

INQUIRY INTO SAME SEX MARRIAGE LAW IN NSW

Organisation: State Parliamentary Marriage Equality Working Group

Date received: 15/05/2013

draft

Introduced by the Hon T J Khan, MLC

Draft

Warning note: This is a draft version of a Non-Government Bill.

New South Wales

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

Same-Sex Marriage Bill 2013

Explanatory note

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 celebrant to solemnise a same-sex marriage except in accordance with the proposed Part (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 (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 take 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 decrees of nullity of a same-sex marriage must be based on the ground that the same-sex marriage is void (clause 24).

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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 staff of public sector agencies 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 by the Administrative Decisions Tribunal.

Part 6 Interstate same-sex marriages

Part 6 (**clauses 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 6 (**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.

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b2012-131-33.d07

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New South Wales

Same-Sex Marriage Bill 2013

No. 1, 2013

A Bill for

An Act to allow for same-sex marriages; and for other purposes.

Clause 1 Same-Sex Marriage Bill 2013

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Same-Sex Marriage Act 2013*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

adult means a person of or above the age of 18.

authorised celebrant means:

- (a) a same-sex marriage celebrant, or
- (b) any other person authorised by or under this Act to solemnise same-sex marriages.

dissolution order means a dissolution order made under section 21.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

marital status declaration means the declaration required under section 7 (1) (c).

married under Commonwealth law includes being married under a law of another jurisdiction in a marriage that is recognised by the Commonwealth as a valid marriage.

notice of intention to same-sex marry means the notice required under section 7 (1) (a).

prohibited relationship—see subsection (2).

Registrar means the Registrar of Births, Deaths and Marriages within the meaning of the *Births, Deaths and Marriages Registration Act 1995*.

same-sex marriage means the union of 2 people of the same sex, to the exclusion of all others, voluntarily entered into for life.

same-sex marriage celebrant means a person registered under Division 2 of Part 5.

(2) A **prohibited relationship** is a relationship:

- (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).

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Clause 3

Preliminary

Part 1

- (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 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 subsection (3):
 - (a) a person who has at any time been adopted by another person is taken to remain the adopted child of that other person despite the fact 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) In 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 (***the descendent***), means any person from whom the descendent is descended, including a parent of the descendent.
- (6) Notes in this Act do not form part of the Act.

Clause 4 Same-Sex Marriage Bill 2013

Part 2 Same-sex marriages

Part 2 Same-sex marriages

4 Application of Part

This Part applies to and in relation to all same-sex marriages solemnised, or intended to be solemnised, in New South Wales.

5 Eligibility to same-sex marry

Two persons are eligible to be same-sex married under this Act if:

- (a) they are of the same sex, and
- (b) both are adults, and
- (c) neither person is same-sex married under this Act or under the law of another State or Territory, and
- (d) neither person is married under Commonwealth law, and
- (e) at least one of them ordinarily resides in New South Wales, and
- (f) they are not in a prohibited relationship.

6 Solemnising of same-sex marriages

- (1) Same-sex marriages are required to be solemnised by authorised celebrants.
- (2) A same-sex marriage may be solemnised on any day, at any time and at any place in New South Wales.

7 Notice of intention to same-sex marry and marital status declaration

- (1) A same-sex marriage must not be solemnised unless:
 - (a) notice in writing of the intended same-sex marriage (a ***notice of intention to same-sex marry***) has been given in accordance with this section and has been received by the authorised celebrant solemnising the same-sex marriage:
 - (i) not earlier than 18 months before the date of the same-sex marriage, and
 - (ii) not later than one month before the date of the same-sex marriage, and
 - (b) the authorised celebrant has been given, 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 signed before the authorised celebrant a declaration (a ***marital status declaration***), in the form prescribed by the regulations, 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
 - (iii) such other matters as are prescribed by the regulations.
- (2) The marital status declarations of the parties to an intended same-sex marriage must be written on the one piece of paper and on the same side of that paper.
- (3) A notice of intention to same-sex marry:
- (a) must be in the form prescribed by the regulations and include such particulars in relation to the parties as are indicated in the form, and
 - (b) must be signed by each of the parties in the presence of:
 - (i) an authorised celebrant, or
 - (ii) a justice of the peace, public notary or other person having authority to administer an oath under the *Oaths Act 1900*.
- (4) However, if a party to an intended same-sex marriage is not able to sign the notice of intention to same-sex marry in accordance with subsection (3) (b) by the time the notice is required to be given under this section, a notice of intention to same-sex marry duly signed by the other party and otherwise complying with 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 be sufficient notice for the purposes of this section.
- (5) A notice of intention to same-sex marry is not ineffective for the purposes of this section if:
- (a) a party to the intended same-sex marriage is unable, after reasonable inquiry, to ascertain all the particulars in relation to that party required to be included in the notice, and
 - (b) at any time before the same-sex marriage is solemnised, that party provides the authorised celebrant solemnising the same-sex marriage with a statutory declaration:

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- (i) explaining that party's inability to ascertain the particulars not included in the notice, and
 - (ii) explaining the reasons for that inability.
- (6) An authorised celebrant must, as soon as practicable after receiving a notice of intention to same-sex marry, give 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.
- (7) If, by reason of the death, absence or illness of an authorised celebrant to whom a notice of intention to same-sex marry has been given, or for any other reason, it is impossible or 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.
- (8) An authorised celebrant must not solemnise a same-sex marriage:
 - (a) unless the authorised celebrant is satisfied that the parties are the parties referred to in the notice of intention to same-sex marry in relation to the same-sex marriage, or
 - (b) if the authorised celebrant has reason to believe that any of the following documents in relation to the same-sex marriage contains a false statement or an error or is defective:
 - (i) a notice of intention to same-sex marry,
 - (ii) a marital status declaration,
 - (iii) a statutory declaration made for the purposes of this section.
- (9) An authorised celebrant may:
 - (a) permit an error in a notice of intention to same-sex marry 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
 - (b) treat the corrected notice as having been originally given in its corrected form.
- (10) If the marital status declaration of a party states that the party is a divorced person or a widow or widower, an authorised celebrant must not solemnise the same-sex marriage unless the authorised celebrant is provided with evidence of the party's divorce, or of the death of the party's spouse, as the case requires.
- (11) If the marital status declaration of a party states that the party was a party to a same-sex marriage that has been dissolved or declared void, an authorised celebrant must not solemnise the same-sex marriage

unless the authorised celebrant is provided with evidence of the dissolution of the same-sex marriage or a declaration that the same-sex marriage is void.

8 Witnesses

A same-sex marriage must not be solemnised unless at least 2 persons who are, or appear to the authorised celebrant solemnising the same-sex marriage to be, adults are present as witnesses.

9 Form of ceremony

- (1) If a same-sex marriage is solemnised by an authorised celebrant who is 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 who is not 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 following words (or words to the same effect):
“I call upon the persons here present to witness that I, [*name of party*], take you, [*name of other party*], to be my lawful wedded spouse”.

