

CLAUSE NOTES

SAME-SEX MARRIAGE BILL 2012

PART 1 PRELIMINARY

Clause 1:Short Title

This provides the short title to be used when citing the Act for any legal purpose.

Clause 2:Commencement

The Act commences on a day or days to be proclaimed.

Clause 3:Interpretation

This Clause defines certain terms that are used in the Bill.

Clause 4:Act binds Crown

This Clause specifies that the Crown in right of the State of Tasmania is bound to the extent that the legislative power of the Tasmanian Parliament permits.

PART 2 SAME-SEX MARRIAGE

Division 1 – Application of Part

Clause 5:Application of Part

This Clause confirms that the provisions in this Bill apply to same-sex marriages solemnised, or intended to be solemnised, in Tasmania notwithstanding any common law rule of private international law applying elsewhere to same-sex marriages.

Division 2 – Same-sex marriage

Clause 6:Same-sex marriageable age

This Clause provides that a person has to be at least 18 years old to be a party to a same-sex marriage.

Division 3 – Void same-sex marriages

Clause 7: Grounds on which same-sex marriages are void

This Clause provides for the circumstances in which same-sex marriages are void. These include reasons such as when:

- one party to a same sex-marriage is already lawfully married (whether under this Bill or any other Act dealing with marriage) to another person at the time of his or her same-sex marriage; and
- the parties are within a prohibited relationship which means by virtue of subclause (2) a relationship between a person and an ancestor or descendant of that person or between siblings (whether whole or half-blood).

Subclauses (3) to (5) deal with adoptive relationships placing the adopted child in the same position as a natural child for the purpose of prohibited relationships.

Subclause (6) defines 'adopted' and 'ancestor' for the purpose of the Clause.

Division 4 – Solemnisation of same-sex marriages in Tasmania

Clause 8: Same-sex marriages to be solemnised by authorised celebrants

This Clause provides that same-sex marriages must be solemnised by authorised celebrants. The authorisation and registration of celebrants is dealt with in Part 7 of the Bill.

Subclause (2) allows a celebrant to set conditions that must be met in order for solemnisation to occur.

Clause 9: Notices to be given and declaration made

Subclause 1 provides that a celebrant must not solemnise a same-sex marriage unless the celebrant has received:

- a notice of the intention for a same-sex marriage in a period not less than one month, and not earlier than 18 months, before the same-sex marriage takes place (Subclause (1a)); and
- proof of date and place of birth (Subclause(1b)); and
- declaration that each party is not currently married and that no impediment exists to the same-sex marriage (Subclause(1c)).

Subclauses 2 and 3 specify how a notice under Subclause 1 should be made.

Subclause 4 allows for a party to a same-sex marriage to provide a statutory declaration if he or she is unable to provide all the particulars required to be contained in a notice.

Subclause 5 obliges an authorised celebrant to provide to the parties to a proposed same-sex marriage information about the obligations and consequences of the marriage and the availability of education and counselling.

Subclause 6 specifies how a same-sex marriage may be solemnised if the authorised celebrant to whom a notice was given is unable to solemnise the marriage; eg because the authorised celebrant is ill.

Subclause 7 specifies the format in which declarations under Subclause 1 are to be made.

Subclause 8 requires a celebrant to satisfy himself or herself that the parties to a same-sex marriage are who they say they are and that no false statements have been made in the required notices and declarations.

Subclause 9 allows errors in notices to be corrected.

Subclause 10 requires parties to produce evidence of any divorce or the death of their previous spouse if they declare their status to be divorced, widow or widower.

Subclause 11 requires that parties must produce evidence of dissolution of a same-sex marriage or the voiding (nullity) of a same-sex marriage if they declare their status of their marriage to be dissolved or void.

Clause 10: Interpreters

This Clause provides for the use of interpreters in connection with same-sex marriage ceremonies, and specifies the responsibilities of such interpreters.

Clause 11: Same-sex marriages may be solemnised on any day, &c

This Clause permits a same-sex marriage to occur on any day, at any time, and at any place in Tasmania.

