903*), other than a chaplain, to solemnise marriages under this Division.

24 Paragraphs 72(1)(a) and (b)

Omit “the chaplain” (wherever occurring), substitute “the authorised celebrant”.

25 Subsection 72(2)

Omit “the chaplain” (wherever occurring), substitute “the authorised celebrant”.

26 Subsection 72(2)

After “or husband”, insert “, or spouse”.

27 Section 74 (heading)

Omit “chaplain”, substitute “authorised celebrant”.

28 Subsection 74(1)

Omit “the chaplain”, substitute “the authorised celebrant”.

29 Subsection 74(3)

Omit “A chaplain”, substitute “An authorised celebrant”.

30 Section 75 (heading)

Omit “Chaplain”, substitute “Authorised celebrant”.

31 Section 75

Omit “A chaplain”, substitute “An authorised celebrant”.

32 Section 75

Omit “the chaplain”, substitute “the authorised celebrant”.

33 Subsections 76(1), 77(1) and 78(2)

Omit “the chaplain”, substitute “the authorised celebrant”.

34 Section 79 (heading)

Omit “Chaplain”, substitute “Authorised celebrant”.

35 Section 79

Omit “A chaplain”, substitute “An authorised celebrant”.

36 Section 79

Omit “the chaplain”, substitute “the authorised celebrant”.

37 Subsection 80(1)

Omit “a chaplain”, substitute “an authorised celebrant”.

38 Subsection 80(1)

Omit “the chaplain”, substitute “the authorised celebrant”.

39 Paragraphs 80(2)(a) and (c)

Omit “the chaplain”, substitute “the authorised celebrant”.

40 Subsection 80(4)

Omit “The chaplain”, substitute “The authorised celebrant”.

41 Subsections 80(5) and (6)

Omit “the chaplain”, substitute “the authorised celebrant”.

42 Subsection 80(8)

Omit “a chaplain”, substitute “an authorised celebrant”.

43 Subsection 80(9)

Omit “the chaplain” (first occurring), substitute “the authorised celebrant”.

44 Paragraph 80(9)(b)

Omit “the chaplain”, substitute “the authorised celebrant”.

45 Subsection 80(10)

Omit “a chaplain”, substitute “an authorised celebrant”.

46 Section 81

Omit “A chaplain”, substitute “(1) An authorised celebrant (including a chaplain)”.

47 Section 81

Omit “the chaplain” (wherever occurring), substitute “the authorised celebrant”.

48 At the end of section 81

Add:

Refusing to solemnise a marriage on the basis of religious beliefs etc.

- (2) A chaplain may refuse to solemnise a marriage despite anything in this Part, if any of the following applies:
- (a) the refusal conforms to the doctrines, tenets or beliefs of the religion of the chaplain’s religious body or religious organisation;
 - (b) the refusal is necessary to avoid injury to the religious susceptibilities of adherents of that religion;
 - (c) the chaplain’s religious beliefs do not allow the chaplain to solemnise the marriage.

Grounds for refusal not limited by this section

- (3) This section does not limit the grounds on which an authorised celebrant (including a chaplain) may refuse to solemnise a marriage.

49 Subsection 83(2)

Omit “a chaplain”, substitute “an authorised celebrant”.

50 Section 84 (heading)

Omit “a chaplain”, substitute “an authorised celebrant”.

51 Paragraph 84(1)(a)

Omit “a chaplain”, substitute “an authorised celebrant”.

52 Paragraphs 84(1)(b) and (c)

Omit “the chaplain”, substitute “the authorised celebrant”.

53 Subsection 84(1)

Omit “the chaplain” (last occurring), substitute “the authorised celebrant”.

54 Paragraph 85(1)(b)

Omit “a chaplain”, substitute “an authorised celebrant”.

55 Paragraph 85(1)(c)

Omit “the chaplain”, substitute “the authorised celebrant”.

56 Subsection 85(1)

Omit “the chaplain” (last occurring), substitute “the authorised celebrant”.

57 Subsection 88B(4)

Repeal the subsection.

58 Section 88EA

Repeal the section.

59 Subsection 99(3)

Omit “A chaplain”, substitute “An authorised celebrant”.

60 Subsection 116(2)

Omit “or chaplain” (wherever occurring).

