

PROPOSALS OF THE SOUTH AFRICAN PAGAN RIGHTS ALLIANCE



- The South African Pagan Rights Alliance has forwarded a complaint to the Department regarding the unconstitutional nature of the Marriage Act.
- They specifically highlighted the discriminatory nature of section 3(1) of the Act, which restricts designated marriage officers to only conduct marriages according to Christian, Jewish or Mohammedan rites, or the rites of any Indian religion.
- They are of the opinion that the proposals by the SALRC that the Minister should be empowered to designate by proclamation persons holding responsible positions in religious denominations or religious organisations to be marriage officers, should be incorporated into the Marriage Act.
- The SALRC has proposed that the current section 3(1) of the Marriage Act be replaced with a new section which will empower the Minister to designate as marriage officers responsible persons from any religious denominations or religious organisations.

PROPOSALS BY THE COMMISSION ON GENDER EQUALITY



The Commission on Gender Equality has approached the Department with complaints regarding the legal non-recognition of religious marriages, in particular Muslim marriages.

Their view is that the draft Bill proposed by the SALRC violates the doctrine of separation of the Church/Religion and State, as it codifies contested interpretations of religious law and empowers the State to enforce and control the manner in which people choose to practice their religion. In their view, it is prudent not to legislate on religious practices.

The Commission has provided us with a proposed draft Bill on the Recognition of Religious Marriages, which is based on the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), hereinafter referred to as "the Recognition of Customary Marriages Act", but with provisions governing marriages concluded in accordance with the tenets of a religion.



PROPOSALS BY THE COMMISSION ON GENDER EQUALITY (CONTINUED)

- The proposed draft Bill prohibits marriage according to the Marriage Act or according to the Customary Marriages Act during the subsistence of a religious marriage.
- They have added a section which provides for the designation by the Minister of the religious leader of a religion, as a marriage officer for solemnization of a marriage according to the tenets of that religion.
- A provision named "*Offences and penalties*" has been added which governs the penalties in cases where a marriage officer solemnizes a marriage which is prohibited.
- They also prepared a proposed draft Bill on Muslim Marriages which is culture-specific in that it contains thorough references to the Muslim religion and cultures relating thereto. Although it also seems to be based on the Recognition of Customary Marriages Act, it refers to specific terms in the Muslim religion, which may become problematic to understand upon attempting to interpret some provisions.



SUPPORT FOR SALRC PROPOSAL

(i) Acceptance of the SALRC's "Dual Act" proposal

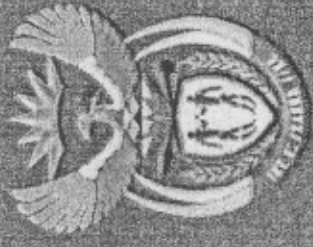
This would be an interim solution to the problem of same-sex couples and the designation of marriage officers of other religious denominations.

It would be possible to reach the deadline set by the Constitutional Court as these proposals are ready for submission to Parliament.

(ii) Acceptance of the SALRC's proposal of the replacement of section 3(1) of the Marriage Act with a new section

This would make provision for the designation by the Minister of a responsible person from any religious denomination or religious organisation.

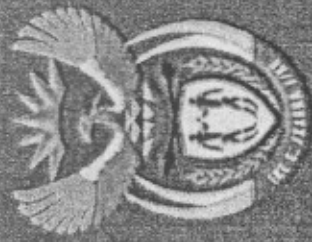
This would solve the problem regarding the registration of marriage officers currently being experienced by the South African Pagan Rights Alliance.



PROPOSALS OF DHA

- (i) Amendment of section 1 of the Act to insert:
 - a definition of marriage to mean a union of two persons;
 - a definition of spouse to mean the lawful partner of a person in a valid marriage concluded in terms of the Act and the reference to spouse in any other law to have the same meaning.
- (ii) Amendment of section 3 of the Marriage Act to remove the reference to Christian, Jewish Mohammedan rites or the rites of any Indian religion and to include designation of Ministers to solemnize marriages according to the rites of the religious denomination concerned;
- (iii) Amendment of section 30(1) of the Marriage Act to include the words "or spouse" after the words "or husband".

PROPOSALS OF DHA (CONTINUED)



(iv) Consequential amendments

The Marriage Act currently still makes reference to the Identification Act, 1986 (Act No. 72 of 1986) which should in fact be the Identification Act, 1997 (Act No. 68 of 1997) (see sections 12(a) and 29A).

The Regulations to the Marriage Act refers to the Births, Marriages and Deaths Registration Act, 1963 (Act No. 81 of 1963) which has been repealed by the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);

(v) Revision of penalties due to corrupt activities encountered by the Department

Penalties stipulated in sections 32(2), 35 and 38(2) of the Marriage Act, as well as penalties in the regulations to the Marriage Act, are no longer deterrent enough and should be amended due to the increase of corruption relating to solemnizing of marriages by marriage officers.