Clause 12: Witnesses

This Clause requires at least two adult witnesses to be present at a same-sex marriage solemnisation (also 2 witnesses must sign the marriage certificates).

Clause 13: Authorised celebrants to explain nature of same-sex marriage relationship

This Clause specifies words that must be spoken by a celebrant before a same-sex marriage is solemnised.

Clause 14: Form of ceremony

This Clause provides for certain formalities to be included in the form of a ceremony to be used by a celebrant to solemnise a same-sex marriage.

If a ceremony is conducted by a celebrant who is a minister of religion, the ceremony may be conducted as required by the religion to which the minister belongs (Subclause 1).

Subclause 2 provides for the form of words that must be spoken by the parties to a same-sex marriage if the ceremony is conducted by a celebrant who is not a minister of religion.

Subclauses 3 and 4 concern certificates of the same-sex marriage and their conclusive evidentiary status that the same-sex marriage was solemnised.

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

This Clause specifies when the solemnisation of a same-sex marriage may be invalid and when a defect does not invalidate the same-sex marriage.

If not solemnised in accordance with the provisions of this part a same-sex marriage will be invalid except for if the defect is for a reason specified in Subclauses 2 or 3.

The reasons specified in Subclause 2 are essentially procedural failings.

If under Subclause 3 the celebrant was not authorised to solemnise same-sex marriages but the parties believed that he or she was properly authorised the same-sex marriage is not invalid.

Clause 16: Second same-sex marriages ceremonies

This Clause prohibits persons who are already legally married going through a second form or ceremony of same-sex marriage unless certain circumstances apply.

Subclause 2 permits a ceremony when there is doubt about whether the persons are legally married or there is doubt the same-sex marriage could be proved in legal proceedings.

Subclauses 3 and 4 provides for the evidence that must be furnished to support a claim under subclause 2.

Subclause 5 provides that a same-sex marriage taking place pursuant to subclause 2 is not invalid merely because of a procedural failing.

Subclause 6 permits parties to an existing legal same-sex marriage to go through a separate religious ceremony of same-sex marriage.

Subclause 7 provides that certain provisions relating to a same-sex marriage (such as the requirement for notices and declarations, witnesses, and marriage certificates) are not required when the ceremony is merely a reaffirmation of the legal same-sex marriage, as these requirements would have been met by the solemnisation ceremony of the original same-sex marriage. The Clause provides that formal certificates of same-sex marriage are not to be made or issued

Clause 17: Marriage certificates

This Clause provides for same-sex marriage certificates to be prepared for same-sex marriages.

The Clause specifies requirements for the certificates in terms of numbers, form, content, signing and timing.

This clause provides that where two official certificates have been prepared by the same-sex marriage celebrant, and then one of the certificates must be forwarded to the Registrar within 14 days of the solemnisation of the same-sex marriage (Subclause 5(a)(i)).

Subclauses 6 and 7 provide for certificates to be completed by the Registrar if an authorised celebrant dies without having prepared the certificate or there is some special circumstance.

Clause 18: Incorrect marriage certificates

This Clause permits the Registrar, in certain circumstances, correcting, or specifying a correction be made to, an incorrect same-sex marriage certificate.

The Registrar may also requires copies of same-sex marriage certificate to be delivered to the Registrar is the same-sex marriage is void.

Division 5 – Offences

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

This Clause makes it an offence for a married person to go through a form or ceremony of same-sex marriage, and for a person to go through a form or ceremony of same-sex marriage with a married person.

Subclauses 2 and 3 provide some defences to the offence.

Subclause 6 permits a person to go through a form or ceremony of same-sex marriage with his or her spouse.

Clause 20: Marrying persons not of marriageable age, &c

This Clause makes it an offence for a person to go through a form or ceremony of same-sex marriage with a person who has not attained 18 years of age.

