

Introduction

- 1.1 On 13 February 2012, Mr Adam Bandt MP (Greens) and Mr Andrew Wilkie MP (Independent) introduced the Marriage Equality Amendment Bill 2012 (the Bandt/Wilkie Bill) and Mr Stephen Jones (Labor) introduced his private member's bill, the Marriage Amendment Bill 2012 (the Jones Bill). Both bills propose amendments to the *Marriage Act 1961* (Cth) (the Marriage Act).
- 1.2 On Thursday 16 February 2012, the House of Representatives Selection Committee asked the Committee to inquire into and report on these two bills.
- 1.3 Mr Bandt was nominated as a supplementary member to the Committee for the purpose of this inquiry on 16 February 2012.
- 1.4 On Monday 27 February 2012, the Committee released a media alert about the inquiry and launched an online survey on its website to provide the public with a quick and anonymous means to make their views known. The Committee sent invitations to a selected, balanced number of religious, legal, family and gay advocacy organisations to make written statements.
- 1.5 All responses, received via the online survey, email, fax or post by 20 April 2012, were accepted by the Committee as evidence to the inquiry.
- 1.6 The Committee received 276 437 responses to the online survey, including 213 524 general comments and 86 991 comments on the legal and technical aspects of the bills. A summary of the responses and a selection of the anonymous comments were published on the Committee website at www.aph.gov.au/marriage.
- 1.7 The online survey was not a statistically valid, random poll. Respondents were self-selected, in that they chose to participate if they wished. It was

also anonymous, so it cannot be ascertained whether it is truly a representative sample of the broadly-held views of Australians.

- 1.8 The Committee accepts that some respondents may have completed the survey more than once in order to ‘boost the numbers’. However, the data was able to be checked for responses from duplicate or invalid email addresses as well as for multiple responses at one time from the same IP address. This occurred with those who supported the bills and those who opposed them, but at such an insignificant rate (4.4 per cent) as to have little effect on the overall numbers.
- 1.9 An additional 2 353 responses were received by email, fax or post. Some of these respondents may have participated in the online survey as well. A small number of written statements, representing a diversity of views, listed in Appendix A, was published on the Committee website at www.aph.gov.au/marriage.
- 1.10 The Committee held a public hearing in Sydney on Thursday, 12 April 2012. The list of witnesses who gave evidence at the public hearing is published at Appendix B.

The Marriage Equality Amendment Bill 2012 (the Bandt/Wilkie Bill)

- 1.11 The long title of the Bandt/Wilkie Bill is ‘A Bill for an Act to amend the *Marriage Act 1961* to create the opportunity for marriage equality for people regardless of their sex, sexual orientation or gender identity, and for related purposes’.

Objects

- 1.12 The objects of the Bandt/Wilkie Bill are:
- to remove from the *Marriage Act 1961* discrimination against people on the basis of their sex, sexual orientation and gender identity;
 - to recognise that freedom of sexual orientation and gender identity are fundamental human rights; and
 - to promote acceptance and the celebration of diversity.

Schedule 1—Amendment of the Marriage Act 1961

- 1.13 The Bandt/Wilkie Bill contains one schedule comprising nine items.

- 1.14 Item 1 proposes that the definition of marriage in Subsection 5(1) of the Marriage Act be repealed and replaced with the words:
- marriage** means the union of two people, regardless of their sex, sexual orientation or gender identity, to the exclusion of all others, voluntarily entered into for life.
- 1.15 Item 3 proposes that the words ‘a man and a woman’ in Subsection 46(1) of the Marriage Act be substituted with the words ‘two people’, changing the speech required of an authorised celebrant, not being a minister of religion, to:
- Marriage, according to the law in Australia, is the union of two people to the exclusion of all others, voluntarily entered into for life.
- 1.16 Similarly, Item 7 proposes that the words ‘a husband and a wife’ in Part III of the Schedule (table item 1) be substituted with the words ‘two people’. Table item 1 of the Schedule (Persons whose consent is required to the marriage of a minor) would then read:
1. Where the minor was adopted by two people jointly
- 1.17 Items 2 and 5 recommend adding the words ‘or partner’ to those spoken by the marriage parties:
- I call upon the persons here present to witness that I, A.B. (*or* C.D.), take thee, C.D. (*or* A.B.), to be my lawful wedded wife (*or* husband *or* partner).
- 1.18 Section 47 states that ‘Nothing in this Part’ shall oblige ministers of religion to solemnise any marriage. Item 4 strengthens this section by adding the words ‘or in any other law’ after the word ‘Part’.
- 1.19 In addition, Item 8 clarifies that the proposed amendments will not change Section 47.
- 1.20 Item 6 recommends repealing Section 88EA, which reads as follows:
- A union solemnised in a foreign country between:
- (a) a man and another man; or
- (b) a woman and another woman;
- must not be recognised as a marriage in Australia.
- 1.21 Item 9 advises that amendments may be made to Acts other than the Marriage Act if they are consequential to the passing of the Bandt/Wilkie Bill.