10 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 2013* of New South Wales 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.

Under the law, this wedding recognises that you are voluntarily entering into a lawful and binding union, for life, to the exclusion of all others.

11 Ministers of religion not bound to solemnise same-sex marriages

This Part does not:

- (a) prevent an authorised celebrant who is a minister of religion from making it a condition of his or her solemnising a same-sex marriage that:
 - (i) longer notice of intention to same-sex marry than that required by this Act is given, or

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- (ii) requirements additional to those provided by this Act are observed, or
- (b) require a minister of religion to make a place (such as a church or other place of public worship) available for solemnising a same-sex marriage.

12 Same-sex 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 the form prescribed by the regulations, to give to the parties to the same-sex marriage, and
 - (b) prepare 2 official certificates of the same-sex marriage in the form prescribed by the regulations.
- (2) Despite subsection (1) (b), the regulations may provide that an authorised celebrant who is a person authorised to solemnise same-sex marriages under Division 1 of Part 5 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 are, or appear to the authorised celebrant to be, adults must sign each of the certificates so prepared.
- (4) One of the official certificates or the official certificate (as the case requires) must be on the reverse side of the paper bearing the marital status declarations made by the parties.
- (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 2 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 of intention to same-sex marry 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.

- (6) If the authorised celebrant dies without having prepared and signed the certificates of the same-sex marriage, or if due to 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 the Registrar thinks 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 provide for the provision of a substitute certificate in the event of the loss or destruction of a certificate of same-sex marriage previously given under this section.

13 Interpreters at same-sex marriage ceremonies

- (1) If the authorised celebrant by whom a same-sex marriage is to be solemnised considers that it is appropriate 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.
Maximum penalty: 10 penalty units.
- (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, provide the authorised celebrant with a certificate signed by the person, and in the form prescribed by the regulations, of the faithful performance of the person's services as interpreter.
Maximum penalty: 10 penalty units.

14 Same-sex marriages invalid if not duly solemnised

- (1) A same-sex marriage solemnised in New South Wales otherwise than in accordance with this Part is not a valid same-sex marriage.
- (2) However, a same-sex marriage is not invalid merely because the person solemnising it was not authorised by this Act to do so.
- (3) Subsection (2) applies only if, at the time the same-sex marriage was solemnised, either party to the same-sex marriage believed that the person solemnising the same-sex marriage was authorised to solemnise

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it. In any such case, the form and ceremony of the same-sex marriage are taken to have been sufficient for the purposes of this Part if they were such as to show an intention on the part of each of the parties to become, by the solemnisation, the lawful same-sex married spouse of the other.

15 Second same-sex marriage ceremonies

- (1) If:
- (a) 2 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.
- (2) If 2 persons decide to go through a form or ceremony of same-sex marriage with each other under subsection (1), they must furnish to the authorised celebrant 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 (1) (b).
- (3) The authorised celebrant by whom a form or ceremony of same-sex marriage is performed under subsection (1) must make an endorsement in accordance with the regulations on each certificate issued in respect of that ceremony.

16 Subsequent religious ceremonies of same-sex marriage

- (1) Nothing in this Part prevents 2 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 if those persons have:

- (a) produced to the person by whom the ceremony is to be performed a certificate of their existing same-sex marriage, and
 - (b) given 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.
- (2) Sections 7 and 12 do not apply to or in relation to a religious ceremony of same-sex marriage performed in accordance with this section and the person by whom the religious 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 already being parties to a valid same-sex marriage with each other.
- (3) A person who is not an authorised celebrant does not commit an offence under this Part 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 this section.

17 Incorrect same-sex 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 12 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
 - (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 subsection (1) (a), 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

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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 12 (5), to be handed to a party to the same-sex marriage.

- (4) A person must comply with a notice served on the person under this section.

Maximum penalty: 10 penalty units.

18 Offences relating to solemnising same-sex marriages

- (1) A person must not solemnise a same-sex marriage unless the person is an authorised celebrant.
- (2) An authorised celebrant must not solemnise a same-sex marriage except in accordance with this Part.
- (3) 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:
- (a) there is a legal impediment to the same-sex marriage, or
 - (b) the same-sex marriage would be void.
- (4) An authorised celebrant must not, except in accordance with section 15, purport to solemnise a same-sex marriage between persons who inform the authorised celebrant that they are already lawfully same-sex married to each other or who the authorised celebrant knows, or has reason to believe, are already lawfully same-sex married to each other.
- (5) 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.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

Part 3 Void same-sex marriages

19 Grounds on which same-sex marriages are void

A same-sex marriage solemnised or purporting to be solemnised in New South Wales is void if:

- (a) either of the parties was, at the time the same-sex marriage was entered into, same-sex married to some other person under this Act or the law of another State or Territory, or
- (b) either of the parties subsequently marries some other person under Commonwealth law, or
- (c) the parties are in a prohibited relationship, or
- (d) the same-sex marriage is not valid because of section 14, or
- (e) 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
- (f) either of the parties was not an adult when the same-sex marriage was entered into.

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Part 4 Dissolution and annulment

Part 4 Dissolution and annulment

Note. This Part is about the dissolution and annulment of same-sex marriages. Couples who are same-sex married are not legally married for the purposes of the Commonwealth law but they may be de facto partners for the purposes of the Commonwealth law. In particular, Part VIIIAB of the *Family Law Act 1975* of the Commonwealth deals with financial matters arising out of the breakdown (other than by reason of death) of de facto relationships, including between persons of the same sex.

The Commonwealth law does not recognise same-sex marriages but the fact that persons are same-sex married under this Act does not prevent them from being de facto partners for the purposes of the Commonwealth law. If those persons are not de facto partners for the purposes of the Commonwealth law, but are in a domestic relationship within the meaning of the *Property (Relationships) Act 1984* of New South Wales, that Act will apply to financial matters arising from any breakdown in the relationship.

20 Institution of proceedings in Supreme Court

- (1) Proceedings:
 - (a) for a dissolution order or a decree of nullity in relation to a 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 the same-sex marriage, or
 - (iii) the annulment of a same-sex marriage,may be instituted in the Supreme Court.
- (2) Except as otherwise prescribed by the regulations or the rules of court, any such proceedings are to be instituted by application to the Supreme Court.
- (3) 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.

21 Dissolution of same-sex marriage

- (1) An application for a dissolution order in relation to a same-sex marriage is to be based only on the ground that the same-sex marriage has broken down irretrievably.
- (2) In proceedings instituted by such an application, the ground is taken to have been established, and a dissolution order in relation to the 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) However, 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.

22 Meaning of separation

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

23 Effect of resumption of cohabitation

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

24 Nullity of same-sex marriage

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

25 Court not to make dissolution order where application for decree of nullity before it

If 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 both before the Supreme Court, the Court must not make a dissolution order in relation to the same-sex marriage unless it has dismissed the application for a decree of nullity of the same-sex marriage.