Clause 21: Solemnising marriage where notice of declaration not given or made, &c

This Clause specifies some offences arising from defective procedural matters including contravention of the provisions about the giving of notices and the making of declarations, contravention of the provision that prohibits a same-sex marriage between people who are already married and purported solemnisation by a person who is not an authorised celebrant.

Clause 22: Solemnising marriage where reason to believe there is a legal impediment

This Clause makes it an offence for a celebrant to solemnise a same-sex marriage if he or she believes that there is a legal impediment or that there is a reason the marriage would be void.

Clause 23: Going through ceremony of marriage before person not authorised to solemnise it

This Clause makes it an offence to knowingly go through a ceremony of same-sex marriage before a person not authorised to solemnise it.

Clause 24: Giving defective notice, &c

This Clause makes it an offence to give a notice or sign a notice after it has been given if a person knows that the notice contains a false statement or is defective.

Clause 25: Failure to comply with notice under Section 18

This Clause makes it an offence for a person to not comply with a notice from a Registrar about a marriage certificate.

Clause 26: Failure by interpreter to furnish certificate, &c

This Clause makes it an offence for an interpreter to not comply with the provisions that apply to an interpreter whose services are used at a same-sex marriage (i.e. making the necessary statutory declaration or furnishing the required certificate) or making a false statement in such a certificate.

PART 3 DISSOLUTION AND NULLITY OF SAME-SEX MARRIAGE

Clause 27: Jurisdiction in matrimonial causes

This Clause permits the Supreme Court to conduct proceedings related to dissolution and nullity of same-sex marriages. It also allows the Supreme Court to declare the validity of a same-sex marriage, dissolution of a same-sex marriage or annulment of a same-sex marriage.

Proceedings may be instituted if any party to the proceedings is an Australian citizen, is ordinarily resident in Australia, or is present in Australia.

Clause 28: Institution of proceedings

This Clause provides that proceedings must be instituted by application to the Supreme Court and that they may be instituted by either party to the same-sex marriage or jointly by both parties to the same-sex marriage for a dissolution order or a decree of nullity.

Clause 29: Application for dissolution order

This Clause provides that an application for a dissolution order is to be based on the ground that the same-sex marriage has broken down irretrievably. In determining this the Supreme Court is to be 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 filing for a dissolution.

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.

Clause 30: Meaning of separation

This Clause recognises that separation may have been caused by the action or conduct of one of the parties and that separation may still have occurred despite that the parties have continued to reside in the same residence or that either party has rendered some household services to the other.

Clause 31: Effect of resumption of cohabitation

This Clause provides that a resumption of cohabitation on one occasion for not more than 3 months does not break the continuity of the separation, but this period of cohabitation does not count towards the duration of the separation.

Clause 32: Nullity of same-sex marriage

This Clause provides that an application for a decree of nullity is to be based on the ground that the same-sex marriage is void.

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

This Clause provides that if both an application for a decree of nullity and an application for a dissolution order are before the Supreme Court, the Court must not make a dissolution order unless it has first dismissed the application for a decree of nullity.

Clause 34: Circumstances occurring before commencement of Act or outside Tasmania

This Clause provides that the Supreme Court may recognise things that may have occurred outside Tasmania that are relevant to the order or decree sought. For instance that the parties separated outside Tasmania or any period or period of separation that occurred outside Tasmania.

Clause 35: When dissolution order takes effect

This Clause provides that a dissolution order takes effect one month from the making of the order by the Supreme Court, unless an appeal has been instituted.

A dissolution order does not take effect if one party to the same-sex marriage dies before it becomes final.

Clause 36: Certificate as to dissolution order

This Clause provides that the Supreme Court Registrar must prepare a dissolution order in the form of a certificate for the parties. The certificate of dissolution is evidence of the dissolution.

Clause 37: Rescission of dissolution order where parties reconciled

The Clause allows the Supreme Court to rescind a dissolution order before it takes effect if the parties to the same-sex marriage reconcile. It provides the parties with one month from the date of the order to reconcile.