61 Subsections 117(1) and (2)

After “other than Subdivision C”, insert “or D”.

62 Paragraph 119(3)(f)

Omit “chaplain”, substitute “authorised celebrant”.

Part 2—Amendment of the Sex Discrimination Act 1984

Sex Discrimination Act 1984

63 Subsection 40(2A)

Repeal the subsection, substitute:

- (2A) A minister of religion (as defined in subsection 5(1) of the *Marriage Act 1961*) may refuse to solemnise a marriage despite anything in Division 1 or 2, as applying by reference to section 5A, 5B, 5C or 6, if any of the circumstances mentioned in paragraph 47(3)(a), (b) or (c) of the *Marriage Act 1961* apply.
- (2AA) A religious marriage celebrant (as defined in subsection 5(1) of the *Marriage Act 1961*) may refuse to solemnise a marriage despite anything in Division 1 or 2, as applying by reference to section 5A, 5B, 5C or 6, if:
- (a) the identification of the person as a religious marriage celebrant on the register of marriage celebrants has not been removed at the time the marriage is solemnised; and
 - (b) the circumstances mentioned in subsection 47A(1) of the *Marriage Act 1961* apply.
- (2AB) A chaplain in the Defence Force may refuse to solemnise a marriage despite anything in Division 1 or 2, as applying by reference to section 5A, 5B, 5C or 6, if any of the circumstances mentioned in paragraph 81(2)(a), (b) or (c) of the *Marriage Act 1961* apply.

Note: Paragraph 37(1)(d) also provides that nothing in Division 1 or 2 affects any act or practice of a body established for religious purposes that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion.

**Part 3—Amendments if Schedule 9 to the Civil Law
and Justice Legislation Amendment Act
2018 not yet commenced**

Marriage Act 1961

64 Paragraph 115(2)(b)

Repeal the paragraph, substitute:

- (b) in respect of each other person:
 - (i) the person’s full name, designation (if any) and address;
and
 - (ii) whether the person is identified as a religious marriage
celebrant on the register of marriage celebrants; and
 - (iii) where appropriate, the religious body or religious
organisation to which the person belongs.

65 The Schedule (table item 1 of Part III)

Omit “by a husband and wife jointly”, substitute “by 2 people jointly”.

**Part 4—Amendments once Schedule 9 to the Civil
Law and Justice Legislation Amendment Act
2018 commences**

Marriage Act 1961

66 After paragraph 115(1)(ab)

Insert:

(ac) a list of the persons who are religious marriage celebrants;
and

67 Subsection 115(2) (after table item 3)

Insert:

3A	paragraph (1)(ac)	the information required to be entered in the register of marriage celebrants for the purposes of subsection 39D(5); and where appropriate, the religious body or religious organisation to which the person belongs.
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68 Subsection 115(3)

Omit “paragraph (1)(a), (aa) or (ab)”, substitute “paragraph (1)(a), (aa), (ab) or (ac)”.

Part 5—Application and transitional provisions

69 Definitions

In this Part:

amended Act means the *Marriage Act 1961*, as amended by this Act.

70 Application of amendments

- (1) Except as provided by subitem (2), the amendments made by this Schedule only apply in relation to a marriage (within the meaning of the amended Act) that takes place at or after the commencement of this item.
- (2) Part VA of the amended Act (recognition of foreign marriages) applies at and after that commencement in relation to a marriage (within the meaning of the amended Act), even if the marriage took place before that commencement.
- (3) For the purposes of determining whether parties to a marriage are within a prohibited relationship as mentioned in paragraph 88D(2)(c) of the amended Act (as it applies because of subitem (2)), paragraph 23B(2)(b) of the amended Act applies.

71 Recognition of certain marriages by foreign diplomatic or consular officers that occurred in Australia before commencement

- (1) A marriage is recognised as valid in Australia if:
 - (a) the marriage was solemnised in Australia, before the commencement of this item, by or in the presence of a diplomatic or consular officer of a foreign country (whether or not the country was a proclaimed overseas country at the time the marriage was solemnised); and
 - (b) at the time the marriage was solemnised:
 - (i) the marriage was not recognised in Australia as valid because the marriage was not the union of a man and a woman; and

- (ii) the marriage was recognised as valid under the law of the foreign country; and
 - (c) had the marriage occurred in the foreign country at the time the marriage was solemnised, the marriage would, after items 57 and 58 of this Schedule commence, be recognised as valid under Part VA of the *Marriage Act 1961*.
- (2) In this item:
 - Australia* includes the external Territories.
 - diplomatic or consular officer* has the meaning given by section 52 of the *Marriage Act 1961*.
 - proclaimed overseas country* has the meaning given by section 52 of the *Marriage Act 1961*.