Clause 26 Same-Sex Marriage Bill 2013

Part 4 Dissolution and annulment

26 Circumstances occurring before commencement of Act or outside New South Wales

An order or a decree may be made, or refused, under this Part by reason of facts and circumstances despite those facts and circumstances, or some of them, having taken place before the commencement of this Act or outside New South Wales.

27 When dissolution order takes effect

- (1) Subject to this section, a dissolution order takes effect at the expiration of a period of one month from the making of the order.
- (2) A dissolution order does not take effect if either of the parties to the same-sex marriage dies before the dissolution order takes effect.
- (3) If an appeal is instituted before a dissolution order takes effect, 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 subsection (1) if no appeal had been instituted,whichever is the later.
- (4) For the purposes of subsection (3), appeal includes an application for a rehearing.

28 Certificate as to dissolution order

- (1) If a dissolution order takes effect, the Registrar of the Supreme Court 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 Registrar of the Supreme Court, to receive a certificate signed by the Registrar of the Court 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.

29 Rescission of dissolution order where parties reconciled

Despite any provision of 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, on the application of the parties to the same-sex marriage, rescind the dissolution order on the ground that the parties have become reconciled.

Same-Sex Marriage Bill 2013

Clause 30

Dissolution and annulment

Part 4

30 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.

31 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 same-sex marry again under this Act.

Clause 32 Same-Sex Marriage Bill 2013

Part 5 Authorised celebrants

Part 5 Authorised celebrants

Division 1 NSW officers

32 Authorisation of NSW officers

- (1) The Registrar is authorised to solemnise same-sex marriages.
- (2) The Minister may, by instrument in writing, authorise any other person who:
 - (a) is a member of staff of a public sector agency within the meaning of the *Public Sector Employment and Management Act 2002*, or
 - (b) is the holder of a statutory office, 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 Registration of same-sex marriage celebrants

33 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.

34 Entitlement to be registered as same-sex marriage celebrant

- (1) A person is entitled to be registered as a same-sex marriage celebrant only if the person is an individual and the Registrar is satisfied that the person:
 - (a) is an adult, 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 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, under a law of the Commonwealth or of 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 37, and
 - (g) any other matter the Registrar considers relevant to whether the person is a fit and proper person to be a same-sex marriage celebrant.

35 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 form prescribed by the regulations, and
 - (b) any statutory declarations required by that form.
- (2) An application for registration as a same-sex marriage celebrant must be accompanied by the fee prescribed by the regulations.
- (3) In dealing with an application, the Registrar:
- (a) is to 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.
- (4) The Registrar may register a person as a same-sex marriage celebrant if:
- (a) the person has applied in accordance with subsection (1), and

Clause 36 Same-Sex Marriage Bill 2013

Part 5 Authorised celebrants

- (b) the Registrar is satisfied that the person is entitled to be registered as a same-sex marriage celebrant.
- (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 the regulations.
- (6) If the Registrar registers a person as a same-sex marriage celebrant, the Registrar must notify the person in writing.
- (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 Act to apply for a review of the decision.

36 Effect of registration

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

37 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
- (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.

38 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.
- (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
 - (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.

39 Disciplinary measures

- (1) The Registrar may take disciplinary measures under this section 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 37, 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

Clause 40 Same-Sex Marriage Bill 2013

Part 5 Authorised celebrants

- complaint in accordance with the complaints resolution procedures established under section 41 (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 disciplinary measures that the Registrar may take against a same-sex marriage celebrant are as follows:
- (a) caution the same-sex marriage celebrant in writing,
 - (b) require, in accordance with the regulations, the same-sex marriage celebrant to undertake professional development activities determined in writing by the Registrar,
 - (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,
 - (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 36 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) the same-sex marriage celebrant's right under section 40 to apply for a 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.

40 Review of decisions

- (1) A person may apply to the Administrative Decisions Tribunal for a review of a decision of the Registrar:
- (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 Administrative Decisions Tribunal in relation to such an application, if:
 - (a) a person has made application for registration as a same-sex marriage celebrant under section 35, 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 Tribunal's decision.

41 Additional functions of Registrar

The Registrar:

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

42 Evidence of registration

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 evidence of that fact until the contrary is proved.

Clause 43 Same-Sex Marriage Bill 2013

Part 6 Interstate same-sex marriages

Part 6 Interstate same-sex marriages

43 Recognition of interstate same-sex marriages

- (1) In this section:
interstate same-sex marriage means a same-sex marriage that is valid under the law of another State or Territory.
- (2) An interstate same-sex marriage is recognised as a valid same-sex marriage for the purposes of the law of New South Wales.
- (3) However, an interstate same-sex-marriage is not to be recognised as a valid same-sex marriage for the purposes of the law of New South Wales if:
 - (a) either of the parties was not an adult at the time of the same-sex marriage, or
 - (b) either of the parties was, at the time of the same-sex marriage:
 - (i) married under Commonwealth law to some other person, or
 - (ii) a party to an interstate same-sex marriage with some other person, or
 - (c) either of the parties:
 - (i) becomes married under Commonwealth law to some other person, or
 - (ii) becomes a party to an interstate same-sex marriage with some other person, or
 - (d) the consent of either of the parties to the interstate same-sex marriage 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) the parties are in a prohibited relationship, or
 - (f) the same-sex marriage is voidable under the law of the State or Territory concerned.
- (4) A document purporting to be either the original or a certified copy of a certificate or record of a same-sex marriage alleged to have been solemnised under the law of another State or Territory and purporting to have been issued by an authority of that State or Territory is, for the purposes of the law of New South Wales, evidence of the facts stated in

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Same-Sex Marriage Bill 2013

Clause 43

Interstate same-sex marriages

Part 6

the document and of the validity of the same-sex marriage to which the document relates until the contrary is proved.

Clause 44 Same-Sex Marriage Bill 2013

Part 7 Miscellaneous

Part 7 Miscellaneous

44 Same-sex marrying person who is not an adult

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

Maximum penalty: Imprisonment for 2 years.

45 Bigamy

- (1) A person who is same-sex married under this Act or the law of another State or Territory must not go through a form or ceremony of same-sex marriage with any person.

Maximum penalty: Imprisonment for 5 years.

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

Maximum penalty: Imprisonment for 5 years.

- (3) It is a defence to a prosecution for an offence under subsection (1) or (2) 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.

- (4) For the purposes of subsection (3), 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 (3) (b).

- (5) A person must not go through a form or ceremony of same-sex marriage with another person who is same-sex married knowing, or having reasonable grounds to believe, that the other person is same-sex married under this Act or the law of another State or Territory.

Maximum penalty: Imprisonment for 2 years.

