

EXPLANATORY NOTES

MARRIED PERSONS (EQUALITY OF STATUS) BILL 2011

By a series of Acts, culminating in the *Married Women's Property Act 1882*, married women in England became entitled to acquire, hold, and dispose of property in their own right as if they were unmarried. Similar legislation was passed in the Australian States and in NSW in 1893 and later in 1901 (being the Act that was applied to Norfolk Island in 1931). Unfortunately the legislation did not work: if the marriage broke down the wife had rarely acquired assets in her own name, and thus the principle of separation of property generally worked to her disadvantage so that the principle reinforced rather than reduced sex-based inequality.

As Matrimonial law developed in Australia from the 1970s it became clear that the old legislation was inadequate and contradictory and eventually the various States and Territories have passed legislation to abolish their Married Women's Property Law Acts in order to update the law regulating the rights of married persons generally.

This Bill follows the broad principles of other States and Territories and follows closely the NSW changes also repealing the *Married Women's Property Act 1931* which relies on the NSW Act that was repealed in 1996.

The broad intent of the Bill is to affirm that irrespective of their gender, married persons retain a separate legal personality and legal capacity as if they were single. Having done this the Bill deals with some specific issues and clearly repeals any vestige of common law and equity that might impact upon the rights of persons in marriage. This Bill does not, and does not seek to, have any impact upon the rights of married persons that arise from specific legislation. However it does mean that in Norfolk Island these rights apply even if the parties were married under a system whereby the rights of the spouses are different and restricted as they may be under different legal regimes.

The Bill is divided into parts—

Part 1. – Preliminary

Clauses 1 and 2 deal with preliminary matters — the name of the Act and commencement.

Part 2 - Equality of status, is subdivided into divisions

Division 1 - General rule

Clause 3 sets out the general rule that for all purposes and in all respects, a married person has legal capacity as if that person were unmarried and their legal personality is independent, separate and distinct from that of their spouse, however it is made clear that this may not override any law that relates to a spouse who is a minor.

Division 2 – Specific examples

Clause 4 provides that spouses may sue each other in tort (eg for negligence) as if they were not married (this was already covered in section 9 of the *Law Reform (Miscellaneous Provisions) Act 1971* that, being unnecessary, is repealed).

Clause 5 provides that spouses may take civil or criminal action against each other to protect their property as if they were not married (s.6).

Clause 6 provides that a married person has no authority (by reason only being the person's spouse) to pledge the credit of his/her spouse for the purchase of necessities, or to act as an agent for his/her spouse in purchasing necessities.

Clause 7 provides that a married person is not liable for any debt incurred by his/her spouse before their marriage.

Clause 8 provides that spouses are treated as separate people for the construction of wills, trusts or other instruments relating to gifts or the disposition of property.

Clause 9 provides that legal documents executed after commencement of the Act are void if they restrict a woman's right to transfer or right to otherwise enjoy her property if such a restriction could not be applied to a man.

Clause 10 makes it clear that the provisions set out in Division 2 are not intended to in any way affect the generality of the provisions in Division 1 (clause 3).

Division 3 - other matters. .

Clause 11 provides that if a married person gives his or her spouse money to pay for joint household expenses, any property bought with the money, or any unspent money, belongs to the married couple as joint tenants.

Clause 12 deals with the issue of the fraudulent investment of a spouse's money and gives recourse to the Supreme Court if a married person invests money belonging to his or her spouse without the spouse's consent. The Supreme Court has the power to order that the money be transferred back. This provision is not intended to affect the powers of the Court to make other orders than return of property, or to affect the application of the criminal law.

Part 3 – Miscellaneous

Clause 13 provides for the usual broad power of the Administrator to make regulations for the purposes of the Act.

Clause 13 repeals the Acts and provisions listed in Schedule 1.

Clause 14 provides for savings of matters set out in Schedule 2.

Schedule 1 provides that the *Married Women's Property Act 1931* is repealed and that section 9 (the only section in Part 3) of the *Law Reform (Miscellaneous Provisions) Act 1971* is also repealed.

Schedule 2 makes it clear in section 1 that nothing is revived from the common law or equity by the passage of this Bill, it being noted that extensive provisions to such effect are also contained in the *Interpretation Act 1979*.

In section 2 it is made clear that the Act applies irrespective of the time or place of marriage.