

DRAFT BILL AS PROPOSED BY THE COMMISSION ON GENDER EQUITY REPUBLIC OF SOUTH  
AFRICA

RECOGNITION OF RELIGIOUS MARRIAGES BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill  
published in Government Gazette No. of )  
(The English text is the official text of the Bill)

(MINISTER OF HOME AFFAIRS)

[B - 2005]

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## BILL

To provide for the recognition of religious marriages; to regulate the registration of religious marriages; to provide for the equal status and capacity of spouses in religious marriages; to provide for the making of regulations; to amend certain provisions of the Deeds Registries Act, and to provide for matters connected therewith.

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

**ARRANGEMENT OF SECTIONS**

1. Definitions
2. Recognition of religious marriages
3. Requirements for validity of religious marriages
4. Age of majority
5. Designation of marriage officers and appointment of registering officers
6. Registration of religious marriages
7. Determination of age of minor
8. Equal status and capacity of spouses
9. Proprietary consequences of religious marriages and contractual capacity of spouses
10. Dissolution of religious marriages
11. Change of marriage system
12. Offences and penalties
13. Regulations
14. Amendment of laws
15. Transitional provisions
16. Short title and commencement

## Definitions

1. In this Act, unless the context otherwise indicates-

"**Marriage Act**" means the Marriage Act, 1961 (Act No. 25 of 1961);

"**marriage officer**" means a person designated as a marriage officer for the purposes of this Act by the Minister or an officer acting under the written authorization of the Minister under section 5;

"**Minister**" means the Minister of Home Affairs;

"**prescribed**" means prescribed by regulation made under section 13;

"**Recognition of Customary Marriages Act**" means the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998);

"**registering officer**" means a person appointed as a registering officer for purposes of this Act by the Minister or an officer acting under the written authorization of the Minister under section 5;

"**religious marriage**" means a marriage concluded in accordance with the tenets of a religion;

"**religious tenets**" means the rites, formularies, doctrines or discipline of a religion; "this Act" includes the regulations.

## Recognition of religious marriages

2. (1) A religious marriage which complies with section 3 is a valid marriage and is recognized as a marriage for all purposes.

(2) If a person is a spouse in more than one religious marriage all such marriages entered into which comply with this Act are recognized as marriages for all purposes.

## Requirements for validity of religious marriages

3. (1) For a religious marriage to be valid-

(a) the prospective spouses-

- (i) must both be above the age of 18 years; and
- (ii) must both consent to be married to each other in terms of their religion; and

(b) the marriage must be entered into and celebrated in accordance with the spouses' religious tenets and solemnized by a marriage officer

(2) A spouse in a religious marriage is prevented from entering into marriage under the Marriage Act 1961 or the Recognition of Customary Marriages Act 1998 during the subsistence of such religious marriage, except as provided for in section · 1(1)

## Age of majority

4. (1) (a) If either of the prospective spouses is a minor, both his or her parents, or if he or she has no parents, his or her legal guardian, must consent to the marriage.

(b) If the consent of the parent or legal guardian cannot be

obtained, section 25 of the Marriage Act 1961 applies.

(2) (a) Despite subsection (1)(a), the Minister or any officer authorized in writing by him or her, may grant written permission to a person under the age of 18 years to enter into a religious marriage if the Minister or that officer considers such marriage desirable and in the interests of the parties in question.

(b) The permission contemplated in paragraph (a) does not relieve the parties to the proposed marriage from the obligation to comply with all the other requirements prescribed by law.

(c) If a person under the age of 18 years has entered into a religious marriage without the written permission of the Minister or the relevant officer, the Minister or the officer may, if-

(i) he or she considers the marriage to be desirable and in the interests of the parties in question; and

(ii) the marriage was in every other respect in accordance with this Act, declare the marriage in writing to be a valid religious marriage.

