

Notice

To Lodging Parties

27 April 2020

No 229

Amendments to *Real Property Act 1886* and *Law of Property Act 1936* as consequence of the legalisation of same sex marriage

Following the [Marriage Amendment \(Definition and Religious Freedoms\) Act 2017 \(Cth\)](#), which made the status of marriage available to same-sex couples, a review of South Australian legislation was conducted to identify which laws required amending to reflect the new gender-neutral definition of marriage.

The majority of minor legislative changes are contained in the [Statutes Amendment \(Legalisation of Same Sex Marriage Consequential Amendments\) Act 2019](#). However due to the extent and nature of changes required, the [Married Persons \(Separate Legal Status\) Act 2019](#) was created to provide for the separate legal status of married persons and to make related amendments to the [Law of Property Act 1936](#) (LPA) specifically.

Please be advised that both the *Statutes Amendment (Legalisation of Same Sex Marriage Consequential Amendments) Act 2019* and the *Married Persons (Separate Legal Status) Act 2019* will commence on **1 May 2020**.

Amendments to *Real Property Act 1886*

The *Statutes Amendment (Legalisation of Same Sex Marriage Consequential Amendments) Act 2019* amends the [Real Property Act 1886](#) as follows:

- Deletion of section 69(g), which relates to a wife's title prevailing where a husband has been wrongly registered as a co-proprietor of land belonging to his wife, because this 1886 provision is no longer relevant.
- Amendment of section 111 by replacement of the gender specific language “*husband or wife*” with “*spouse*”.

Amendments to *Law of Property Act 1936*

The *Married Persons (Separate Legal Status) Act 2019* amends the LPA as follows:

- Amendment of section 40 to gender neutralise language in relation to conveying property to oneself jointly with another person.
- Deletion of section 42(3) which prescribes a concept relating to a wife being deemed to convey property on the direction of the husband where both the wife and the husband

convey and are expressed to convey as beneficial owners.

- Amendment of section 82 removing reference to married women in this section which in effect equated married women with persons with impaired decision making abilities.
- Deletion of sections 92 to 99 containing certain provisions in relation to married women that are no longer required, such as prescribing that, in relation to legal status in respect of property, a married woman is to be treated as though she were not married.
- Deletion of sections 101 to 107 which specify certain provisions in relation to married women that are no longer required, such as a married woman having the same civil and criminal redress in relation to property as if she were not married.
- Amendment of section 108 to remove outdated references to married women and otherwise gender neutralises terminology in relation to executors and administrators.
- Deletion of section 109 which relates to wills of married women.
- Deletion of section 111 which relates to acquisitions and dispositions of trust estates by married women.

The *Statutes Amendment (Legalisation of Same Sex Marriage Consequential Amendments) Act 2019* also amends section 100 of the LPA (relating to assurance policies) in a gender neutral way.

For further information please contact Office of the Registrar-General via DPTI.RegistrarGeneral@sa.gov.au.



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