Marriage Equality Amendment Bill 2012

Explanatory Memorandum

Circulated by authority of Mr Bandt

GENERAL OUTLINE

The *Marriage Equality Amendment Bill 2012* will remove all discrimination from the *Marriage Act 1961* to ensure that all people, regardless of their sex, sexual orientation or gender identity have the opportunity to marry.

The Australian Greens believe that discrimination such as that espoused by the *Marriage Act 1961* must be overturned to ensure that freedom of sexual orientation and gender identity are recognised as fundamental human rights, and that acceptance and celebration of diversity are essential components for genuine social justice and equality to exist.

This Bill will also reverse amendments made to the Marriage Act in 2004, which not only continue to discriminate on the basis of sexuality and gender identity, but also explicitly prohibit the recognition of same-sex marriages entered into under the laws of another country.

FINANCIAL IMPACT:

Nil.

NOTES ON CLAUSES

Clause 1 – Short title

This clause provides for the Act, when enacted, to be cited as the *Marriage Equality Amendment Act 2012.*

Clause 2 – Commencement

This clause provides for the commencement of the Act on the day on which it receives Royal Assent.

Clause 3 – Objects

This clause states that the objects of this Bill are to:

(a) remove from the Marriage Act 1961 discrimination against people on the basis of their sex, sexual orientation or gender identity; and
(b) recognise that freedom of sexual orientation and gender identity are fundamental human rights; and; and
(c) promote acceptance and the celebration of diversity;

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Schedule 1 – Amendment of the Marriage Act

Item 1 – Subsection 5(1) (definition of marriage):

Item 1 amends the definition of 'marriage' in the *Marriage Act 1961* to "*marriage* means the union of two people, regardless of their sex, sexual orientation or gender identity, to the exclusion of all others, voluntarily entered into for life."

Item 2 – Subsection 45(2)

Item 2 inserts "or partner" into the words spoken by each of the parties in the presence of an authorised celebrant, not being a Minister of religion, when solemnizing a marriage.

Item 3 – Subsection 46(1)

Item 3 amends the words required to be spoken by the authorised celebrant to the parties replacing the gendered term 'man and a woman' with the gender neutral phrase "Marriage, according to law in Australia, is the union of two people to the exclusion of all others, voluntarily entered into for life."

Item 4 – Section 47

Item 4 amends section 47 to make it clear that Ministers of religion are not bound to solemnise marriage by the Marriage Act or any other law.

Item 5 – Subsection 72(2):

Item 5 inserts "or partner" into the words spoken by each of the parties in the presence of an authorised celebrant, not being a Minister of religion, when solemnizing a marriage.

Item 6 – Section 88EA

Item 6 repeals section 88EA that prohibits the recognition of marriage between same sex couples solemnised in a foreign country.

Item 7 – Part 111 of the Schedule (table item 1)

Item 7 amends the Schedule that deals with 'Persons whose consent is required to the marriage of a minor'. Item 1 of the schedules table, to change the discriminatory term 'husband and wife' to 'two people'.

Item 8 - Application—ministers of religion

Item 8 clearly states that the amendments made by this Schedule do not limit the effect of section 47 (ministers of religion not bound to solemnise marriage etc.) of the Marriage Act 1961.

Item 9 - Regulations may make consequential amendments of Acts

Item 9 inserts a regulation making power that allows Acts (other than the Marriage Act 1961) to be amended consequentially, or that otherwise relate to, the enactment of this Act.