

Marriage Act Amendment (Recognition of Foreign Marriage for Same-Sex Couples) Bill 2013

Introduced into the Senate on 16 May 2013

Sponsor: Senator Hanson-Young

Overview

1.104 The bill proposes to amend the *Marriage Act 1961* to permit the recognition under the laws of Australia of marriages that have been validly entered into in foreign countries.

1.105 The bill proposes the repeal of the current section 88EA of the Act, which provides that a union solemnised in a foreign country between a man and another man or between a woman and another woman, must not be recognised as a marriage in Australia.

1.106 This amendment would put same-sex couples who have entered into a marriage valid under the laws of an overseas country in the same position as opposite-sex couples who have married overseas, so far as recognition of the overseas marriage and its consequences is concerned.

1.107 Section 5 of the *Marriage Act 1961* provides that '*marriage* means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.'

1.108 The committee notes that the bill would have a similar effect to the Marriage Equality Amendment Bill 2013, also introduced by Senator Hanson-Young on 25 February 2013 and currently still before the Senate, insofar as that bill also applied to the recognition of foreign marriages. However, that bill also proposed to amend the definition of marriage in relation to marriages solemnised in Australia, in order to include same-sex marriages. This bill is restricted to the issue of the recognition of foreign marriages and the effects of such recognition under Australian law.

Compatibility with human rights

1.109 The bill is accompanied by a self-contained statement of compatibility. The statement of compatibility argues that the bill promotes the right of men and women of marriageable age to marry and found a family guaranteed by article 23 of the International Covenant on Civil and Political Rights (ICCPR), the right of gay and lesbian Australians to equal protection of the law guaranteed by article 26 of the ICCPR, and the right to the highest attainable standard of physical and mental health.

1.110 The committee has already examined and set out its views in relation to a number of the human rights issues relevant to same-sex marriage in its consideration

of the Marriage Equality Amendment Bill 2013.⁹ These included the issues relating to the recognition of overseas marriages. It concluded that the proposed changes did not give rise to issues of human rights compatibility but could be viewed as promoting human rights.

1.111 The only difference between the Marriage Equality Amendment Bill 2013 and the current bill is that this bill provides only for same-sex partners who have been married overseas to have their marriage recognised in Australia on the same basis as opposite-sex couples, and does not propose to extend to same-sex couples the right to marry in Australia. Thus, it involves drawing a distinction between same-sex couples married overseas (whose marital relationship is recognised) and same-sex couples in Australia who are unable to marry under Australian law. While this treats the two groups differently, it is unlikely that the distinction would be considered to be discriminatory. Rather it would be viewed as a partial step towards eliminating discrimination against same-sex couples by treating them in the same way as heterosexual couples who marry abroad.

1.112 The committee considers that the bill does not appear to give rise to human rights concerns.

9 See PJCHR comments, *Third Report of 2013*, p. 79.