

## Annexure B

**GENERAL EXPLANATORY NOTE:**

- [     ]     Words in bold type in square brackets indicate omissions from existing enactments
- \_\_\_\_\_     Words underlined with a solid line indicate insertions in existing enactments
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**Option 1:****BILL**

**To amend the Marriage Act, 1961 so as to provide for the conclusion of a marriage between persons of the same sex; and to amend the marriage formula to acknowledge marriages between persons of the same sex.**

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:-

**Amendment of section 1 of Act 25 of 1961**

1. Section 1 of the Marriage Act, 1961 (in this Act referred to as the principal Act), is hereby amended by the insertion after the definition of "magistrate" of the following definition:

"marriage" means the voluntary union of two persons concluded in terms of this Act to the exclusion of any other marriage, union or partnership;

"spouse" means a partner of a person in a valid marriage;"

**Amendment of section 30 of Act 25 of 1961**

2. Section 30 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) In solemnizing any marriage any marriage officer designated under section 3 may follow the marriage formula usually observed by his religious denomination or

organization if such marriage formula has been approved by the Minister, but if such marriage formula has not been approved by the Minister, or in the case of any other marriage officer, the marriage officer concerned shall put the following questions to each of the parties separately, each of whom shall reply thereto in the affirmative:

'Do you, A.B., declare that as far as you know there is no lawful impediment to your proposed marriage with C.D. here present, and that you call all here present to witness that you take C.D. as your lawful **[wife (or husband)] spouse ?**',

and thereupon the parties shall give each other the right hand and the marriage officer concerned shall declare the marriage solemnized in the following words:

'I declare that A.B. and C.D. here present have been lawfully married.'.

#### **Short title and commencement**

**3.** This Act is called the Marriage Amendment Act, 20.. (Act No. ... of 20..) and will come into operation on a date fixed by the President by proclamation in the *Gazette*.

**Option 2:****BILL**

**To amend the Marriage Act, 1961 so as to provide for the conclusion of a marriage between persons of the same sex; to amend the marriage formula to acknowledge marriages between persons of the same sex; to provide for marriage officers to solemnize marriages between persons of the same or opposite sex; and to provide for matters related thereto.**

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:-

**Amendment of section 1 of Act 25 of 1961**

1. Section 1 of the Marriage Act, 1961, (hereinafter referred to as the principal Act) is hereby amended by the insertion of the following definitions:

"marriage' means the voluntary union of two persons concluded in terms of this Act to the exclusion of any other marriage, union or partnership;

'marriage officer' means a marriage officer as described in section 2 of this Act;

'spouse' means a partner of a person in a valid marriage;"

**Repeal of section 3 of Act 25 of 1961**

2. Section 3 of the principal Act is hereby repealed.

**Repeal of section 7 of Act 25 of 1961**

3. Section 7 of the principal Act is hereby repealed.

**Repeal of section 8 of Act 25 of 1961**

4. Section 8 of the principal Act is hereby repealed.

**Amendment of section 29 of Act 25 of 1961**

5. Section 29 of the principal Act is hereby amended –

(a) by the substitution for subsection (2) of the following subsection:

"(2) A marriage officer [shall] may solemnize a marriage **[in a church or other building used for religious service, or in a public office or private dwelling-house, with open doors]** in any place and shall solemnise such marriage in the presence of the parties themselves and at least two competent witnesses [, **but the foregoing provisions of this subsection shall not be construed as prohibiting a marriage officer from solemnizing a marriage in any place other than a place mentioned therein if the marriage must be solemnized in such other place by reason of the serious or longstanding illness of, or serious bodily injury to, one or both of the parties]**"; and

(b) by the substitution for subsection (3) of the following subsection:

"(3) Every marriage [-

(a)] which was solemnized in the Orange Free State or the Transvaal before the commencement of this Act in any place other than a place appointed by a prior law as a place where for the purposes of such law a marriage shall be solemnized [;

or

(b) which by reason of the serious or longstanding illness of, or serious bodily injury to, one or both of the parties was solemnized before the commencement of the Marriage Amendment Act, 1968, in a place other than a place appointed by subsection (2) of this section as a place where for the purposes of this Act a marriage shall be solemnized,]

shall, provided such marriage has not been dissolved or declared invalid by a competent court and provided further that neither of the parties to such marriage has after such marriage and during the life of the other, already lawfully married another, be as valid and binding as it would have been if it had been solemnized in a place appointed therefor by the applicable provisions of the prior law **[or, as the case may be, of this Act.]**"

### **Substitution of section 30 of Act 25 of 1961**

6. The following section is hereby substituted for section 30 of the principal Act:

#### **"30 Marriage formula**

(1) In solemnising a marriage any marriage officer shall put the following questions to each of the parties separately, each of whom shall reply thereto in the affirmative:

'Do you, A.B., declare that as far as you know there is no lawful impediment to your proposed marriage with C.D. here present, and that you call all here present to witness that you take C.D. as your lawful spouse ?'

and thereupon the parties shall give each other the right hand and the marriage officer concerned shall declare the marriage solemnized in the following words:

'I declare that A.B. and C.D. here present have been lawfully married'.

(2) If the provisions of this section or any former law relating to the questions to be put to each of the parties separately or to the declaration whereby the marriage shall be declared to be solemnized or to the requirement that the parties shall give each other the right hand, have not been strictly complied with owing to-

- (a) an error, omission or oversight committed in good faith by the marriage officer; or
- (b) an error, omission or oversight committed in good faith by the parties or owing to the physical disability of one or both of the parties,

but such marriage has in every other respect been solemnized in accordance with the provisions of this Act or, as the case may be, a former law, that marriage shall, provided there was no other lawful impediment thereto and provided further that such marriage, if it was solemnized before the commencement of the Marriage Amendment Act, 1970 (Act 51 of 1970), has not been dissolved or declared invalid by a competent court and neither of the parties to such marriage has after such marriage and during the life of the other, already lawfully married another, be as valid and binding as it would have been if the said provisions had been strictly complied with."

#### **Repeal of section 31 of Act 25 of 1961**

- 7. Section 31 of the principal Act is hereby repealed.

#### **Amendment of section 32 of Act 25 of 1961**

- 8. Section 32 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) No marriage officer may demand or receive any fee, gift or reward, for or by reason of anything done by him as marriage officer in terms of this Act [:  
**Provided that a minister of religion or a person holding a responsible position in a religious denomination or organization may, for or by reason of any such thing done by him, receive-**

- (a) **such fees or payments as were immediately prior to the commencement of this Act ordinarily paid to any such minister of religion or person in terms of the rules and regulations of his**

religious denomination or organization, for or by reason of any such thing done by him in terms of a prior law; or

(b) such fee as may be prescribed]."

**Short title and commencement**

5. This Act is called the Marriage Amendment Act, 20.. (Act No. ... of 20..) and will come into operation on a date fixed by the President by proclamation in the *Gazette*.