

**Legislative Council—No 73**

As introduced and read a first time, 9 February 2011

South Australia

**Marriage Equality Bill 2011**

A BILL FOR

An Act to provide for marriage between adults of the same sex.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Marriage Equality Act 2011*.

#### 2—Commencement

5 This Act will come into operation on a day to be fixed by proclamation.

#### 3—Interpretation

In this Act—

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

*authorised celebrant* means—

- 10
- (a) a minister of religion registered under Part 4 Division 1; or
  - (b) a person authorised to solemnise marriages by virtue of Part 4 Division 2; or
  - (c) a same sex marriage celebrant;

*minister of religion* means—

- 15
- (a) a person recognised by a religious body or a religious organisation as having authority to solemnise marriages in accordance with the rites or customs of the body or organisation; or
  - (b) in relation to a religious body or a religious organisation in respect of which paragraph (a) is not applicable—a person nominated by—
    - 20 (i) the head, or the governing authority, in a State or Territory, of that body or organisation; or
    - (ii) such other person or authority acting on behalf of that body or organisation as is prescribed,

to be an authorised celebrant for the purposes of this Act;

*ordinarily resident* includes habitually resident;

25 *Registrar* means the Registrar of Births, Deaths and Marriages;

*same sex marriage* means the lawful union of 2 people of the same sex to the exclusion of all others, voluntarily entered into for life;

*same sex marriage celebrant* means person registered under Part 4 Division 3.

## Part 2—Same sex marriage

### Division 1—Same sex marriageable age

#### 4—Application of Division

5 This Division applies, despite any common law rule of private international law, in relation to same sex marriages.

#### 5—Same sex marriageable age

A person is of same sex marriageable age if the person has attained the age of 18 years.

### Division 2—Void same sex marriages

#### 10 6—Grounds on which same sex marriages are void

- (1) A same sex marriage is void if—
- (a) either of the parties was, at the time of the same sex marriage, lawfully married to some other person; or
  - (b) the parties are within a prohibited relationship; or
  - 15 (c) by reason of section 15 the same sex marriage is not a valid same sex marriage; or
  - (d) the consent of either of the parties was not a real consent because—
    - (i) it was obtained by duress or fraud; or
    - 20 (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) either of the parties was not of same sex marriageable age, and not otherwise.
- 25 (2) Same sex marriages of parties within a prohibited relationship are same sex marriages—
- (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).
- 30 (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, will be deemed to be or to have been the natural relationship of child and parent.

(4) Nothing in subsection (3) makes it lawful for a person to marry a person whom the first-mentioned person could not lawfully have married if that subsection had not been enacted.

(5) For the purposes of this section—

5           (a) a person who has at any time been adopted by another person will be deemed 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

10           (b) a person who has been adopted on more than 1 occasion will be deemed to be the adopted child of each person by whom he or she has been adopted.

(6) 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;

15           *ancestor*, in relation to a person, means any person from whom the first-mentioned person is descended including a parent of the first-mentioned person.

### **Division 3—Solemnisation of same sex marriages in South Australia**

#### **7—Application of Division**

20           This Division applies to and in relation to all same sex marriages solemnised, or intended to be solemnised, in this State.

#### **8—Same sex marriages to be solemnised by authorised celebrant**

A same sex marriage must be solemnised by or in the presence of an authorised celebrant who is authorised to solemnise same sex marriages at the place where the same sex marriage takes place.

#### **9—Ministers of religion not bound to solemnise same sex marriage etc**

Nothing in this Part—

25           (a) imposes an obligation on an authorised celebrant, being a minister of religion, to solemnise any same sex marriage; or

30           (b) prevents such an authorised celebrant 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

          (ii) requirements additional to those provided by this Act are observed.

**10—Notice to be given and declaration made**

(1) Subject to this section, a same sex marriage must not be solemnised unless—

(a) notice in writing of the intended same sex marriage has been given in accordance with this section and has been received by the authorised celebrant solemnising the same sex marriage not earlier than 18 months before the date of the same sex marriage and not later than 1 month before the date of the same sex marriage; and

(b) there has been produced to that authorised celebrant, 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 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 subscribed before that authorised celebrant a declaration, in accordance with the prescribed form, as to—

(i) the party’s conjugal 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.

(2) A notice under subsection (1)—

(a) will be in accordance with the prescribed form and contain such particulars in relation to the parties as are indicated in the prescribed form; and

(b) must be signed by each of the parties; and

(c) must be signed in the presence of—

(i) an authorised celebrant; or

(ii) a justice of the peace; or

(iii) a commissioner for taking affidavits in the Supreme Court.

