

TASMANIA

SAME-SEX MARRIAGE (CELEBRANT & REGISTRATION) BILL 2005

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SAME-SEX MARRIAGE (CELEBRANT & REGISTRATION) BILL 2005

(Brought in by Nicholas James McKim MHA)

A BILL FOR

An Act providing for the establishment and maintenance of registers of same-sex marriages and same-sex marriage celebrants.

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 (Celebrant and Registration) Act 2005*.

2 Commencement

This Act commences on a day to be proclaimed.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

adult means a person who has attained the age of 18 years.

authorized celebrant means:

- (a) a minister of religion registered under Division 1 of Part II; or
- (b) a person authorized to solemnize marriages by virtue of Division 2 of Part II; or
- (c) a same-sex marriage celebrant.

minister of religion means:

- (a) a person recognized by a religious body or a religious organization as having authority to solemnize marriages in accordance with the rites or customs of the body or organization; or
- (b) in relation to a religious body or a religious organization in respect of which paragraph (a) is not applicable, a person nominated by:
 - (i) the head, or the governing authority, in a State or Territory, of that body or organization; or
 - (ii) such other person or authority acting on behalf of that body or organization as is prescribed;

to be an authorized celebrant for the purposes of this Act.

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

same-sex marriage has the same meaning as in the *Same-Sex Marriage Act 2005*.

same-sex marriage celebrant means a person registered under Division 3 of Part II.

4 Act binds Crown

This Act binds the Crown in right of Tasmania, and so far as the legislative power of Parliament permits, in all its other capacities.

Part 2 – Authorized Celebrants

Division 1 - Ministers of Religion

5 Interpretation

In this Division a reference to a register shall be read as a reference to a register kept for the purposes of this Division.

6 Registers of ministers of religion

For the purposes of this Division, the Registrar shall keep a register, in such form as the Minister determines, of ministers of religion ordinarily resident in Tasmania who are entitled to registration under this Division.

7 Qualifications for registration under this Division

Subject to this Division, a person is entitled to registration under this Division if:

- (a) the person is a minister of religion of a recognized denomination;
- (b) the person is nominated for registration under this Division by that denomination;
- (c) the person is ordinarily resident in Australia; and
- (d) the person has attained the age of 21 years.

8 Registrar to register applicant

- (1) Subject to this Division, the Registrar shall, on application in accordance with the regulations, by a person who is entitled to registration under this Division, register that person in the register kept by that Registrar.
- (2) The particulars set out in an application for registration under this Division shall be verified by the applicant by statutory declaration.

9 Applicant may be refused registration in certain circumstances

- (1) A Registrar to whom an application for registration under this Division is made may refuse to register the applicant if, in the opinion of the Registrar:
 - (a) there are already registered under this Division sufficient ministers of religion of the denomination to which the applicant belongs to meet the needs of the denomination in the locality in which the applicant resides;
 - (b) the applicant is not a fit and proper person to solemnize marriages; or
 - (c) the applicant is unlikely to devote a substantial part of his or her time to the performance of functions generally performed by a minister of religion.

10 Removal from register

- (1) Subject to this section, a Registrar shall remove the name of a person from the register kept by that Registrar if he or she is satisfied that:
 - (a) that person has requested that his or her name be so removed;
 - (b) that person has died;

- (c) the denomination by which that person was nominated for registration, or in respect of which that person is registered, no longer desires that that person be registered under this Division or has ceased to be a recognized denomination;
 - (d) that person:
 - (i) has been guilty of such contraventions of this or any associated Acts or the regulations as to show him or her not to be a fit and proper person to be registered under this Division;
 - (ii) has been making a business of solemnizing marriages for the purpose of profit or gain; or
 - (iii) is not a fit and proper person to solemnize marriages; or
 - (e) that person is, for any other reason, not entitled to registration under this Division.
- (2) The Registrar shall not remove the name of a person from a register under this section on a ground specified in paragraph (1)(d) or (e) unless:
- (a) the Registrar has, in accordance with the regulations, served on the person a notice in writing:
 - (i) stating the Registrar's intention to do so on that ground unless, not later than a date specified in the notice and being not less than 21 days from the date of service of the notice, the person satisfies the Registrar that the person's name should not be removed from the register; and
 - (ii) informing the person that any representations made to the Registrar before that date will be considered by the Registrar;
 - (b) the Registrar has considered any representations made by the person before the date specified in the notice; and
 - (c) the removal takes place within 14 days after the date specified in the notice.
- (3) Where notice is served on a person under subsection (2), that person shall not solemnize a marriage unless and until:
- (a) the person is notified by the Registrar that the Registrar has decided not to remove the person's name from the register;
 - (b) a period of 14 days has elapsed from the date specified in the notice under subsection (2) and the person's name has not been removed from the register;
or
 - (c) the person's name, having been removed from the register, is restored to the register.

