



South African
Law Reform Commission

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MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION: DISCUSSION PAPER 152 ON A SINGLE MARRIAGE STATUTE (PROJECT 144) PUBLISHED FOR GENERAL INFORMATION AND COMMENT

1. The South African Law Reform Commission announces the availability for general information and comment of its project 144 Discussion Paper 152 which deals with the possible adoption of a single marriage statute.
2. In April 2019 the SALRC published its first paper developed in this investigation, Issue Paper 35, for general information and comment. The responses on Issue Paper 35 was considered in the development of Discussion Paper 152.
3. Two draft Bills were developed as two alternative options. The first option is the 'Protected Relationships Bill'. The second option is the 'Recognition and Registration of Marriages and Life Partnerships Bill'.
4. Unified requirements for all protected relationships, marriages and life partnerships are proposed in option one, the Protected Relationships Bill and in option two, the Recognition and Registration of Marriages and Life Partnerships Bill.
5. The Bills seek to provide for the recognition of protected relationships or of marriages and life partnerships, entered into by parties regardless of the religious, cultural or any other beliefs of the parties, or the manner in which the relationship was entered into; to provide for the requirements for entering into a protected relationship or a marriage or a life partnership; to provide for registration of protected relationships or marriages and life partnerships; to provide for the legal consequences of entering into protected relationships or marriages and life partnerships; and to provide for matters incidental thereto.
6. Whenever legislation or the common law attaches consequences to protected relationships or to marriages or life partnerships, the relationships as defined in the proposed

legislation are deemed to be referred to regardless of whether they have been registered in terms of the proposed legislation or the Marriage Act of 1961, the Civil Union Act of 2006 or the Recognition of Customary Marriages Act of 1998.

7. The validity requirements for a protected relationship, a marriage or a life partnership are that all the parties must be at least 18 years on the date of entering into the relationship; that the parties must give free and informed consent; and must have capacity to enter into the relationship. If the parties do not comply with the requirements the relationship is void.

8. If a protected relationship or a marriage, is solemnised by a marriage officer, the consent of the parties must be obtained by the marriage officer in the presence of two competent witnesses. If the protected relationship or the marriage was not solemnised by a marriage officer, the registering officer has a duty to determine if all the parties consented to the relationship.

9. A proxy may represent a party to enter a protected relationship or a marriage, if the custom of the parties to the relationship require a proxy to represent a party to the relationship, as is the custom in Muslim marriages. The marriage officer or registering officer must ascertain from the proxy whether the parties to the prospective protected relationship, or the prospective marriage, have consented to enter into the protected relationship or marriage. The marriage officer must indicate such consent in the prescribed manner in the prescribed marriage register.

10. If a male party to a subsisting polygynous protected relationship or to a subsisting marriage or life partnership, wishes to enter into a further relationship, he must obtain consent from the wife or wives to enter into a further relationship. If he enters into a further relationship without the consent of all his wives that further relationship entered into will be void. The registering officer must enquire into the existence of such consent having been sought and granted when the further relationship is registered. Where consent for a party entering into a relationship is lacking due to a failure to comply with the proposed legislation, the court must be empowered to make a just property division order about the relationship property of the parties to the relationship.

11. Every person in a protected relationship or a marriage or life partnership must have the capacity to understand the legal consequences of the relationship at the time it was entered into. All parties in a protected relationship or a marriage or life partnership have equal status and capacity.

12. The Minister of Home Affairs may designate categories of persons as marriage officers, including public servants; religious officials; persons holding responsible positions in non-religious organisations; and any traditional or Khoi-San council, or any person duly authorised by the

council. The Minister may revoke designations at the request of the religious denomination or organisation, the non-religious organisation or the marriage officer. Any affected person may appeal to the Minister about any decision taken by a person acting under a power delegated by the Minister regarding a designation. The Minister is empowered on appeal to confirm, set aside or vary any decision or limitation or take any other appropriate decision.

13. Marriage officers must verify the identities of the parties intending to enter into a protected relationship or into a marriage and keep records of protected relationships or marriages conducted. A marriage officer is required to transmit the marriage register and records to the official in the public service who is responsible for the population register in the area in question. The latter must include the particulars of the protected relationship or marriage in the population register. A transitional provision is also proposed that a marriage officer who was authorised to solemnise protected relationships or marriages in terms of prior legislation, shall continue to have authority to solemnise such relationships under the proposed legislation.

14. The state has no interest in any marriage formula used to solemnise a protected relationship or a marriage. A marriage officer may solemnise a protected relationship or marriage at any place and at any time in accordance with any mode of solemnisation, or in accordance with any religious or cultural practice. A marriage officer shall not solemnise a protected relationship or marriage unless satisfied that each party has the capacity to understand that he or she enters into a protected relationship or marriage and what the consequences of that relationship are.

15. A marriage officer must ask the parties whether they declare that they freely consent to the formalisation of their intended relationship; that there is no lawful impediment to their relationship; they are not related on account of consanguinity, affinity or an adoptive relationship; and that they call two persons present to witness that they each take the other to be their legal partner in the case of a protected relationship and spouse in the case of a marriage.

