

# TASMANIA

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## SAME-SEX MARRIAGE BILL 2012

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## **SAME-SEX MARRIAGE BILL 2012**

*(Brought in by the Premier, the Honourable Larissa Tahireh Giddings and the Leader of the Greens, the Honourable Nicholas James McKim)*

### **A BILL FOR**

**An Act to provide for marriage equality by allowing for marriage between adults of the same sex**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

### **PART 1 – PRELIMINARY**

#### **1. Short title**

This Act may be cited as the *Same-Sex Marriage Act 2012*.

#### **2. Commencement**

The provisions of this Act commence on a day or days to be proclaimed.

#### **3. Interpretation**

In this Act, unless the contrary intention appears –

*applicant* includes a cross-applicant and a petitioner or cross-petitioner;

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***authorised celebrant*** means –

- (a) a person authorised to solemnise same-sex marriages by virtue of Division 1 of Part 7; or
- (b) a same-sex marriage celebrant registered under Division 2 of Part 7;

***dissolution order*** means an order made under section 29;

***financial agreement*** – see sections 63, 64 and 65;

***proceedings*** means proceedings in a court, whether between parties or not, and includes cross-proceedings or an incidental proceeding in the course of or in connection with a proceeding;

***Registrar*** means the person holding office as Registrar under the *Births, Deaths and Marriages Registration Act 1999*;

***regulations*** means regulations made under section 92;

***rules of court*** means rules of court made under section 93 or 94;

***same-sex marriage*** means the lawful union of two people of the same sex, to the exclusion of all others, voluntarily entered into for life;



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*same-sex marriage celebrant* means a person registered under Division 2 of Part 7;

*same-sex marriageable age* – see section 6;

*termination agreement* – see section 72.

**4. Acts binds Crown**

This Act binds the Crown in right of Tasmania.

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**PART 2 – SAME-SEX MARRIAGE**

*Division 1 – Application of Part*

**5. Application of Part**

- (1) This Part applies, notwithstanding any common law rule of private international law, in relation to same-sex marriages.
- (2) This Part applies to and in relation to all same-sex marriages solemnised, or intended to be solemnised, in Tasmania.

*Division 2 – Same-sex marriage*

**6. Same-sex marriageable age**

A person is of same-sex marriageable age if the person has attained the age of 18 years.

*Division 3 – Void same-sex marriages*

**7. Grounds on which same-sex marriages are void**

- (1) A same-sex marriage is void at the time the same-sex marriage is entered into if –
  - (a) either of the parties was, at the time of the same-sex marriage, lawfully married to some other person; or
  - (b) the parties are within a prohibited relationship; or

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- (c) by reason of section 15, the same-sex marriage is not a valid same-sex marriage; or
- (d) the consent of either of the parties was not a real consent because –
- (i) it was obtained by duress or fraud; or
  - (ii) that party was mistaken as to the identity of the other party or as to the nature of the ceremony performed; or
  - (iii) that party was mentally incapable of understanding the nature and effect of the same-sex marriage ceremony; or
- (e) either of the parties was not of same-sex marriageable age –
- and not otherwise.
- (2) Same-sex marriages of parties within a prohibited relationship are same-sex marriages –
- (a) between a person and an ancestor or descendant of the person; or
  - (b) between siblings of the same sex (whether of the whole blood or the half-blood).
- (3) Any relationship specified in subsection (2) includes a relationship traced through, or to, a person who is or was an adopted child, and, for

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that purpose, the relationship between an adopted child and the adoptive parent, or each of the adoptive parents, of the child, is taken to be or to have been the natural relationship of child and parent.

(4) For the purposes of this section –

- (a) a person who has at any time been adopted by another person is taken to remain the adopted child of that other person notwithstanding that any order by which the adoption was effected has been annulled, cancelled or discharged or that the adoption has for any other reason ceased to be effective; and
- (b) a person who has been adopted on more than one occasion is taken to be the adopted child of each person by whom he or she has been adopted.

(5) For the purposes of this section –

***adopted***, in relation to a child, means adopted under the law of any place (whether in or out of Australia) relating to the adoption of children;

***ancestor***, in relation to a person, means any person from whom the first-mentioned person is descended including a parent of the first-mentioned person.

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*Division 4 – Solemnisation of same-sex marriages in  
Tasmania*

**8. Same-sex marriages to be solemnised by authorised celebrant**

- (1) A same-sex marriage must be solemnised by an authorised celebrant.
- (2) Nothing in this Act prevents such an authorised celebrant from making it a condition of his or her solemnising a same-sex marriage that –
  - (a) longer notice of intention to marry than that required by this Act is given; or
  - (b) requirements additional to those provided by this Act are observed.

**9. Notices to be given and declaration made**

- (1) Subject to this section, a same-sex marriage must not be solemnised unless –
  - (a) notice in writing of the intended same-sex marriage has been given in accordance with this section and has been received by the authorised celebrant solemnising the same-sex marriage not earlier than 18 months before the date of the same-sex marriage and not later than one month before the date of the same-sex marriage; and

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- (b) there has been produced to that authorised celebrant, in respect of each of the parties –
  - (i) an official certificate, or an official extract of an entry in an official register, showing the date and place of birth of the party; or
  - (ii) a statutory declaration made by the party or a parent of the party stating that, for reasons specified in the declaration, it is impracticable to obtain such a certificate or extract and stating, to the best of the declarant's knowledge and belief and as accurately as the declarant has been able to ascertain, when and where the party was born; or
  - (iii) a passport issued by the Commonwealth or by a government of an overseas country, showing the date and place of birth of the party; and
- (c) each of the parties has made and subscribed before that authorised celebrant a declaration, in accordance with the prescribed form, as to –
  - (i) the party's marital status; and
  - (ii) the party's belief that there is no legal impediment to the same-sex marriage; and

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- (iii) such other matters as are prescribed.
- (2) A notice under subsection (1) –
- (a) is to be in accordance with the prescribed form and contain such particulars in relation to the parties as are indicated in the prescribed form; and
  - (b) must be signed by each of the parties; and
  - (c) must be signed in the presence of –
    - (i) an authorised celebrant; or
    - (ii) a commissioner for declarations under the *Oaths Act 2001*.
- (3) However, if the signature of a party to an intended same-sex marriage cannot conveniently be obtained at the time when it is desired to give notice under this section, a notice duly signed by the other party and otherwise complying with the provisions of this section is, if it is signed by the first-mentioned party in the presence of an authorised celebrant before the same-sex marriage is solemnised, taken to have been a sufficient notice.
- (4) If a party to an intended same-sex marriage is unable, after reasonable inquiry, to ascertain all of the particulars in relation to that party required to be contained in a notice under this section, the failure to include in the notice such of those particulars as the party is unable to

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ascertain does not make the notice ineffective for the purposes of this section if, at any time before the same-sex marriage is solemnised, that party furnishes to the authorised celebrant solemnising the same-sex marriage a statutory declaration as to that party's inability to ascertain the particulars not included in the notice and the reason for that inability.

- (5) An authorised celebrant must, as soon as practicable after receiving the notice given under subsection (1), give to the parties a document in the form approved by the Registrar outlining the obligations and consequences of same-sex marriage and indicating the availability of same-sex marriage education and counselling.
- (6) Where, by reason of the death, absence or illness of an authorised celebrant to whom a notice under subsection (1) has been given, or for any other reason, it is impracticable for that person to solemnise the same-sex marriage, the same-sex marriage may be solemnised by any authorised celebrant who has possession of the notice.
- (7) The declarations of the parties required by subsection (1) must both be written on the one paper and on the same side of that paper.
- (8) An authorised celebrant must not solemnise a same-sex marriage –
  - (a) unless the authorised celebrant has satisfied himself or herself that the parties are the parties referred to in the



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notice given under this section in relation to the same-sex marriage; or

(b) if the authorised celebrant has reason to believe that –

(i) a notice given under this section; or

(ii) a declaration made and subscribed under this section, or a statutory declaration made for the purposes of this section –

in relation to the same-sex marriage, contains a false statement or an error or is defective.

- (9) An authorised celebrant may permit an error in a notice under this section to be corrected in his or her presence by either of the parties at any time before the same-sex marriage to which it relates has been solemnised and may treat the corrected notice as having been originally given in its corrected form.
- (10) If the declaration made by a party under subsection (1) states that that party is a divorced person or a widow or widower, an authorised celebrant must not solemnise the same-sex marriage unless there is produced to him or her evidence of that party's divorce, or of the death of that party's spouse, as the case requires.
- (11) If the declaration made by a party under subsection (1) states that that party was a party to a same-sex marriage that has been dissolved

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or declared void, an authorised celebrant must not solemnise the same-sex marriage unless there is produced to him or her evidence of the dissolution of the same-sex marriage or a declaration that the same-sex marriage is void.