**Clause 38: Rescission of dissolution order on ground of
miscarriage of justice**

This Clause provides the Supreme Court with the power to rescind a dissolution order on application by the parties, or intervention by the Attorney-General, if it is satisfied that there has been a miscarriage of justice. Matters that may indicate that there may have been a miscarriage of justice include fraud, suppression of evidence and perjury.

Clause 39: Remarriage

The Clause provides that once a dissolution order has been granted and takes effect (after a month from the making of the order) the parties are free to re-marry.

Clause 40: Void same-sex marriage because of marriage

The Clause provides that a same-sex marriage is void if either party to the same-sex marriage marries another person under law recognised by the Commonwealth.

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

Division 1 – Preliminary

Clause 41: Interpretation

This Clause defines certain terms that are relevant to this Part.

Court is defined as either the Supreme Court or Magistrates Court. This recognises that both these courts have jurisdiction in relation to property matters. The Magistrate Court can hear matters involving property and financial claims up to the value of \$50,000 and the Supreme Court can make orders in relation to property and financial matters that are valued over \$50,000.

**Clause 42: Application for adjustment of interest or
maintenance**

This Clause allows parties to a same-sex marriage to apply to the relevant Court for an order to adjust property interests or to grant maintenance.

Such an application is not dependent on a dissolution order being made. Parties to a same-sex marriage who have separated may make such applications.

Clause 43: Time limit for making application

The Clause provides that, once a dissolution has been granted or the same-sex marriage is declared void, the parties to the same-sex marriage only have 12 months in which to initiate property and/or maintenance proceedings.

If the court is satisfied that hardship may result from this statutory bar to claims it may grant leave for an application in respect to property or maintenance to be made after the 12 months.

Clause 44: Order to end financial relationship

This Clause requires the court to take account of the principle that it has a duty to end financial relations between the parties where possible.

Division 2 – Adjustment of interest in property

Clause 45: Order for adjustment

This Clause provides that the court may make any order in respect of property interests that it considers 'just and equitable'.

The Clause sets out a number of factors to which the court must have regard in deciding whether an order is 'just and equitable'. This includes things such as the contributions made by the parties to the same-sex marriage, both in kind and financial, direct or indirect, the length of the same-sex marriage and other relevant matters (as referred to in Clause 51).

Clause 46: Adjournment because of significant change in circumstances

This Clause allows the court to adjourn financial or property proceedings where there may be some event or change to the financial circumstances of the parties in the future that could impact on the matters currently before the court; e.g. an imminent windfall gain for one party or loss of employment.

The Clause sets out the factors that the court may have regard to when making a decision to adjourn proceedings.

Clause 47: Adjournment because of proceedings in Family Court

This Clause allows the court to adjourn proceedings in the event that matters are before the Family Court of Australia. The Family Court has jurisdiction to hear matters in respect of children and may deal with de facto property matters under Part V11AB of the *Family Law Act 1975*.

Clause 48: Deferment of order

The Clause permits the court to defer the operation of any property order it makes under Clause 45 until the occurrence of an event; eg the transfer of real estate at the expiration of lease or the transfer of a lump sum of money following retirement.

Clause 49: Death before order made

This Clause provides that if one party to the same-sex marriage dies before an application for property is determined the court action can continue against the estate. This ensures that any the surviving party to the same-sex marriage is not adversely affected by any will or succession that vests property elsewhere.

Clause 50: Death after order made

The Clause provides that if one party has died and a property order is made in favour or against the party then the court order may be enforced against the estate of the deceased party.

Division 3 – Maintenance

Clause 51. Order for maintenance

This Clause grants the right of a party to a same-sex marriage to apply for spousal maintenance because the applicants earning capacity has been affected by the circumstances of the same-sex marriage or any other reason arising from the same-sex marriage.

The Subclauses set out the factors that the court must have regard to when making a determination in respect of maintenance. These include income and financial resources of each party, financial needs and obligations, the responsibilities of a party to support another person, any order for adjustment made under Clause 45, whether children are involved and who cares for the children, the length of the same-sex marriage and such like.