- (6) A person must not go through a form or ceremony of same-sex marriage with another person who is married under Commonwealth law knowing, or having reasonable grounds to believe, that the other person is married under Commonwealth law.

Maximum penalty: Imprisonment for 2 years.

- (7) It is not an offence under this section for a person to go through a form or ceremony of same-sex marriage with that person's own spouse.
- (8) In a prosecution for an offence under this section, the spouse of the accused person is a competent and compellable witness for either the prosecution or the defence.
- (9) In a prosecution for an offence under this section, the fact that, at the time of the alleged offence, a person was same-sex married under this Act or the law of another State or Territory, or was married under Commonwealth law, 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 same-sex marriage.

46 False statements or documents

A person who intentionally makes a false or misleading statement or representation in a notice, declaration, application or other document under this Act is guilty of an offence.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

47 Restrictions on publication of court proceedings

- (1) A person who publishes an account of any proceedings under this Act is guilty of an offence if that account identifies:
 - (a) a party to the proceedings, or
 - (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.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

- (2) A person who publishes 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.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

- (3) Without limiting the generality of subsection (1), an account 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

Clause 47 Same-Sex Marriage Bill 2013

Part 7 Miscellaneous

- (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 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
 - (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.
- (4) This section does 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
 - (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 under the direction of a court, or
 - (e) the publication or display by a 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, being a publication intended primarily for use by the members of any profession:
 - (i) to a person who is a member of the 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
 - (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) any publication approved by a court.
- (5) In this section:
- court*** includes an officer of a court investigating or dealing with a matter in accordance with this Act.
- 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 the speech is processed at its destination by an automated voice recognition system.
- publish*** means publish in a newspaper or periodical publication or by radio broadcast or television or by other electronic means, or publicly disseminate by any other means.

48 Proceedings for offences

- (1) Proceedings for an offence under this Act are to be dealt with summarily before the Local Court.
- (2) Despite subsection (1), an offence under section 44 or 45 is to be prosecuted on indictment.

Clause 49 Same-Sex Marriage Bill 2013

Part 7 Miscellaneous

49 Act binds Crown

This Act binds the Crown in right of New South Wales.

50 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

51 Rules of court

Rules of court may be made under the *Supreme Court Act 1970* for or with respect to:

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

52 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Amendment of Acts

1.1 Births, Deaths and Marriages Registration Act 1995 No 62

[1] Section 6 Registrar's general functions

Insert at the end of the section:

- (2) The Registrar also has the functions conferred or imposed on the Registrar under the *Same-Sex Marriage Act 2013*.

[2] Section 8 Delegation

Omit “and the *Relationships Register Act 2010*” from section 8 (1).

Insert instead “, the *Relationships Register Act 2010* or the *Same-Sex Marriage Act 2013*”.

[3] Part 6A

Insert after Part 6:

Part 6A Registration of same-sex marriages

35A Cases in which registration of same-sex marriage is required

If a same-sex marriage is solemnised in the State in accordance with the *Same-Sex Marriage Act 2013*, the same-sex marriage must be registered under this Act.

35B How to have same-sex marriage registered

A person has a same-sex marriage registered by lodging with the Registrar a certificate of the same-sex marriage under section 12 of the *Same-Sex Marriage Act 2013*.

35C Registration of same-sex marriage

A same-sex marriage may be registered by:

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

1.2 Interpretation Act 1987 No 15

Section 21 Meanings of commonly used words and expressions

Insert in alphabetical order in section 21 (1):

Same-Sex Marriage Bill 2013

Schedule 1 Amendment of Acts

marriage includes same-sex marriage under the *Same-Sex Marriage Act 2013*.

1.3 Property (Relationships) Act 1984 No 147

[1] Section 5 Domestic relationships

Insert after section 5 (1) (a):

- (a1) a same-sex marriage under the *Same-Sex Marriage Act 2013*, or

[2] Section 5 (3) (c1)

Insert “or a same-sex marriage” after “de facto relationship”.

1.4 Relationships Register Act 2010 No 19

Section 10 Revocation of registration by events

Insert at the end of the section:

- (2) For the purposes of this section, *marriage* does not include same-sex marriage under the *Same-Sex Marriage Act 2013*.

1.5 Status of Children Act 1996 No 76

[1] Section 9 Presumptions of parentage arising from marriage

Insert after section 9 (5):

- (6) For the purposes of this section, *marriage* does not include same-sex marriage under the *Same-Sex Marriage Act 2013*.

[2] Section 14 Presumptions of parentage arising out of use of fertilisation procedures

Insert “or spouse” after “de facto partner” wherever occurring in section 14 (1A) and (5A) (other than in the note to section 14 (1A)).

[3] Section 14 (1A), note

Insert “and “spouse” is defined in that Act to include the other party to a same-sex marriage” after *Interpretation Act 1987*.

Introduced by the Hon T J Khan, MLC

Draft

Warning note: This is a draft version of a Non-Government Bill.

New South Wales

Same-Sex Marriage Bill 2013

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draft

Warning note: This is a draft version of a Non-Government Bill.

New South Wales

Same-Sex Marriage Bill 2013

No. , 2013

A Bill for

An Act to ~~provide~~ allow for ~~marriage equality by allowing for same-sex marriage between two adults regardless of their sex~~ marriages; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the ~~State~~ Same-Sex Marriage ~~Equality~~ Act 2013.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

adult means a person of or above the age of 18.

authorised celebrant means:

- (a) a same-sex marriage celebrant, or
- (b) any other person authorised by or under this Act to solemnise same-sex marriages.

dissolution order means a dissolution order made under section ~~22~~21.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

~~lawfully married~~ means:-

- (a) ~~married under this Act (including a marriage recognised under section 45), or~~

- (b) marital status declaration means the declaration required under section 7 (1) (c).

married under Commonwealth law includes being married under a law of ~~the Commonwealth (including another jurisdiction in a marriage in another jurisdiction~~ that is recognised by the Commonwealth as a valid marriage).

notice of intention to same-sex marry means the notice required under section ~~8~~7 (1) (a).

prohibited relationship—see subsection (2)-.

Registrar means the Registrar of Births, Deaths and Marriages within the meaning of the *Births, Deaths and Marriages Registration Act 1995*.

same-sex marriage means the union of 2 people of the same sex, to the exclusion of all others, voluntarily entered into for life.

Note. ~~The reference to people who are of the same sex is not intended to exclude persons who, although legally recognised as being of the same sex, are in fact of indeterminate sex.~~

same-sex marriage celebrant means a person registered under Division 2 of Part 5.

- (2) A ***prohibited relationship*** is a relationship:
- (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 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 subsection (3):
- (a) a person who has at any time been adopted by another person is taken to remain the adopted child of that other person despite the fact 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) In 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 (~~the descendant~~descendent), means any person from whom the ~~descendant~~descendent is descended, including a parent of the ~~descendant~~descendent.
- (6) Notes in this Act do not form part of the Act.

