OUTLINE

The Marriage Amendment (Marriage Equality) Bill 2015 will allow Australians to marry regardless of their sex, sexual orientation, gender identity or intersex status.

FINANCIAL IMPACT

The bill will have no financial impact.

NOTES ON CLAUSES

Clause 1 – Short title

This clause provides for the Act, when enacted, to be cited as the Marriage Amendment (Marriage Equality) Act 2015.

Clause 2 – Commencement

This clause provides for the commencement of the whole of the Act on the day after the Act receives the Royal Assent.

Clause 3 – Objects

This clause states that the object of the Act is to allow Australians to marry regardless of their sex, sexual orientation, gender identity or intersex status.

Clause 4 – Schedules

This clause provides that the legislation that is specified in a Schedule to the Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Act has effect according to its terms.

Schedule 1 – Amendments to the Marriage Act 1961

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, to the exclusion of all others, voluntarily entered into for life.”

Item 2 – Paragraphs 23(2)(b) and 23B(2)(b)

Item 2 omits “a brother and a sister” and substitutes “siblings”, which relates to marriages of parties within a prohibited relationship.
Item 3 – Subsection 45(2)

Item 3 inserts “or partner” into the choice of words that may be spoken by each of the parties in the presence of an authorised celebrant when solemnising a marriage. This recognises that some couples prefer the word “partner” to “husband” or “wife”.

Item 4 – Subsection 46(1)

Item 4 amends the words required to be spoken by the authorised celebrant to the parties replacing the term 'man and a woman' with the gender neutral phrase ‘two people’.

Item 5 – Section 47

This item amends section 47 to clarify that nothing in the Marriage Act 1961, or any other law, obliges an authorised celebrant, being a minister of religion, to solemnise any marriage.

Item 6 – At the end of section 47

This item adds a note to the end of section 47 to indicate that one effect of this provision is that a minister of religion cannot be required to solemnise a marriage where the parties to the marriage are of the same sex.

Item 7 - Subsection 72(2)

Item 7 inserts “or partner” into the choice of words that may be spoken by each of the parties in the presence of a military chaplain when solemnising a marriage.

Item 8 – Section 88EA

Item 8 repeals section 88EA. The effect of this amendment is to permit the recognition of a marriage solemnised in a foreign country regardless of the sex, sexual orientation, gender identity or intersex status of the parties to that marriage.

Item 9 – Part III of the Schedule (table item 1)

Item 9 amends the Schedule that deals with ‘persons whose consent is required to the marriage of a minor’. This item amends item 1 of the table in Part III of the Schedule to replace the term 'husband and wife' with the gender neutral phrase 'two people'.

Item 10

This item inserts a regulation-making power to allow legislation to be amended consequentially, or in relation to, the enactment of the Act.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Marriage Amendment (Marriage Equality) Bill 2015

This bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the bill

The Marriage Amendment (Marriage Equality) Bill 2015 will allow Australians to marry regardless of their sex, sexual orientation, gender identity or intersex status.

Human rights implications

The bill is not detrimental to any applicable rights or freedoms.

The bill positively engages with the following rights and freedoms:

ICCPR – Article 18

The bill acknowledges the right to freedom of thought, conscience and religion in Article 18 of the ICCPR. The bill preserves and clarifies the operation of section 47(a) of the Marriage Act 1961 which provides that an authorised celebrant, being a minister of religion, is not obliged to solemnise any marriage. One effect of this provision is that a minister of religion is not obliged to solemnise a marriage between two persons of the same gender if to do so would be inconsistent with his or her religious beliefs.

ICCPR – Article 23

The bill promotes the right to of men and women of marriageable age to marry and found a family in Article 23 of the ICCPR. The bill allows Australians to marry regardless of their sex, sexual orientation, gender identity or intersex status. This removes discrimination which currently restricts access to marriage to heterosexual couples.

ICCPR – Article 26

The bill enhances the right to all persons to the equal protection of the law in Article 26 of the ICCPR. The bill allows Australians to marry regardless of their sex, sexual orientation, gender identity or intersex status. This extends the equal protection of the law to all Australians by ensuring that access to the institution of marriage is not limited to heterosexual couples.

Conclusion

This bill is compatible with human rights and it promotes and enhances human rights under the ICCPR.

Hon Bill Shorten MP