**10. Interpreters at same-sex marriage ceremonies**

- (1) Subject to this section, where the authorised celebrant by whom a same-sex marriage is to be solemnised considers that it is desirable to do so, the authorised celebrant may use the services of an interpreter, not being a party to the same-sex marriage, in or in connection with the ceremony.
- (2) An authorised celebrant must not solemnise a same-sex marriage in or in connection with the ceremony for which the services of an interpreter are used unless the authorised celebrant has received a statutory declaration by the interpreter stating that the interpreter understands, and is able to converse in, the languages in respect of which he or she is to act as interpreter.
- (3) A person who has acted as interpreter in or in connection with a ceremony of same-sex marriage must as soon as practicable after the ceremony has been solemnised, furnish to the authorised celebrant solemnising the same-sex marriage a certificate signed by the first-mentioned person, in the prescribed form, of the faithful performance of the first-mentioned person's services as interpreter.

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**11. Same-sex marriage may be solemnised on any day, &c.**

A same-sex marriage may be solemnised on any day, at any time and at any place in Tasmania.

**12. Witnesses**

A same-sex marriage must not be solemnised unless at least 2 persons who have, or appear to the person solemnising the same-sex marriage to have, attained the age of 18 years are present as witnesses.

**13. Authorised celebrants to explain nature of same-sex marriage relationship**

Before a same-sex marriage is solemnised by an authorised celebrant, the authorised celebrant is to say to the parties, in the presence of the witnesses, the following words:

“I am duly authorised under the *Same-Sex Marriage Act 2012* made by the Parliament of Tasmania to solemnise same-sex marriages”.

“Before you are duly wed in my presence and the presence of these witnesses, I remind you of the solemn and binding nature of the relationship into which you are about to enter”.

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“According to the *Same-Sex Marriage Act 2012*, this wedding recognises that you are voluntarily entering into a lawful and binding union, for life, to the exclusion of all others”.

**14. Form of ceremony**

(1) If a same-sex marriage is solemnised by an authorised celebrant, being a minister of religion, it may be solemnised according to any form and ceremony recognised as sufficient for the purpose of the religious body or organisation of which he or she is a minister.

(2) If a same-sex marriage is solemnised by an authorised celebrant, not being a minister of religion, it is sufficient if each of the parties says to the other, in the presence of the authorised celebrant and the witnesses, the words –

“I call upon the persons here present to witness that I, A.B. (or C.D.), take you, C.D. (or A.B.), to be my lawful wedded spouse” –

or words to that effect.

(3) If a same-sex marriage has been solemnised by an authorised celebrant, a certificate of the same-sex marriage prepared and signed in accordance with section 17 is conclusive evidence that the same-sex marriage was solemnised in accordance with this section.

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- (4) Nothing in subsection (3) makes a certificate conclusive –
- (a) where the fact that the same-sex marriage ceremony took place is in issue, as to that fact; or
  - (b) where the identity of a party to the same-sex marriage is in issue, as to the identity of that party.

**15. Certain same-sex marriages not solemnised in accordance with this Part to be invalid**

- (1) Subject to this section, a same-sex marriage solemnised otherwise than in accordance with sections 8 to 14 is not a valid same-sex marriage.
- (2) A same-sex marriage is not invalid by reason of all or any of the following:
  - (a) failure to give the notice required by section 9, or a false statement, defect or error in such a notice;
  - (b) failure of the parties, or either of them, to make or subscribe a declaration as required by section 9, or a false statement, defect or error in such a declaration;
  - (c) failure to produce to the authorised celebrant a certificate or extract of an entry or a statutory declaration as required by section 9, or a false

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- statement, defect or error in such a statutory declaration;
- (d) failure to comply with any other requirement of section 9, or any contravention of that section;
  - (e) failure to comply with the requirements of section 12 or 13.
- (3) A same-sex marriage is not invalid by reason that the person solemnising it was not authorised by this Act to do so, if either party to the same-sex marriage, at the time the same-sex marriage was solemnised, believed that that person was lawfully authorised to solemnise it, and in such a case the form and ceremony of the same-sex marriage is taken to have been sufficient if they were such as to show an intention on the part of each of the parties to become by the solemnisation the lawfully wedded spouse of the other.

**16. Second same-sex marriage ceremonies**

- (1) Except in accordance with this section –
  - (a) persons who are already parties to a valid same-sex marriage with each other must not go through a form or ceremony of same-sex marriage with each other; and
  - (b) an authorised celebrant must not purport to solemnise a same-sex marriage between persons who –

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- (i) inform the first-mentioned person that they are parties to a valid same-sex marriage with each other; or
  - (ii) who the first-mentioned person knows, or has reason to believe, are already parties to a valid same-sex marriage with each other.
- (2) If –
  - (a) two persons have gone through a form or ceremony of same-sex marriage with each other; and
  - (b) there is a doubt –
    - (i) whether those persons are parties to a valid same-sex marriage with each other; or
    - (ii) whether their same-sex marriage could be proved in legal proceedings –those persons may, subject to this section, go through a form or ceremony of same-sex marriage with each other as if they had not previously gone through a form or ceremony of same-sex marriage with each other.
- (3) If two persons wish to go through a form or ceremony of same-sex marriage with each other in pursuance of subsection (2), they must furnish

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to the person by whom the form or ceremony is to be performed –

- (a) a statutory declaration by them stating that they have previously gone through a form or ceremony of same-sex marriage with each other and specifying the date on which, the place at which and the circumstances in which they went through that form or ceremony; and
  - (b) a certificate by an Australian legal practitioner, being a certificate endorsed on the statutory declaration, that, on the facts stated in the declaration, there is, in his or her opinion, a doubt as to one of the matters specified in subsection (2)(b).
- (4) The person by whom a form or ceremony of same-sex marriage is performed in pursuance of subsection (2) must make an endorsement in accordance with the regulations on each certificate issued in respect of it.
- (5) A same-sex marriage which takes place in pursuance of subsection (2) is not invalid by reason of any failure to comply with the requirements of subsection (3) or (4).
- (6) Nothing in this Act is taken to prevent two persons who are already parties to a valid same-sex marriage with each other from going through a religious ceremony of same-sex marriage with each other where those persons have –



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- (a) produced to the person by whom the ceremony is to be performed a certificate of their existing same-sex marriage; and
  - (b) furnished to that person a statement in writing, signed by them and witnessed by that person, that –
    - (i) they have previously gone through a form or ceremony of same-sex marriage with each other; and
    - (ii) they are the parties mentioned in the certificate of same-sex marriage produced with the statement; and
    - (iii) they have no reason to believe that they are not parties to a valid same-sex marriage with each other.
- (7) The provisions of sections 9, 12, 17 and 18 do not apply to or in relation to a religious ceremony of same-sex marriage in accordance with subsection (6) and the person by whom the ceremony is performed is not to –
- (a) prepare or issue in respect of it any certificate of same-sex marriage under this Act; or
  - (b) issue any other document to the parties in respect of the ceremony unless the parties are described in the document as

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being already parties to a valid same-sex marriage with each other.

- (8) A person who is not an authorised celebrant does not commit an offence against section 21 by reason only of his or her having performed a religious ceremony of same-sex marriage between parties who have complied with the requirements of subsection (6).

**17. Marriage certificates**

- (1) If an authorised celebrant solemnises a same-sex marriage, the authorised celebrant must –
- (a) prepare a certificate of the same-sex marriage, in accordance with the prescribed form, for the purpose of issue to the parties to the same-sex marriage; and
  - (b) prepare 2 official certificates of the same-sex marriage in accordance with the prescribed form.
- (2) Notwithstanding subsection (1)(b), the regulations may provide that an authorised celebrant who is a person authorised to solemnise same-sex marriages by virtue of Division 1 of Part 7 is to prepare only one official certificate under that paragraph.
- (3) Immediately after the solemnisation of the same-sex marriage, the authorised celebrant, each of the parties to the same-sex marriage and 2 witnesses of the same-sex marriage who have, or

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appear to the authorised celebrant to have, attained the age of 18 years must sign each of the certificates so prepared.

- (4) One of the official certificates or the official certificate, as the case may be, must be on the reverse side of the paper bearing the declaration made by the parties under section 9.
- (5) The authorised celebrant must hand the certificate referred to in subsection (1)(a) to one of the parties to the same-sex marriage on behalf of the parties, and –
  - (a) if two official certificates have been prepared –
    - (i) within 14 days after the solemnisation of the same-sex marriage, forward the official certificate to which subsection (4) applies, together with the notice under section 9, and any statutory declarations relating to the same-sex marriage that are in his or her possession, to the Registrar; and
    - (ii) retain the other official certificate and deal with it in accordance with the regulations; or
  - (b) if only one official certificate has been prepared, retain that certificate and deal with it in accordance with the regulations.

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- (6) If the authorised celebrant dies without having prepared and signed the certificates of the same-sex marriage, or where by reason of other special circumstances the Registrar thinks it necessary to do so, the Registrar may, if satisfied that the same-sex marriage was duly solemnised, prepare and sign the certificates with such modifications as are appropriate.
- (7) A certificate prepared and signed by the Registrar under subsection (6) has the same force and effect as if it had been prepared and signed, in accordance with this section, by the authorised celebrant.
- (8) The regulations may make provision for and in relation to the furnishing of a substitute certificate in the event of the loss or destruction of a certificate of same-sex marriage previously forwarded in pursuance of this section.