11 Review of refusal to register or removal from register

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

- (a) refusing to register a person who has applied for registration under this Division; or
 - (b) removing the name of a person from a register in pursuance of section 10.
- (2) Where the Magistrates Court (Administrative Appeals Division) sets aside a decision refusing to register a person or a decision to remove the name of a person from a register, the Registrar shall forthwith register the person, or restore the name of the person to the register, as the case requires.
- (3) For the purposes of the making of an application under subsection (1), where a person has made application for registration under this Division and, at the expiration of a period of 3 months from the day on which the application was made, the person has not been registered and has not been notified by the Registrar that that person's application has been refused, the Registrar shall be deemed to have decided, on the last day of that period, not to register that person.

12 Change of address etc. to be notified

- (1) Where a person registered under this Division:
- (a) changes his or her name, address or designation; or
 - (b) ceases to exercise, or ceases to be entitled to exercise, the functions of a minister of religion of the denomination by which he or she was nominated for registration or in respect of which he or she is registered;
- the person shall, within 30 days thereafter, notify the Registrar by whom the register in which the person is registered is kept of that fact in accordance with the regulations.
- (2) The Registrar may, upon receiving notification of a change of name, address or designation under subsection (1) or if the Registrar is otherwise satisfied that the particulars shown in the register in respect of a person are not correct, amend the register accordingly.

13 Transfer to another State etc.

- (1) Where a person whose name is included in the register for Tasmania is ordinarily resident in another State or Territory, the Registrar by whom the register is kept shall, subject to this section, remove the name of that person from that register.
- (2) Where the name of a person referred to in subsection (1) is not included in the register for Tasmania and that person is ordinarily resident in Tasmania, the Registrar for Tasmania may enter the name of that person in the register.

14 Furnishing of information by recognised denominations

The regulations may make provision for, and in relation to, the furnishing to the Registrar by each recognized denomination of:

- (a) information as to matters affecting the right to registration under this Division of persons who are so registered as ministers of religion of that denomination; and
- (b) an annual list of persons registered under this Division as ministers of religion of that denomination who are exercising the functions of a minister of religion of that denomination.

15 Registrars to furnish information

Each Registrar shall, if the Secretary to the Department so requests, furnish to the Secretary:

- (a) a list of ministers of religion registered by that Registrar under this Division during the period specified in the request, showing the full name, designation, residential or postal address and religious denomination of each minister; and
- (b) particulars of any other alterations to the register kept by that Registrar under this Division made during that period.

Division 2—Officers of the State of Tasmania

16 Authorisation of Tasmanian officers etc.

- (1) A person who, under the law of Tasmania, has the function of registering same-sex marriages solemnized in Tasmania may solemnize same-sex marriages in Tasmania.
- (2) The Minister may, by instrument in writing, authorize other officers of the State of Tasmania to solemnize same-sex marriages.
- (3) An authorization under subsection (2) is subject to such conditions (if any) as are specified in the instrument.

Division 3—Same-Sex Marriage Celebrants

17 Registrar of Same-Sex Marriage Celebrants

- (1) The Registrar will 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.

18 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) All information contained in the register must be made available on the Internet.
- (5) 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.