Part 2 Same-sex marriages

4 Application of Part

This Part applies to and in relation to all same-sex marriages solemnised, or intended to be solemnised, in New South Wales.

5 Eligibility ~~for to~~ same-sex marriage ~~marry~~

~~In order for 2 people of the same sex~~ Two persons are eligible to be ~~same-sex~~ married under this ~~Act~~ Act if:

- (a) ~~each party to~~ they are of the ~~marriage must be an adult~~ same sex, and
- (b) both are adults, and
- (c) ~~each party can not already be lawfully married, and~~ neither person is same-sex married under this Act or under the law of another State or Territory, and
- (d) neither person is married under Commonwealth law, and
- (e) at least ~~one of the parties must~~ them ordinarily ~~reside~~ resides in New South Wales, and
- (f) ~~the parties must~~ they are not ~~be~~ in a prohibited relationship.

~~**Note.** People who are in a registered relationship are eligible to same-sex marry, however, section 10 (b) of the Relationships Register Act 2010 provides that the registration of a registered relationship is revoked on the marriage of a person in the relationship. (Section 21 of the Interpretation Act 1987 provides that in any Act, marriage includes a same-sex marriage under this Act.)~~

6

7 Solemnising of same-sex marriages

- (1) Same-sex marriages are required to be solemnised by authorised celebrants.
- (2) A same-sex marriage may be solemnised on any day, at any time and at any place in New South Wales.

8 ~~Ministers of religion not bound to solemnise same-sex marriages~~

~~This Part does not:~~

- (a) ~~prevent an authorised celebrant who is a minister of religion from making it a condition of his or her solemnising a same-sex marriage that:~~
 - (i) ~~longer notice of intention to marry than that required by this Act is given, or~~

9 ~~requirements additional to those provided by this Act are observed, or~~

- (a) ~~require a minister of religion to make a place (such as a church or other place of public worship) available for solemnising a same-sex marriage.~~

10 Notice of intention to same-sex marry and marital status declaration

- (1) A same-sex marriage must not be solemnised unless:
- (a) notice in writing of the intended same-sex marriage (a ***notice of intention to same-sex marry***) has been given in accordance with this section and has been received by the authorised celebrant solemnising the same-sex marriage:
 - (i) not earlier than 18 months before the date of the same-sex marriage, and
 - (ii) not later than one month before the date of the same-sex marriage, and
 - (b) the authorised celebrant has been given, 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 signed before the authorised celebrant a declaration (a ***marital status declaration***), in the form prescribed by the regulations, 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
 - (iii) such other matters as are prescribed by the regulations.
- (2) The marital status declarations of the parties to an intended same-sex marriage must be written on the one piece of paper and on the same side of that paper.
- (3) A notice of intention to same-sex marry:

Clause Same-Sex Marriage Bill 2013

- (a) must be in the form prescribed by the regulations and include such particulars in relation to the parties as are indicated in the form, and
 - (b) must be signed by each of the parties in the presence of:
 - (i) an authorised celebrant, or
 - (ii) a justice of the peace, public notary or other person having authority to administer an oath under the *Oaths Act 1900*.
- (4) However, if a party to an intended same-sex marriage is not able to sign the notice of intention to same-sex marry in accordance with subsection (3) (b) by the time the notice is required to be given under this section, a notice of intention to same-sex marry duly signed by the other party and otherwise complying with 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 be sufficient notice for the purposes of this section.
- (5) A notice of intention to same-sex marry is not ineffective for the purposes of this section if:
 - (a) a party to the intended same-sex marriage is unable, after reasonable inquiry, to ascertain all the particulars in relation to that party required to be included in the notice, and
 - (b) at any time before the same-sex marriage is solemnised, that party provides the authorised celebrant solemnising the same-sex marriage with a statutory declaration:
 - (i) explaining that party's inability to ascertain the particulars not included in the notice, and
 - (ii) explaining the reasons for that inability.
- (6) An authorised celebrant must, as soon as practicable after receiving a notice of intention to same-sex marry, give 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.
- (7) If, by reason of the death, absence or illness of an authorised celebrant to whom a notice of intention to same-sex marry has been given, or for any other reason, it is impossible or 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.
- (8) An authorised celebrant must not solemnise a same-sex marriage:
 - (a) unless the authorised celebrant is satisfied that the parties are the parties referred to in the notice of intention to same-sex marry in relation to the same-sex marriage, or

-
- (b) if the authorised celebrant has reason to believe that any of the following documents in relation to the same-sex marriage contains a false statement or an error or is defective:
 - (i) a notice of intention to same-sex marry,
 - (ii) a marital status declaration,
 - (iii) a statutory declaration made for the purposes of this section.
 - (9) An authorised celebrant may:
 - (a) permit an error in a notice of intention to same-sex marry 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
 - (b) treat the corrected notice as having been originally given in its corrected form.
 - (10) If the marital status declaration of a party states that the party is a divorced person or a widow or widower, an authorised celebrant must not solemnise the same-sex marriage unless the authorised celebrant is provided with evidence of the party's divorce, or of the death of the party's spouse, as the case requires.
 - (11) If the marital status declaration of a party states that the party was a party to a same-sex marriage that has been dissolved or declared void, an authorised celebrant must not solemnise the same-sex marriage unless the authorised celebrant is provided with evidence of the dissolution of the same-sex marriage or a declaration that the same-sex marriage is void.

11 Witnesses

A same-sex marriage must not be solemnised unless at least 2 persons who are, or appear to the authorised celebrant solemnising the same-sex marriage to be, adults are present as witnesses.

12 Form of ceremony

- (1) If a same-sex marriage is solemnised by an authorised celebrant who is 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 who is not 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 following words (or words to the same effect):

“I call upon the persons here present to witness that I, [name of party], take you, [name of other party], to be my lawful wedded spouse”.

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 ~~State-Same-Sex Marriage Equality Act 2013 made by the Parliament~~ of New South Wales 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”.

“Under the law, this wedding recognises that you are voluntarily entering into a lawful and binding union, for life, to the exclusion of all others”.

14 Ministers of religion not bound to solemnise same-sex marriages

This Part does not:

- (a) prevent an authorised celebrant who is a minister of religion from making it a condition of his or her solemnising a same-sex marriage that:
 - (i) longer notice of intention to same-sex marry than that required by this Act is given, or
 - (ii) requirements additional to those provided by this Act are observed, or
- (b) require a minister of religion to make a place (such as a church or other place of public worship) available for solemnising a same-sex marriage.