Clause 52. Interim maintenance

This Clause permits an urgent or interim spousal maintenance application to be made pending the resolution of other matters. The court must be satisfied that there is an immediate need for financial assistance.

Clause 53. Cessation of order

This Clause provides that where a party dies any maintenance order ceases to have effect in respect of the other party.

Clause 54. Notification of change of circumstances

This Clause requires the party in whose favour a maintenance order was granted must notify the other party of any re-marriage or registered relationship. The purpose of this Clause is to allow the parties to re-negotiate any maintenance obligations or apply to the court cease any current duty to pay maintenance.

Clause 55. Recovery of arrears

The Clause provides that even if a maintenance order has ceased and there are arrears or amounts owing, the party who is owed the arrears is not barred from applying for and recovering back payments.

Clause 56. Variation of order for periodic maintenance

Either of the parties to a same-sex marriage may apply to the court for a variation, discharge, suspension of a current maintenance order. Subclauses 2 and 3 set out the factors that the court is to take into account in deciding to increase, decrease, suspend or discharge a maintenance order.

Clause 57. Other maintenance orders not to be varied

This Clause provides that lump sum orders for maintenance (a fixed total amount paid over a period of time as opposed to an amount paid regularly but for an indefinite and possibly unlimited period), may not be varied unless one of the conditions in Clause 61 is met; i.e. there has been some fraud, miscarriage of justice or difficulty with compliance with the lump sum maintenance order.

Division 4 – General**Clause 58. Orders of court**

This Clause sets out what types of orders that the court may do or make in respect of dealing with property, maintenance and making financial adjustment between the parties to a same-sex marriage where the parties have separated or a same-sex marriage has been dissolved by the Supreme Court.

These include orders in respect of the sale of transfer of property, payments of lump sums, consent orders, appointing trustees, injunctions to restraint or mandate action by parties to preserve property and financial resources.

Clause 59. Execution of instruments

This Clause gives the court power to appoint an officer of the court or other person to execute any deed or do anything necessary to give effect to the order and facilitate the operation of a deed or instrument.

This is a Clause that is relevant in enforcing certain property transactions that may be the subject of court orders. For example if a party to a property matter refuses to sell or transfer proceeds of a bank account to another party in contravention of the court order, the court can appoint a person to give effect to the order and undertake the transaction by signing the appropriate documents.

Clause 60. Ex parte orders

This provision permits urgent orders to be made in the absence of one of the parties to the same-sex marriage in court. This is relevant in urgent or extreme situations; such as where one party has control of funds and is about to dispose of them to the possible detriment of the other party prior to the settlement of property or maintenance issues.

The court must be satisfied of the urgency of the case and may give directions as to service of the affected party and future hearing of the application.

Clause 61. Variation and setting aside of orders

The Clause provides the court with the power to vary or set aside a property or maintenance order where it is satisfied there has been miscarriage of justice or other criteria are met. The Clause sets out the relevant factors in determining whether a miscarriage of justice has occurred and the like.

The Clause also provides that the court may substitute another order in lieu of an order it sets aside.

PART 5 – FINANCIAL AGREEMENTS

Clause 62. Interpretation:

This Clause sets out definitions relevant to this Part.

Clause 63. Financial agreements before same-sex marriage

This Clause provides that parties contemplating a same-sex marriage may make a written financial agreement with each other in respect of how property may be dealt with in the event of a breakdown of the relationship, maintenance during marriage, separation and following dissolution and the like.

The financial agreement may involve other parties who have a vested interest in the property or finances; e.g. relatives, business partners, insolvency trustee.

Clause 64. Financial agreements during marriage

This Clause allows parties to a same-sex marriage to enter into a written financial agreement with each other during the course of their marriage.

The agreement may refer to things such as how property and financial resources will be dealt with following the breakdown of marriage, maintenance of either of the parties to the same-sex marriage and the like.