(3) However, if the signature of a party to an intended same sex marriage cannot conveniently be obtained at the time when it is desired to give notice under this section, a notice duly signed by the other party and otherwise complying with the provisions of this section will, if it is signed by the first-mentioned party in the presence of an authorised celebrant before the same sex marriage is solemnised, be deemed to have been a sufficient notice.

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### Part 2—Same sex marriage

#### Division 3—Solemnisation of same sex marriages in South Australia

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- 5 (4) If a party to an intended same sex marriage is unable, after reasonable inquiry, to ascertain all of the particulars in relation to that party required to be contained in a notice under this section, the failure to include in the notice such of those particulars as the party is unable to ascertain does not make the notice ineffective for the purposes of this section if, at any time before the same sex marriage is solemnised, that party furnishes to the authorised celebrant solemnising the same sex marriage a statutory declaration as to that party's inability to ascertain the particulars not included in the notice and the reason for that inability.
- 10 (5) An authorised celebrant must, as soon as practicable after receiving the notice referred to in subsection (1), give to the parties a document in the prescribed form outlining the obligations and consequences of same sex marriage and indicating the availability of same sex marriage education and counselling.
- 15 (6) If, by reason of the death, absence or illness of an authorised celebrant to whom a notice of intention to marry has been given, or for any other reason, it is 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.
- (7) The declarations of the parties required by subsection (1) must both be written on the 1 paper and on the same side of that paper.
- 20 (8) An authorised celebrant must not solemnise a same sex marriage—
- (a) unless the authorised celebrant has satisfied himself or herself that the parties are the parties referred to in the notice given under this section in relation to the same sex marriage; or
- (b) if the authorised celebrant has reason to believe that—
- 25 (i) a notice given under this section; or
- (ii) a declaration made and subscribed under this section, or a statutory declaration made for the purposes of this section, in relation to the same sex marriage,
- contains a false statement or an error or is defective.
- 30 (9) An authorised celebrant may permit an error in a notice under this section 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 may treat the corrected notice as having been originally given in its corrected form.
- 35 (10) If the declaration made by a party under subsection (1) states that that party is a divorced person or a widow or widower, an authorised celebrant must not solemnise the same sex marriage unless there is produced to him or her evidence of that party's divorce, or of the death of that party's spouse, as the case requires.

### **11—Same sex marriage may be solemnised on any day etc**

A same sex marriage may be solemnised on any day, at any time and at any place.

### **12—Witnesses**

40 A same sex marriage must not be solemnised unless at least 2 persons who are, or appear to the person solemnising the same sex marriage to be, over the age of 18 years are present as witnesses.

### 13—Form of ceremony

(1) If a same sex marriage is solemnised by or in the presence of an authorised celebrant, being a minister of religion, it may be solemnised according to any form and ceremony recognised as sufficient for the purpose by the religious body or organisation of which he or she is a minister.

(2) If a same sex marriage is solemnised by or in the presence of an authorised celebrant, not being 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 words:

“I call upon the persons here present to witness that I, A.B. (or C.D.), take thee, C.D. (or A.B.), to be my lawful wedded wife (or husband or spouse).”,

or words to that effect.

### 14—Certain authorised celebrants to explain nature of same sex marriage relationship

Before a same sex marriage is solemnised by or in the presence of an authorised celebrant, not being a minister of religion of a recognised denomination, the authorised celebrant will say to the parties, in the presence of the witnesses, the words:

“I am duly authorised by law to solemnise same sex marriages according to law;

Before you are joined in same sex marriage in my presence and in the presence of these witnesses, I am to remind you of the solemn and binding nature of the relationship into which you are now about to enter;

Same sex marriage, according to law in South Australia, is the lawful union of 2 persons to the exclusion of all others, voluntarily entered into for life.”,

or words to that effect.

### 15—Certain same sex marriages not solemnised in accordance with this Part to be invalid

(1) Subject to this section, a same sex marriage solemnised otherwise than in accordance with the preceding provisions of this Division is not a valid same sex marriage.

(2) A same sex marriage is not invalid by reason of all or any of the following:

(a) failure to give the notice required by section 10, or a false statement, defect or error in such a notice;

(b) failure of the parties, or either of them, to make or subscribe a declaration as required by section 10, or a false statement, defect or error in such a declaration;

(c) failure to produce to the authorised celebrant a certificate or extract of an entry or a statutory declaration as required by section 10, or a false statement, defect or error in such a statutory declaration;

(d) failure to comply with any other requirement of section 10, or any contravention of that section;

(e) failure to comply with the requirements of section 12 or 13.

- 5 (3) A same sex marriage is not invalid by reason that the person solemnising it was not authorised by this Act to do so, if either party to the same sex marriage, at the time the same sex marriage was solemnised, believed that that person was lawfully authorised to solemnise it, and in such a case the form and ceremony of the same sex marriage will be deemed to have been sufficient if they were such as to show an intention on the part of each of the parties to become thereby the lawfully wedded spouse of the other.