15 Same-sex 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 the form prescribed by the regulations, to give to the parties to the same-sex marriage, and
 - (b) prepare 2 official certificates of the same-sex marriage in the form prescribed by the regulations.
- (2) Despite subsection (1) (b), the regulations may provide that an authorised celebrant who is a person authorised to solemnise same-sex

marriages under Division 1 of Part 5 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 are, or appear to the authorised celebrant to be, adults must sign each of the certificates so prepared.
- (4) One of the official certificates or the official certificate (as the case requires) must be on the reverse side of the paper bearing the marital status declarations made by the parties.
- (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 2 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 of intention to same-sex marry 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.
- (6) If the authorised celebrant dies without having prepared and signed the certificates of the same-sex marriage, or if due to 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 the Registrar thinks 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 provide for the provision of a substitute certificate in the event of the loss or destruction of a certificate of same-sex marriage previously given under this section.

16 Interpreters at same-sex marriage ceremonies

- (1) If the authorised celebrant by whom a same-sex marriage is to be solemnised considers that it is appropriate 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.

Maximum penalty: 10 penalty units.

- (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, provide the authorised celebrant with a certificate signed by the person, and in the form prescribed by the regulations, of the faithful performance of the person's services as interpreter.

Maximum penalty: 10 penalty units.

17 Same-sex marriages invalid if not duly solemnised

- (1) A same-sex marriage solemnised in New South Wales otherwise than in accordance with this Part is not a valid same-sex marriage.
- (2) However, a same-sex marriage is not invalid merely because the person solemnising it was not authorised by this Act to do so.
- (3) Subsection (2) applies only if, at the time the same-sex marriage was solemnised, either party to the same-sex marriage believed that the person solemnising the same-sex marriage was authorised to solemnise it. In any such case, the form and ceremony of the same-sex marriage are taken to have been sufficient for the purposes of this Part if they were such as to show an intention on the part of each of the parties to become, by the solemnisation, the ~~lawfully~~ lawful same-sex married spouse of the other.

18 Second same-sex marriage ceremonies

- (1) If:
- (a) 2 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.

- (2) If 2 persons decide to go through a form or ceremony of same-sex marriage with each other under subsection (1), they must furnish to the authorised celebrant 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 (1) (b).
- (3) The authorised celebrant by whom a form or ceremony of same-sex marriage is performed under subsection (1) must make an endorsement in accordance with the regulations on each certificate issued in respect of that ceremony.

19 Subsequent religious ceremonies of same-sex marriage

- (1) Nothing in this Part prevents 2 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 if those persons have:
 - (a) produced to the person by whom the ceremony is to be performed a certificate of their existing same-sex marriage, and
 - (b) given 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.
- (2) Sections ~~8, 12, 17~~ 7 and ~~19~~ 12 do not apply to or in relation to a religious ceremony of same-sex marriage performed in accordance with this section and the person by whom the religious 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 being already parties to a valid same-sex marriage with each other.
- (3) A person who is not an authorised celebrant does not commit an offence under this Part 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 this section.

20 Incorrect same-sex 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 12 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
 - (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 subsection (1) (a), 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 12 (5), to be handed to a party to the same-sex marriage.
- (4) A person must comply with a notice served on the person under this section.
Maximum penalty: 10 penalty units.

21 Offences relating to solemnising same-sex marriages

- (1) A person must not solemnise a same-sex marriage unless the person is an authorised celebrant.
- (2) An authorised celebrant must not solemnise a same-sex marriage except in accordance with this Part.

-
- (3) 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:
- (a) there is a legal impediment to the same-sex marriage, or
 - (b) the same-sex marriage would be void.
- (4) An authorised celebrant must not, except in accordance with section 15, purport to solemnise a same-sex marriage between persons who inform the authorised celebrant that they are already lawfully same-sex married to each other or who the authorised celebrant knows, or has reason to believe, are already lawfully same-sex married to each other.
- (5) 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.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

Part 3 Void same-sex marriages

22 Grounds on which same-sex marriages are void

A same-sex marriage solemnised or purporting to be solemnised in New South Wales is void if:

- (a) either of the parties was, at the time the same-sex marriage was entered into, ~~lawfully~~ same-sex married to some other ~~person~~ person under this Act or the law of another State or Territory, or
- (b) either of the parties subsequently marries some other person under ~~the law of the Commonwealth (including a marriage in another jurisdiction that is recognised by the Commonwealth as a valid marriage)~~ law, or
- (c) the parties are in a prohibited relationship, or
- (d) the same-sex marriage is not valid ~~under~~ because of section ~~14 (Same-sex marriages invalid if not duly solemnised)~~ 14, or
- (e) 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
- (f) either of the parties was not an adult when the same-sex marriage was entered into.

Note. ~~People who are in a registered relationship are eligible to same sex marry, however, section 10 (b) of the Relationships Register Act 2010 provides that the registration of a registered relationship is revoked on the marriage of a person in the relationship. Similarly, a person who is married is ineligible to enter into a registered relationship (see section 5 (3) (e) of that Act). (Section 21 of the Interpretation Act 1987 provides that in any Act, **marriage** includes a same sex marriage under this Act.)~~

Part 4 Dissolution and annulment

Note. This Part is about the dissolution and annulment of same-sex marriages. Couples who are same-sex married are not legally married for the purposes of the Commonwealth law but they may be de facto partners for the purposes of the Commonwealth law. In particular, Part VIIIAB of the *Family Law Act 1975* of the Commonwealth deals with financial matters arising out of the breakdown (other than by reason of death) of de facto relationships between persons of the same sex.

The Commonwealth law does not recognise same-sex marriages but the fact that persons are same-sex married under this Act does not prevent them from being de facto partners for the purposes of the Commonwealth law. If those persons are not de facto partners for the purposes of the Commonwealth law, but are in a domestic relationship within the meaning of the *Property (Relationships) Act 1984* of New South Wales, that Act will apply to financial matters arising from any breakdown in the relationship.

23 ~~Jurisdiction~~ Institution of proceedings in 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) for a dissolution order or a decree of nullity in relation to a same-sex marriage, or
 - (b) ~~decree of nullity of same-sex marriage, or~~
 - (c) for a declaration as to the validity of:
 - (i) a same-sex marriage, or
 - (ii) a dissolution in relation to ~~a~~ the 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 New South Wales at the relevant date.~~
- (3) ~~In subsection (2), relevant date, in relation to proceedings, means:~~
 - (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.~~

may be instituted in the Supreme Court.
- (4) ~~Institution of proceedings~~
- (5) Except as otherwise prescribed by the regulations or the rules of court, any such proceedings ~~under this Part~~ are to be instituted by application to the Supreme Court.
- (6) 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.

24 Dissolution of same-sex marriage

- (1) An application for a dissolution order in relation to a same-sex marriage is to be based only on the ground that the same-sex marriage has broken down irretrievably.
- (2) In proceedings instituted by such an application, the ground is taken to have been established, and a dissolution order in relation to the 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) However, 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.

25 Meaning of separation

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

26 Effect of resumption of cohabitation

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

27 Nullity of same-sex marriage

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

28 Court not to make dissolution order where application for decree of nullity before it

If 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 both before the Supreme Court, the Court must not make a dissolution order in relation to the same-sex marriage unless it has dismissed the application for a decree of nullity of the same-sex marriage.