Schedule 2—Additional amendment of the Sex Discrimination Act 1984

Sex Discrimination Act 1984

1 Subsection 4(1) (definition of *official record of a person's sex*)

Repeal the definition.

2 Subsection 40(5)

Repeal the subsection.

Schedule 3—Consequential amendments

Part 1—Attorney-General

Acts Interpretation Act 1901

1 Section 2B

Insert:

spouse: see section 2CA.

2 After section 2C

Insert:

2CA References to spouses

- (1) For the purposes of any Act, a person is the *spouse* of another person (whether of the same sex or a different sex) if the person is legally married to the other person.
- (2) Subsection (1) has effect in addition to any provision of an Act that affects the meaning of *spouse* in a provision of that Act.

Example: *Spouse* is defined for the purposes of an Act to include a de facto partner and a former spouse. Because of this section, a reference in the Act to a person's spouse covers any person who is legally married to the person, in addition to any person covered by the definition in the Act.

3 Application of definition of *spouse*

The amendments of the *Acts Interpretation Act 1901* made by this Part apply, on and after the commencement of this Part, in relation to Acts enacted and instruments made before, on or after that commencement.

Defence Force Discipline Appeals Act 1955

4 Paragraph 31(1)(c)

Omit “husband or wife” (wherever occurring), substitute “husband, wife or spouse”.

5 Application of amendment—evidence of spouses in proceedings

The amendment of the *Defence Force Discipline Appeals Act 1955* made by this Part applies in relation to proceedings before the Tribunal on or after the commencement of this Part, whether instituted before or after that commencement.

Defence (Visiting Forces) Act 1963

6 Subsection 5(1) (paragraph (a) of the definition of *dependant*)

Omit “wife or husband”, substitute “wife, husband or spouse”.

Evidence Act 1995

7 Paragraph 73(1)(b)

Omit “a man and a woman”, substitute “2 people”.

8 Application of amendment—evidence concerning relationships

The amendment of the *Evidence Act 1995* made by this Part applies in relation to evidence adduced in proceedings on or after the commencement of this Part, whether the proceedings are instituted before or after that commencement.

Family Law Act 1975

9 Subsection 4(1) (definition of *child of a marriage*)

Repeal the definition, substitute:

child of a marriage has a meaning affected by subsections 60F(1), (2), (3) and (4).

10 Paragraph 43(1)(a)

Omit “a man and a woman”, substitute “2 people”.

11 Subsection 55A(3)

Omit “the husband or the wife”, substitute “party to the marriage”.

12 Subsection 55A(3)

Omit “the husband and wife”, substitute “both parties to the marriage”.

13 Subsection 55A(4)

Omit “husband and wife”, substitute “parties to the marriage”.

14 Section 60E

Omit all the words after “void”, substitute “as if the purported marriage were a marriage”.

15 Subsection 60F(1)

Repeal the subsection, substitute:

- (1) For the purposes of this Act, a child is (subject to subsections (2), (3) and (4)) a child of a marriage if:
 - (a) the child is the child of both parties to the marriage, whether born before or after the marriage; or
 - (b) the child is adopted after the marriage by both parties to the marriage, or by either of them with the consent of the other.

16 Subsection 60F(4A)

Repeal the subsection.

17 Subsection 98A(3)

Omit “the husband or the wife”, substitute “party to the marriage”.

18 Subsection 98A(3)

Omit “the husband and wife”, substitute “both parties to the marriage”.

19 Subsection 98A(4)

Omit “husband and wife”, substitute “parties to the marriage”.