19 Entitlement to be registered as a 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) is aged 18 years or over; and
 - (b) has all the qualifications, and/or skills, determined in writing to be necessary by the Registrar in accordance with regulations made for the purposes of this paragraph; 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 same-sex marriage celebrant, the Registrar must take into account:
 - (a) whether the person has sufficient knowledge of the law relating to the solemnization of same-sex marriages by same-sex marriage celebrants; and
 - (b) whether the person is committed to advising couples of the availability of relationship support services; and
 - (c) whether the person is of good standing in the community; and
 - (d) 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 a Territory; and
 - (e) 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
 - (f) 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
 - (g) whether the person will fulfil the obligations under section 23; and
 - (h) any other matter the Registrar considers relevant to whether the person is a fit and proper person to be a same-sex marriage celebrant.

20 Registration as a 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 form specified by regulations made for the purposes of this paragraph; and
 - (b) any statutory declarations required by the form.
- (2) The Registrar must deal with applications in the order in which they are received.
- (3) 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) is not required to seek any further information.
- (4) 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.

The Registrar must not register a person as a same-sex marriage celebrant in any other circumstances.

- (5) The Registrar registers a person as a same-sex marriage celebrant by entering in the register of same-sex marriage celebrants all details relating to the person that are required by regulations made for the purposes of this subsection.
- (6) If the Registrar registers a person as a same-sex marriage celebrant, the Registrar must notify the person in accordance with regulations made for the purposes of this subsection.
- (7) 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 Part (if any) to apply for review of the decision.

21 Capping of number of same-sex marriage celebrants for 5 years

- (1) The Registrar must not register a person as a same-sex marriage celebrant if doing so would cause the breach of any applicable limit on the number of same-sex marriage celebrants determined in accordance with regulations made for the purposes of this subsection.

- (2) Subsection (1) ceases to have effect at the end of the period of 5 years after this section commences.

22 Effect of registration

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

23 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 regulations made for the purposes of this paragraph; and
- (b) undertake all professional development activities required by the Registrar in accordance with regulations made for the purposes of this paragraph; 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.

24 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. Each later review must be completed within 5 years of the previous review and must cover the period since the previous review.
- (3) In reviewing the performance of a same-sex marriage celebrant, the Registrar:
 - (a) must consider the matters prescribed by regulations made for the purposes of this paragraph; and
 - (b) may have regard to any information in his or her possession, but is not required to seek any further information.
- (4) 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 regulations made for the purposes of this paragraph, 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
- (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.

25 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 23; 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 paragraph 27 (c); or
 - (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 regulations made for the purposes of this paragraph, 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.
- (3) If the Registrar suspends a same-sex marriage celebrant's registration for a particular period, section 22 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) the disciplinary measure that is being taken; and
 - (iv) the same-sex marriage celebrant's right under section 26 to apply for review of the decision; and
 - (b) may inform the community, in any way the Registrar thinks appropriate, including by electronic means, that the disciplinary measure is being taken against the same-sex marriage celebrant.

26 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:
 - (a) not to register a person as a same-sex marriage celebrant (unless a ground for the decision was that the Registrar would breach section 21 by registering the person); 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 20; and
 - (b) at the end 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 that 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 (even if doing so at the time the action is taken would cause a breach of a limit under section 21).

27 Additional functions of the Registrar

The Registrar must:

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

28 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.

29 Evidence of registration etc.

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.

Part 3 - The Register of Same-Sex Marriages

Division 1 - Keeping the Register

30. The Register

- (1) The Registrar must maintain a register of same-sex marriage certificates to be known as the Register of Same-Sex Marriages.
- (2) The Register –
 - (a) must contain the particulars of same-sex marriage certificates required under this Act to be included in the Register; and
 - (b) may contain further information if the Registrar considers its inclusion appropriate.
- (3) The Register may be wholly or partly in the form of a computer database, in documentary form, or in another form the Registrar considers appropriate.
- (4) The Registrar must maintain the indexes to the Register that are necessary to make the information contained in the Register reasonably accessible.