## **Division 4—Offences**

### **16—Bigamy**

- 10 (1) A person who is married must not go through a form or ceremony of same sex marriage with any person.  
Maximum penalty: Imprisonment for 5 years.
- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that—
- 15 (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.
- 20 (3) For the purposes of subsection (2), 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 (2)(b).
- 25 (4) A person must not go through a form or ceremony of same sex marriage with a person who is married, knowing, or having reasonable grounds to believe, that the latter person is married.  
Maximum penalty: Imprisonment for 5 years.
- 30 (5) It is not an offence against this section for a person to go through a form or ceremony of same sex marriage with that person's own spouse.
- (6) In a prosecution for an offence against this section, the spouse of the accused person is a competent and compellable witness for either the prosecution or the defence.
- 35 (7) In a prosecution for an offence against this section, the fact that, at the time of the alleged offence, a person was married will not be taken to have been proved if the only evidence of the fact is the evidence of the other party to the alleged marriage.

## **Division 5—Miscellaneous**

### **17—Second same sex marriage ceremonies**

- 40 (1) Except in accordance with this section—
- (a) persons who are already legally married to each other must not go through a form or ceremony of same sex marriage with each other; and

(b) a person who is authorised by this Act to solemnise same sex marriages must not purport to solemnise a same sex marriage between persons who inform the first-mentioned person that they are already legally married to each other or whom the first-mentioned person knows or has reason to believe to be already legally married to each other.

(2) If—

(a) 2 persons have gone through a form or ceremony of same sex marriage with each other, whether before or after the commencement of this Act; and

(b) there is a doubt—

(i) whether those persons are legally married to each other; or

(ii) where the form or ceremony of same sex marriage took place outside Australia—whether the same sex marriage would be recognised as valid by a court in Australia; or

(iii) 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.

(3) If 2 persons wish to go through a form or ceremony of same sex marriage with each other under subsection (2), they must furnish to the person by whom, or in whose presence, the form or ceremony is to take place or 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 a 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 1 of the matters specified in subsection (2)(b).

(4) The person by whom or in whose presence a form or ceremony of same sex marriage takes place or is performed under subsection (2) must make an endorsement in accordance with the regulations on each certificate issued in respect of it.

(5) A same sex marriage which takes place under subsection (2) is not invalid by reason of any failure to comply with the requirements of subsection (3) or (4).

(6) Nothing in this Act will be taken to prevent 2 persons who are already legally married to each other from going through a religious ceremony of same sex marriage with each other in Australia where those persons have—

(a) produced to the person by whom or in whose presence the ceremony is to be performed a certificate of their existing same sex marriage; and

(b) furnished to 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

- 5
- (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 legally married to each other or, if their same sex marriage took place outside Australia, they have no reason to believe that it would not be recognised as valid in Australia.

## Part 3—Dissolution and annulment

### Division 1—Interpretation

#### 18—Interpretation

10 In this Division—

*appeal* includes an application for a re-hearing;

*applicant* includes a cross-applicant;

*decree* means decree, judgment or order, and includes a decree *nisi* and an order dismissing an application or refusing to make a decree or order;

15 *made*, in relation to a decree, being a judgment, means given;

*matrimonial cause* means—

- (a) proceedings between the parties to a same sex marriage, or by the parties to a same sex marriage, for a decree of—
  - (i) dissolution of same sex marriage; or
  - 20 (ii) nullity of same sex marriage; or
- (b) proceedings for a declaration as to the validity of a same sex marriage or of the dissolution or annulment of a same sex marriage by decree or otherwise;

25 *proceedings* means a proceeding in a court, whether between parties or not, and includes cross-proceedings or an incidental proceeding in the course of or in connection with a proceeding;

*registrar* means the registrar of the Supreme Court.

### Division 2—Jurisdiction in matrimonial causes

#### 19—Jurisdiction in matrimonial causes

- 30
- (1) Subject to this Part, a matrimonial cause may be instituted under this Act in the Supreme Court.
  - (2) Proceedings for a decree of dissolution of a same sex marriage may be instituted under this Act if that same sex marriage took place in South Australia pursuant to Part 2.

(3) Proceedings of a kind referred to in the definition of *matrimonial cause* in section 18, other than proceedings for a decree of dissolution of same sex marriage, may be instituted under this Act if—

5           (a) in the case of proceedings between the parties to a same sex marriage or proceedings of a kind referred to in paragraph (b) of that definition in relation to a same sex marriage—either party to the same sex marriage is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, at the relevant date; and

10           (b) in any other case—any party to the proceedings is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, at the relevant date.

(4) In subsection (3)—

*relevant date*, in relation to proceedings, means—

15           (a) if the application instituting the proceedings is filed in a 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.