**18. Incorrect marriage certificates**

- (1) If the Registrar is satisfied, by statutory declaration or otherwise, that any particular in a certificate of same-sex marriage prepared and signed under section 17 is incorrect, the Registrar may –
  - (a) in the case of a certificate that has been handed to a party to the same-sex marriage or retained by the authorised celebrant, correct the certificate; and

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- (b) in the case of a certificate that has been forwarded to the Registrar, certify that a specified correction is necessary.
- (2) For the purposes of exercising his or her powers under subsection (1)(a) in relation to a certificate, the Registrar may, by notice in writing served on a party to the same-sex marriage, or the authorised celebrant, as the case requires, require the party or the authorised celebrant to produce or forward the certificate to the Registrar within a period (not being less than 7 days from the date of service of the notice) specified in the notice.
- (3) If a same-sex marriage has been solemnised, or purports to have been solemnised, under this Part, and the same-sex marriage is void, the Registrar may, by notice in writing served on a party to the same-sex marriage, require the party to deliver or forward to the Registrar, within a period (not being less than 7 days from the date of service of the notice) specified in the notice, the certificate required, by section 17(5), to be handed to a party to the same-sex marriage.

*Division 5 – Offences*

**19. Married person not to go through form or ceremony of same-sex marriage with any person**

- (1) A person who is married must not go through a form or ceremony of same-sex marriage with any person.

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Penalty: Imprisonment for a term not exceeding  
5 years.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that –
  - (a) at the time of the alleged offence, the defendant believed that his or her spouse was dead; and
  - (b) the defendant's spouse had been absent from the defendant for such time and in such circumstances as to provide, at the time of the alleged offence, reasonable grounds for presuming that the defendant's spouse was dead.
- (3) For the purposes of subsection (2), proof by a defendant that the defendant's spouse had been continually absent from the defendant for the period of 7 years immediately preceding the date of the alleged offence and that, at the time of the alleged offence, the defendant had no reason to believe that the defendant's spouse had been alive at any time within that period is sufficient proof of the matters referred to in subsection (2)(b).
- (4) To avoid doubt, section 14 of the *Criminal Code* (mistake of fact) does not apply in relation to the matters mentioned in subsections (2) and (3).
- (5) A person must not go through a form or ceremony of same-sex marriage with a person who is married, knowing, or having reasonable

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grounds to believe, that the latter person is married.

Penalty: Imprisonment for a term not exceeding 5 years.

- (6) It is not an offence against this section for a person to go through a form or ceremony of same-sex marriage with that person's own spouse.
- (7) In a prosecution for an offence against this section, the defendant's spouse is a competent and compellable witness for either the prosecution or the defence.
- (8) In a prosecution for an offence against this section, the fact that, at the time of the alleged offence, a person was married is not to be taken to have been proved if the only evidence of the fact is the evidence of the other party to the alleged marriage.

**20. Marrying person not of marriageable age, &c.**

A person must not go through a form or ceremony of same-sex marriage with a person who is not of marriageable age.

Penalty: Imprisonment for a term not exceeding 5 years.

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**21. Solemnising same-sex marriage where notice or declaration not given or made, &c.**

- (1) An authorised celebrant must not solemnise a same-sex marriage under Division 4 of Part 2 in contravention of section 9 or 12.

Penalty: Fine not exceeding 150 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (2) A person must not solemnise a same-sex marriage in contravention of section 10.

Penalty: Fine not exceeding 150 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (3) A person must not solemnise a same-sex marriage if that person is not an authorised celebrant.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (4) An authorised celebrant must not, otherwise than in accordance with section 16, purport to solemnise a same-sex marriage between persons who inform the authorised celebrant that they are already legally married to each other or who the authorised celebrant knows, or has reason to believe, are already legally married to each other.



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Penalty: Fine not exceeding 150 penalty units or imprisonment for a term not exceeding 6 months, or both.

**22. Solemnising same-sex marriage where reason to believe there is a legal impediment**

An authorised celebrant must not solemnise a same-sex marriage, or purport to solemnise a same-sex marriage, if the authorised celebrant has reason to believe that there is a legal impediment to the same-sex marriage or if the authorised celebrant has reason to believe the same-sex marriage would be void.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both.

**23. Going through ceremony of same-sex marriage before person not authorised to solemnise it**

A person must not go through a form or ceremony of same-sex marriage with another person –

- (a) knowing that the person solemnising the same-sex marriage is not authorised to solemnise it; and
- (b) having reason to believe that the other party to the same-sex marriage believes that the person solemnising the same-sex marriage is so authorised.

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Penalty: Fine not exceeding 150 penalty units or imprisonment for a term not exceeding 6 months, or both.

**24. Giving defective notice, &c.**

A person must not give notice to an authorised celebrant under section 9, or sign a notice under that section after it has been given, if, to the knowledge of that person, the notice contains a false or misleading statement or an error or is defective.

Penalty: Fine not exceeding 150 penalty units or imprisonment for a term not exceeding 6 months, or both.

**25. Failure to comply with notice under section 18**

- (1) A person on whom a notice under section 18 has been duly served must not fail to comply with the notice.

Penalty: Fine not exceeding 150 penalty units or imprisonment for a term not exceeding 6 months, or both.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

**26. Failure by interpreter to furnish certificate, &c.**

A person who has acted as interpreter at the solemnisation of a same-sex marriage must not –

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- (a) fail to comply with section 10; or
- (b) intentionally make a false or misleading statement in a certificate under that section.

Penalty: Fine not exceeding 150 penalty units or imprisonment for a term not exceeding 6 months, or both.

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**PART 3 – DISSOLUTION AND NULLITY OF SAME-SEX MARRIAGE**

**27. Jurisdiction of Supreme Court**

- (1) Proceedings under this Part are to be instituted in the Supreme Court.
- (2) Proceedings –
  - (a) between the parties to a same-sex marriage, or by the parties to a same-sex marriage, for a –
    - (i) dissolution order in relation to a same-sex marriage; or
    - (ii) decree of nullity of same-sex marriage; or
  - (b) for a declaration as to the validity of –
    - (i) a same-sex marriage; or
    - (ii) a dissolution in relation to a same-sex marriage; or
    - (iii) the annulment of a same-sex marriage –

may be instituted if any party to the proceedings is an Australian citizen and is ordinarily resident in Tasmania at the relevant date.
- (3) In subsection (2), *relevant date*, in relation to proceedings, means –

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- (a) if the application instituting the proceedings is filed in the Supreme Court, the date on which the application is so filed; or
- (b) in any other case, the date on which the application instituting the proceedings is made.

**28. Institution of proceedings**

- (1) Except as otherwise prescribed by the regulations or the rules of court, proceedings under this Part are to be instituted by application to the Supreme Court.
- (2) Proceedings under this Part for –
  - (a) a dissolution order in relation to a same-sex marriage; or
  - (b) a decree of nullity of a same-sex marriage –

may be instituted by either party to the same-sex marriage or jointly by both parties to the same-sex marriage.

**29. Application for dissolution order**

- (1) An application under this Part for a dissolution order in relation to a same-sex marriage is to be based on the ground that the same-sex marriage has broken down irretrievably.

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- (2) Subject to subsection (3), in a proceeding instituted by an application under subsection (1), the ground is taken to have been established, and a dissolution order in relation to same-sex marriage may be made, if, and only if, the Supreme Court is satisfied that the parties have separated and lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of the filing of the application for a dissolution order in relation to the same-sex marriage.
- (3) A dissolution order in relation to a same-sex marriage is not to be made if the Supreme Court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

**30. Meaning of separation**

- (1) The parties to a same-sex marriage may be held to have separated notwithstanding that the cohabitation was brought to an end by the action or conduct of one only of the parties.
- (2) The parties to a same-sex marriage may be held to have separated and to have lived separately and apart notwithstanding that they have continued to reside in the same residence or that either party has rendered some household services to the other.

**31. Effect of resumption of cohabitation**

- (1) For the purposes of proceedings for a dissolution order in relation to a same-sex marriage, if, after

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the parties to the same-sex marriage separated, they resumed cohabitation on one occasion but, within a period of 3 months after the resumption of cohabitation, they again separated and after that separation lived separately and apart up to the date of the filing of the application, the periods of living separately and apart before and after the period of cohabitation may be aggregated as if they were one continuous period, but the period of cohabitation is not to be taken to be part of the period of living separately and apart.

- (2) For the purposes of subsection (1), a period of cohabitation is taken to have continued during any interruption of the cohabitation that, in the opinion of the Supreme Court, was not substantial.

**32. Nullity of same-sex marriage**

An application under this Part for a decree of nullity of same-sex marriage is to be based on the ground that the same-sex marriage is void.

**33. Supreme Court not to make dissolution order where application for decree of nullity before it**

If both an application for a decree of nullity of a same-sex marriage and an application for a dissolution order in relation to that same-sex marriage are before the Supreme Court, the Supreme Court must not make a dissolution order in relation to the same-sex marriage unless

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it has dismissed the application for a decree of nullity of the same-sex marriage.