(3) Subject to subsection (4), section 24A of the Marriage Act, 1961 applies to the religious marriage of a minor entered into without the consent of a parent, guardian, commissioner of child welfare or a judge, as the case may be.

(4) The prohibition of a religious marriage between persons on account of their relationship by blood or affinity is determined by the religious tenets of the spouses' religion.

### **Designation of marriage officers and appointment of registering officers**

5. (1) The Minister or an officer authorized by him or her in writing may designate a religious leader or a minister of a religion as a marriage officer for the purpose of solemnizing a religious marriage according to the tenets of that religion.

(2) A designation under subsection (1) may limit the authority of a religious leader or a minister of a religion to solemnize marriages-

(a) within a specified area;

(b) for a specified period.

(3) A designation under subsection (1) must-

(a) be in writing;

(b) specify the date on which it becomes effective; and

(c) specify any limitation to which it is subject.

(4) The Minister or an officer authorized by him or her, in writing, may appoint registering officers for the purpose of this Act and may limit the authority of a registering officer to the registration of religious marriages within a specified area.

## Registration of religious marriages

6. (1) Either spouse may apply to a registering officer in the prescribed form for the registration of his or her religious marriage and must furnish the registering officer with the prescribed information and any additional information which the registering officer may require in order to satisfy himself or herself as to the existence of the marriage.

(2) Each spouse must submit a prescribed affidavit to the registering officer declaring whether or not one of the spouses is in more than one subsisting religious marriage.

(3) A registering officer must, if satisfied that the spouses concluded a valid religious marriage-

(a) register the marriage by recording-

- (i) the identity of the spouses;
- (ii) the date of the marriage;
- (iii) whether there are other subsisting religious marriages; and
- (iv) any other prescribed particulars; and

(b) issue to the spouses a certificate of registration, reflecting the prescribed particulars.

(4) (a) If a religious marriage is not registered, any person who satisfies a registering officer that he or she has sufficient interest in the matter may apply to the registering officer in the prescribed manner to investigate the existence of the marriage

(b) If the registering officer is satisfied that a valid religious marriage exists between the spouses, he or she must register the marriage and issue a certificate of registration as contemplated in subsection (3).

(5) If a registering officer is not satisfied that the spouses entered into a valid religious marriage, he or she must refuse to register the marriage.

(6) A court may, upon application made to that court and upon investigation instituted by that court, order the-

- (a) registration of any religious marriage;
- (b) rectification of any registration of a religious marriage effected by a registering officer; or
- (c) cancellation of any registration of a religious marriage effected by a registering officer.

(7) A certificate of registration of a religious marriage issued under this section constitutes sufficient proof of the existence of the religious marriage and of the particulars contained in the certificate.

(8) Failure to register a religious marriage does not affect the validity of that marriage.

### **Determination of age of minor**

7. (1) If the age of a person, who allegedly is a minor, is uncertain or is in dispute, and that person's age is relevant for purposes of this Act, the registering officer may in the prescribed manner submit the matter to a magistrate

(2) The magistrate must determine, in the prescribed manner, the person's age and issue the prescribed certificate in regard thereto, which constitutes proof of the person's age.

### **Equal status and capacity of spouses**

8. In addition to any rights and powers that a wife in a religious marriage<sup>1</sup> has at common law, that wife has, on the basis of equality with her husband, but subject to the matrimonial property system governing the marriage, full status and capacity, including the capacity to acquire and dispose of assets, the right to enter into contracts and to litigate.

### **Proprietary consequences of religious marriages and contractual capacity of spouses**

9. (1) Subject to this section, the proprietary consequences of a religious marriage are governed by the tenets of that religion.

(2) Spouses in a religious marriage may specifically exclude the proprietary consequences contemplated in subsection (1) in an antenuptial contract which regulates the matrimonial property system of their marriage.

