



Ministerial Statement

By

The Hon. Walter H. Roban, JP, MP

Minister of Home Affairs

17th June 2022

Tabling of Amendments to the Domestic Partnership Act 2018 in light of the UK Privy Council Judgment

Mr. Speaker, today I am tabling the Bill entitled the *Domestic Partnership Act 2022*, to amend the transitional period of the Domestic Partnership Act 2018 (“the principal Act”) in light of the Privy Council judgment in *Attorney General for Bermuda v Ferguson and others*.

Mr. Speaker, section 53 of the principal Act, provides that a marriage is void unless the parties are respectively male and female.

Mr. Speaker, section 54 of the principal Act provided for a transitional period (a) during which certain same sex marriages entered into in Bermuda or on Bermuda registered ships would be valid, and (b) before or during which certain overseas same sex marriages could be recognised in Bermuda. The transitional period was defined as the period from 5 May 2017 (the date of the Supreme Court judgment in *Godwin and DeRoche v The Registrar General and others*) until immediately before the commencement date of the principal Act on 1 June 2018.

Mr. Speaker, on 6 June 2018, the Supreme Court (Kawaley CJ) determined that section 53 was unconstitutional, but his judgment was stayed pending appeal. On 23 November 2018, the Court of Appeal upheld the Supreme Court decision (though on different grounds) and refused to extend the stay previously granted by the Supreme Court. Consequently, from that date same sex marriages conducted in Bermuda and on Bermuda registered ships were not invalidated by section 53, and certain overseas same sex marriages could be recognised in Bermuda.

Mr. Speaker, on 14 March 2022, the Privy Council overturned the decision of the Court of Appeal and determined that section 53 was not unconstitutional. This cast doubt on the validity of same sex marriages conducted in Bermuda or on Bermuda registered ships since 1 June 2018, and the recognition in Bermuda since that date of overseas same sex marriages.

Mr. Speaker, the uncertainty over the validity and recognition of same sex marriages potentially has widespread negative effect on the rights previously enjoyed by the couples involved who were married lawfully under the law as it existed at the time, and who may suffer the loss or interruption of certain rights and benefits. It is therefore not tenable to leave the Act as it is without making the appropriate amendments.

Mr. Speaker, the intention of these proposed amendments is to extend the transitional period to 14th March 2022 to confirm the validity of same sex marriages formalized according to the law of Bermuda prior to the date of the Privy Council judgment, and to recognize certain same sex marriages formalised overseas during the extended transitional period.

Thank you, **Mr. Speaker**