**34. Circumstances occurring before commencement of Act or outside Tasmania**

An order or a decree may be made, or refused, under this Part by reason of facts and circumstances notwithstanding that those facts and circumstances, or some of them, took place before the commencement of this section or outside Tasmania.

**35. When dissolution order takes effect**

- (1) Subject to this section, a dissolution order made under this Part takes effect by force of this section at the expiration of a period of one month from the making of the order.
- (2) A dissolution order does not take effect by force of this section if either of the parties to the same-sex marriage has died before the dissolution order takes effect.
- (3) If an appeal is instituted before the dissolution order, unless reversed or rescinded, takes effect by force of this section, the dissolution order takes effect –
  - (a) at the expiration of a period of one month from the day on which the appeal is determined or discontinued; or
  - (b) on the day on which the dissolution order would have taken effect under



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subsection (1) if no appeal had been  
instituted –

whichever is the later.

**36. Certificate as to dissolution order**

- (1) If a dissolution order takes effect, the Supreme Court Registrar must prepare and file a memorandum of the fact and of the date on which the dissolution order took effect.
- (2) If a dissolution order has taken effect, any person is entitled, on application to the Supreme Court Registrar, to receive a certificate signed by the Supreme Court Registrar that the dissolution order has taken effect.
- (3) A certificate given under subsection (2) is, in all courts and for all purposes, evidence of the matters specified in the certificate.

**37. Rescission of dissolution order where parties reconciled**

Notwithstanding anything contained in this Part, if a dissolution order has been made in relation to a same-sex marriage, the Supreme Court may, at any time before the order takes effect, upon the application of the parties to the same-sex marriage, rescind the dissolution order on the ground that the parties have become reconciled.

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**38. Rescission of dissolution order on ground of miscarriage of justice**

If a dissolution order has been made in proceedings under this Part but has not taken effect, the Supreme Court may, on the application of a party to the proceedings, or on the intervention of the Attorney-General, and if it is satisfied that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence or any other circumstance, rescind the dissolution order and, if it thinks fit, order that the proceedings be re-heard.

**39. Re-marriage**

If a dissolution order under this Part in relation to a same-sex marriage has taken effect, a party to the same-sex marriage may marry again under this Act.

**40. Void same-sex marriage because of marriage**

A same-sex marriage is void if either party to the same-sex marriage marries another person under, or recognised by, a law of the Commonwealth.

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**PART 4 – PROCEEDINGS FOR FINANCIAL  
ADJUSTMENT AND MAINTENANCE**

*Division 1 – Preliminary*

**41. Interpretation**

In this Part –

*court* means the Supreme Court or the Magistrates Court, as the case may require;

*marriage* includes a void marriage under section 7 or section 40.

**42. Application for adjustment of interests or maintenance**

- (1) A party to a same-sex marriage may apply to a court for an order for the adjustment of interests with respect to the property of either or both of the parties or for the granting of maintenance, or both.
- (2) The application may be made whether or not any other application for any order, remedy or relief is or may be made under this Act or any other Act or law.

**43. Time limit for making application**

- (1) If a same-sex marriage has been dissolved under this Act, an application to a court for an order under section 42(1) is to be made before the

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expiration of the period of 12 months from the day on which they ceased to be married under this Act.

- (2) If a same-sex marriage is void or is declared void, an application to a court for an order under section 42(1) is to be made before the expiration of the period of 12 months from the day on which the marriage becomes void or is declared void.
- (3) A court, at any time before or after the expiration of the period referred to in subsection (1), may grant leave to a party to apply to the court for an order if greater hardship would be caused to the applicant if that leave were not granted than would be caused to the respondent if that leave were granted.

**44. Order to end financial relationship**

In proceedings for an order, a court, so far as is practicable, is to make an order that –

- (a) finally determines the financial relationship between the parties; and
- (b) avoids further proceedings between the parties.

***Division 2 – Adjustment of interest in property***

**45. Order for adjustment**

- (1) On an application by a party for an order for the adjustment of interests in respect of the property

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of either or both the parties, a court may make any order it considers just and equitable having regard to –

- (a) the financial and non-financial contributions made directly or indirectly by or on behalf of either or both of the parties to the acquisition, conservation or improvement of any of the property; and
  - (b) the financial resources of either or both of the parties; and
  - (c) the contributions, including any contributions made in the capacity of homemaker or parent, made by a party to the welfare of the other party or to the welfare of the family constituted by the parties and one or more of –
    - (i) a child of the parties; or
    - (ii) a child accepted by either or both the parties into the household of the parties, whether or not the child is a child of either of the parties; and
  - (d) the nature and duration of the relationship; and
  - (e) any relevant matter mentioned in section 51.
- (2) A court may make an order in respect of property whether or not it has declared the title

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or rights of a party to a same-sex marriage in respect of the property.

**46. Adjournment because of significant change in circumstances**

- (1) Without limiting the power of a court to grant an adjournment in relation to any proceedings before it, if, on an application by a party for an order under section 45, the court is of the opinion that –
  - (a) there is likely to be a significant change in the financial circumstances of either or both of the parties and that, having regard to when that change is likely to take place, it is reasonable to adjourn the proceedings; and
  - (b) an order that the court could make with respect to the property of either or both of the parties, if that significant change occurs, is more likely to do justice between the parties than an order that the court could make immediately with respect to the property of either or both of the parties –

the court, if requested by either party, may adjourn the application for a specified period.

- (2) Before adjourning an application under subsection (1), the court may make any order it considers appropriate with respect to the property of either or both of the parties.

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- (3) A court, in forming an opinion for the purposes of subsection (1), may have regard to –
- (a) any change in the financial circumstances of a party that may occur because of the vesting in either or both of the parties, or the use or application in or towards the purposes of either or both of the parties, of a financial resource of either or both of the parties; and
  - (b) any other circumstances the court considers appropriate.

**47. Adjournment because of proceedings in Family Court**

- (1) Without limiting the power of a court to grant an adjournment in relation to any proceedings before it, the court may adjourn the hearing of the application for an order under section 45 if, before the court has made a final order to adjust interests with respect to the property of either or both parties, proceedings in relation to the property are commenced in the Family Court of Australia.
- (2) If the hearing of an application for an order is adjourned under subsection (1), either party may apply to the court for the hearing of the application to proceed.

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**48. Deferment of order**

If a court is of the opinion that a party, in respect of the property of whom an order is made under section 45, is likely to become entitled to property that may be applied in satisfaction of the order, the court may defer the operation of the order until the date or the occurrence of an event specified in the order.

**49. Death before order made**

- (1) If, before an application under section 45 is determined, either party to the application dies, the application may be continued by or against the legal personal representative of the deceased party.
- (2) A court may make an order in respect of property if of the opinion that –
  - (a) it would have adjusted interests in respect of property if the deceased party had not died; and
  - (b) notwithstanding the death of the deceased party, it is still appropriate to adjust those interests.
- (3) Any order may be enforced on behalf of, or against, the estate of the deceased party.

**50. Death after order made**

If a party to a proceeding for an order under section 45 dies after the order is made in favour



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of, or against, that party, the order may be enforced on behalf of, or against, the estate of the deceased party.

***Division 3 – Maintenance***

**51. Order for maintenance**

- (1) On an application by a party to a same-sex marriage for an order for maintenance, a court may make the order if satisfied that the applicant is unable to support himself or herself adequately because –
  - (a) the applicant’s earning capacity has been adversely affected by the circumstances of the same-sex marriage; or
  - (b) of any other reason arising in whole or in part from the circumstances of the same-sex marriage.
- (2) In determining whether to make the order and in fixing any amount to be paid under the order, a court is to have regard to the following:
  - (a) the income, property and financial resources of each party (including the rate of any pension, allowance or benefit paid, payable or entitled to be paid to either party) and the physical and mental capacity of each party for appropriate gainful employment;
  - (b) the financial needs and obligations of each party;

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- (c) the responsibilities of either party to support any other person;
- (d) the terms of any order made or proposed to be made under section 45;
- (e) any payments provided for the maintenance of a child in the care and control of either party;
- (f) whether either party has the care and control of a child of the party who is under 18;
- (g) the age and state of health of each party;
- (h) the standard of living that is reasonable for each party in all the circumstances;
- (i) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of the party by enabling the party –
  - (i) to undertake a course of education or training; or
  - (ii) to establish a business; or
  - (iii) otherwise to obtain adequate income;
- (j) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;

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- (k) the length of the relationship;
  - (l) the extent to which the same-sex marriage has affected the earning capacity of the party whose maintenance is under consideration;
  - (m) whether either party is cohabitating with another person and the financial circumstances relating to the cohabitation;
  - (n) the terms of any order made or proposed to be made in relation to the property of the parties;
  - (o) under Division 2 or the *Family Law Act 1995* of the Commonwealth the terms of any financial agreement that is binding on the parties to the same-sex marriage;
  - (p) any other fact or circumstances the court considers relevant.
- (3) In making an order for maintenance, a court is to disregard any entitlement of the party whose maintenance is under consideration to an income-tested pension, allowance or benefit.