This Clause allows such an agreement to be made before or after the marriage has broken down; i.e. while contentedly married or after separation but while still married.

Such an agreement will terminate any earlier financial agreement such as ones made under the previous Clause.

The agreement may include other parties, not just those to the marriage. This recognises that there may be other interests in the property or financial resources that are shared by the couple to the same-sex marriage.

Clause 65. Financial agreements after dissolution order is made

This Clause allows the parties to enter into a financial agreement in respect of property and finances following dissolution of their same-sex marriage.

It allows the parties to a dissolved same-sex marriage to agree to split the property, deal with maintenance of the other spouse and such without the need to go to court to seek an order, although the court may need to ratify the agreement.

It is similar to the preceding Clauses in that other persons (other than the parties to the same-sex marriage) may be parties to the agreement. An agreement made under this Clause terminates any earlier agreement.

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

The Clause provides that where a financial agreement may be activated upon the breakdown of a same-sex marriage then the parties may need to declare in writing that they are separated and living separately and apart in order for certain clauses of the financial agreement to take effect.

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

This Clause provides that a financial agreement that is binding on the parties cannot include an obligation of a third party to contribute to maintenance of a spouse party to the marriage during the course of the marriage.

The Clause also clarifies that where a financial agreement may make provision for maintenance, this part of the agreement is of no force or effect until the marriage breaks down.

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

This Clause sets out certain requirements that must be set out in financial agreements in relation to maintenance.

The financial agreement must set out clearly who the party or children are in respect of the maintenance provision and the amount or other attribution that is to be made as maintenance to that party or children.

If these matters are not clearly set out then the agreement may be void.

Clause 69. Certain provisions in agreements

The Clause provides that a financial agreement made under this Part cannot exclude or limit the power of a court to make orders in respect to maintenance of a party to the same-sex marriage in certain circumstances.

Subclause 2 takes into account the circumstances of a party to a same-sex marriage if they are unable to support themselves and are reliant on an income tested pension, allowance or benefit then an order for maintenance may be made despite any, and in addition to, any financial agreement between the parties.

Subclause 3 clarifies that a financial agreement continues to operate in respect of how the property or finances are to be dealt with.

Clause 70. When financial agreements are binding

This Clause sets out how to ensure that a financial agreement is binding.

Subclause 1 sets out a number of preconditions or requirements that need to be undertaken before the agreement is binding. These include that the parties must both sign the agreement, take legal advice and such things.

Subclause 2 declares an agreement to be binding if certain requirements, as mentioned in Subclause 1, are met and that it would be unjust not to bind the parties.

The Clause also permits the court to declare a financial agreement to be binding or not, upon application to the court for enforcement.

Subclause 5 allows the court to make such order for the enforcement of a financial agreement as it thinks necessary.

Clause 71. Effect of death of party to financial agreement

This Clause provides that a financial agreement continues to operate and is binding in favour of one party even if the other party has died. It then becomes binding on the estate.

Clause 72. Termination of financial agreement

This Clause allows the parties to agree to terminate a financial agreement, including by making another financial agreement.

Subclause 2 sets out the preconditions and requirements in order to make a termination agreement. These include that the agreement must be signed, and legal advice must be sought about the advantages and disadvantages and the like before the agreement is signed..

Subclause 3 declares that a termination agreement will be binding if certain conditions are met. These include it has been signed, legal advice has been obtained and the court is satisfied it would be unjust not to give effect to the agreement.

Subclause 4 permits the court to make a declaration in respect of a termination agreement, declaring that is binding or not.

Subclauses 5 and 6 provide for the enforcement of the termination agreement.

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

Subclauses 1 to 3 allows the court to set aside a financial or termination agreement if it is satisfied of certain criteria, such as where the agreement was obtained by fraud, or the agreement was prepared to defeat other interests such as creditors or a new de-facto partner, it is void or unenforceable, it is impracticable to enforce or new circumstances have arisen and the like.

Subclause 4 provides the court has powers under an application to set aside to deal with property and resource as it considers fair and equitable in to preserve rights of the parties.