(3) Chapter III and sections 18, 19, 20 and 24 of Chapter IV of the Matrimonial Property Act, 1984 (Act No. 88 of 1984), apply in respect of any religious marriage where the spouses opt for community of property as their matrimonial property system

(4) Spouses in a religious marriage entered into before the commencement of this Act may apply jointly to a court for leave to change the matrimonial property system which applies to their marriage or marriages.

(5) The court considering an application made to it under subsection (4) may, if satisfied that-

(i) there are sound reasons for the proposed change;

(ii) sufficient written notice of the proposed change has been given to all creditors of the spouses for amounts exceeding R500 or such amount as may be determined by the Minister of Justice and Constitutional Development by notice in the Gazette; and

(iii) no other person will be prejudiced by the proposed change, order that the matrimonial property system applicable to such marriage or marriages will no longer apply and authorize the parties to such marriage or marriages to enter into a written contract in terms of which the future matrimonial property system of their marriage or marriages will be regulated on conditions determined by the court.

(6) In the case of a person who is a spouse in more than one religious marriage, all persons having a sufficient interest in the matter, and in particular the applicant's existing spouse or spouses, must be joined in the proceedings.

## **Dissolution of religious marriage**

10. (1) A religious marriage registered under this Act may only be dissolved by a court.

(2) A court may grant a decree of divorce on the ground of the irretrievable breakdown of a marriage if the court is satisfied that the marriage relationship between the parties to the marriage has reached such a state of disintegration that there is no reasonable prospect of the restoration of a normal marriage relationship between them.

(3) If it appears to a court in divorce proceedings that either of the spouses, by reason of the tenets of their religion, is not free to remarry unless the marriage is also dissolved in accordance with such religious tenets, the court may compel the spouse preventing the religious dissolution of the marriage to take all the necessary steps to have that marriage dissolved in accordance with the religious tenets where after it may grant a decree of divorce or the court may make any other order that it considers just.

(4) The Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), and section 6 of the Divorce Act, 1979 (Act No. 70 of 1979), apply to the dissolution of religious marriage.

- (5) A court granting a decree for the dissolution of a religious marriage-
- (a) has the powers contemplated in sections 7, 8, 9 and 10 of the Divorce Act, 1979, and section 24(1) of the Matrimonial Property Act, 1984 (Act No. 88 of 1984);
  - (b) must, in the case of a husband who is a spouse in more than one religious marriage, take into consideration all relevant factors including any contract, agreement or order made in terms of section 9(4) and (5), and must make an order that it considers just;
  - (c) may order that any person who in the court's opinion has a sufficient interest in the matter be joined in the proceedings;
  - (d) may make an order with regard to the custody or guardianship of any minor child of the marriage; and
  - (e) may, when making an order for the payment of maintenance, take into account any provision or arrangement made in accordance with the religious tenets of spouses.

## **Marriage in terms of Marriage Act**

11. (1) Parties to a religious marriage may contract a marriage with each other under the Marriage Act if neither of them is a spouse in a subsisting religious marriage with any other person.

(2) If a marriage is concluded as contemplated in subsection (1) the Marriage Act applies.

(3) A spouse in a marriage entered into under the Marriage Act is, during the subsistence of such marriage, prevented from entering into any other marriage.

## **Offences and penalties**

12. (1) Any marriage officer who purports to solemnize a marriage which he or she is not authorized under this Act to solemnize or which to his or her knowledge is prohibited is guilty of an offence and liable on conviction to a fine or to imprisonment for a period of 12 months or to both a fine and such imprisonment.

(2) Any person who purports to be a marriage officer and solemnizes a marriage which he or she is not authorized under this Act to solemnize, is guilty of an offence and liable on

conviction to a fine or to imprisonment for a period of 12 months or to both a fine and such imprisonment.

(3) Subsection (1) and (2) do not apply to a marriage solemnized in accordance with the tenets of any religion, if such ceremony does not purport to effect a valid marriage.