**52. Interim maintenance**

If, on an application by a party for an order for maintenance, it appears to a court that the applicant is in immediate need of financial assistance but it is not practicable in the circumstances to determine immediately if any

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order should be made, the court may order the payment by the other party, pending the disposal of the application, of any periodic sum or other sums the court considers reasonable.

**53. Cessation of order**

An order for maintenance ceases to have effect –

- (a) on the death of the party in whose favour the order was made; or
- (b) on the death of the party against whom the order was made.

**54. Notification of change of circumstances**

If a party marries, remarries or registers a deed of relationship under this or any other Act, as the case may be, that party is to notify the party against whom a maintenance order was made of the date of the marriage, remarriage or registration as soon as practicable.

**55. Recovery of arrears**

The provisions of this Division do not affect the recovery of any arrears due under an order for maintenance when the order ceases to have effect.

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**56. Variation of order for periodic maintenance**

- (1) On an application by a party in respect of whom an order has been made for periodic maintenance, a court may –
  - (a) subject to subsection (2), discharge the order; or
  - (b) suspend the operation of the order wholly or in part until –
    - (i) a further order; or
    - (ii) a fixed time; or
    - (iii) the happening of a future event; or
  - (c) revive wholly or in part the operation of an order suspended under paragraph (b); or
  - (d) subject to subsection (2), vary the terms of the order.
- (2) A court is not to make an order discharging an order or increasing or decreasing an amount payable under an order unless satisfied that it is justifiable to do so because, since the order was made or last varied –
  - (a) the circumstances of the party in whose favour the order was made have changed; or

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- (b) the circumstances of the party against whom the order was made have changed;  
or
  - (c) the cost of living has changed.
- (3) In satisfying itself for the purposes of subsection (2)(c), a court is to have regard to any changes occurring during the relevant period in –
  - (a) the Consumer Price Index (All Groups Index) issued by the Australian Statistician; or
  - (b) a group of prescribed numbers or prescribed amounts relating to the price of goods and services issued by the Australian Statistician, other than those set out in the Index referred to in paragraph (a).
- (4) A court, in considering the variation of an order, is not to have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or last varied.
- (5) An order increasing or decreasing the amount of a periodic sum payable under an order may be expressed to be retrospective to any date the court thinks fit.
- (6) For the purposes of this section, a court is to have regard to the provisions of section 51.

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**57. Other maintenance orders not to be varied**

Subject to section 61, an order for maintenance, other than for periodic maintenance, is not to be varied.

*Division 4 – General*

**58. Orders of court**

- (1) Without derogating from any other power of a court under this or any other Act or law, a court, in exercising its powers under this Part, may do any one or more of the following:
  - (a) order the transfer of property;
  - (b) order the sale of property and the distribution of the proceeds of sale in any proportions it thinks fit;
  - (c) order that any necessary deed or instrument be executed and that any documents of title be produced or any other things be done as are necessary to enable an order to be carried out effectively or to provide security for the performance of an order;
  - (d) order payment of a lump sum, whether in one amount or by instalments;
  - (e) order payment of a weekly, fortnightly, monthly, yearly or other periodic sum;

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- (f) order that payment of any sum ordered to be paid be wholly or partly secured in any manner the court directs;
  - (g) appoint or remove trustees;
  - (h) make an order or grant an injunction for either or both of the following purposes:
    - (i) for the protection of, or otherwise relating to, the property or financial resources of either or both of the parties to an application;
    - (ii) to aid enforcement of any other order made in respect of an application;
  - (i) impose terms and conditions;
  - (j) make an order by consent;
  - (k) make an order in the absence of a party;
  - (l) make any other order or grant any other injunction (whether or not of the same nature as those mentioned in this subsection) that it considers just and equitable.
- (2) A court, in relation to an application, may make any order or grant any remedy or relief –
- (a) that it is empowered to make or grant under this or any other Act or law; and



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- (b) under this Part, in addition to or in conjunction with making any other order or granting any other remedy or relief that it is so empowered to make or grant.

**59. Execution of instruments**

- (1) If a person refuses or fails to comply with a direction in an order to execute a deed or instrument, or a court thinks it necessary to exercise the powers conferred on it under this subsection, the court may appoint an officer of the court or other person –
  - (a) to execute a deed or instrument in the name of the person to whom the direction was given; and
  - (b) to do anything necessary to give validity and operation to the deed or instrument.
- (2) The execution of the deed or instrument by the person appointed under subsection (1) is as valid as if it were executed by the person directed by the order to execute it.
- (3) A court may make any order it thinks just relating to the payment of the costs and expenses of, and incidental to, the preparation of the deed or instrument and its execution.

**60. Ex parte orders**

- (1) In the case of urgency and on application made to it, a court may make or grant the following:

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- (a) an ex parte order under section 52;
  - (b) an ex parte order or ex parte injunction for either or both of the purposes specified in section 58(1)(h).
- (2) An application under this section is to be made –
- (a) orally or in writing; or
  - (b) in any form the court considers appropriate.
- (3) If an application is not made in writing, the court is not to make an order or grant an injunction under subsection (1) unless, because of the extreme urgency of the case, it considers that it is necessary to do so.
- (4) The court may give any directions with respect to the filing of a written application, the service of the application and the further hearing of the application it thinks fit.
- (5) An order made or injunction granted under subsection (1) operates or applies until a specified time or the further order of the court as specified in the order.
- (6) If a court makes an order or grants an injunction under subsection (1), it may give directions with respect to –
- (a) the service of the order or injunction and any other documents it thinks fit; and
  - (b) the hearing of an application for a further order.

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**61. Variation and setting aside of orders**

If, on the application of a person in respect of whom an order referred to in section 45 or 51 is made, a court is satisfied that –

- (a) there has been a miscarriage of justice because of fraud, duress, suppression of evidence, the giving of false evidence or any other circumstances; or
- (b) it is impracticable for the order or part of the order to be carried out; or
- (c) a person failed to carry out an obligation imposed on the person by the order –

the court may vary or set aside the order and make another order in substitution for the order set aside.

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Part 5 – Financial Agreements

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**PART 5 – FINANCIAL AGREEMENTS**

**62. Interpretation: Part 5**

In this Part –

*dealt with* includes the meaning given by section 69(3);

*marriage* includes a void marriage under section 7 or section 40;

*spouse party* means a person who is a party to a same-sex marriage in respect of which a financial agreement is made under this Part.

**63. Financial agreements before same-sex marriage**

(1) If –

(a) persons who are contemplating entering into a same-sex marriage with each other make a written agreement with respect to any of the matters mentioned in subsection (3); and

(b) the agreement is expressed to be made under this section –

the agreement is a financial agreement.

(2) Persons may make the financial agreement with one or more other persons.

(3) The matters referred to in subsection (1)(a) are the following:

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- (a) how, in the event of the breakdown of the same-sex marriage all or any of the property or financial resources of either or both of the parties at the time when the agreement is made, or at a later time and before dissolution, is to be dealt with;
  - (b) the maintenance of either of the parties –
    - (i) during the same-sex marriage; or
    - (ii) after dissolution of the same-sex marriage; or
    - (iii) both during the same-sex marriage and after dissolution.
- (4) A financial agreement made as mentioned in subsection (1) may also contain –
- (a) matters incidental or ancillary to those mentioned in subsection (3); and
  - (b) other matters.
- (5) A financial agreement (the *new agreement*) made as mentioned in subsection (1) may terminate a previous financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

**64. Financial agreements during same-sex marriage**

- (1) If –

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- (a) the parties to a same-sex marriage make a written agreement with respect to any of the matters mentioned in subsection (3); and
- (b) the agreement is expressed to be made under this section –

the agreement is a financial agreement.

- (2) The parties to the same-sex marriage may make the financial agreement with one or more other persons.
- (3) The matters referred to in subsection (1)(a) are the following:
  - (a) how, in the event of the breakdown of the same-sex marriage, all or any of the property or financial resources of either or both of the spouse parties at the time when the agreement is made, or at a later time and during the same-sex marriage, is to be dealt with;
  - (b) the maintenance of either of the spouse parties –
    - (i) during the same-sex marriage; or
    - (ii) after dissolution of the same-sex marriage; or
    - (iii) both during the same-sex marriage and after dissolution.
- (4) For the avoidance of doubt, a financial agreement under this section may be made

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before or after the same-sex marriage has broken down.

- (5) A financial agreement made as mentioned in subsection (1) may also contain –
  - (a) matters incidental or ancillary to those mentioned in subsection (3); and
  - (b) other matters.
- (6) A financial agreement (the *new agreement*) made as mentioned in subsection (1) may terminate a previous financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

**65. Financial agreements after dissolution**

- (1) If –
  - (a) after a dissolution order is made in relation to a same-sex marriage (whether it has taken effect or not), the parties to the former same-sex marriage make a written agreement with respect to any of the matters mentioned in subsection (3); and
  - (b) the agreement is expressed to be made under this section –

the agreement is a financial agreement.

