

2016-2017

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Marriage Amendment (Definition and
Religious Freedoms) Bill 2017**

No. , 2017

(Senator Smith)

**A Bill for an Act to amend the law relating to the
definition of marriage and protect religious
freedoms, and for related purposes**

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	3
Schedule 1—Amendments		4
Part 1—Main amendments		4
<i>Marriage Act 1961</i>		4
Part 2—Amendment of the Sex Discrimination Act 1984		17
<i>Sex Discrimination Act 1984</i>		17
Part 3—Amendments if Schedule 9 to the Civil Law and Justice Legislation Amendment Act 2017 not yet commenced		18
<i>Marriage Act 1961</i>		18
Part 4—Amendments once Schedule 9 to the Civil Law and Justice Legislation Amendment Act 2017 commences		19
<i>Marriage Act 1961</i>		19
Part 5—Application and transitional provisions		20

A Bill for an Act to amend the law relating to the definition of marriage and protect religious freedoms, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Marriage Amendment (Definition and Religious Freedoms) Act 2017*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Parts 1 and 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 28 days beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 1, Part 3	At the same time as the provisions covered by table item 2. However, if Schedule 9 to the <i>Civil Law and Justice Legislation Amendment Act 2017</i> commences at or before that time, the provisions covered by this table item do not commence at all.	
4. Schedule 1, Part 4	The later of: (a) the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of Schedule 9 to the <i>Civil Law and Justice Legislation Amendment Act 2017</i> . However, if Schedule 9 to the <i>Civil Law and Justice Legislation Amendment Act 2017</i> does not commence, the provisions covered by this table item do not commence at all.	
5. Schedule 1, Part 5	At the same time as the provisions covered by table item 2.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

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

Schedule 1—Amendments

Part 1—Main amendments

Marriage Act 1961

1 After section 2

Insert:

2A Objects of this Act

It is an object of this Act to create a legal framework:

- (a) to allow civil celebrants to solemnise marriage, understood as the union of 2 people to the exclusion of all others, voluntarily entered into for life; and
- (b) to allow ministers of religion to solemnise marriage, respecting the doctrines, tenets and beliefs of their religion, the views of their religious community or their own religious beliefs; and
- (c) to allow equal access to marriage while protecting religious freedom in relation to marriage.

2 Subsection 5(1) (definition of *authorised celebrant*)

Repeal the definition, substitute:

authorised celebrant means:

- (a) in relation to a marriage proposed to be solemnised in Australia:
 - (i) a minister of religion registered under Subdivision A of Division 1 of Part IV; or
 - (ii) a person authorised to solemnise marriages under Subdivision B of Division 1 of Part IV; or
 - (iii) a marriage celebrant; or
 - (iv) a religious marriage celebrant; or
- (b) in relation to a marriage proposed to be solemnised in accordance with Division 3 of Part V:
 - (i) a chaplain; or

- (ii) an officer (within the meaning of the *Defence Act 1903*), other than a chaplain, authorised by the Chief of the Defence Force under section 71A to solemnise marriages under that Division.

3 Subsection 5(1) (definition of *marriage*)

Omit “a man and a woman”, substitute “2 people”.

4 Subsection 5(1) (paragraph (c) of the definition of *prescribed authority*)

Omit “a chaplain”, substitute “a chaplain or an officer (within the meaning of the *Defence Act 1903*), other than a chaplain, authorised by the Chief of the Defence Force under section 71A to solemnise marriages under that Division”.

5 Subsection 5(1)

Insert:

religious marriage celebrant means a person identified as a religious marriage celebrant on the register of marriage celebrants under Subdivision D of Division 1 of Part IV.

6 Paragraph 21(2)(b)

Omit “the chaplain”, substitute “the authorised celebrant”.

7 Paragraph 23B(2)(b)

Omit “a brother and a sister”, substitute “2 siblings”.

8 After section 39D

Insert:

Subdivision D—Religious marriage celebrants

39DA Entitlement to be identified as a religious marriage celebrant on the register of marriage celebrants

A person is entitled to be identified as a religious marriage celebrant on the register of marriage celebrants if:

- (a) the person is registered as a marriage celebrant under Subdivision C of this Division; and

- (b) the person is a minister of religion.

