

## DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

### *Justice and Related Legislation (Marriage Amendments) Bill 2018*

*\*check Hansard for delivery\**

Madam Speaker, I move that the Bill be read a second time.

I am pleased to introduce the Justice and Related Legislation (Marriage Amendments) Bill 2018. This Bill makes a number of consequential amendments to various Tasmanian Acts as a result of the Commonwealth *Marriage Amendment (Definition and Religious Freedoms) Act 2017*.

Under paragraph 51(xxi) of the Constitution of Australia, the Commonwealth has the power to make laws relating to marriage. On 9 December 2017, the Commonwealth *Marriage Amendment (Definition and Religious Freedoms) Act 2017* amended the *Marriage Act 1961* to allow same-sex couples to marry. Marriage is now defined as the 'union of two people to the exclusion of all others, voluntarily entered into for life' and the right to marry is no longer determined by the sex of the parties. The Act also made consequential amendments to a number of other Commonwealth laws to ensure all married couples are treated consistently.

The States and Territories were given 12 months, until 9 December 2018, to change their own laws to ensure they are consistent with the Commonwealth legislation.

This Bill makes a number of consequential amendments to various Tasmanian Acts to ensure consistency with and support the changes made by the Commonwealth *Marriage Amendment (Definition and Religious Freedoms) Act 2017*. These consequential amendments are predominantly technical in nature. Many of the amendments are designed to ensure the terminology is consistent with the recent amendments to the *Marriage Act 1961* and that the legislation encompasses same-sex marriage by using gender neutral terms.

I will now outline each of the amendments.

Section 29 of the *Adoption Act 1988* provides that the court shall not make an order for the adoption of a child unless consent is given by appropriate persons. The current consent provisions do not recognise same-sex marriages. For example, in the case of a child whose parents were married to each other at the time of the child's birth, the appropriate persons are the mother and father of the child. In the case of a child whose mother was in a significant relationship with another woman, the appropriate persons are the parties to that relationship if the child was born as a result of a fertilisation procedure and there was no man required to give consent.

This Bill amends section 29 to recognise a woman married to the mother at the time of the child's birth as an appropriate person to give consent to the adoption of a child. Section 20(3) is also amended to reflect the changes in section 29 of the Act.

This Bill amends section 104 and 109 to insert the word 'parents' as a gender neutral term to again recognise a woman married or in a significant relationship with the mother of the child.

The next amendment is to the *Anti-Discrimination Act 1998* and it reflects the position at Commonwealth law to exempt ministers of religion or religious celebrants from being required to conduct same sex marriages.

The Commonwealth Marriage Act allows a minister for religion or a religious marriage celebrant to refuse to solemnise a marriage if the circumstances set out in section 47 of 47A of the Commonwealth Marriage Act apply.

Under section 47 of the *Marriage Act 1961*, a minister of religion may refuse to solemnise a marriage if the refusal conforms to the doctrines, tenets or beliefs of the religion of the minister's religious body or religious organisation; or the refusal is necessary to avoid injury to the religious susceptibilities of adherents of that religion; or the minister's religious beliefs do not allow the minister to solemnise the marriage.

Section 47A of the Act provides that a religious marriage celebrant may refuse to solemnise a marriage if the celebrant's religious beliefs do not allow the celebrant to solemnise the marriage.

The Bill makes amendments to the *Tasmanian Anti-Discrimination Act 1988* to reflect the exemptions provided under the Commonwealth Marriage Act. The Bill inserts a new provision into the *Anti-Discrimination Act 1988* to allow a minister for religion or a religious marriage celebrant to refuse to solemnise a marriage if the circumstances mentioned in section 47 or 47A of the *Marriage Act 1961* apply to that refusal. This is consistent with equivalent changes made to the Commonwealth Sex Discrimination Act.

I note that this exemption will not apply to civil marriage celebrants. In accordance with the existing code of practice and anti-discrimination laws, marriage celebrants, who are not religious marriage celebrants, will not be able to refuse to solemnise marriages on religious grounds.

The next amendments in the Bill relate to the *Births, Deaths and Marriages Registration Act 1999*.

Section 17 of the *Births, Deaths and Marriages Registration Act 1999* provides that the Registrar must not include information about the identity of any of a child's parents in the Register unless the father and the mother of the child make a joint application for inclusion of registrable information about that identity. This Bill amends section 17 to replace the terms "father" and "mother" with the word 'parents' as a gender neutral term to include parents of the same-sex.

The Bill also makes important changes to the Act to remove what has become known as the "forced divorce" requirements in relation to the registration of a change of sex.

Section 28A(1)(c) of the *Births, Deaths and Marriages Registration Act 1999* provides that a person may apply to the Registrar for alteration of the record of the person's sex only if the person is not married. Section 28C(3) provides that the Registrar must not note in the Register particulars of the change of the person's sex if the person is married. This paragraph is now obsolete and inconsistent with the recent amendments made by the *Commonwealth Marriage Amendment (Definition and Religious Freedoms) Act 2017* which repealed the forced divorce exemption in subsection 40(5) of the *Commonwealth Sex Discrimination Act 1984*. This Bill amends section 28A and 28C to remove the requirement that a person applying to register their change of sex 'not be married'.

The Bill also includes amendments to section 28D of the *Civil Liability Act 2002* to include same-sex marriage in the abolition of action for loss of consortium and section 62 of the *Conveyancing and Law of Property Act 1884* to include persons in a same-sex marriage conveying freehold land or a thing in action, alone or jointly with another person.

The Bill makes amendments to two provisions in the *Criminal Code Act 1924*.

Section 232 of the *Criminal Code 1924* provides that any person who, while a husband and wife are living together, assists either of them in doing, with respect to the property of the other, any act which would constitute stealing if they were not married, knowing that such property is being

so dealt with, is deemed to steal such property. The Bill amends this provision to include same-sex marriage in the crime of assisting married persons to take property.

This Bill also amends the conspiracy laws in section 297 of the *Criminal Code 1924* which include an exemption stating that a husband and wife are not criminally responsible for any conspiracy between themselves only. Under the amendment, this is updated to refer to “married persons”, so that it includes same sex marriages.

The final amendments in the Bill are to the *Status of Children Act 1974*.

The *Status of Children Act 1974* removes the legal disabilities of children born out of wedlock and establishes parenthood of certain children. Section 3 provides that for all purposes of the law of the State the relationship between every person and his father and mother shall be determined irrespective of whether the father and mother are or have been married to each other. This Bill amends section 3 to replacing the terms ‘father and mother’ with ‘parents’ as a gender neutral term to recognise all parents whether of the same-sex or opposite sex.

The *Status of Children Act 1974* also establishes a number of presumptions as to the parenthood of a child, some of which currently exclude same-sex marriage. For example, the section 5 presumption of parentage arising from marriage presumes that a child who is born to a woman while she is married is the child of the woman and her husband and the section 10C presumption of parentage arising from a fertilisation procedure recognises the parentage of both women in a significant relationship but not in a marriage. This Bill amends the presumptions of parentage in the Act to recognise same-sex marriage.

I commend the Bill to the House.