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- (2) The parties to the former same-sex marriage may make the financial agreement with one or more other persons.
- (3) The matters referred to in subsection (1)(a) are the following:
  - (a) how all or any of the property or financial resources that either or both of the parties to the same-sex marriage had or acquired during the former same-sex marriage is to be dealt with;
  - (b) the maintenance of either of the spouse parties to the former same-sex marriage.
- (4) A financial agreement made as mentioned in subsection (1) may also contain –
  - (a) matters incidental or ancillary to those mentioned in subsection (3); and
  - (b) other matters.
- (5) A financial agreement (the *new agreement*) made as mentioned in subsection (1) may terminate a previous financial agreement (however made) if all of the parties to the previous agreement are parties to the new agreement.

**66. Need for separation declaration for certain provisions of financial agreement to take effect**

- (1) A financial agreement that is binding on the parties to the agreement, to the extent to which it deals with how, in the event of the breakdown of



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the same-sex marriage, all or any of the property or financial resources of either or both of the parties to the same-sex marriage –

- (a) at the time when the agreement is made; or
- (b) at a later time and before the termination of the same-sex marriage by dissolution –

are to be dealt with, is of no force or effect until a separation declaration is made.

- (2) Subsection (1) ceases to apply if –
  - (a) the marriage of the spouse parties is dissolved; or
  - (b) either or both of them die.
- (3) A separation declaration is a written declaration that complies with subsections (4) and (5), and may be included in the financial agreement to which it relates.
- (4) The declaration must be signed by at least one of the spouse parties to the financial agreement.
- (5) The declaration must state that –
  - (a) the spouse parties have separated and are living separately and apart at the declaration time; and
  - (b) in the opinion of the spouse parties making the declaration, there is no

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reasonable likelihood of cohabitation  
being resumed.

(6) In this section –

*declaration time* means the time when the  
declaration was signed by a party to the  
financial agreement.

**67. Whether or when certain other provisions of  
financial agreements take effect**

- (1) A financial agreement that is binding on the parties to the agreement, to the extent to which it provides for a third party to contribute to the maintenance of a spouse party during the same-sex marriage, is of no force or effect.
- (2) A financial agreement that is binding on the parties to the agreement to the extent to which it provides for matters covered by section 63(4)(b) or section 64(5)(b), is of no force or effect unless and until the same-sex marriage breaks down.

**68. Requirements with respect to provisions in financial  
agreements relating to the maintenance of a party  
or a child or children**

A provision of a financial agreement that relates  
to the maintenance of a spouse party to the  
agreement or a child or children is void unless  
the provision specifies –

- (a) the party, or the child or children, for  
whose maintenance provision is made;  
and

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- (b) the amount provided for, or the value of the portion of the relevant property attributable to, the maintenance of the party, or of the child or each child, as the case may be.

**69. Certain provisions in agreements**

- (1) No provision of a financial agreement excludes or limits the power of a court to make an order in relation to the maintenance of a party to a same-sex marriage if subsection (2) applies.
- (2) This subsection applies if the court is satisfied that, when the agreement came into effect, the circumstances of the party to the same-sex marriage were such that, taking into account the terms and effect of the agreement, the party to the same-sex marriage was unable to support himself or herself without an income-tested pension, allowance or benefit.
- (3) To avoid doubt, a provision in an agreement made as mentioned in section 63(1), section 64(1) or section 65(1) that provides for property or financial resources owned by a spouse party to the agreement to continue in the ownership of that party is taken, for the purposes of that section, to be a provision with respect to how the property or financial resources are to be dealt with.

**70. When financial agreements are binding**

- (1) Subject to subsection (2), a financial agreement is binding on the parties to the agreement if, and only if –
  - (a) the agreement is signed by all parties; and
  - (b) before signing the agreement, each spouse party was provided with independent legal advice from an Australian legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the agreement; and
  - (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the Australian legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the agreement); and
  - (d) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to an Australian legal practitioner acting for the other spouse party; and
  - (e) the agreement has not been terminated and has not been set aside by a court.

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- (2) A financial agreement is binding on the parties to the agreement if –
- (a) the agreement is signed by all parties; and
  - (b) one or more of subsection (1)(b), (c) and (d) are not satisfied in relation to the agreement; and
  - (c) a court is satisfied that it would be unjust and inequitable if the agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and
  - (d) the court makes an order under subsection (3) declaring that the agreement is binding on the parties to the agreement; and
  - (e) the agreement has not been terminated and has not been set aside by a court.
- (3) For the purposes of subsection (2)(d), a court may make an order declaring that a financial agreement is binding on the parties to the agreement, upon application (the ***enforcement application***) by a spouse party seeking to enforce the agreement.
- (4) To avoid doubt, section 74 applies in relation to the enforcement application.
- (5) A court may make such orders for the enforcement of a financial agreement that is

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binding on the parties to the agreement as it thinks necessary.

**71. Effect of death of party to financial agreement**

A financial agreement that is binding on the parties to the agreement continues to operate despite the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party.

**72. Termination of financial agreement**

- (1) The parties to a financial agreement may terminate the agreement only by –
  - (a) including a provision to that effect in another financial agreement as mentioned in section 63(5), section 64(6) or section 65(5); or
  - (b) making a written agreement (a *termination agreement*) to that effect.
- (2) Subject to subsection (3), a termination agreement is binding on the parties if, and only if –
  - (a) the agreement is signed by all parties to the agreement; and
  - (b) before signing the agreement, each spouse party was provided with independent legal advice from an Australian legal practitioner about the effect of the agreement on the rights of

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- that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the agreement; and
- (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the Australian legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the agreement); and
  - (d) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to the Australian legal practitioner acting for the other spouse party; and
  - (e) the agreement has not been set aside by a court.
- (3) A termination agreement is binding on the parties if –
- (a) the agreement is signed by all parties to the agreement; and
  - (b) one or more of subsection (2)(b), (c) and (d) are not satisfied in relation to the agreement; and
  - (c) a court is satisfied that it would be unjust and inequitable if the agreement were not binding on the spouse parties to the

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agreement (disregarding any changes in circumstances from the time the agreement was made); and

- (d) the court makes an order under subsection (4) declaring that the agreement is binding on the parties to the agreement, upon application (the ***enforcement application***) by a spouse party seeking to enforce the agreement; and
  - (e) the agreement has not been set aside by a court.
- (4) For the purposes of subsection (3)(d), a court may make an order declaring that a termination agreement is binding on the parties to the agreement, upon application (the ***enforcement application***) by a spouse party seeking to enforce the agreement.
- (5) To avoid doubt, section 74 applies in relation to the enforcement application.
- (6) A court may, on an application by a person who was a party to the financial agreement that has been terminated, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.



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**73. Circumstances in which court may set aside a financial agreement or termination agreement**

- (1) A court may make an order setting aside a financial agreement or a termination agreement if, and only if, the court is satisfied that –
- (a) the agreement was obtained by fraud (including non-disclosure of a material matter); or
  - (b) a party to the agreement entered into the agreement –
    - (i) for the purpose, or for purposes that included the purpose, of defrauding or defeating a creditor or creditors of the party; or
    - (ii) with reckless disregard of the interests of a creditor or creditors of the party; or
  - (c) a party to the agreement entered into the agreement –
    - (i) for the purpose, or for purposes that included the purpose, of defrauding another person who is a party to a de facto relationship with a spouse party; or
    - (ii) for the purpose, or for purposes that included the purpose, of defeating the interests of that other person in relation to any possible or pending application

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for an order or declaration in  
relation to the de facto  
relationship; or

(iii) with reckless disregard of those  
interests of that other person; or

(d) the agreement is void, voidable or  
unenforceable; or

(e) in the circumstances that have arisen  
since the agreement was made it is  
impracticable for the agreement or a part  
of the agreement to be carried out; or

(f) since the making of the agreement, a  
material change in circumstances has  
occurred (being circumstances relating to  
the care, welfare and development of a  
child of the same-sex marriage) and, as a  
result of the change, the child or, if the  
applicant has caring responsibility for the  
child (as defined in subsection (3)), a  
party to the agreement will suffer  
hardship if the court does not set the  
agreement aside; or

(g) in respect of the making of a financial  
agreement, a party to the agreement  
engaged in conduct that was, in all the  
circumstances, unconscionable.

(2) For the purposes of subsection (1)(b) –

*creditor*, in relation to a party to the  
agreement, includes a person who could  
reasonably have been foreseen by the

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party as being reasonably likely to become a creditor of the party.