39DB Request to be identified as a religious marriage celebrant on the register of marriage celebrants

- (1) A person may, in writing, give the Registrar of Marriage Celebrants notice that the person wishes to be identified as a religious marriage celebrant on the register of marriage celebrants.
- (2) The notice must be in a form approved by the Registrar, and include all of the information required by the form.

39DC Identification as a religious marriage celebrant

The Registrar of Marriage Celebrants must identify a person as a religious marriage celebrant on the register of marriage celebrants if:

- (a) the person has given the Registrar notice in accordance with section 39DB that the person wishes to be identified as a religious marriage celebrant on the register; and
- (b) the person is entitled to be identified as a religious marriage celebrant on the register.

39DD Transitional provisions for existing marriage celebrants

Marriage celebrants who are ministers of religion, but not ministers of religion of a recognised denomination

- (1) The Registrar of Marriage Celebrants must identify a person as a religious marriage celebrant on the register of marriage celebrants if:
- (a) the person was registered as a marriage celebrant under Subdivision C of this Division immediately before Part 1 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* commenced; and
- (b) the person is a minister of religion.

Marriage celebrants who wish to be religious marriage celebrants on the basis of their religious beliefs

- (2) The Registrar of Marriage Celebrants must identify a person as a religious marriage celebrant on the register of marriage celebrants if:
 - (a) the person was registered as a marriage celebrant under Subdivision C of this Division immediately before Part 1 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* commenced; and
 - (b) the person gives the Registrar notice that the person wishes to be identified as a religious marriage celebrant on the register:
 - (i) in writing; and
 - (ii) in a form approved by the Registrar; and
 - (iii) within 90 days after Part 1 of Schedule 1 to the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* commences; and
 - (c) the choice is based on the person's religious beliefs.

39DE Process of identification on the register as a religious marriage celebrant

- (1) The Registrar identifies a person as a religious marriage celebrant on the register of marriage celebrants by annotating the register to include that detail.
- (2) If the Registrar identifies a person as a religious marriage celebrant on the register of marriage celebrants, the Registrar must, as soon as practicable, give the person written notice of that fact.
- (3) If the Registrar decides not to identify a person as a religious marriage celebrant on the register of marriage celebrants, the Registrar must, as soon as practicable, inform the person in writing of:
 - (a) the decision; and
 - (b) the reasons for it; and
 - (c) the person's right under section 39J to apply for a review of the decision.

Subdivision E—General provisions relating to all marriage celebrants

9 After paragraph 39G(1)(c)

Insert:

- ; and (d) disclose that the celebrant is a marriage celebrant, and whether or not the celebrant is a religious marriage celebrant, in any document relating to the performance of services as a marriage celebrant (including advertisements) by the celebrant.

10 After paragraph 39I(1)(a)

Insert:

- (aa) is satisfied that the marriage celebrant is no longer entitled to be identified as a religious marriage celebrant on the register of marriage celebrants; or

11 At the end of subsection 39I(1)

Add:

- ; or (f) is satisfied that the marriage celebrant's notice under section 39DB or paragraph 39DD(2)(b) (notice requesting to be identified as a religious marriage celebrant) was known by the marriage celebrant to be false or misleading in a material particular.

12 After paragraph 39I(2)(d)

Insert:

- ; or (e) if the marriage celebrant is identified as a religious marriage celebrant on the register of marriage celebrants:
 - (i) remove the identification of the marriage celebrant as a religious marriage celebrant from the register for a period (the *suspension period*) of up to 6 months by annotating the register of marriage celebrants to include a statement that the celebrant is not identified as a religious marriage celebrant, and the dates of the start and end of the suspension period; or
 - (ii) remove the identification of the marriage celebrant as a religious marriage celebrant permanently from the register.

13 After subsection 39I(3)

Insert:

- (3A) If the Registrar removes the identification of a marriage celebrant as a religious marriage celebrant for any period under paragraph (2)(e), section 47A does not apply in respect of the celebrant during that period.

14 Subsection 39I(4)

After “disciplinary measures against a marriage celebrant”, insert “(including a religious marriage celebrant)”.

15 At the end of subsection 39J(1)

Add:

- ; or (d) not to identify a person as a religious marriage celebrant on the register of marriage celebrants; or
- (e) to remove the identification of a person as a religious marriage celebrant from the register of marriage celebrants, either for a specified period or permanently.