## **20—Principles to be applied by Supreme Court**

The Supreme Court must, in the exercise of its jurisdiction under this Act, have regard to—

20           (a) the need to promote, preserve and protect the institution of same sex marriage as the union of 2 people of the same sex to the exclusion of all others voluntarily entered into for life; and

             (b) the need to ensure safety from family violence; and

25           (c) the means available for assisting parties to a same sex marriage to consider reconciliation or the improvement of their relationship to each other.

## **21—Institution of proceedings**

(1) Proceedings under this Part must be instituted by application to the Supreme Court.

30           (2) Proceedings under this Part for a decree of dissolution of same sex marriage or nullity of same sex marriage may be instituted by either party to the same sex marriage or jointly by both parties to the same sex marriage.

(3) An application for dissolution of a same sex marriage may not, without the leave of the Court granted under subsection (4), be filed within the period of 2 years after the date of the same sex marriage unless there is filed with the application a certificate—

35           (a) stating that the parties to the same sex marriage have considered a reconciliation, with the assistance of a counsellor or counselling organisation; and

             (b) signed by that person or on behalf of that organisation, as the case may be.

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(4) Despite subsection (3), if the Court is satisfied that there are special circumstances by reason of which the hearing of an application for dissolution of a same sex marriage should proceed despite the fact that that the parties have not considered a reconciliation with assistance of the kind referred to in subsection (3), the Court may—

(a) if the application has not been filed—give leave for the application to be filed; or

(b) if the application has been filed—at any time before or during the hearing of the application, declare that it is so satisfied,

and, if the Court makes a declaration under paragraph (b), the application will be taken to have been duly filed and everything done pursuant to that application will be as valid and effectual as if the Court had, before the application was filed, given leave under paragraph (a) for the application to be filed.

(5) Despite subsections (3) and (4), a respondent may, in an answer to an application, include an application for any decree or declaration under this Part.

**Division 3—Dissolution and nullity of same sex marriage**

**22—Dissolution of same sex marriage**

(1) An application under this Act for a decree of dissolution of a same sex marriage must be based on the ground that the same sex marriage has broken down irretrievably.

(2) Subject to subsection (3), in a proceeding instituted by such an application, the ground will be held to have been established, and a decree of dissolution of the same sex marriage will be made, if, and only if, the Court is satisfied that the parties separated and thereafter 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 dissolution of same sex marriage.

(3) A decree of dissolution of same sex marriage must not be made if the Court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

**23—Meaning of separation**

(1) The parties to a same sex marriage may be held to have separated despite the fact that the cohabitation was brought to an end by the action or conduct of 1 only of the parties.

(2) The parties to a same sex marriage may be held 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.

**24—Effect of resumption of cohabitation**

(1) For the purposes of proceedings for a decree of dissolution of same sex marriage, if, after the parties to the same sex marriage separated, they resumed cohabitation on 1 occasion but, within a period of 3 months after the resumption of cohabitation, they again separated and thereafter 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 1 continuous period, but the period of cohabitation will not be taken to be part of the period of living separately and apart.

- (2) For the purposes of subsection (1), a period of cohabitation will be taken to have continued during any interruption of the cohabitation that, in the opinion of the court, was not substantial.

## **25—Nullity of same sex marriage**

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

## **26—Court not to make decree of dissolution where application for decree of nullity before it**

10 If both an application for a decree of nullity of a same sex marriage and an application for a decree of dissolution of that same sex marriage are before a Court, the Court must not make a decree of dissolution of the same sex marriage unless it has dismissed the application for a decree of nullity of the same sex marriage.

## **27—Circumstances occurring before commencement of Act or outside State**

15 A decree may be made, or refused, under this Part by reason of facts and circumstances despite the fact that those facts and circumstances, or some of them, took place before the commencement of this Act or outside this State.

## **28—Decree *nisi* in first instance**

A decree of dissolution of same sex marriage under this Part will, in the first instance, be a decree *nisi*.

## **29—When decree becomes absolute**

- 20
- (1) Subject to this section, a decree *nisi* made under this Part becomes absolute by force of this section at the expiration of a period of 1 month from the making of the decree or from the making of an order under this section, whichever is the later.
- 25
- (2) If a decree *nisi* has been made in any proceedings, the court of first instance (whether or not it made the decree), or the Full Court if an appeal has been instituted, may, either before or after it has disposed of the proceedings or appeal, and whether or not a previous order has been made under this subsection—
- 30
- (a) having regard to the possibility of an appeal or further appeal—make an order extending the period at the expiration of which the decree *nisi* will become absolute; or
- (b) if it is satisfied that there are special circumstances that justify its so doing—make an order reducing the period at the expiration of which the decree *nisi* will become absolute.
- 35
- (3) If an appeal is instituted (whether or not it is the first appeal) before a decree *nisi* has become absolute, then, despite any order in force under subsection (2) at the time of the institution of the appeal but subject to any such order made after the institution of the appeal, the decree *nisi*, unless reversed or rescinded, becomes absolute by force of this section—
- 40
- (a) at the expiration of a period of 1 month from the day on which the appeal is determined or discontinued; or
- (b) on the day on which the decree would have become absolute under subsection (1) if no appeal had been instituted,

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Division 3—Dissolution and nullity of same sex marriage

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whichever is the later.

