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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**MARRIAGE LEGISLATION AMENDMENT BILL 2004**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,  
the Honourable Philip Ruddock MP)

## **MARRIAGE LEGISLATION AMENDMENT BILL 2004**

### **GENERAL OUTLINE**

The purpose of the Marriage Legislation Amendment Bill 2004 ('the Bill') is to give effect to the Government's commitment to protect the institution of marriage by ensuring that marriage means a union of a man and a woman and that same sex relationships cannot be equated with marriage.

The Bill also reflects the Commonwealth's view that the adoption of children by same sex couples is undesirable. In this Bill the Commonwealth legislates to the extent of its direct area of responsibility to prevent adoption by same sex couples under international agreements or arrangements to which Australia is a party.

The principal provisions of the Bill:

- define marriage as the union of a man and a woman to the exclusion of all others, voluntarily entered into for life;
- confirm that unions solemnized overseas between same sex couples will not be recognized as marriages in Australia; and,
- prevent intercountry adoptions by same sex couples under multilateral or bilateral agreements or arrangements.

### **FINANCIAL IMPACT STATEMENT**

There is no financial impact from this Bill.

## **NOTES ON CLAUSES**

### **Clause 1 – Short title**

1. Clause 1 will provide that the Act may be cited as the *Marriage Legislation Amendment Act 2004*.

### **Clause 2 – Commencement**

2. Clause 2 of the Bill will provide for the commencement of the Act.

3. Subclause 2(1) provides that sections 1, 2 and 3 commence when the Act receives Royal Assent.

4. The items of Schedule 1 commence the day after the Act receives Royal Assent. The items of Schedule 2 commence 28 days after the Act receives Royal Assent.

### **Clause 3 – Schedule(s)**

5. Clause 3 of the Bill will provide that each Act specified in a Schedule will be amended or repealed as set out in the applicable items in the Schedule. Clause 3 of the Bill will also provide that any other item in a Schedule has effect according to its terms.

## **SCHEDULE 1 – AMENDMENT OF THE *MARRIAGE ACT 1961***

### **Item 1 – Subsection 5(1) (definition of *marriage*)**

6. Currently, there is no definition of marriage in the Marriage Act. Subsection 46(1) requires authorized celebrants, who are not ministers of religion of a recognized denomination, to explain the nature of the marriage relationship before solemnizing a marriage. The authorized celebrant shall say to the parties certain words, including: “Marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life”, or words to that effect.

7. Item 1 amends the Marriage Act so that marriage is defined in subsection 5(1) to mean the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

### **Item 2 – Addition of subsection 88B(4)**

8. Part VA of the Act relates to the recognition in Australia of foreign marriages. The addition of subsection 88B(4) is to make clear that the meaning given to marriage in subsection 5(1) applies to Part VA of the Act.

### **Item 3 – Insertion of section 88EA**

9. This item confirms that unions between same sex couples entered into in foreign countries will not be recognised as marriages in Australia.

## **SCHEDULE 2 – AMENDMENT OF THE *FAMILY LAW ACT 1975***

10. These amendments are intended to prevent same sex couples from being put forward as prospective adoptive parents under any international agreement or arrangement relating to the adoption of children to which Australia is a party.

### **Item 1 – Insertion of subsection 111C(4A)**

11. Item 1 inserts a new provision, subsection 111C(4A), into Division 3 of Part XIII A of the Family Law Act. This Division gives a general power to make regulations to enable the operation within Australia of the *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption* (the Convention) or bilateral international agreements and arrangements relating to intercountry adoption of children. Subsection 111C(4A) will limit the regulation making power so that adoptions of children by same sex couples may not be facilitated or provided for under the Convention or these agreements or arrangements.

### **Item 2 – addition of section 111CA certain international adoptions not allowed**

12. Item 2 adds a new provision, section 111CA, that makes it clear that it is unlawful for any person to facilitate or provide for the adoption of a child by a same sex couple under the Convention or any bilateral arrangement or agreement.