- (3) For the purposes of subsection (1)(f), a person has caring responsibility for a child if –
- (a) the person is a parent of the child with whom the child lives; or
  - (b) a parenting order under the *Family Law Act 1975* of the Commonwealth provides that –
    - (i) the person is a parent of the child with whom the child lives; or
    - (ii) the person has parental responsibility for the child.
- (4) A court may, on an application by a person who was a party to the financial agreement that has been set aside, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.
- (5) An order under subsection (1) or (4) may, after the death of a party to the proceedings in which the order was made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (6) If a party to proceedings under this section dies before the proceedings are completed –

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- (a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable rules of court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and
- (b) if the court is of the opinion –
  - (i) that it would have exercised its powers under this section if the deceased party had not died; and
  - (ii) that it is still appropriate to exercise those powers –the court may make any order that it could have made under subsection (1) or (4); and
- (c) an order under paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

**74. Validity, enforceability and effect of financial agreements and termination agreements**

The question whether a financial agreement or a termination agreement is valid, enforceable or effective is to be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and

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purported contracts, and, in proceedings relating to such an agreement, the court –

- (a) subject to paragraph (b), has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the Supreme Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the Supreme Court has original jurisdiction; and
- (b) has power to make an order for the payment, by a party to the agreement to another party to the agreement, of interest on an amount payable under the agreement, from the time when the amount became or becomes due and payable, at a rate not exceeding the rate prescribed by the applicable rules of court; and
- (c) in addition to, or instead of, making an order or orders under paragraph (a) or (b), may order that the agreement, or a specified part of the agreement, be enforced as if it were an order of the court.

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**PART 6 – RECOGNITION OF SAME-SEX  
MARRIAGES UNDER CORRESPONDING LAWS**

**75. Same-sex marriages registered under  
corresponding laws**

(1) The parties to a same-sex marriage that is registered under a corresponding law are taken to be parties to a same-sex marriage that is registered under Part 5A of the *Births, Deaths and Marriages Registration Act 1999*

(2) In this section –

*corresponding law* means a law of another Australian jurisdiction that substantially corresponds to the provisions of this Act or is prescribed as a corresponding law.

**PART 7 – AUTHORISED CELEBRANTS**

*Division 1 – Officers of Tasmania*

**76. Authorisation of Tasmanian officers, &c.**

- (1) The Registrar may solemnise same-sex marriages.
- (2) The Minister may, by instrument in writing, authorise other State Service officers or State Service employees to solemnise same-sex marriages.
- (3) An authorisation under subsection (2) is subject to such conditions (if any) as are specified in the instrument.

*Division 2 – Same-sex marriage celebrants*

**77. Registrar of same-sex marriage celebrants**

- (1) The Registrar is to act as the Registrar of same-sex marriage celebrants and is to perform those functions and has power to do all things necessary or convenient to be done for or in connection with the performance of those functions.
- (2) The Registrar may delegate to any person any of the Registrar's functions or powers under this Division, other than this power of delegation.

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**78. Register of same-sex marriage celebrants**

- (1) The Registrar is to maintain a register of same-sex marriage celebrants.
- (2) The register may be kept in any way the Registrar thinks appropriate, including by electronic means.
- (3) The register may be made available for inspection in any way the Registrar thinks appropriate.
- (4) Any or all of the information contained in the register may also be disseminated in any other way the Registrar thinks appropriate, including by electronic means.

**79. Entitlement to be registered as same-sex marriage celebrant**

- (1) A person is only entitled to be registered as a same-sex marriage celebrant if the person is an individual and the Registrar is satisfied that the person –
  - (a) has attained the age of 18 years; and
  - (b) has the appropriate skills and experience; and
  - (c) is a fit and proper person to be a same-sex marriage celebrant.
- (2) In determining whether the Registrar is satisfied that the person is a fit and proper person to be a



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same-sex marriage celebrant, the Registrar must take into account –

- (a) whether the person has sufficient knowledge of the law relating to the solemnisation of same-sex marriages by same-sex marriage celebrants; and
- (b) whether the person is of good standing in the community; and
- (c) whether the person has been convicted of an offence, punishable by imprisonment for one year or longer, against a law of the Commonwealth, a State or Territory; and
- (d) whether the person has an actual or potential conflict of interest between his or her practice, or proposed practice, as a same-sex marriage celebrant and his or her business interests or other interests; and
- (e) whether the person's registration as a same-sex marriage celebrant would be likely to result in the person gaining a benefit in respect of another business that the person owns, controls or carries out; and
- (f) whether the person will fulfil the obligations under section 82; and
- (g) any other matter the Registrar considers relevant to whether the person is a fit and

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proper person to be a same-sex marriage celebrant.

**80. Registration as same-sex marriage celebrant**

- (1) A person may apply to be registered as a same-sex marriage celebrant by giving the Registrar –
  - (a) a completed application in the prescribed form; and
  - (b) any statutory declarations required by the form; and
  - (c) the prescribed fee.
- (2) In dealing with an application, the Registrar –
  - (a) must have regard to the information in the application; and
  - (b) may have regard to any other information in his or her possession; and
  - (c) may seek any further information.
- (3) The Registrar must register a person as a same-sex marriage celebrant if –
  - (a) the person has applied in accordance with subsection (1); and
  - (b) the Registrar is satisfied that the person is entitled to be registered as a same-sex marriage celebrant.
- (4) The Registrar registers a person as a same-sex marriage celebrant by entering in the register of

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same-sex marriage celebrants all details relating to the person that are required by the regulations.

- (5) If the Registrar registers a person as a same-sex marriage celebrant, the Registrar must notify the person in writing.
- (6) If the Registrar decides not to register a person as a same-sex marriage celebrant after dealing with the person's application, the Registrar must inform the applicant in writing of –
  - (a) the decision; and
  - (b) the reasons for it; and
  - (c) the person's right under this Act to apply for review of the decision.

**81. Effect of registration**

A person who is registered as a same-sex marriage celebrant may solemnise same-sex marriages at any place in Tasmania.

**82. Obligations of each same-sex marriage celebrant**

A same-sex marriage celebrant must –

- (a) conduct himself or herself in accordance with the Code of Practice for same-sex marriage celebrants prescribed by the regulations; and

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- (b) undertake all professional development activities required by the Registrar in accordance with the regulations; and
- (c) notify the Registrar, in writing, within 30 days of –
  - (i) a change that results in the details entered in the register in relation to the person no longer being correct; or
  - (ii) the occurrence of an event that might have caused the Registrar not to register the person as a same-sex marriage celebrant if the event had occurred before the person was registered.

**83. Performance reviews**

- (1) The Registrar must regularly review each same-sex marriage celebrant's performance to determine whether the Registrar considers that the same-sex marriage celebrant's performance is satisfactory.
- (2) The first review must be completed within 5 years of the same-sex marriage celebrant being registered and must cover the period between registration and the end of the review.
- (3) Each later review must be completed within 5 years of the previous review and must cover the period since the previous review.

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- (4) In reviewing the performance of a same-sex marriage celebrant, the Registrar –
- (a) must consider the matters prescribed by the regulations; and
  - (b) may have regard to any information in his or her possession; and
  - (c) may seek any further information.
- (5) The Registrar must not determine that a same-sex marriage celebrant's performance in respect of a period was not satisfactory unless –
- (a) the Registrar has, in accordance with the regulations, given the same-sex marriage celebrant a written notice –
    - (i) stating the Registrar's intention to make the determination unless, before the date specified in the notice (which must be at least 21 days after the date on which the notice was given), the same-sex marriage celebrant satisfies the Registrar that the same-sex marriage celebrant's performance in respect of the period was satisfactory; and
    - (ii) informing the same-sex marriage celebrant that any representations made to the Registrar before that date will be considered by the Registrar; and

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- (b) the Registrar has considered any representations made by the same-sex marriage celebrant before the date specified in the notice; and
- (c) the determination is made in writing within 14 days after the date specified in the notice.

**84. Disciplinary measures**

- (1) The Registrar may only take disciplinary measures against a same-sex marriage celebrant if the Registrar –
  - (a) is satisfied that the same-sex marriage celebrant is no longer entitled to be registered as a same-sex marriage celebrant; or
  - (b) is satisfied that the same-sex marriage celebrant has not complied with an obligation under section 82; or
  - (c) has determined in writing that the same-sex marriage celebrant's performance in respect of a period was not satisfactory; or
  - (d) is satisfied that it is appropriate to take disciplinary measures against the same-sex marriage celebrant after considering a complaint in accordance with the complaints resolution procedures established under section 86(c); or

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- (e) is satisfied that the same-sex marriage celebrant's application for registration was known by the same-sex marriage celebrant to be false or misleading in a material particular.
- (2) The only disciplinary measures that the Registrar may take against a same-sex marriage celebrant are to –
- (a) caution the same-sex marriage celebrant in writing; or
  - (b) in accordance with the regulations, require the same-sex marriage celebrant to undertake professional development activities determined in writing by the Registrar; or
  - (c) suspend the same-sex marriage celebrant's registration for a period (the *suspension period*) of up to 6 months by annotating the register of same-sex marriage celebrants to include –
    - (i) a statement that the registration is suspended; and
    - (ii) the dates of the start and end of the suspension period; or
  - (d) deregister the same-sex marriage celebrant by removing his or her details from the register of same-sex marriage celebrants.

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- (3) If the Registrar suspends a same-sex marriage celebrant's registration for a particular period, section 81 does not apply in respect of the same-sex marriage celebrant during the period.
- (4) If the Registrar decides to take disciplinary measures against a same-sex marriage celebrant, the Registrar –
  - (a) must give the same-sex marriage celebrant written notice of –
    - (i) the decision; and
    - (ii) the reasons for it; and
    - (iii) any disciplinary measure that is being taken; and
    - (iv) any same-sex marriage celebrant's right under section 85 to apply for review of the decision; and
  - (b) may inform the community, in any way the Registrar thinks appropriate, including by electronic means, the disciplinary measure or measures being taken against the same-sex marriage celebrant.