20 Section 100 (heading)

Repeal the heading, substitute:

100 Evidence of husbands, wives or spouses

21 Application of amendments

- (1) Sections 55A, 60F and 98A of the *Family Law Act 1975*, as in force on and after the commencement of this Part, apply in relation to a marriage (within the meaning of the *Marriage Act 1961*, as amended by this Act), even if:
 - (a) the marriage took place before that commencement; or
 - (b) for subsections 60F(3) and (4)—the adoption of the child took place before that commencement.
- (2) Section 60E of the *Family Law Act 1975*, as in force on and after the commencement of this Part, applies in relation to a purported marriage (within the meaning of the *Marriage Act 1961*, as amended by this Act), even if the purported marriage took place before that commencement.

Financial Transaction Reports Act 1988

22 Paragraph 21A(1)(b)

Repeal the paragraph, substitute:

- (b) if the signatory has changed the surname by which the signatory is known to that of the signatory's spouse or de facto spouse—by which the signatory was known before making that change; or

Maintenance Orders (Commonwealth Officers) Act 1966

23 Section 3 (definition of *maintenance order*)

After “wives,”, insert “husbands, spouses,”.

Marriage Act 1961

24 Subsection 42(10)

Omit “a widow or widower”, substitute “that that party's last spouse has died”.

25 Application of amendments

Subsection 42(10) of the *Marriage Act 1961*, as amended by this Part, applies in relation to a marriage (within the meaning of that Act as amended by this Act) that takes place at or after the commencement of this Part.

Part 2—Defence

Australian Defence Force Cover Act 2015

26 Subsections 7(1) and (2)

Omit “husband or wife” (wherever occurring), substitute “husband, wife, spouse”.

Defence Force Retirement and Death Benefits Act 1973

27 Subsections 6A(1) and (2)

Omit “husband or wife” (wherever occurring), substitute “husband, wife, spouse”.

Part 3—Employment

Safety, Rehabilitation and Compensation Act 1988

28 Subsection 4(1) (paragraph (b) of the definition of spouse)

Omit “husband or wife”, substitute “husband, wife or spouse”.

Seafarers Rehabilitation and Compensation Act 1992

29 Section 3 (paragraph (b) of the definition of spouse)

Omit “husband or wife”, substitute “husband, wife or spouse”.

Part 4—Finance

Federal Circuit Court of Australia Act 1999

30 Subclause 9E(5) of Schedule 1

Omit “husband or wife” (wherever occurring), substitute “husband, wife, spouse”.

Governor-General Act 1974

31 Subsections 2B(2) and (3)

Omit “husband or wife” (wherever occurring), substitute “husband, wife, spouse”.

Judges’ Pensions Act 1968

32 Subsections 4AB(1) and (2)

Omit “husband or wife” (wherever occurring), substitute “husband, wife, spouse”.

Parliamentary Contributory Superannuation Act 1948

33 Subsections 4B(1) and (2)

Omit “husband or wife” (wherever occurring), substitute “husband, wife, spouse”.

Superannuation Act 1976

34 Subsections 8A(1) and (2)

Omit “husband or wife” (wherever occurring), substitute “husband, wife, spouse”.

Part 5—Immigration and Border Protection

Migration Act 1958

35 Subsection 5F(1)

After “another person”, insert “(whether of the same sex or a different sex)”.

36 Paragraph 5F(2)(b)

Omit “as husband and wife”, substitute “as a married couple”.

Part 6—Veterans' Affairs

Military Rehabilitation and Compensation Act 2004

37 Subsection 5(1) (paragraph (a) of the definition of *partner*)

Omit “husband or wife”, substitute “husband, wife or spouse”.

Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

38 Subsection 4(1) (paragraph (b) of the definition of *spouse*)

Omit “husband or wife”, substitute “husband, wife or spouse”.

Schedule 4—Additional application and transitional provisions

Part 1—Application and transitional provisions relating to family law matters

Division 1—Preliminary

1 Definitions

- (1) In this Schedule:
- pre-commencement same-sex marriage* means a marriage (within the meaning of the *Marriage Act 1961*, as amended by this Act) that:
- (a) was solemnised before the recognition time; and
 - (b) is recognised in Australia as valid at the recognition time because of Part 5 of Schedule 1 to this Act; and
 - (c) would not have been so recognised apart from that Part.
- recognition time* means the commencement of Part 5 of Schedule 1.
- (2) A term that is used in this Schedule and defined for the purposes of the *Family Law Act 1975* has the same meaning in this Schedule as it has in that Act.