(4) A decree *nisi* will not become absolute by force of this section where either of the parties to the same sex marriage has died.

(5) In this section—

5 **appeal**, in relation to a decree *nisi*, means—

(a) an appeal relating to—

(i) the decree *nisi*; or

(ii) an order under this section in relation to the proceedings in which the decree *nisi* was made; or

10 (b) an application under section 31 or 32 for rescission of the decree or an appeal or application for permission to appeal arising out of such an application.

(6) For the purposes of this section, if an application for permission to appeal is granted, the application will be taken not to have been determined or discontinued so long as an appeal is pending.

15 **30—Certificate as to decree absolute**

(1) If a decree *nisi* becomes absolute, the registrar must prepare and file with the Supreme Court Registry and with the Registrar of Births Deaths and Marriages a memorandum of the fact and of the date on which the decree became absolute.

20 (2) If a decree *nisi* has become absolute, any person is entitled, on application to the registrar, to receive a certificate signed by the registrar that the decree *nisi* has become absolute.

(3) A certificate given under subsection (2) is, in all courts and for all purposes, evidence of the matters specified in the certificate.

25 (4) The regulations may provide for the establishment of central records of decrees made under this Act and for the notification of decrees to the Registrar of Births, Deaths and Marriages.

**31—Rescission of decree *nisi* if parties reconciled**

30 Despite anything contained in this Part, if a decree *nisi* has been made in proceedings for a decree of dissolution of same sex marriage, the Court may, at any time before the decree becomes absolute, on the application of the parties to the same sex marriage, rescind the decree on the ground that the parties have become reconciled.

**32—Rescission of decree *nisi* on ground of miscarriage of justice**

35 If a decree *nisi* has been made but has not become absolute, the Court may, on the application of a party to the proceedings, or on the intervention of the Attorney-General, 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 decree and, if it thinks fit, order that the proceedings be re-heard.

**33—Same sex re-marriage**

40 If a decree of dissolution of same sex marriage under this Part has become absolute, a party to the same sex marriage may marry again.

## Part 4—Authorised celebrants

### Division 1—Ministers of religion

#### 34—Interpretation

In this Division—

5            *register* means the register maintained by the Registrar in accordance with section 35.

#### 35—Register of ministers of religion

- (1) The Registrar is to maintain a register of ministers of religion ordinarily resident in this State who are entitled to registration under this Division.
- 10        (2) The register may be kept in any way the Registrar thinks appropriate, including by electronic means.
- (3) The register may be made available for inspection in any way the Registrar thinks appropriate.
- (4) All information contained in the register must be made available on the Internet.
- 15        (5) Any or all of the information contained in the register may also be disseminated in any other way the Registrar thinks appropriate, including by electronic means.

#### 36—Qualifications for registration under this Division

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

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

#### 37—Registrar to register applicant

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

#### 38—Applicant may be refused registration in certain circumstances

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

### 39—Removal from register

- (1) Subject to this section, the Registrar must remove the name of a person from the register if he or she is satisfied that—
- (a) the person has requested that his or her name be so removed; or
  - 5 (b) the person has died; or
  - (c) the denomination by which that person was nominated for registration, or in respect of which that person is registered, no longer desires that that person be registered under this Division or has ceased to be a recognised denomination; or
  - 10 (d) the person—
    - (i) has been guilty of such contraventions of this Act or the regulations as to show him or her not to be a fit and proper person to be registered under this Division; or
    - 15 (ii) has been making a business of solemnising marriages for the purpose of profit or gain; or
    - (iii) is not a fit and proper person to solemnise marriages; or
  - (e) the person is, for any other reason, not entitled to registration under this Division.
- (2) The Registrar must not remove the name of a person from the register under this section on a ground specified in subsection (1)(d) or (e) unless—
- 20 (a) the Registrar has, in accordance with the regulations, served on the person a notice in writing—
    - 25 (i) stating the Registrar’s intention to do so on that ground unless, not later than a date specified in the notice and being not less than 21 days from the date of service of the notice, the person satisfies the Registrar that the person’s name should not be removed from the register; and
    - (ii) informing the person that any representations made to the Registrar before that date will be considered by the Registrar; and
  - 30 (b) the Registrar has considered any representations made by the person before the date specified in the notice; and
  - (c) the removal takes place within 14 days after the date specified in the notice.
- (3) If notice is served on a person under subsection (2), that person must not solemnise a same sex marriage unless and until—
- 35 (a) the person is notified by the Registrar that the Registrar has decided not to remove the person’s name from the register; or
  - (b) a period of 14 days has elapsed from the date specified in the notice under subsection (2) and the person’s name has not been removed from the register; or
  - 40 (c) the person’s name, having been removed from the register, is restored to the register.