The Marriage Amendment Bill 2012 (the Jones Bill)

- 1.22 The long title of the Jones Bill is ‘A Bill for an Act to amend the *Marriage Act 1961* to establish marriage equality for same-sex couples, and for related purposes’.

Objects

- 1.23 The object of the Jones Bill is to ‘amend the *Marriage Act 1961* to ensure equal access to marriage for all adult couples irrespective of sex who have a mutual commitment to a shared life.’

Schedule 1—Amendment of the Marriage Act 1961

- 1.24 The Jones Bill contains one schedule comprising five items.

- 1.25 Item 1 proposes that the definition of marriage in Subsection 5(1) of the Marriage Act be repealed and replaced with the words:

marriage means the union of two people, regardless of their sex, to the exclusion of all others, voluntarily entered into for life.

- 1.26 Item 2 proposes that the words ‘a man and a woman’ in Subsection 46(1) of the Marriage Act be substituted with the words ‘two people’, changing the speech required of an authorised celebrant, not being a minister of religion, to:

Marriage, according to the law in Australia, is the union of two people to the exclusion of all others, voluntarily entered into for life.

- 1.27 Similarly, Item 5 proposes that the words ‘a husband and a wife’ in Part III of the Schedule (table item 1) be substituted with the words ‘two people’. Table item 1 of the Schedule (Persons whose consent is required to the marriage of a minor) would then read:

1. Where the minor was adopted by two people jointly

- 1.28 Item 3 proposes an additional paragraph (aa) for Section 47 so that it would read as follows:

Nothing in this Part:

(a) imposes an obligation on an authorised celebrant, being a minister of religion, to solemnise any marriage; or

(aa) imposes an obligation on an authorised celebrant, being a minister of religion, to solemnise a marriage where the parties to the marriage are of the same sex; or

(b) prevents such an authorised celebrant from making it a condition of his or her solemnising a marriage that:

(i) longer notice of intention to marry than that required by this Act is given; or

(ii) requirements additional to those provided by this Act are observed.

1.29 Item 4 recommends repealing Section 88EA, which reads as follows:

A union solemnised in a foreign country between:

(a) a man and another man; or

(b) a woman and another woman;

must not be recognised as a marriage in Australia.

Purpose of inquiry

1.30 The purpose of this advisory report is for the Committee to scrutinise the two marriage bills before the Parliament. It is for the Parliament to determine whether a bill legalising same-sex marriage will be passed. The report aims to aid the Parliament in determining how it will proceed on these bills.

1.31 To this end, the Committee examined historical and contemporary approaches to marriage and relationship recognition, social values and opinions regarding the proposed changes, and technical differences in the drafting of each bill.

Scope of the report

1.32 The Committee has examined the proposed changes to the Marriage Act contained in the Bandt/Wilkie and Jones Bills. In summary, the proposed amendments seek to change the definition of marriage to include two people of the same sex and to repeal the section that prohibits recognition of same-sex marriages conducted overseas.

- 1.33 Neither bill proposes any changes to the protections that currently exist in the Marriage Act, such as the marriageable age, the prohibition against consanguineous relationships, or the religious freedom of ministers of religion to refuse to solemnise any marriage.
- 1.34 This report focuses solely on the intent and content of the two bills. Neither bill proposes any changes to the words ‘to the exclusion of all others’ in the definition of marriage. Neither do they propose any changes to Section 94, which makes bigamy an offence. As such, polygamy, the practice of having more than one spouse, is not of relevance in considering these bills, despite having been raised by some respondents. Should a bill be introduced in the future that proposes to expand the definition of marriage to accommodate more than two people and to repeal Section 94, then polygamy would be a relevant topic of discussion.
- 1.35 Many objections to the bills have been based on concerns about the adoption of children by same-sex married couples. However, adoption rights come under state legislation and are not addressed in the Marriage Act that the proposed bills would amend. Moreover, marital status is not necessarily linked to adoption rights. All states and territories, with the exception of South Australia, allow single people to adopt children. The Australian Capital Territory, New South Wales and Western Australian permit same-sex couples to adopt children. The remaining states could change legislation to extend adoption rights to same-sex couples without any changes to the Marriage Act.
- 1.36 Should same-sex marriage be legalised by the Australian Parliament, this would not change adoption rights for same-sex couples without subsequent legislative changes being agreed to by individual state and territory governments.

Structure of the report

- 1.37 The next chapter outlines the history of marriage laws in Australia and examines legally-recognised relationships other than marriage.
- 1.38 Chapter 3 discusses the public responses to the inquiry, based around common themes that featured predominantly during the course of this inquiry. Selected quotations from the numerous responses are presented in this chapter.
- 1.39 Chapter 4 addresses the legal issues with respect to the two bills, and the different wording proposed in each bill.

- 1.40 The final chapter provides the Committee's concluding remarks. The Committee chose not to make a recommendation in this report. Some members have made recommendations in their additional comments. These reflect the diversity of views within the Committee.