**85. Review of decisions**

- (1) An application may be made to the Magistrates Court (Administrative Appeals Division) for a review of a decision of the Registrar –



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- (a) not to register a person as a same-sex marriage celebrant; or
- (b) to suspend a person's registration as a same-sex marriage celebrant; or
- (c) to deregister a same-sex marriage celebrant.
- (2) For the purposes of both the making of an application under subsection (1) and the operation of the Magistrates Court (Administrative Appeals Division) in relation to such an application, if –
- (a) a person has made application for registration as a same-sex marriage celebrant under section 80; and
- (b) at the end of the period of 3 months after the day on which the application was made, the person has not been –
- (i) registered; or
- (ii) notified by the Registrar that the person's application has been refused –
- the Registrar is taken to have decided, on the last day of the 3-month period, not to register that person as a same-sex marriage celebrant.
- (3) The Registrar must take such action as is necessary to give effect to the court's decision.

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**86. Additional functions of Registrar**

The Registrar must –

- (a) amend the register of same-sex marriage celebrants in accordance with the regulations; and
- (b) keep records relating to same-sex marriage celebrants, and the register of same-sex marriage celebrants, in accordance with the regulations; and
- (c) establish complaints resolution procedures, in accordance with the regulations, to resolve complaints about the solemnisation of marriages by same-sex marriage celebrants; and
- (d) perform any additional functions specified in the regulations.

**87. Registrar not liable for damages**

The Registrar is not liable to an action or other proceeding for damages in respect of anything done, or omitted to be done, in good faith in –

- (a) the exercise or performance; or
  - (b) the purported exercise or performance –
- of powers or functions under this Act.

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**88. Evidence of registration, &c.**

A certificate, signed by the Registrar, stating that, at a specified time, or during a specified period –

- (a) a person was registered as a same-sex marriage celebrant; or
- (b) a person's registration as a same-sex marriage celebrant was suspended; or
- (c) a person was not registered as a same-sex marriage celebrant –

is prima facie evidence of that fact.

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**PART 8 – MISCELLANEOUS**

**89. Transactions to defeat claims**

- (1) If a court is satisfied that an existing or anticipated order in a proceeding under this Act is likely to be defeated by the making of a document or disposition by a party to the proceeding, the court may set aside or restrain the making of the document or disposition.
- (2) If a court is satisfied that an existing or anticipated order in a proceeding under this Part was defeated by the making of a document or disposition by a party to the proceeding, the court may order that –
  - (a) any property dealt with by the document or disposition be applied towards, or charged with, payment of –
    - (i) an amount payable under an order adjusting interests in the property of one or more of the parties to the proceeding; or
    - (ii) costs; or
  - (b) the proceeds of a sale be paid into court to satisfy its order.
- (3) A court may order a party or a person acting in collusion with a party to pay the costs of any other party, or of a genuine purchaser or other interested person, of and incidental to any

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document or disposition or the setting aside or restraining of the document or disposition.

- (4) For the purpose of this section –
- (a) something is made by a person if the thing is made by or on behalf of, or by direction or in the interests of, the person; and
  - (b) it does not matter that the document or disposition is intended to defeat the order concerned.

**90. Interests of other parties**

In exercising its powers under this Part, a court is to –

- (a) have regard to the interests of a genuine purchaser or other person interested; and
- (b) make an order that is proper for the protection of such a purchaser or person.

**91. Restrictions on publication of court proceedings**

- (1) A person who publishes in a newspaper or periodical publication, by radio broadcast or television or by other electronic means, or otherwise disseminates to the public or to a section of the public by any means, any account of any proceedings, or of any part of any proceedings, under this Act that identifies –
- (a) a party to the proceedings; or

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(b) a person who is related to, or associated with, a party to the proceedings or is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate; or

(c) a witness in the proceedings –

is guilty of an offence punishable, upon conviction, by imprisonment for a term not exceeding one year.

(2) A person who, except as permitted by the applicable rules of court, publishes in a newspaper or periodical publication, by radio broadcast or television or by other electronic means, or otherwise disseminates to the public or to a section of the public by any means (otherwise than by the display of a notice in the premises of the court) a list of proceedings under this Act, identified by reference to the names of the parties to the proceedings, that are to be dealt with by a court is guilty of an offence punishable, upon conviction, by imprisonment for a term not exceeding one year.

(3) Without limiting the generality of subsection (1), an account of proceedings, or of any part of proceedings, referred to in that subsection is to be taken to identify a person if –

(a) it contains any particulars of –

(i) the name, title, pseudonym or alias of the person; or

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- (ii) the address of any premises at which the person resides or works, or the locality in which any such premises are situated; or
- (iii) the physical description or the style of dress of the person; or
- (iv) any employment or occupation engaged in, profession practised, or calling pursued, by the person or any official or honorary position held by the person; or
- (v) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person; or
- (vi) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person; or
- (vii) any real or personal property in which the person has an interest or with which the person is otherwise associated –

being particulars that are sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires; or

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- (b) in the case of a written or televised account or an account by other electronic means, it is accompanied by a picture of the person; or
  - (c) in the case of a broadcast or televised account or an account by other electronic means, it is spoken in whole or in part by the person and the person's voice is sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case requires.
- (4) Proceedings for an offence against this section must not be commenced except by, or with the written consent of, the Director of Public Prosecutions.
- (5) Subsections (1), (2), (3) and (4) do not apply to or in relation to –
- (a) the communication, to persons concerned in proceedings in any court, of any pleading, transcript of evidence or other document for use in connection with those proceedings; or
  - (b) the communication of any pleading, transcript of evidence or other document to –
    - (i) a body that is responsible for disciplining members of the legal profession in a State or Territory; or



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- (ii) persons concerned in disciplinary proceedings against a member of the legal profession of a State or Territory, being proceedings before a body that is responsible for disciplining members of the legal profession in that State or Territory; or
- (c) the communication, to a body that grants assistance by way of legal aid, of any pleading, transcript of evidence or other document for the purpose of facilitating the making of a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case; or
- (d) the publishing of a notice or report in pursuance of the direction of a court; or
- (e) the publication by the court of lists of proceedings under this Act, identified by reference to the names of the parties, that are to be dealt with by the court; or
- (f) the publishing of any publication *bona fide* intended primarily for use by the members of any profession, being –
  - (i) to a person who is a member of a profession, in connection with the practice by that person of that profession or in the course of any form of professional training in which that person is involved; or

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- (ii) to an individual who is a party to any proceedings under this Act, in connection with the conduct of those proceedings; or
  - (iii) to a person who is a student, in connection with the studies of that person; or
  - (g) publication of accounts of proceedings, where those accounts have been approved by the court.
- (6) Applicable rules of court made for the purposes of subsection (2) may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.
- (7) In this section –
- court* includes an officer of a court investigating or dealing with a matter in accordance with this Act, the regulations or the rules of court;
- electronic means* includes –
- (a) in the form of data, text or images by means of guided or unguided, or both guided and unguided, electromagnetic energy; and
  - (b) in the form of speech by means of guided or unguided, or both guided and unguided, electromagnetic energy, where

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the speech is processed at its destination by an automated voice recognition system.

**92. Regulations**

- (1) The Governor may make regulations for the purposes of this Act except in respect of any matter for which rules of court may be made under section 93 or 94.
- (2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may –
  - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
  - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units.
- (4) The regulations may prescribe fees in relation to matters arising under this Act.
- (5) The regulations may authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations.

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**93. Rules of Supreme Court**

The judges of the Supreme Court or a majority of them may make rules of court with respect to –

- (a) the way in which applications under this Act may be made to the Court; or
- (b) service on appropriate persons of copies of documents lodged with a registry of the Court under this Act.

**94. Rules of Magistrates Court**

The magistrates or a majority of them may make rules of court with respect to –

- (a) the way in which applications under this Act may be made to the court; or
- (b) service on appropriate persons of copies of documents lodged with a registry of the court under this Act.

**95. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and

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- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

**96. Consequential amendments**

The legislation specified in Schedule 1 is amended as specified in that Schedule.

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**SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**

Section 96

***Births, Deaths and Marriages Registration Act 1999***

1. After section 31, the following Part is inserted:

**PART 5A – REGISTRATION OF SAME-SEX  
MARRIAGES**

**31A. Cases in which registration of marriage is required**

If a same-sex marriage is solemnised in the State, the marriage must be registered under this Act.

**31B. How to have same-sex marriage registered**

A person may have a same-sex marriage registered by lodging with the Registrar a certificate of the marriage under the *Same-Sex Marriage Act 2012*.

**31C. Registration of same-sex marriage**

A same-sex marriage may be registered by –

- (a) including the marriage certificate as part of the Register; or
- (b) including particulars of the marriage in the Register.