(4) A spouse who fails to disclose the existence of subsisting marriages in the manner contemplated in section 6(2) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period of ... . or to both a fine and such imprisonment.

(5) A person who knowingly submits false information to the registering officer is guilty of an offence and liable on conviction to a fine or to imprisonment for a period of.....or to both a fine and such imprisonment.

## **Regulations**

13. (1) The Minister may, in consultation with the Minister of Justice and Constitutional Development, make regulations-

(a) relating to-

(i) the requirements to be complied with and the information to be furnished to a registering officer in respect of the registration of a religious marriage;

(ii) the manner in which a registering officer must satisfy himself or herself as to the existence or the validity of a religious marriage;

(iii) the manner in which a person with sufficient interest in the existence or registration of a religious marriage may participate in the proof thereof;

(iv) the manner in which a registering officer may submit a matter to a magistrates' court to determine a person's age

(v) the form and content of certificates, notices, affidavits and declaration required for the purposes of this Act;

(vi) the custody, certification, implementation, rectification, reproduction and disposal of any document relating to the registration of religious marriages of any document prescribed in terms of the regulations;

(vii) any matter that is required or permitted to be prescribed in terms of this Act; and

(viii) any other matter which is necessary or expedient to provide for the effective registration of religious marriages or the efficient administration of this Act; and

(b) prescribing the fees payable in respect of the registration of a religious marriage and the issuing of any certificate in respect thereof.

(2) Regulations made under subsection (1) must be submitted to Parliament before publication in the Gazette.

(3) Regulations made under subsection (1) which may result in financial expenditure for the State and regulations made under subsection (1)(b) must be made in consultation with the Minister of Finance.

(4) Regulations made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment.



## Amendment of laws

14. (1) Section 17 of the Deeds Registries Act, 1937 (Act No. 47 of 1 337), is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

"(b) where the marriage concerned is governed by the law in force in the Republic or any part thereof. state whether the marriage was contracted in or out of community of property or whether the matrimonial property system is governed by customary law in terms of the Recognition of Customary Marriages Act, 1998 or by religious tenets of the spouses in terms of the Recognition of Religious Marriages Act, 2005;"

(2) Section 45bis of the Deeds Registries Act, 1937, is hereby amended-

(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) forms or formed an asset in a joint estate, and a court has made an order, or has made an order and given an authorization, under section 20 or 21 (1) of the Matrimonial Property Act, 1984 (Act No. 88 of 1984), [or] under section 7 of the Recognition of Customary Marriages Act, 1998 or under section 9 of the Recognition of Religious Marriages Act 2005 as the case may be, in terms of which the property, lease or bond is awarded to one of the spouses,"; and

(b) by the substitution for paragraph (b) of subsection (1A) of the following paragraph:

"(b) forms or formed an asset in a joint estate and a court has made an order, or has made an order and given an authorization under section 20 or 21 (1) of the Matrimonial Property Act, 1984 (Act No. 88 of 1984), [or] under section 7 of the Recognition of Customary Marriages Act, 1998, or under section 9 of the Recognition of Religious Marriages Act 2005 as the case may be in terms of which the property, lease or bond is awarded to both spouses in undivided shares,".

## Transitional provisions

15. (1) Either spouse in a religious marriage, which is a valid marriage in terms of the tenets of their religion and existing at the time of commencement of this Act, may apply to a registering officer to register that marriage and must produce proof to the satisfaction of the registering officer of the existence of such a marriage.

(2) If the registering officer is satisfied that a valid religious marriage exists between the spouses, he or she must register the marriage and issue to the spouses a certificate of registration, bearing the prescribed particulars.

(3) Section 6(7) applies to a certificate issued under this section.

(4) The application for registration of a religious marriage contemplated in subsection (1) must be made within.....or such longer period as the Minister may determine.

## Short title and commencement

16. This Act is called the Recognition of Religious Marriages Act, 2005, and comes into operation on a date fixed by the President by proclamation in the Gazette.