#### **40—Review of refusal to register or removal from register**

- (1) An application may be made to the District Court for a review of a decision of a Registrar—
- 5           (a) refusing to register a person who has applied for registration under this Division; or
- (b) removing the name of a person from the register under section 39.
- (2) If the Court sets aside a decision refusing to register a person or a decision to remove the name of a person from the register, the Registrar must immediately register the person, or restore the name of the person to the register, as the case requires.
- 10       (3) For the purposes of the making of an application under subsection (1), if a person has made application for registration under this Division and, at the expiration of a period of 3 months from the day on which the application was made, the person has not been registered and has not been notified by the Registrar that that person’s application has
- 15           been refused, the Registrar will be taken to have decided, on the last day of that period, not to register that person.

#### **41—Change of address etc to be notified**

- (1) If a person registered under this Division—
- (a) changes his or her name, address or designation; or
- 20           (b) ceases to exercise, or ceases to be entitled to exercise, the functions of a minister of religion of the denomination by which he or she was nominated for registration or in respect of which he or she is registered,
- the person must, within 30 days, notify the Registrar of that fact in accordance with the regulations.
- (2) The Registrar may, on receiving notification of a change of name, address or designation under subsection (1) or if the Registrar is otherwise satisfied that the particulars shown in the register in respect of a person are not correct, amend the register accordingly.
- 25

#### **42—Transfer to another State etc**

- (1) If a person whose name is included in the register is ordinarily resident in another State or Territory, the Registrar must, subject to this section, remove the name of that person from the register.
- 30
- (2) If the name of a person referred to in subsection (1) is not included in the register and that person is ordinarily resident in this State, the Registrar may enter the name of that person in the register.

#### **43—Furnishing of information by recognised denominations**

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

- (a) information as to matters affecting the right to registration under this Division of persons who are so registered as ministers of religion of that denomination; and
- 40

- (b) an annual list of persons registered under this Division as ministers of religion of that denomination who are exercising the functions of a minister of religion of that denomination.

#### **44—Registrars to furnish information**

5 The Registrar must, if the Chief Executive of the Attorney-General's Department so requests, furnish to the Chief Executive—

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

### **Division 2—Officers of the State**

#### **45—Authorisation of South Australian officers etc**

- (1) The Registrar may solemnise same sex marriages in this State.  
15 (2) The Minister may, by instrument in writing, authorise other officers of the State 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 3—Same sex marriage celebrants**

#### **46—Interpretation**

20 In this Division—

*register* means the register maintained by the Registrar in accordance with section 48.

#### **47—Registrar of same sex marriage celebrants**

25 The Registrar will act as the Registrar of same sex marriage celebrants and is to perform those functions and has power to do all things necessary or convenient to be done for or in connection with the performance of those functions.

#### **48—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.  
30 (3) The register may be made available for inspection in any way the Registrar thinks appropriate.  
(4) All information contained in the register must be made available on the Internet.  
(5) Any or all of the information contained in the register may also be disseminated in any other way the Registrar thinks appropriate, including by electronic means.

#### **49—Entitlement to be registered as a same sex marriage celebrant**

- (1) A person is only entitled to be registered as a same sex marriage celebrant if the person is an individual and the Registrar is satisfied that the person—
- (a) is an adult; and
  - 5 (b) has all the qualifications or skills determined to be necessary by the Registrar in accordance with regulations made for the purposes of this paragraph; and
  - (c) is a fit and proper person to be a same sex marriage celebrant.
- (2) In determining whether the Registrar is satisfied that the person is a fit and proper person to be a same sex marriage celebrant, the Registrar must take into account—
- 10 (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 committed to advising couples of the availability of relationship support services; and
  - (c) whether the person is of good standing in the community; and
  - 15 (d) whether the person has been convicted of an offence, punishable by imprisonment for 1 year or longer, against a law of the Commonwealth, a State or a Territory; and
  - (e) whether the person has an actual or potential conflict of interest between his or her practice, or proposed practice, as a same sex marriage celebrant and his or her business interests or other interests; and
  - 20 (f) whether the person’s registration as a same sex marriage celebrant would be likely to result in the person gaining a benefit in respect of another business that the person owns, controls or carries out; and
  - (g) whether the person will fulfil the obligations under section 53; and
  - 25 (h) any other matter the Registrar considers relevant to whether the person is a fit and proper person to be a same sex marriage celebrant.