Division 2—Matters under the Family Law Act 1975

2 Proceedings pending under the *Family Law Act 1975* in relation to pre-commencement same-sex marriages

- (1) This item applies to proceedings that:
- (a) were pending under the *Family Law Act 1975* immediately before the recognition time; and
 - (b) related to a de facto relationship that:
 - (i) existed before or when the proceedings were instituted; and
 - (ii) was between 2 persons who were parties to a single pre-commencement same-sex marriage solemnised before the proceedings were instituted.

- (2) The proceedings continue under the *Family Law Act 1975* at and after the recognition time:
- (a) as if they related to a marriage that had been solemnised when the pre-commencement same-sex marriage was solemnised; and
 - (b) if the proceedings were a de facto financial cause—as if anything done before the recognition time for the purposes of a provision of Part VIIIAB of that Act (except Division 4 of that Part) had been done for the purposes of the corresponding provision of Part VIII of that Act.

Note 1: Part VIII of that Act is about property, spousal maintenance and maintenance agreements relating to a marriage. Part VIIIAB of that Act is about financial matters relating to de facto relationships. Division 4 of that Part is about financial agreements.

Note 2: Item 5 of this Schedule deals with financial agreements.

3 Cessation of maintenance at recognition time

- (1) If:
- (a) before the recognition time, an order was made under Part VIII of the *Family Law Act 1975* with respect to the maintenance of a party to a marriage; and
 - (b) the party later became party to a pre-commencement same-sex marriage;
- subsections 82(4), (6), (7) and (8) of that Act apply in relation to the order as if the party had remarried at the recognition time.
- (2) If:
- (a) before the recognition time, an order was made under Division 2 of Part VIIIAB of the *Family Law Act 1975* with respect to the maintenance of a party (the **receiving party**) to a de facto relationship; and
 - (b) the receiving party later became party to a pre-commencement same-sex marriage with someone who was not a party to the de facto relationship;
- subsections 90SJ(2), (3), (4) and (5) of that Act apply in relation to the order as if the receiving party had married at the recognition time.

4 Recognition of overseas divorces, annulments and legal separations relating to pre-commencement same-sex marriages

- (1) To avoid doubt, subsection 104(3) of the *Family Law Act 1975* extends to a divorce, annulment or legal separation relating to a pre-commencement same-sex marriage, even if:
 - (a) the relevant date (as defined in section 104 of that Act) was before the recognition time; or
 - (b) the divorce, annulment or legal separation occurred before the recognition time.
- (2) The *Family Law Act 1975* applies as if subsection 104(3) of that Act also provided for a divorce effected in accordance with the law of an overseas jurisdiction to be recognised as valid in Australia if the divorce related to a pre-commencement same-sex marriage and was effected before the recognition time.
- (3) For the purposes of the application of subsection 104(4) of the *Family Law Act 1975* in relation to subsection 104(3) of that Act as it applies because of subitem (2), the mere fact that the divorce relates to a pre-commencement same-sex marriage does not mean that recognition of the divorce would manifestly be contrary to public policy.

5 Financial agreements and separation declarations

- (1) This item applies if:
 - (a) before the recognition time, the parties to a pre-commencement same-sex marriage made a Part VIIIAB financial agreement relating to a contemplated, actual or former de facto relationship between them:
 - (i) whether or not they were parties to the pre-commencement same-sex marriage at the time they made the agreement; and
 - (ii) whether or not anyone else is a party to the agreement; and
 - (b) under section 90UJ of the *Family Law Act 1975*, the agreement is binding on the parties to the agreement immediately before the recognition time.