Subclauses 5 and 6 also makes provision for what happens if a party dies before proceeding are completed under this Clause. The proceedings may continue against the estate if the court is satisfied that this is appropriate.

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

This Clause sets out the overarching principles that the court must take into account when dealing with the validity, enforceability and effect of financial agreements, including termination agreements.

The Clause specifically applies the principles of law and equity in relation to contract law to the determination of any validity, enforcement or effect of contract of a financial or termination agreement.

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

Clause 75. Same-sex marriages registered under corresponding laws

This Clause permits the State of Tasmania to recognise same-sex marriages from other Australian jurisdictions.

PART 7 – AUTHORISED CELEBRANTS

Division 1 – Officers of Tasmania

Clause 76. Authorisation of Tasmanian officers, &c.

This Clause provides that the Registrar of Births, Deaths and Marriages may solemnise same-sex marriages.

Subclauses 2 and 3 allows the Minister responsible for the Same-Sex Marriage Act to authorise State Service officers or employees to solemnise same-sex marriage ceremonies subject to any conditions.

Division 2 – Same-sex marriage celebrants

Clause 77. Registrar of Same-Sex Marriage Celebrants

The Registrar of Births, Deaths and Marriages is to also act as the Registrar of same-sex marriage celebrants and has the power to do all things necessary or convenient in connection with that function.

Subclause 2 permits the Registrar to delegate any of the Registrar's function or powers in respect to same-sex marriage celebrants to another person, but not the Registrar's power of delegation.

Clause 78. Register of Same-Sex Marriage Celebrants

Subclause 1 requires the Registrar to maintain a register of authorised same-sex marriage celebrants.

Subclause 2 requires that the register be kept in such a way that the Registrar thinks appropriate, including by electronic means.

Subclause 3 and 4 provides that the register may be open for inspection and information contained in the register may be disseminated in any other way the Registrar thinks appropriate.

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

Subclause 1 states that a person is only entitled to be registered as a same-sex marriage celebrant if that person -

- is aged over 18;
- has appropriate skills and experience; and
- is a fit and proper person.

Subclause 2 sets out the relevant criteria that the Registrar must take into account in determining whether a person is a fit and proper person.

Clause 80. Registration as a same-sex marriage celebrant

This Clause sets out the process for a person to apply to the Registrar to be a same-sex marriage celebrant.

Subclause 1 requires an applicant to give the Registrar an application form, statutory declarations as required and the prescribed fee.

Subclauses 2 to 6 deal with the processes undertaken by the Registrar in deciding to register a person or not as an authorised same-sex marriage celebrant.

If the Registrar of same-sex marriage celebrants decides not to register a person as a same-sex marriage celebrant, the Registrar must inform the applicant in writing of that decision and the reasons for it. A person refused registration has the right under this Act to apply for review of the decision.

Clause 81. Effect of registration

This Clause provides that once a person is registered as a same-sex marriage celebrant he or she is able to solemnise same-sex marriages in Tasmania.

Clause 82. Obligations of each same-sex marriage celebrant

The Clause requires same-sex marriage celebrants to conduct themselves in accordance with a code of practice, to be prescribed in regulations, and undertake professional development. There is also an onus on the same-sex marriage celebrant to notify the Registrar of any changes to his or her registration details.

Clause 83. Performance reviews

This Clause requires the Registrar to conduct performance reviews of same-sex marriage celebrants within 5 years of their registration.

Subclause 4 sets out what the Registrar may take into account when conducting a performance review.

Subclause 5 provides that the Registrar must not determine that a same-sex marriage celebrant's performance was not satisfactory unless he or she has given the same-sex marriage celebrant an opportunity to make representations about such a decision.

Clause 84. Disciplinary measures

This Clause permits the Registrar to take disciplinary measures against a same-sex marriage celebrant for a number of reasons such as: a determination that their performance is not satisfactory, as a result of a complaint that has been made and upheld, or providing false information in the same-sex marriage celebrant's application.