#### **50—Registration as a same sex marriage celebrant**

- (1) A person may apply to be registered as a same sex marriage celebrant by giving the Registrar—
- 30 (a) a completed application in the prescribed form; and
  - (b) any statutory declarations required by the form.
- (2) The Registrar must deal with applications in the order in which they are received.
- (3) In dealing with an application, the Registrar—
- (a) must have regard to the information in the application; and
  - 35 (b) may have regard to other information in his or her possession; and
  - (c) is not required to seek further information.
- (4) The Registrar must register a person as a same sex marriage celebrant if—
- (a) the person has applied in accordance with subsection (1); and

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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 must not register a person as a same sex marriage celebrant in any circumstances other than those specified in subsection (4).

5 (6) The Registrar registers a person as a same sex marriage celebrant by entering in the register of same sex marriage celebrants all details relating to the person that are required by regulations made for the purposes of this subsection.

(7) If the Registrar registers a person as a same sex marriage celebrant, the Registrar must notify the person in accordance with regulations made for the purposes of this subsection.

10 (8) 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

15 (b) the reasons for it; and

(c) the person's right under this Part (if any) to apply for review of the decision.

**51—Capping of number of same sex marriage celebrants for 5 years**

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

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

**52—Effect of registration**

25 A person who is registered as a same sex marriage celebrant may solemnise same sex marriages at any place in the State.

**53—Obligations of same sex marriage celebrants**

A same sex marriage celebrant must—

30 (a) conduct himself or herself in accordance with the Code of Practice for same sex marriage celebrants prescribed by regulations made for the purposes of this section; and

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

(c) notify the Registrar, in writing, within 30 days of—

35 (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.

## **54—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.
- 5 (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, and each later review must be completed within 5 years of the previous review and must cover the period since the previous review.
- (3) In reviewing the performance of a same sex marriage celebrant, the Registrar—
- 10 (a) must consider the matters prescribed by regulations made for the purposes of this subsection; and
- (b) may have regard to information in his or her possession, but is not required to seek further information.
- (4) The Registrar must not determine that a same sex marriage celebrant’s performance in respect of a period was not satisfactory unless—
- 15 (a) the Registrar has, in accordance with the regulations, given the same sex marriage celebrant a written notice—
- 20 (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
- 25 (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.

## **55—Disciplinary matters**

- 30 (1) The Registrar may only take disciplinary measures against a same sex marriage celebrant if the Registrar—
- (a) is satisfied that the same sex marriage celebrant is no longer entitled to be registered as a same sex marriage celebrant; or
- 35 (b) is satisfied that the same sex marriage celebrant has not complied with an obligation under section 53; or
- (c) has determined in writing that the same sex marriage celebrant’s performance in respect of a period was not satisfactory; or
- 40 (d) is satisfied that it is appropriate to take disciplinary measures against the same sex marriage celebrant after considering a complaint in accordance with the complaints resolution procedures established under section 57(c); or

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(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.

5 (2) The only disciplinary measures that the Registrar may take against a same sex marriage celebrant are to—

(a) caution the same sex marriage celebrant in writing; or

(b) in accordance with regulations made for the purposes of this subsection, require the same sex marriage celebrant to undertake professional development activities determined in writing by the Registrar; or

10 (c) suspend the same sex marriage celebrant's registration for a period (the *suspension period*) of up to 6 months by annotating the register to include—

(i) a statement that the registration is suspended; and

(ii) the dates of the start and end of the suspension period; or

15 (d) deregister the same sex marriage celebrant by removing his or her details from the register.

(3) If the Registrar suspends a same sex marriage celebrant's registration for a particular period, section 52 does not apply in respect of the same sex marriage celebrant during the period.

20 (4) If the Registrar decides to take disciplinary measures against a same sex marriage celebrant, the Registrar—

(a) must give the same sex marriage celebrant written notice of—

(i) the decision; and

(ii) the reasons for it; and

(iii) the disciplinary measure that is being taken; and

25 (iv) the same sex marriage celebrant's right under section 56 to apply for review of the decision; and

(b) may inform the community, in any way the Registrar thinks appropriate, including by electronic means, that the disciplinary measure is being taken against the same sex marriage celebrant.

30 **56—Review of decisions**

(1) An application may be made to the District Court for a review of a decision of the Registrar—

35 (a) not to register a person as a same sex marriage celebrant (unless a ground for the decision was that the Registrar would breach section 51 by registering the person); or

(b) to suspend a person's registration as a same sex marriage celebrant; or

(c) to deregister a same sex marriage celebrant.

