

Bills Digest  
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## Marriage Amendment Bill 2004

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# Marriage Amendment Bill 2004

**Date Introduced:** 24 June 2004

**House:** House of Representatives

**Portfolio:** Attorney-General

**Commencement:** Royal Assent

## Purpose

This Bill has the following purposes:

- To formally define ‘marriage’ in the *Marriage Act 1961*, and
- To ensure that same sex marriages are not recognised as marriage in Australia, inclusive of those performed under the laws of another country that permits such unions.

## Background

### History of the proposed changes

The pre-cursor to the Marriage Amendment Bill 2004 (‘the current Bill’) is the Marriage Legislation Amendment Bill 2004 (‘the first Bill’). Introduced on 27 May 2004, it proposed to amend the *Marriage Act 1961* to define ‘marriage’ and prevent same sex couples from adopting children from overseas countries.

The first Bill passed the House of Representatives on 17 June 2004 and was introduced into the Senate the following day. It was referred to the Senate Legal and Constitutional Legislation Committee on 23 June 2004 with the Committee scheduled to release a report by 7 October 2004.

The current Bill replicates Schedule 1 of the first Bill with provisions defining marriage. Further comments and a comprehensive analysis of the provisions of the first Bill are available in Bills Digest 155 2003-04, Marriage Legislation Amendment Bill 2004<sup>1</sup>.

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## **Government**

The Government's haste to have the current Bill passed appears to be linked to two applications filed in court to have same sex marriages performed within the laws of another country recognised under Australian law<sup>2</sup>. This Bill amends the *Marriage Act 1961* to prevent the recognition of same-sex marriages in Australia, even where the marriage has been performed under the laws of another country which does recognise this type of union.

In addition the Government has also indicated that the need for Parliament to give its immediate attention to the current Bill is related to expressions of 'significant community concern about the possible erosion of the institution of marriage'.<sup>3</sup> It is the Attorney-General's opinion that Parliament's quick action is needed to address these community concerns.

## **ALP commitments**

The Marriage Amendment Bill 2004 contains those provisions of the Marriage Legislation Amendment Bill 2004 which the Australian Labor Party stipulated it would support in a press release issued on 1 June 2004.<sup>4</sup> Shadow Attorney-General, Nicola Roxon MP, reiterated during the second reading of the current Bill that the Labor Party would agree to the measures it contains. However, the Party expressed reservations about the process on two grounds. The first, questioned the Government's claims that the issue of gay marriage was of such major community concern that it warranted the need to be dealt with urgently. The second raised the point that the first Bill has already been referred to a Senate committee, the report from which is yet to be released.<sup>5</sup>

## **The Greens**

The Greens have labelled both the current and the first Bill discriminatory 'against the gay and lesbian community' and condemned both the Government and the Labor Party for failing to acknowledge the change, within present day society, in the make up of couples.<sup>6</sup> In the House of Representatives, Greens MP, Michael Organ introduced amendments to the current Bill which included provisions that acknowledged gay and lesbian unions within the definition of marriage and also the recognition of such unions as marriages in Australia regardless of whether they were performed in a foreign country. These amendments were not adopted and the current Bill passed the House of Representatives unchanged.

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## Main Provisions

For an explanation of the main provisions of the current Bill, please refer to Bills Digest 155 2003-04, Marriage Legislation Amendment Bill 2004.

## Concluding Comments

The Marriage Amendment Bill 2004 passed the House of Representatives on 24 June 2004 however the first reading in the Senate was negatived on the 25 June 2004.

## Endnotes

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- 1 Jennifer Norberry, 'Marriage Legislation Amendment Bill 2004', [Bills Digest](#), no. 155, Parliamentary Library, Canberra, 2003-04.
  - 2 House of Representatives, *Hansard*, 24 June 2004, p. 30563.
  - 3 *Ibid.*
  - 4 Shadow Attorney-General, *Media Release*, 'Labor's decision on gay marriage ban entrenches discrimination,' 1 June 2004.
  - 5 House of Representatives, *Hansard*, 24 June 2004, p. 30564.
  - 6 House of Representatives, *Hansard*, 24 June 2004, p. 30565.

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