MARRIAGE AMENDMENT BILL 1985

Date Introduced: 22 February 1985
House: Senate
Presented by: Senator Gareth Evans, representing the Attorney-General

Purpose

To simplify the law regarding the validity of marriages through the implementation of the Convention on the Celebration and Recognition of Marriages 1978 (the Hague Convention) and to make amendments relating to the legitimacy of children.

Background

The Bill was introduced in the Senate on 4 April 1984 but lapsed following the dissolution of Parliament in October 1984. It was restored by a resolution of the Senate on 22 February 1985.

The validity of marriages performed in foreign countries, or in Australia involving a party who is not a domicile, is governed by a complex set of common law rules. Determining the validity of such marriages often involves the need to refer to the laws of a foreign country, rather than Australian law. The Hague Convention, which was signed by Australia in July 1980, aims to remove the need to refer to foreign law.

There are two major aspects of the implementation of the Hague Convention. First, the validity of marriages performed in Australia will be determined solely by reference to Australian law (Chapter I of the Hague Convention). Secondly, a marriage recognised as valid in the country where it was performed, subject to certain conditions, will be recognised as valid in Australia (Chapter II of the Hague Convention).

Outline

The Bill implements the Hague Convention and amends the requirements for the legitimacy of children. It also expresses the intention not to affect State and Territory
law regarding children born through artificial insemination and in vitro fertilization (IVF).

Main Provisions

By clause 2, the main provisions implementing the Hague Convention come into operation on a date fixed by Proclamation.

Clause 13, which inserts a new Division 2 into Part III of the Marriage Act 1961 (Principal Act), deals with the grounds upon which marriages may be declared void for marriages performed in Australia after the commencement of the clause. The effect is that the validity of such marriages will be determined solely by reference to Australian law, in accordance with Chapter I of the Hague Convention. There is no change in the grounds that will make such marriages void.

Clause 23 inserts a new Part VA dealing with the recognition of foreign marriages, to give effect to Chapter II of the Hague Convention. The conditions upon which a valid foreign marriage will be considered valid in Australia are substantially the same as those found in clause 13.

The clause also allows for the continued operation of the common law where that would recognise a marriage as valid though it falls outside the present Bill (proposed section 88E). It further allows for a document issued by an appropriate authority in a foreign country to be, prima facie, proof of the marriage (proposed section 88G).

Clauses 24 and 25 amend sections 89 and 90 of the Principal Act which deal with the conditions in which a child will be considered legitimate due to the parents later marriage, by making the domicile of the mother as relevant as that of the father.

Clause 26 contains the expression of Parliament's intention not to affect the validity of State or Territory law relating to the parentage of children born through artificial insemination or IVF.

For further information, if required, contact:

14 March 1985

Law & Government Group
LEGISLATIVE RESEARCH SERVICE