- (2) For the purposes of both the making of an application under subsection (1) and the operation of the District Court in relation to such an application, if—
- (a) a person has made application for registration as a same sex marriage celebrant under section 50; and
  - 5 (b) at the end of 3 months after the day on which the application was made, the person has not been—
    - (i) registered; or
    - (ii) notified by the Registrar that that person’s application has been refused,
- 10 the Registrar is taken to have decided, on the last day of the 3 month period, not to register that person as a same sex marriage celebrant.
- (3) The Registrar must take such action as is necessary to give effect to the Court’s decision (even if doing so at the time the action is taken would cause a breach of a limit under section 51).

### **57—Additional functions of Registrar**

The Registrar must—

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

### **58—Evidence of registration etc**

A certificate, signed by the Registrar, stating that, at a specified time, or during a specified period—

- (a) a person was registered as a same sex marriage celebrant; or
- (b) a person’s registration as a same sex marriage celebrant was suspended; or
- (c) a person was not registered as a same sex marriage celebrant,

30 is prima facie evidence of that fact.

## **Part 5—Register of Same Sex Marriages**

### **Division 1—Keeping the Register**

#### **59—The Register**

- (1) The Registrar must maintain a register of same sex marriages to be known as the Register of Same Sex Marriages.

- (2) The Register—
- (a) must contain the particulars of same sex marriages required by regulation to be included in the Register; and
  - (b) may contain further information if the Registrar considers its inclusion appropriate.
- (3) The Register may be wholly or partly in the form of a computer database, in documentary form, or in another form the Registrar considers appropriate.
- (4) The Registrar must maintain the indexes to the Register that are necessary to make the information contained in the Register reasonably accessible.

## **Division 2—Access to, and certification of, Register entries**

### **60—Access to Register**

- (1) The Registrar may, on conditions the Registrar considers appropriate—
- (a) allow access to the Register to a person or organisation that has an adequate reason for wanting access to the Register; or
  - (b) provide information extracted from the Register to a person or organisation that has an adequate reason for wanting information from the Register.
- (2) In deciding whether an applicant has an adequate reason for wanting access to the Register, or information from the Register, the Registrar must have regard to—
- (a) the nature of the applicant's interest; and
  - (b) the sensitivity of the information; and
  - (c) the use to be made of the information; and
  - (d) other relevant factors.
- (3) In deciding the conditions on which access to the Register, or information from the Register, is to be allowed or provided under this section, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.

### **61—Search of Register**

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

- (d) any other relevant factors.

### **62—Protection of privacy**

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

### **63—Issue of certificate**

- (1) On completing a search of the Register, the Registrar may issue a certificate—

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

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

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

### **64—Access policies**

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

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

### **65—Review**

- (1) A person who is dissatisfied with a decision of the Registrar made in the exercise or purported exercise of functions under this Part may apply to the District Court for a review of the decision.

- (2) On a review, the Court may—

- (a) confirm, vary or reverse the Registrar's decision; and
- (b) make consequential and ancillary orders and directions.

### **66—Fees**

- (1) The regulations may prescribe fees, or a basis for calculating fees, for—

- (a) access to the Register; or
- (b) a search of the Register; or
- (c) the issue of a certificate following a search of the Register; or
- (d) other services provided by the Registrar.

- (2) The regulations may allow for fees to be fixed by negotiation between the Registrar and the person who asks for the relevant services.

- (3) The Registrar may, in appropriate cases, remit the whole or part of a fee.

### **67—Unauthorised access to or interference with Register**

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

- (a) obtain access to the Register or information contained in the Register; or

- (b) make, alter or delete an entry in the Register; or
- (c) interfere with the Register in any other way.

Maximum penalty: \$10 000 or imprisonment for 2 years.

## **Part 6—Miscellaneous**

### **5 68—False statements or documents**

A person who makes a false or misleading statement or representation in a declaration, application or other document under this Act, knowing it to be false or misleading in a material particular, is guilty of an offence.

Maximum penalty: \$10 000.

### **10 69—Falsification of certificate etc**

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

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (2) The Registrar may impound—

- 15 (a) a certificate or other document purporting to be a certificate or other document under this Act which the Registrar has reason to believe has been forged or falsified; or
- (b) a certificate issued under section 63 in relation to an entry in the Register of Same Sex Marriages if the entry has been cancelled or corrected since the issue of the certificate.

### **20 70—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

- (2) Without limiting the generality of subsection (1), the regulations may—

- 25 (a) fix fees to be paid in respect to any matter under this Act and regulate the payment, recovery or refund of fees (including by providing that an application will be taken not to have been duly made unless or until the relevant application fee is paid); and
- (b) provide for the service of documents; and
- 30 (c) impose a penalty (not exceeding \$2 500) for contravention of, or non-compliance with, a regulation.

- (3) Regulations under this Act—

- (a) may be of general application or limited application;
- (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
- 35 (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the Registrar.