

Fact sheet

Marriage Amendment (Definition and Religious Freedoms) Bill 2017

What is the Bill?

In August 2017, Senator Dean Smith publicly released the Marriage Amendment (Definition and Religious Freedoms) Bill 2017 (**the Bill**). The Bill reflects the outcomes from the first consensus cross-party report released by the Senate Select Committee in early 2017 on how amendments to the Marriage Act could allow same-sex couples to marry while balancing freedom from discrimination and freedom of religion.

The Bill is supported by key members of the Liberal Backbench, the Australian Labor Party and the Greens as a pathway forward for marriage equality in the event that a Yes result is delivered in the Australian Marriage Law Postal Survey on 15 November 2017.

Part 1: Marriage equality

Changes to the definition of marriage

All LGBTI people will be able to marry in Australia. The Bill amends the definition of marriage from the union of 'a man and a woman' to the union of '2 people', inclusive of all LGBTI people and their relationships.

Recognition of foreign same-sex marriage

All LGBTI people who have already married overseas will be recognised under Australian laws, as will any couples who marry overseas in the future.

Part 2: Solemnising marriages

Who can refuse to solemnise a marriage?

Ministers of religion from recognised religions can currently refuse to perform weddings under the Marriage Act. This does not change under the Bill. The Bill clarifies that the refusal to solemnise a marriage must be because of their denomination's doctrines, their congregation, or their religious beliefs.

NEW Religious marriage celebrants can also refuse to perform weddings if their religious beliefs do not allow them to do so. This new category includes:

- Ministers of religion from religions that aren't officially recognised who can currently refuse to perform weddings. This does not change under the Bill.
- Current marriage celebrants of faith also have 90 days to transfer to this new category in recognition that they signed up as a celebrant under the current definition of marriage.

This new category must publicly advertise their services as *religious* marriage celebrants.

Defence Force chaplains can currently refuse to perform weddings of Defence Force members overseas (including for religious reasons). This does not change under the Bill, but the Bill does clarify the religious grounds on which chaplains can refuse.

Who cannot refuse?

Civil celebrants will not be able to discriminate a couple wanting to marry. This includes all current marriage celebrants who do not transfer to the religious marriage celebrant within 90 days and all future marriage celebrants.

Registry officers also cannot refuse to marry a couple on discriminatory grounds.

NEW The Bill introduces a new category of **Defence Force marriage officers** to provide a secular alternative for ADF members wanting to marry overseas. Marriage officers cannot refuse to marry a couple on religious grounds.

Facilities, goods and services for wedding ceremonies and receptions

Religious bodies & organisations

Bodies established for religious purposes can already refuse to provide facilities, goods and services under the Sex Discrimination Act:

- in accordance with the doctrines, tenets and beliefs of their religion, or
- where necessary to protect the religious susceptibilities of adherents of that religion.

A 'body established for religious purposes' is an organisation which is directly and immediately religious, or which has an essentially religious purpose or character.

The Bill uses this same test for solemnising a marriage or facilities, goods and services "intrinsic to, or directly associated with" the solemnisation of the marriage.

The Explanatory Memorandum provides that hires of church halls, premises or catering providers, owned by bodies established for religious purposes, would be able to lawfully refuse the use of the church hall or premises or to provide catering for both a wedding ceremony and a wedding reception.

The wording of this provision is consistent with the Sex Discrimination Act.

Commercial businesses

Commercial businesses or **individuals** would not be able to refuse to provide facilities, goods and services on religious grounds.

The Explanatory Memorandum provides that a taxi driver, florist, baker or photographer who does not work for a body established for religious purposes cannot lawfully refuse to drive a person to a wedding reception, provide flowers, prepare a wedding cake or take photographs at a wedding ceremony on the basis of their religious or other beliefs about marriage.

This is consistent with existing anti-discrimination laws which do not allow refusals of service (e.g. for a commitment ceremony for a same-sex couple or a wedding of an inter-racial couple).

This protection from discrimination is consistent with the Sex Discrimination Act.

Part 3: Common questions & answers

Will the Consensus Bill allow civil celebrants and commercial businesses to discriminate against LGBTI people?

No. The Consensus Bill will not allow civil celebrants or commercial businesses to discriminate against LGBTI people or other groups.

Can Defence Force chaplains currently refuse to solemnise marriages?

Yes. Defence Force chaplains can currently refuse to solemnise marriages (including for religious reasons). Job advertisements for Defence Force chaplains require a chaplain to be an ordained minister of religion, but requires a chaplain to provide multi-faith support for Defence Force members deployed overseas.

How can other non-marriage issues be resolved?

There are lots of issues which have arisen out of the postal survey which will not be resolved in a marriage equality bill because they relate to issues outside of marriage. The Human Rights Law Centre considers that existing anti-discrimination laws do not strike an appropriate balance between freedom of religion and freedom from discrimination.

We consider that debate on broader issues – such as anti-discrimination reform, religious education in schools and hate speech protections – should not stand in the way of marriage equality becoming a reality for Australians this year.

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