29 Circumstances occurring before commencement of Act or outside New South Wales

An order or a decree may be made, or refused, under this Part by reason of facts and circumstances despite those facts and circumstances, or some of them, having taken place before the commencement of this Act or outside New South Wales.

30 When dissolution order takes effect

- (1) Subject to this section, a dissolution order takes effect at the expiration of a period of one month from the making of the order.
- (2) A dissolution order does not take effect if either of the parties to the same-sex marriage dies before the dissolution order takes effect.
- (3) If an appeal is instituted before a dissolution order takes effect, 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 subsection (1) if no appeal had been instituted,whichever is the later.
- (4) For the purposes of subsection (3), appeal includes an application for a rehearing.

31 Certificate as to dissolution order

- (1) If a dissolution order takes effect, the Registrar of the Supreme Court 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 Registrar of the Supreme Court, to receive a certificate signed by the Registrar of the Court 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.

32 Rescission of dissolution order where parties reconciled

Despite any provision of 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, on the application of the parties to the same-sex marriage, rescind the dissolution order on the ground that the parties have become reconciled.

33 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.

34 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 same-sex marry again under this Act.

Part 5 Authorised celebrants

Division 1 NSW officers

35 Authorisation of NSW officers

- (1) The Registrar is authorised to solemnise same-sex marriages.
- (2) The Minister may, by instrument in writing, authorise any other person who:
 - (a) is a member of staff of a public sector agency within the meaning of the *Public Sector Employment and Management Act 2002*, or
 - (b) is the holder of a statutory office, 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 Registration of same-sex marriage celebrants

36 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.

37 Entitlement to be registered as same-sex marriage celebrant

- (1) A person is entitled to be registered as a same-sex marriage celebrant only if the person is an individual and the Registrar is satisfied that the person:
 - (a) is an adult, 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 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, under 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 ~~38~~37, and
 - (g) any other matter the Registrar considers relevant to whether the person is a fit and proper person to be a same-sex marriage celebrant.

38 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 form prescribed by the regulations, and
 - (b) any statutory declarations required by that form.
- (2) An application for registration as a same-sex marriage celebrant must be accompanied by the fee prescribed by the regulations.
- (3) In dealing with an application, the Registrar:
- (a) is to 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.
- (4) The Registrar may register a person as a same-sex marriage celebrant if:
- (a) the person has applied in accordance with subsection (1), and

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- (b) the Registrar is satisfied that the person is entitled to be registered as a same-sex marriage celebrant.
 - (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 the regulations.
 - (6) If the Registrar registers a person as a same-sex marriage celebrant, the Registrar must notify the person in writing.
 - (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 Act to apply for review of the decision.

39 Effect of registration

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

40 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
- (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.

41 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.
- (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
 - (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.

42 Disciplinary measures

- (1) The Registrar may take disciplinary measures under this section 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 ~~38~~37, 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

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- complaint in accordance with the complaints resolution procedures established under section ~~42~~41 (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 disciplinary measures that the Registrar may take against a same-sex marriage celebrant are as follows:
- (a) caution the same-sex marriage celebrant in writing,
 - (b) require, in accordance with the regulations, the same-sex marriage celebrant to undertake professional development activities determined in writing by the Registrar,
 - (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,
 - (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 ~~37~~36 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 ~~41~~40 to apply for a 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.

43 Review of decisions

- (1) A person may apply to the Administrative Decisions Tribunal for a review of a decision of the Registrar:
 - (a) not to register a person as a same-sex marriage celebrant, or

Clause Same-Sex Marriage Bill 2013

- (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 Administrative Decisions Tribunal in relation to such an application, if:
 - (a) a person has made application for registration as a same-sex marriage celebrant under section ~~36~~35, 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 Tribunal's decision.

44 Additional functions of Registrar

The Registrar:

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

45 Evidence of registration

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 evidence of that fact until the contrary is proved.

Part 6 Interstate same-sex marriages

46 Recognition of interstate same-sex marriages ~~other jurisdictions marriages~~ ~~marriages solemnised in~~

(1) ~~Application of Part~~

In this section:

interstate same-sex marriage means a same-sex marriage that is valid under the law of another State or Territory.

- (2) ~~This Part applies to any same-sex marriage solemnised, whether before or after the commencement of this Part, in another State or Territory or in a country other than Australia if:~~

An interstate same-sex marriage is recognised as a valid same-sex marriage for the purposes of the law of New South Wales.

- (3) ~~under the local law concerned, the marriage was, at the time it was solemnised, recognised as valid, or~~

However, an interstate same-sex marriage is not to be recognised as a valid same-sex marriage for the purposes of the law of New South Wales if:

- (a) ~~in the case of a same-sex marriage solemnised by or in the presence of a diplomatic or consular officer of a country other than Australia:~~

either of the parties was not an adult at the time of the same-sex marriage, or

- (b) ~~under the law either of that other country, the marriage parties was, at the time when it was solemnised, recognised as valid, and of the same-sex marriage:~~

- (i) ~~at the time when it was solemnised, the solemnisation of the marriage was not prohibited by the local law:~~
married under Commonwealth law to some other person, or

- (ii) ~~If a same-sex marriage (not being a same-sex marriage referred to in subsection (1)) that was solemnised, whether before or after the commencement of this Part, in another State or Territory or in a country other than Australia:~~

a party to an interstate same-sex marriage with some other person, or

- (a) ~~is, at any time in relation to which the validity of the marriage falls to be determined, recognised as valid under the local law concerned, or~~

either of the parties:

~~(i) if the marriage was solemnised by or in the presence of a diplomatic or consular officer of a country other than Australia and, at the time when it was solemnised, the solemnisation of the marriage was not prohibited by the local law—is, at any time in relation to which the validity of the marriage falls to be determined, recognised as valid under the law of that other country,~~

~~this Part applies to and in relation to the marriage from and including that time.~~

becomes married under Commonwealth law to some other person, or

~~(ii) For the purposes of this Part:~~

~~**local law**, in relation to a same-sex marriage solemnised in another State or Territory or in a country other than Australia, means the law in force in that State or Territory, or in that other country, in which the same-sex marriage was solemnised.~~

47 Validity in New South Wales of same-sex marriages solemnised in other jurisdictions

(1) ~~Subject to this section, a same-sex marriage to which this Part applies is recognised as a valid same-sex marriage for the purposes of the law of New South Wales.~~

(2) ~~A same-sex marriage to which this Part applies is not to be recognised as a valid same-sex marriage for the purposes of the law of New South Wales if:~~

(a) ~~either of the parties was, at the time of the marriage, lawfully married to some other person and the marriage to that other person was, at that time, recognised in New South Wales as valid, or~~

becomes a party to an interstate same-sex marriage with some other person, or

(b) ~~the parties are in a prohibited relationship, or~~

(c) the consent of either of the parties to the interstate same-sex marriage 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

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- (d) ~~either of the parties was not an adult at the time of the marriage,~~
~~or~~
the parties are in a prohibited relationship, or
- (e) ~~either party marries another person under this Act or the law of~~
~~any other jurisdiction, or~~
- (f) the same-sex marriage is voidable under the ~~local~~ law of the State
or Territory concerned.