16 After subsection 39J(2)

Insert:

- (2A) For the purposes of both the making of an application under subsection (1) and the operation of the *Administrative Appeals Tribunal Act 1975* in relation to such an application, if:
- (a) a person has given notice under section 39DB or paragraph 39DD(2)(b) (notice requesting to be identified as a religious marriage celebrant); and
- (b) at the end of 3 months after the day on which the notice was given, the person has not been:
- (i) identified as a religious marriage celebrant on the register of marriage celebrants; or
- (ii) notified by the Registrar that the Registrar has decided not to identify the person as a religious marriage celebrant on the register of marriage celebrants;
- the Registrar is taken to have decided, on the last day of the 3 month period, not to identify that person as a religious marriage celebrant on the register of marriage celebrants.

17 After paragraph 39M(c)

Insert:

- or (d) a person was identified as a religious marriage celebrant on the register of marriage celebrants; or
- (e) a person was not identified as a religious marriage celebrant on the register of marriage celebrants;

18 Subsection 45(2)

After “or husband”, insert “, or spouse”.

19 Subsection 46(1)

Omit “a man and a woman”, substitute “2 people”.

20 Section 47

Repeal the section, substitute:

47 Ministers of religion may refuse to solemnise marriages

Refusing to solemnise a marriage despite this Part

- (1) A minister of religion may refuse to solemnise a marriage despite anything in this Part.
- (2) In particular, nothing in this Part prevents a minister of religion from:
 - (a) making it a condition of solemnising a marriage that:
 - (i) notice of the intended marriage is given to the minister earlier than this Act requires; or
 - (ii) additional requirements to those provided by this Act are complied with; and
 - (b) refusing to solemnise the marriage if the condition is not observed.

Refusing to solemnise a marriage on the basis of religious beliefs etc.

- (3) A minister of religion may refuse to solemnise a marriage despite anything in this Part, if any of the following applies:

- (a) the refusal conforms to the doctrines, tenets or beliefs of the religion of the minister's religious body or religious organisation;
- (b) the refusal is necessary to avoid injury to the religious susceptibilities of adherents of that religion;
- (c) the minister's religious beliefs do not allow the minister to solemnise the marriage.

Grounds for refusal not limited by this section

- (4) This section does not limit the grounds on which a minister of religion may refuse to solemnise a marriage.

21 Before section 48

Insert:

47A Religious marriage celebrants may refuse to solemnise marriages

- (1) A religious marriage celebrant may refuse to solemnise a marriage despite anything in this Part, if the celebrant's religious beliefs do not allow the celebrant to solemnise the marriage.

Grounds for refusal not limited by this section

- (2) This section does not limit the grounds on which a religious marriage celebrant may refuse to solemnise a marriage.

47B Bodies established for religious purposes may refuse to make facilities available or provide goods or services

- (1) A body established for religious purposes may refuse to make a facility available, or to provide goods or services, for the purposes of the solemnisation of a marriage, or for purposes reasonably incidental to the solemnisation of a marriage, if the refusal:
 - (a) conforms to the doctrines, tenets or beliefs of the religion of the body; or
 - (b) is necessary to avoid injury to the religious susceptibilities of adherents of that religion.
- (2) Subsection (1) applies to facilities made available, and goods and services provided, whether for payment or not.

- (3) This section does not limit the grounds on which a body established for religious purposes may refuse to make a facility available, or to provide goods or services, for the purposes of the solemnisation of a marriage, or for purposes reasonably incidental to the solemnisation of a marriage.
- (4) To avoid doubt, a reference to a *body established for religious purposes* has the same meaning in this section as it has in section 37 of the *Sex Discrimination Act 1984*.
- (5) For the purposes of subsection (1), a purpose is *reasonably incidental* to the solemnisation of marriage if it is intrinsic to, or directly associated with, the solemnisation of the marriage.

22 Subsection 71(1)

Omit “a chaplain”, substitute “an authorised celebrant”.

23 After section 71

Insert:

71A Marriage officers

The Chief of the Defence Force may, by instrument in writing, authorise an officer (within the meaning of the *Defence Act 1903*), other than a chaplain, to solemnise marriages under this Division.

24 Paragraphs 72(1)(a) and (b)

Omit “the chaplain” (wherever occurring), substitute “the authorised celebrant”.

25 Subsection 72(2)

Omit “the chaplain” (wherever occurring), substitute “the authorised celebrant”.

26 Subsection 72(2)

After “or husband”, insert “, or spouse”.