16. If a protected relationship or a marriage was not solemnised by a marriage officer, the parties to the relationship have the duty to ensure that their relationship is registered. All the parties to the protected relationship or marriage must appear in person before a registering officer to confirm individually and in each other's presence on the prescribed form that they have entered into a protected relationship or marriage or life partnership. If all the parties cannot appear in each other's presence, either partner must apply for the registration of the protected relationship or marriage or life partnership. Furthermore, if for any reason a protected relationship or marriage or life partnership is not registered, any person who satisfies a registering officer that he or she

has a sufficient interest in the matter, may apply to the registering officer to enquire into the existence of the relationship.

17. The applicants 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 protected relationship or the marriage or life partnership. A protected relationship or marriage or life partnership entered into before the commencement of the proposed legislation, and which was not registered, must be registered within 12 months after the commencement of the legislation or within such a period as the Minister may from time to time prescribe by notice in the Gazette.

18. All the parties to the unregistered protected relationship or marriage or life partnership must appear in person before a registering officer to confirm individually and in each other's presence on the prescribed form that they have entered into a protected relationship or marriage or life partnership. If all the parties cannot appear in each other's presence, any party must apply for the registration of the protected relationship or marriage or life partnership to the registering officer.

19. A registering officer must if satisfied that a protected relationship or a marriage or life partnership has been entered into, register the relationship. The registering officer must record the identity of the parties; the date of the relationship; the consent of the parties; that there is no lawful impediment against the registration of the relationship; that the parties are not related on account of consanguinity, affinity or an adoptive relationship; the property system and whether it is in or out of community of property, and when out of community of property with or without accrual; a partnership agreement, if any. Once the registering officer has registered the relationship, he or she and must issue to the parties a certificate of registration.

20. A registering officer must, after he or she has registered a protected relationship a marriage or life partnership, transmit the relationship register and records to the official responsible for the population register for inclusion in the population register. If a registering officer is not satisfied that a valid protected relationship or marriage or life partnership was entered into by the parties, he or she must refuse to register the relationship.

21. A court may order the registration of any protected relationship or any marriage or life partnership; or the cancellation or rectification of any registration of a protected relationship or marriage or life partnership. A certificate of registration of a protected relationship or marriage or life partnership issued in terms of the legislation constitutes prima facie proof of the existence of

the protected relationship or marriage or life partnership and of the particulars contained in the certificate.

22. Failure to register a protected relationship or a marriage or life partnership, does not lead to the invalidity of the relationship.

23. The Minister may designate officers or employees in the public service as registering officers for protected relationships or marriages or life partnerships. A party to a protected relationship or marriage or life partnership who is a member of a traditional community or Khoi-San community may report his or her protected relationship or marriage or life partnership to his or her traditional council or Khoi-San council who must facilitate and assist the registration of that protected relationship or marriage or life partnership by a registering officer.

24. It is possible to prove the existence of a life partnership other than by proof of registration.

25. As regards addressing sham or bogus marriages, the continued involvement of marriage officers who will verify the identification documentation of prospective partners and who will conduct interviews with the parties can play a role in determining whether the relationship is genuine. Registering officers of the DHA will also be able to scrutinise and verify the particulars of the parties when they consider applications for the registration of relationships at DHA registering offices.

26. Regarding consequences of relationships whenever legislation or the common law attaches consequences to protected relationships or to marriages or life partnerships, the relationships as defined in the proposed legislation are deemed to be referred to regardless of whether they have been registered in terms of the proposed legislation or the Marriage Act of 1961, the Civil Union Act of 2006 or the Recognition of Customary Marriages Act of 1998.

27. Discussion Paper 152 serves to elicit responses and to serve as basis for the Commission's further deliberations. It contains the Commission's **preliminary proposals**. The views, conclusions and recommendations should therefore not be regarded as the Commission's final views on this investigation.

28. This Discussion Paper (which includes two Bills) is published in full to provide persons and bodies wishing to comment with enough background information to enable them to place focused submissions before the Commission. Responses to the discussion paper will be collated and evaluated to prepare a report setting out the Commission's final recommendations. The report (with draft legislation) will be submitted to the Minister of Justice and Correctional Services for submission to the Minister of Home Affairs.

29. Respondents are requested to submit written comment, representations or submissions to the Commission by **31 March 2021** for the attention of Pierre van Wyk to the following address:

The Secretary
South African Law Reform Commission
Private Bag X668
Pretoria
0001
E-mail: pvanwyk@justice.gov.za

30. Discussion Paper 152 is available on the Internet at the following site:
<https://www.justice.gov.za/salrc/dpapers.htm>

31. Discussion Paper 152 can also be obtained free of charge from the SALRC on request. Kindly contact Mr Jacob Kabini at Jakabini@justice.gov.za or (012) 622 6346 in this regard.

Contact for enquiries in respect of media statement: Pierre van Wyk

Email: pvanwyk@justice.gov.za

Tel: (012) 622 6317

ISSUED BY THE SECRETARY, S A LAW REFORM COMMISSION, CENTURION

DATE: 11 January 2021