Division 2 - Access to, and certification of, Register entries

31. Access to Register

- (1) The Registrar may, on any conditions the Registrar considers appropriate –
 - (a) allow access to the Register to a person or organization that has an adequate reason for wanting access to the Register; or
 - (b) provide information extracted from the Register to a person or organization that has an adequate reason for wanting information from the Register.
- (2) In deciding whether an applicant has an adequate reason for wanting access to the Register, or information from the Register, the Registrar must have regard to –
 - (a) the nature of the applicant's interest; and

- (b) the sensitivity of the information; and
- (c) the use to be made of the information; and
- (d) other relevant factors.

(3) In deciding the conditions on which access to the Register, or information from the Register, is to be allowed or provided under this section, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.

32. Search of Register

- (1) The Registrar may, on application, search the Register for an entry about a deed of registration.
- (2) The applicant must state the reason for the applicant's interest in the subject matter of the search.
- (3) The Registrar may reject the application if the applicant does not have an adequate reason for wanting the information to which the application relates.
- (4) In deciding whether an applicant has an adequate reason for wanting information, the Registrar must have regard to –
 - (a) the relationship, if any, between the applicant and the persons to whom the information relates; and
 - (b) the age of the entry; and
 - (c) the contents of the entry; and
 - (c) any other relevant factors.

33. Protection of privacy

In providing information extracted from the Register, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.

34. Issue of certificate

(1) On completing a search of the Register under section 32, the Registrar may issue a certificate –

- (a) certifying particulars contained in an entry; or
- (b) certifying that no relevant entry was located in the Register.

(2) A certificate under subsection (1) is admissible in legal proceedings as evidence of –

- (a) the entry to which the certificate relates; and
- (b) the facts recorded in the entry.

35. Access policies

(1) The Registrar must maintain a written statement of the policies on which access to information contained in the Register is to be given or denied under this Division.

(2) The Registrar must give a copy of the statement, on request, to any person.

36. Review

A person who is dissatisfied with a decision of the Registrar made in the performance or purported performance of functions under this Part may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision.

37. False or misleading statements

A person must not, in giving any information under this Act –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without the matter the statement is false or misleading.

Penalty:

Fine not exceeding 30 penalty units.

38. Unauthorised access to or interference with Register

A person must not, without the authority of the Registrar or other lawful authority –

- (a) obtain access to the Register or information contained in the Register; or
- (b) make, alter or delete an entry in the Register; or
- (c) interfere with the Register in any other way.

Penalty:

Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

39. Falsification of certificate

- (1) A person must not forge the Registrar's signature.

Penalty:

Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (2) A person must not forge or falsify a certificate or other document under this Act.

Penalty:

Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (3) The Registrar may impound –

- (a) a document which the Registrar has reason to believe bears a forged impression of the Registrar's signature; or
- (b) a certificate or other document purporting to be a certificate or other document under this Act which the Registrar has reason to believe has been forged or falsified; or

(c) a certificate issued under section 34 if the entry in the Register about the event has been revoked or corrected since the issue of the certificate.

40. Immunity from liability

- (1) No liability attaches to the Registrar for an honest act or omission in the performance or purported performance of functions under this Act.
- (2) A liability that would, but for subsection (1), attach to the Registrar attaches instead to the Crown.

41. Fees

- (1) The regulations may prescribe fees or a basis for calculating fees for –
 - (a) lodgment of an application for registration of a deed of relationship; or
 - (b) lodgment of an application for revocation of a deed of relationship; or
 - (c) access to the Register; or
 - (d) a search of the Register; or
 - (e) the issue of a certificate following a search of the Register; or
 - (f) other services provided by the Registrar.
- (2) The regulations may allow for fees to be fixed by negotiation between the Registrar and the person who asks for the relevant services.

42. Consequential amendments

- (1) The *Acts Interpretation Act 1931* is amended by:

inserting the following definition into section 46 after the definition of “Magistrates Court”:

“*Marriage*” includes marriage under the *Same-Sex Marriage Act 2005*.

(2) *The Relationships Act 2003* is amended by deleting the definition of “marriage” in section 3 and inserting the following section:

“3A. Notwithstanding the definition of “Marriage” in the *Acts Interpretation Act 1931*, in this Act "**marriage**" means a marriage under the *Marriage Act 1961* of the Commonwealth.

43. Regulations

The Governor may make regulations for the purposes of this Act.