27 Section 74 (heading)

Omit “chaplain”, substitute “authorised celebrant”.

28 Subsection 74(1)

Omit “the chaplain”, substitute “the authorised celebrant”.

29 Subsection 74(3)

Omit “A chaplain”, substitute “An authorised celebrant”.

30 Section 75 (heading)

Omit “**Chaplain**”, substitute “**Authorised celebrant**”.

31 Section 75

Omit “A chaplain”, substitute “An authorised celebrant”.

32 Section 75

Omit “the chaplain”, substitute “the authorised celebrant”.

33 Subsections 76(1), 77(1) and 78(2)

Omit “the chaplain”, substitute “the authorised celebrant”.

34 Section 79 (heading)

Omit “**Chaplain**”, substitute “**Authorised celebrant**”.

35 Section 79

Omit “A chaplain”, substitute “An authorised celebrant”.

36 Section 79

Omit “the chaplain”, substitute “the authorised celebrant”.

37 Subsection 80(1)

Omit “a chaplain”, substitute “an authorised celebrant”.

38 Subsection 80(1)

Omit “the chaplain”, substitute “the authorised celebrant”.

39 Paragraphs 80(2)(a) and (c)

Omit “the chaplain”, substitute “the authorised celebrant”.

40 Subsection 80(4)

Omit “The chaplain”, substitute “The authorised celebrant”.

41 Subsections 80(5) and (6)

Omit “the chaplain”, substitute “the authorised celebrant”.

42 Subsection 80(8)

Omit “a chaplain”, substitute “an authorised celebrant”.

43 Subsection 80(9)

Omit “the chaplain” (first occurring), substitute “the authorised celebrant”.

44 Paragraph 80(9)(b)

Omit “the chaplain”, substitute “the authorised celebrant”.

45 Subsection 80(10)

Omit “a chaplain”, substitute “an authorised celebrant”.

46 Section 81

Omit “A chaplain”, substitute “(1) An authorised celebrant (including a chaplain)”.

47 Section 81

Omit “the chaplain” (wherever occurring), substitute “the authorised celebrant”.

48 At the end of section 81

Add:

Refusing to solemnise a marriage on the basis of religious beliefs etc.

- (2) A chaplain may refuse to solemnise a marriage despite anything in this Part, if any of the following applies:
- (a) the refusal conforms to the doctrines, tenets or beliefs of the religion of the chaplain’s religious body or religious organisation;
 - (b) the refusal is necessary to avoid injury to the religious susceptibilities of adherents of that religion;
 - (c) the chaplain’s religious beliefs do not allow the chaplain to solemnise the marriage.

Grounds for refusal not limited by this section

- (3) This section does not limit the grounds on which an authorised celebrant (including a chaplain) may refuse to solemnise a marriage.

49 Subsection 83(2)

Omit “a chaplain”, substitute “an authorised celebrant”.

50 Section 84 (heading)

Omit “a chaplain”, substitute “an authorised celebrant”.

51 Paragraph 84(1)(a)

Omit “a chaplain”, substitute “an authorised celebrant”.

52 Paragraphs 84(1)(b) and (c)

Omit “the chaplain”, substitute “the authorised celebrant”.

53 Subsection 84(1)

Omit “the chaplain” (last occurring), substitute “the authorised celebrant”.

54 Paragraph 85(1)(b)

Omit “a chaplain”, substitute “an authorised celebrant”.

55 Paragraph 85(1)(c)

Omit “the chaplain”, substitute “the authorised celebrant”.

56 Subsection 85(1)

Omit “the chaplain” (last occurring), substitute “the authorised celebrant”.

57 Subsection 88B(4)

Repeal the subsection.

58 Section 88EA

Repeal the section.

59 Subsection 99(3)

Omit “A chaplain”, substitute “An authorised celebrant”.

60 Subsection 116(2)

Omit “or chaplain” (wherever occurring).

61 Subsections 117(1) and (2)

After “other than Subdivision C”, insert “or D”.

62 Paragraph 119(3)(f)

Omit “chaplain”, substitute “authorised celebrant”.