~~(3) Incidental determination of recognition of same-sex marriages~~
~~solemnised in other jurisdictions~~

~~Despite any other law, the question whether a same-sex marriage solemnised in another State or Territory or in a country other than Australia is to be recognised as valid for the purposes of the law of New South Wales is to be determined in accordance with the provisions of this Part.~~

48 Evidence

A document purporting to be either the original or a certified copy of a certificate or record of a same-sex marriage alleged to have been solemnised under the law of another State or Territory ~~or a country other than Australia~~ and purporting to have been issued by an authority of that ~~State, State or Territory or country~~ is, for the purposes of the law of New South Wales, evidence of the facts stated in the document and of the validity of the same-sex marriage to which the document relates until the contrary is proved.

Part 7 Miscellaneous

49 ~~Marrying~~ Same-sex marrying person who is not an adult

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

Maximum penalty: Imprisonment for 2 years.

50 Bigamy

- (1) A person who is ~~lawfully same-sex~~ married under this Act or the law of another State or Territory must not go through a form or ceremony of same-sex marriage with any person.
Maximum penalty: Imprisonment for 5 years.
- (2) A person who is married under Commonwealth law must not go through a form or ceremony of same-sex marriage with any person.
Maximum penalty: Imprisonment for 5 years.
- (3) It is a defence to a prosecution for an offence under subsection (1) or (2) 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.
- (4) For the purposes of subsection (~~23~~), 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 (~~23~~) (b).
- (5) A person must not go through a form or ceremony of same-sex marriage with another person who is same-sex married knowing, or having reasonable grounds to believe, that the other person is same-sex married under this Act or the law of another State or Territory.
Maximum penalty: Imprisonment for 2 years.
- (6) A person must not go through a form or ceremony of same-sex marriage with another person who is ~~lawfully married, married under Commonwealth law~~ knowing, or having reasonable grounds to believe, that the other person is ~~lawfully married~~ married under Commonwealth law.

Maximum penalty: Imprisonment for 2 years.

- (7) It is not an offence under this section for a person to go through a form or ceremony of same-sex marriage with that person's own spouse.
- (8) In a prosecution for an offence under this section, the spouse of the accused person is a competent and compellable witness for either the prosecution or the defence.
- (9) In a prosecution for an offence under this section, the fact that, at the time of the alleged offence, a person was ~~lawfully same-sex married~~ under this Act or the law of another State or Territory, or was married under Commonwealth law, 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 same-sex marriage.

51 False statements or documents

A person who intentionally makes a false or misleading statement or representation in a notice, declaration, application or other document under this Act is guilty of an offence.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

52 Restrictions on publication of court proceedings

- (1) A person who publishes an account of any proceedings under this Act is guilty of an offence if that account identifies:
 - (a) a party to the proceedings, or
 - (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.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

- (2) A person who publishes 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.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

- (3) Without limiting the generality of subsection (1), an account 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

- (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 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
 - (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.
- (4) This section does 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
 - (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

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- 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 under the direction of a court, or
 - (e) the publication or display by a 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, being a publication intended primarily for use by the members of any profession:
 - (i) to a person who is a member of the 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
 - (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) any publication approved by a court.
- (5) In this section:
- court*** includes an officer of a court investigating or dealing with a matter in accordance with this Act.
- 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 the speech is processed at its destination by an automated voice recognition system.
- publish*** means publish in a newspaper or periodical publication or by radio broadcast or television or by other electronic means, or publicly disseminate by any other means.

53 Proceedings for offences

- (1) Proceedings for an offence under this Act are to be dealt with summarily before the Local Court.
- (2) Despite subsection (1), an offence under section ~~48~~44 or ~~49~~45 is to be prosecuted on indictment.

54 Act binds Crown

This Act binds the Crown in right of New South Wales.

55 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

56 Rules of court

Rules of court may be made under the *Supreme Court Act 1970* for or with respect to:

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

57 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Amendment of Acts

1.1 Births, Deaths and Marriages Registration Act 1995 No 62

[1] Section 6 Registrar's general functions

Insert at the end of the section:

- (2) The Registrar also has the functions conferred or imposed on the Registrar under the ~~State-Same-Sex Marriage Equality Act 2013~~.

[2] Section 8 Delegation

Omit "and the *Relationships Register Act 2010*" from section 8 (1).

Insert instead " , the *Relationships Register Act 2010* or the ~~State-Same-Sex Marriage Equality Act 2013~~".

[3] Insert after Part 6:

Part 6A Registration of same-sex marriages

35A Cases in which registration of same-sex marriage is required

If a same-sex marriage is solemnised in the State in accordance with ~~law~~the *Same-Sex Marriage Act 2013*, the same-sex marriage must be registered under this Act.

35B How to have same-sex marriage registered

A person has a same-sex marriage registered by lodging with the Registrar a certificate of the same-sex marriage under the ~~State-Same-Sex Marriage Equality Act 2013~~.

35C Registration of same-sex marriage

A same-sex marriage may be registered by:

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

1.2 Interpretation Act 1987 No 15

Section 21 Meanings of commonly used words and expressions

Insert in alphabetical order in section 21 (1):

Same-Sex Marriage Bill 2013

marriage includes a same-sex marriage under the ~~State~~ Same-Sex Marriage Equality Act 2013 and ~~married~~ includes married under that Act. 2013.

~~spouse, in relation to a person, includes the other party to a same-sex marriage with the person under the State Marriage Equality Act 2013.~~

1.3 Property (Relationships) Act 1984 No 147

[1] **Section 5 Domestic relationships**

Insert after section 5 (1) (a):

- (a1) a same-sex marriage under the ~~State~~ Same-Sex Marriage Equality Act 2013, or

[2] **Section 5 (3) (c1)**

Insert “or a same-sex marriage” after “de facto relationship”.

1.4 Status of Children Act 1996 No 76

[1] **Section 9 Presumptions of parentage arising from marriage**

Insert after section 9 (5):

- (6) For the purposes of this section, *marriage* does not include same-sex marriage under the ~~State~~ Same-Sex Marriage Equality Act 2013.

[2] **Section 14 Presumptions of parentage arising out of use of fertilisation procedures**

Insert “or spouse” after “de facto partner” wherever occurring in section 14 (1A) and (5A).

[3] **Section 14 (1A), note**

Insert “and “spouse” is defined in that Act to include the other party to a same-sex marriage” after *Interpretation Act 1987*.