

# Same-Sex Marriage Bill 2013

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to allow for adults of the same sex to enter into a same-sex marriage.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** defines certain words and expressions used in the proposed Act.

### Part 2 Same-sex marriages

Part 2 (**clauses 4–18**) sets out the requirements for same-sex marriages. Clause 6 provides that same-sex marriages are required to be solemnised by authorised celebrants, and may be solemnised on any day, at any time and at any place in New South Wales. The proposed Part also sets out the grounds of eligibility for same-sex marriages, the notices and declarations that must be given before same-sex marriages may be solemnised, the form and wording of same-sex marriage ceremonies, and requirements relating to witnesses and same-sex marriage certificates. Clause 14 provides that a same-sex marriage solemnised otherwise than in accordance with proposed Part 2 is not valid. Under clause 18, it is an offence for a person to solemnise a same-sex marriage unless the person is an authorised celebrant, and it is an offence for an authorised (maximum penalty: \$11,000, or imprisonment for 6 months, or both). Clause 18 also sets out a number of other offences relating to solemnising same-sex marriages.

### Part 3 Void same-sex marriages

Part 3 (**clause 19**) sets out the grounds on which same-sex marriages are void, which include the following (among other grounds):

- (a) if either of the parties was already same-sex married to another person,
- (b) if either party subsequently marries another person under Commonwealth law (including a law recognised by the Commonwealth),
- (c) if either of the parties was not an adult,
- (d) if the consent of either of the parties was not real consent because of various circumstances, including duress, fraud, mistaken identity or mental incapacity.

### Part 4 Dissolution and annulment

Part 4 (**clauses 20–31**) provides for the dissolution and annulment of same-sex marriages.

Proceedings under proposed Part 4 are to be instituted in the Supreme Court. An application for a dissolution order in relation to a same-sex marriage must be based only on the ground that the same-sex marriage has broken down irretrievably (clause 21). This ground is established only if the Supreme Court is satisfied that the parties have separated and lived separately for a continuous period of at least 12 months. However, a dissolution order will not be made if the Court is satisfied that there is a reasonable likelihood of cohabitation being resumed. Clause 22 deals with the meaning of separation and clause 23 deals with the effect of resumption of cohabitation.

A dissolution order takes effect one month from the making of the order, subject to certain circumstances. If a dissolution order has taken effect, the parties may same-sex marry again under the proposed Act.

An application for a decree of nullity of a same-sex marriage must be based on the ground that the same-sex marriage is void (clause 24).

## **Part 5 Authorised celebrants**

Division 1 (**clause 32**) provides that the Registrar of Births, Deaths and Marriages is authorised to solemnise same-sex marriages and that the Minister may authorise other persons employed in the Public Service and statutory officers to solemnise same-sex marriages.

Division 2 (**clauses 33–42**) provides for the registration of same-sex marriage celebrants, including provisions relating to the register of same-sex marriage celebrants, the requirements for entitlement to be registered and applications for registration. The effect of registration is that the registered same-sex marriage celebrant may solemnise same-sex marriages at any place in New South Wales.

The proposed Division also provides for performance reviews and disciplinary measures in relation to same-sex marriage celebrants. Certain decisions of the Registrar with respect to same-sex marriage celebrants are reviewable.

## **Part 6 Interstate same-sex marriages**

Part 6 (**clause 43**) provides for same-sex marriages under the laws of other States or Territories to be recognised for the purposes of the law of New South Wales.

## **Part 7 Miscellaneous**

Part 7 (**clauses 44–52**) creates a number of offences, including an offence of going through a form or ceremony of same-sex marriage with a person who is not an adult (maximum penalty: imprisonment for 2 years) and an offence of bigamy (maximum penalty: imprisonment for 5 years).

The proposed Part also contains several miscellaneous provisions. Clause 48 provides that proceedings for offences under the proposed Act are to be dealt with summarily before the Local Court, except for the offences of same-sex marriage with a person who is not an adult and bigamy, which are to be prosecuted on indictment. Clause 50 enables the Governor to make regulations for the purposes of the proposed Act and clause 51 enables rules of court to be made under the *Supreme Court Act 1970* with respect to applications and service of documents under the proposed Act. Clause 52 provides for the review of the proposed Act in 5 years.

## **Schedule 1 Amendment of Acts**

**Schedule 1** makes amendments consequential on the enactment of the proposed Act to the Acts specified in the Schedule.