Part 2—Amendment of the Sex Discrimination Act 1984

Sex Discrimination Act 1984

63 Subsection 40(2A)

Repeal the subsection, substitute:

- (2A) A minister of religion (as defined in subsection 5(1) of the *Marriage Act 1961*) may refuse to solemnise a marriage despite anything in Division 1 or 2, as applying by reference to section 5A, 5B, 5C or 6, if any of the circumstances mentioned in paragraph 47(3)(a), (b) or (c) of the *Marriage Act 1961* apply.
- (2AA) A religious marriage celebrant (as defined in subsection 5(1) of the *Marriage Act 1961*) may refuse to solemnise a marriage despite anything in Division 1 or 2, as applying by reference to section 5A, 5B, 5C or 6, if:
- (a) the identification of the person as a religious marriage celebrant on the register of marriage celebrants has not been removed at the time the marriage is solemnised; and
 - (b) the circumstances mentioned in subsection 47A(1) of the *Marriage Act 1961* apply.
- (2AB) A chaplain in the Defence Force may refuse to solemnise a marriage despite anything in Division 1 or 2, as applying by reference to section 5A, 5B, 5C or 6, if any of the circumstances mentioned in paragraph 81(2)(a), (b) or (c) of the *Marriage Act 1961* apply.

Note: Paragraph 37(1)(d) also provides that nothing in Division 1 or 2 affects any act or practice of a body established for religious purposes that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion.

Part 3—Amendments if Schedule 9 to the Civil Law and Justice Legislation Amendment Act 2017 not yet commenced

Marriage Act 1961

64 Paragraph 115(2)(b)

Repeal the paragraph, substitute:

- (b) in respect of each other person:
 - (i) the person’s full name, designation (if any) and address and
 - (ii) whether the person is identified as a religious marriage celebrant on the register of marriage celebrants; and
 - (iii) where appropriate, the religious body or religious organisation to which the person belongs.

65 The Schedule (table item 1 of Part III)

Omit “by a husband and wife jointly”, substitute “by 2 people jointly”.

**Part 4—Amendments once Schedule 9 to the Civil
Law and Justice Legislation Amendment Act
2017 commences**

Marriage Act 1961

66 After paragraph 115(1)(ab)

Insert:

- (ac) a list of the persons who are religious marriage celebrants;
and

67 Subsection 115(2) (after table item 3)

Insert:

3A	paragraph (1)(ac)	the information required to be entered in the register of marriage celebrants for the purposes of subsection 39D(5); and where appropriate, the religious body or religious organisation to which the person belongs.
----	-------------------	--

68 Subsection 115(3)

Omit “paragraph (1)(a), (aa) or (ab)”, substitute “paragraph (1)(a), (aa), (ab) or (ac)”.

Part 5—Application and transitional provisions

69 Definitions

In this Part:

amended Act means the *Marriage Act 1961*, as amended by this Act.

70 Application of amendments

- (1) Except as provided by subitem (2), the amendments made by this Schedule only apply in relation to a marriage (within the meaning of the amended Act) that takes place at or after the commencement of this item.
- (2) Part VA of the amended Act (recognition of foreign marriages) applies at and after that commencement in relation to a marriage (within the meaning of the amended Act), even if the marriage took place before that commencement.
- (3) For the purposes of determining whether parties to a marriage are within a prohibited relationship as mentioned in paragraph 88D(2)(c) of the amended Act (as it applies because of subitem (2)), paragraph 23B(2)(b) of the amended Act applies.

71 Recognition of certain marriages by foreign diplomatic or consular officers that occurred in Australia before commencement

- (1) A marriage is recognised as valid in Australia if:
 - (a) the marriage was solemnised in Australia, before the commencement of this item, by or in the presence of a diplomatic or consular officer of an overseas country (whether or not the country was a proclaimed overseas country at the time the marriage was solemnised); and
 - (b) at the time the marriage was solemnised:
 - (i) the marriage was not recognised in Australia as valid because the marriage was not the union of a man and a woman; and
 - (ii) the marriage was recognised as valid under the law of the overseas country; and

(c) had the marriage occurred in the overseas country at the time the marriage was solemnised, the marriage would, after items 57 and 58 of this Schedule commence, be recognised as valid under Part VA of the *Marriage Act 1961*.

(2) In this item:

Australia includes the external Territories.

diplomatic or consular officer has the meaning given by section 52 of the *Marriage Act 1961*.

overseas country has the same meaning as in Division 3 of Part IV of the *Marriage Act 1961*.

proclaimed overseas country has the meaning given by section 52 of the *Marriage Act 1961*.