

House of Representatives
Supplementary Order Paper

Wednesday, 27 March 2013

Marriage (Definition of Marriage) Amendment Bill

Proposed amendments

Su'a William Sio, in Committee, to move the following amendments:

Clause 5A

Replace *clause 5A* (lines 18 to 28 on page 2) with:

5A Section 29 amended (Licence authorizes but not obliges marriage celebrant to solemnize marriage)

In section 29, insert as subsections (2) and (3):

“(2) Without limiting subsection (1),—

“Celebrants

“(a) a celebrant (as defined in **subsection (3)**) is not obliged to solemnize a marriage between 2 people if, because of the sex, sexual orientation, or gender identity of either of the 2 people, solemnizing the marriage would contravene the religious beliefs or convictions of the celebrant or of the celebrant’s religious body or approved organisation; and

“Freedom of expression

“(b) no challenge may be made under any Act to the lawfulness of the following conduct by a person or organisation, provided that the conduct is based on the belief or conviction that marriage should be the union of a man and a woman:

“(i) the expression of views:

“(ii) the provision of guidance or counselling, or a refusal to provide guidance or counselling; and

“Use of premises

“(c) no challenge may be made under any Act to the lawfulness of a refusal by a religious body or approved or-

ganisation to allow premises (being premises that are occupied and used by the body or organisation for, or in association with, its religious purposes) to be used for or in connection with a marriage that is not a marriage between a man and a woman.

“(3) In this section,—

“**approved organisation** means an organisation that has been declared under section 9 to be an approved organisation

“**celebrant** means either of the following:

“(a) a minister of religion whose name is on the list of marriage celebrants because it has been sent to the Registrar-General, under section 8, by a religious body:

“(b) a person nominated under section 10 to solemnize marriages by an approved organisation

“**religious body** means a religious body enumerated in Schedule 1.”

Explanatory note

This Supplementary Order Paper proposes amendments to *clause 5A* of the Marriage (Definition of Marriage) Amendment Bill.

The first purpose of the amendments is to ensure full protection for celebrants from religious bodies and approved organisations to refuse to perform same-sex marriages if to do so would be against the beliefs or convictions of the celebrant or of the religious body or approved organisation.

Civil celebrants and Registrars should not have this protection because they are performing a paid public service, so their personal views on marriage are not relevant. This is consistent with the approach taken in the UK and Canada.

The amendment also confirms the right to freedom of expression by protecting persons and organisations from challenges to the lawfulness of their conduct in expressing views, or providing or refusing to provide guidance or counselling, but only if that conduct is based on the belief that marriage should be between a man and a woman.

Finally, the amendments protect religious bodies and approved organisations from challenges to the lawfulness of refusing to allow their premises to be used in connection with a same-sex marriage. This applies only to premises used for religious purposes, and not to commercial or investment property.

For the interest of members, the relevant provision of the Canadian Civil Marriage Act is set out below:

Religious Officials

3 It is recognised that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs.

Freedom of conscience and religion and expression of beliefs

- 3.1 For greater certainty, no person or organisation shall be deprived of any benefit, or subject to any obligation of sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and religion guaranteed under the Canadian Charter of Rights and Freedoms or the expression of their beliefs in respect of marriage as the union of a man and woman to the exclusion of all others based on that guaranteed freedom.
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