- (2) For the purposes of a law of the Commonwealth (including the *Family Law Act 1975*) at and after the recognition time, the agreement, with the necessary changes, is taken:
- (a) to be a financial agreement made under Part VIIIA of that Act relating to a contemplated, actual or former marriage between the parties to the pre-commencement same-sex marriage; and
 - (b) to be binding on the parties to the agreement under section 90G of that Act until the agreement is terminated or set aside in accordance with that Act.
- (3) However, the agreement is taken not to include a provision that deals with a matter that could not validly have been dealt with in a Part VIIIAB financial agreement, even if the matter could validly be dealt with in a financial agreement.
- (4) Section 90E of the *Family Law Act 1975* does not apply in relation to the agreement at and after the recognition time if the agreement was covered by section 90UE (agreements made in non-referring States that become Part VIIIAB financial agreements) of that Act before that time.
- Note: Section 90E and subsection 90UH(1) of that Act set out requirements for provisions in agreements relating to the maintenance of a party or a child or children. Subsection 90UH(1) does not apply in relation to a Part VIIIAB financial agreement covered by section 90UE.
- (5) If, before the recognition time, a separation declaration was made, as described in section 90UF of the *Family Law Act 1975*, for the purposes of giving effect to the agreement (whether the declaration was included in the agreement or not), the declaration is taken on and after that time to be a separation declaration made as described in section 90DA of that Act.
- (6) If, before the recognition time, a separation declaration was made as described in subsection 90MP(8), (9) or (10) of the *Family Law Act 1975* in relation to the agreement so far as it is a superannuation agreement for the purposes of Part VIIIB of that Act, the declaration is taken on and after that time to be a separation declaration made as described in subsection 90MP(3), (4) or (4A) of that Act.
- (7) Subitem (6) applies whether the separation declaration was included in the superannuation agreement or not.
-

Division 3—Matters under the Family Court Act 1997 (WA)

6 Proceedings pending under the *Family Court Act 1997* (WA) before the recognition time

Application

- (1) This item applies to proceedings in a court (the **WA court**) that:
- (a) were pending under the *Family Court Act 1997* (WA) (the **WA Act**) immediately before the recognition time; and
 - (b) related to a de facto relationship that:
 - (i) existed before or when the proceedings were instituted; and
 - (ii) was between 2 persons who were parties to a single pre-commencement same-sex marriage solemnised before the proceedings were instituted.

Continuation of proceedings under the Family Law Act 1975

- (2) The proceedings continue under the *Family Law Act 1975* (the **Commonwealth Act**) at and after the recognition time:
- (a) as if they related to a marriage that had been solemnised when the pre-commencement same-sex marriage was solemnised; and
 - (b) if the proceedings were Part 5A proceedings (within the meaning of the WA Act)—as if anything done before the recognition time for the purposes of a provision of Part 5A of the WA Act (except Division 3 of that Part) had been done for the purposes of the corresponding provision of Part VIII of the Commonwealth Act.

Note 1: Part VIII of the Commonwealth Act is about property, spousal maintenance and maintenance agreements relating to a marriage. Part 5A of the WA Act is about financial matters relating to de facto relationships. Division 3 of that Part is about financial agreements.

Note 2: Item 8 of this Schedule deals with financial agreements made under Division 3 of Part 5A of the WA Act.

- (3) The WA court is invested with jurisdiction to hear and determine the proceedings as continued under subitem (2).

- (4) Any decision validly made by a court before the recognition time about the admissibility of particular evidence in the proceedings continues to have effect for the purposes of the proceedings after that time.
- (5) In performing duties or exercising powers in relation to the proceedings under the Commonwealth Act, a court may ask questions of, and seek evidence or the production of documents or other things from, parties, witnesses and experts on matters relevant to the proceedings.

Appeal proceedings in Court of Appeal

- (6) If the proceedings were an appeal instituted in, or made to, the Court of Appeal under Part 7 of the WA Act, that Court may, on the application of a party or of its own motion, refer the appeal to a Full Court of the Family Court of Australia.
- (6A) To avoid doubt, on and after the day Schedule 1 to the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021* commences, an appeal mentioned in subitem (6) may not be referred to the Full Court of the Federal Circuit and Family Court of Australia (Division 1).
- (7) If an appeal is referred to a Full Court of the Family Court of Australia under subitem (6):
 - (a) jurisdiction is conferred on the Court to hear and determine the appeal; and
 - (b) the following provisions of the Commonwealth Act, and the standard Rules of Court made for the purposes of those provisions, apply in relation to the appeal as if it were an appeal referred to in subsection 94(1) of that Act:
 - (i) subsection 93A(2);
 - (ii) section 94, except subsections 94(1), (1AA), (1A) and (3);
 - (iii) section 94AAB;
 - (iv) section 96AA; and
 - (c) the Full Court may proceed by way of a hearing *de novo*, but may receive as evidence any record of evidence given, including any affidavit filed or exhibit received in the Court of Appeal or the court from which the appeal lay.

- (8) However, subsection 94(2) of the Commonwealth Act applying because of subitem (7) does not permit the Full Court to order a re-hearing by the Court of Appeal.

