

2016

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Marriage Legislation Amendment Bill 2016

No. , 2016

(Mr Shorten)

**A Bill for an Act to amend the law relating to
marriage, and for related purposes**

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A Bill for an Act to amend the law relating to marriage, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Marriage Legislation Amendment Act 2016*.

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.	
2. Schedule 1	The 14th day after this Act receives the Royal Assent.	
3. Schedule 2, Part 1	The 14th day after this Act receives the Royal Assent.	
4. Schedule 2, Part 2	The day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendment of the Marriage Act 1961

Marriage Act 1961

1 After section 2

Insert:

3 Objects

The object of this Act is to allow couples to marry, and to have their marriages recognised, regardless of sex, sexual orientation, gender identity or intersex status.

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

Repeal the definition, substitute:

marriage means the union of 2 people to the exclusion of all others, voluntarily entered into for life.

Note: See section 110 for the application of this definition.

3 Paragraph 23B(2)(b)

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

4 At the end of section 39

Add:

- (4) A person who is authorised by subsection (1) or under subsection (2) to solemnise marriages must not refuse to solemnise a marriage if:
- (a) the refusal would amount to unlawful discrimination (within the meaning of the *Australian Human Rights Commission Act 1986*); and
 - (b) section 100 of this Act does not prevent the person from solemnising the marriage.

5 Subsection 45(2)

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

6 Subsection 46(1)

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

7 Section 47

After “Part”, insert “, or in any other law”.

8 At the end of section 47

Add:

Note: Because of paragraph (a), a minister of religion may refuse to solemnise a marriage for any reason, including because to do so would be contrary to the minister’s beliefs or the minister’s understanding of the doctrines, tenets, beliefs or teachings of the minister’s denomination.

9 Subsection 72(2)

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

10 At the end of section 81

Add:

Note: Another ground might be that the solemnisation of the marriage would be contrary to the chaplain’s beliefs or the chaplain’s understanding of the doctrines, tenets, beliefs or teachings of the chaplain’s church or faith group.

11 Section 88EA

Repeal the section.

12 Part VIII (heading)

Repeal the heading, substitute:

Part VIII—Application and transitional provisions

Division 1—Commencement of this Act

13 At the end of Part VIII

Add:

Division 2—Amendment of the definition of marriage

110 Application of amendments relating to the definition of *marriage*

- (1) The amendments of this Act made by Schedule 1 to the *Marriage Legislation Amendment Act 2016* apply in relation to marriages that take place at or after the commencement of that Schedule.
- (2) The marriage definition amendments apply after that commencement, in relation to marriages that took place before that commencement, for the purposes of the following provisions:
 - (a) Division 3 of Part IV (marriages by foreign diplomatic or consular officers);
 - (b) Part VA (recognition of foreign marriages);
 - (c) this subsection;
 - (d) any other provision of this Act, in so far as the provision applies in relation to a marriage that is recognised as valid because of paragraph (a) or (b) of this subsection.
- (3) The ***marriage definition amendments*** are the amendments of the following provisions of this Act made by Schedule 1 to the *Marriage Legislation Amendment Act 2016*:
 - (a) the definition of ***marriage*** in subsection 5(1);
 - (b) paragraph 23B(2)(b).

14 Part III of the Schedule (table item 1)

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

Schedule 2—Consequential amendments

Part 1—Amendment of the Sex Discrimination Act 1984

Sex Discrimination Act 1984

1 Subsection 40(2A)

Repeal the subsection.

Part 2—Other consequential amendments

2 Regulations may make consequential amendments of Acts

- (1) The Governor-General may, during the period of 12 months starting on the commencement of this item, make regulations amending Acts (including the *Marriage Act 1961* and the *Sex Discrimination Act 1984*) being amendments that are consequential on, or that otherwise relate to, the amendments made by Schedule 1 to this Act. The amendments may directly amend the text of an Act.
- (2) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:
 - (a) any amendments made by regulations under subitem (1); or
 - (b) the amendments made by Part 1 of this Schedule.

Retrospective commencement

- (3) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply in relation to regulations made for the purposes of this item.
- (4) However, if:
 - (a) a person engaged in conduct before the regulations were registered under the *Legislation Act 2003*; and
 - (b) but for the retrospective effect or commencement of the regulations, the conduct would not have contravened a provision of an Act or instrument;

then a court must not convict the person of an offence, or impose a pecuniary penalty, in relation to the conduct on the grounds that it contravened that provision.

Publication

- (5) To avoid doubt, amendments of an Act made by regulations for the purposes of subitem (1) can be incorporated into a reprint or compilation of the Act.