Subclauses 2 to 4 set out what kind of disciplinary actions may be taken, such as a written caution, direction to undertake professional development, suspension for up to 6 months, or de-registration, as well as notice provisions, a right to written reasons for a decision and a right of review.

Clause 85. Review of decisions

This Clause provides for a review process that may be undertaken in respect of any disciplinary action taken by the Registrar in respect to a same-sex marriage celebrant. The Clause provides for reviews to be made to the Magistrates Courts (Administrative Appeals Divisions).

Subclause 2 sets a period after which the Registrar is taken to have decided not to register a person, if that person has not been registered as a same-sex marriage celebrant or notified that their application has been refused.

Subclause 3 provides that the Registrar must take such action as is necessary to give effect to the court's decision.

Clause 86. Additional functions of the Registrar

This Clause obliges the Registrar to do things such as amending the same-sex marriage celebrant register as necessary, keep proper records relating to same-sex marriage celebrants, setting up a complaints resolution procedure and perform any additional functions as specified in the regulations.

Clause 87. Registrar not liable for damages

This Clause provides statutory officer immunity to the Registrar of same-sex marriage celebrants.

Clause 88. Evidence of registration, &c.

This Clause provides judicial and other recognition for certificates signed by the Registrar of same-sex marriage celebrants about a person's registration as a same-sex marriage celebrant (or not).

PART 8 – MISCELLANEOUS

Clause 89. Transactions to defeat claims

This Clause is aimed at preventing parties from doing acts aimed at defeating an existing or anticipated order arising from a court proceeding taken under this Act (i.e. hiding assets or income).

Subclause 2 deals with the power of the court to take action where an earlier order of the court may have been defeated. The court may order that other property or proceeds be transferred to another party to adjust the property interest fairly or pay costs.

Subclause 3 gives the court power to deal with colluding parties, genuine purchasers of property that may be subject to court action under this Act or other interested parties.

Clause 90. Interest of other parties

This Clause allows the court in exercising its powers to have regard to the interests of genuine purchasers or other persons and make orders that are proper for the protection of genuine purchasers or other persons.

Clause 91. Restrictions on publication of court proceedings

This Clause restricts, in relation to court proceedings under the Bill, the publication of information that identifies a party to proceedings, 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 is a witness in the proceedings.

Subclause 2 provides that it is an offence for a person, unless permitted to do so by the rules of a court, who published or broadcasts a list of proceedings, identifying the names of the parties.

Subclause 3 provides guidance about what sort of information is likely to be considered as identifying a person.

Subclause 4 requires that proceedings for an offence under this Clause must not be commenced except by, or with the written consent of, the Director of Public Prosecutions.

Subclause 5 specifies in what circumstances publication of identifying information may be appropriate.

Clause 92. Regulations

This Clause provides the power to make regulations, including prescribing fees.

Clause 93. Rules of Supreme Court

This Clause provides for the Supreme Court to make rules of court for the way proceedings under this Act will be managed.

Clause 94. Rules of Magistrates Court

This Clause provides the Magistrates Court to make rules of court for the way proceedings under this Bill will be managed.

Clause 95. Administration of Act

This Clause assigns portfolio responsibility of this Act to the Department of Justice under the Minister for Justice.

Clause 96. Consequential amendments

This Clause provides for consequential amendments to other Acts. The amendments are specified in Schedule 1.

SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Births, Deaths and Marriages Registration Act 1999

This Schedule provides for consequential amendments to the *Births, Deaths and Marriages Registration Act 1999*.

New sections (31A, 31B and 31C) are to be inserted into the *Births, Deaths and Marriages Registration Act*. These sections will provide for the registration of same-sex marriages, in particular that:

- If a same-sex marriage is solemnised in the State, the marriage must be registered under the *Same-Sex Marriage Act 2012*;
- 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; and
- A same-sex marriage may be registered by including the marriage certificate as part of the Register, or including particulars of the marriage in the Register.