This item does not apply to proceedings about guardians

- (9) Despite subitem (1), this item does not apply to so much of the proceedings as relate to the appointment or removal under section 71 of the WA Act of a guardian.

7 Cessation of maintenance at recognition time

If:

- (a) before the recognition time, an order was made under Division 2 of Part 5A of the *Family Court Act 1997* (WA) with respect to the maintenance of a party (the **receiving party**) to a de facto relationship; and
- (b) the receiving party later became party to a pre-commencement same-sex marriage with someone who was not a party to the de facto relationship;

section 82 of the *Family Law Act 1975* applies in relation to the order as if it were an order with respect to the maintenance of a party to a marriage and the party had remarried at the recognition time.

8 Financial agreements and separation declarations

- (1) This item applies if:
- (a) before the recognition time, the parties to a pre-commencement same-sex marriage made a financial agreement within the meaning of Part 5A of the *Family Court Act 1997* (WA), or a former financial agreement (within the meaning of that Part), relating to a contemplated, actual or former de facto relationship between them:
 - (i) whether or not they were parties to the pre-commencement same-sex marriage at the time they made the agreement; and
 - (ii) whether or not anyone else is a party to the agreement; and

- (b) under section 205ZS of that Act, the agreement is binding on the parties to the agreement immediately before the recognition time.
- (2) For the purposes of a law of the Commonwealth (including the *Family Law Act 1975*) at and after the recognition time, the agreement, with the necessary changes, is taken:
 - (a) to be a financial agreement made under Part VIIIA of that Act relating to a contemplated, actual or former marriage between the parties to the pre-commencement same-sex marriage; and
 - (b) to be binding on the parties to the agreement under section 90G of that Act until the agreement is terminated or set aside in accordance with that Act.
- (3) However, the agreement is taken not to include a provision that deals with a matter that could not validly have been dealt with in a financial agreement within the meaning of Part 5A of the *Family Court Act 1997* (WA), even if the matter could validly be dealt with in a financial agreement within the meaning of the *Family Law Act 1975*.
- (4) If the agreement was a former financial agreement (within the meaning of Part 5A of the *Family Court Act 1997* (WA)), then section 90E of the *Family Law Act 1975* (requirements for provisions in agreements relating to the maintenance of a party or a child or children) does not apply in relation to the agreement.
- (5) Section 90DA (need for separation declaration) of the *Family Law Act 1975* does not apply in relation to the agreement unless the spouse parties separate, and begin living separately and apart, at or after the recognition time.

Part 2—Other transitional provisions

9 Second marriage ceremonies for certain marriages by foreign diplomatic or consular officers that occurred in Australia before commencement

- (1) This item applies to a marriage (within the meaning of the *Marriage Act 1961*, as amended by this Act) that was solemnised:
 - (a) in Australia, before the commencement of this item; and
 - (b) by or in the presence of a diplomatic or consular officer of a foreign country (whether or not the country was a proclaimed overseas country at the time the marriage was solemnised).
- (2) Subsections 113(2) and (5) of the *Marriage Act 1961*, as in force on and after the commencement of this item, apply in relation to the marriage as if it took place outside Australia.

Part 3—Transitional rules

10 Transitional rules

- (1) The Attorney-General may, by legislative instrument, make rules (*transitional rules*) prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.
- (2) To avoid doubt, the transitional rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of an Act.
- (3) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to transitional rules made during the period of 12 months starting on the commencement of this item.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Marriage Amendment (Definition and Religious Freedoms) Act 2017	129, 2017	8 Dec 2017	Sch 1 (items 1–65, 69–71), Sch 3 and 4: 9 Dec 2017 (s 2(1) items 2, 3, 5, 7) Sch 1 (items 66–68): 26 Oct 2018 (s 2(1) item 4) Sch 2: 9 Dec 2018 (s 2(1) item 6) Remainder: 8 Dec 2017 (s 2(1) item 1)	
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (item 540): 1 Sept 2021 (s 2(1) item 5)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
s 2	ed C1
Schedule 1	
Part 3	
Part 3 heading	ed C1
Part 4	
Part 4 heading	ed C1
Schedule 4	
Part 1	
Division 3	
item 6.....	am No 13, 2021