

MARRIAGE AMENDMENT BILL

EXPLANATORY NOTE

THE main purpose of this Bill is to enable some non-religious bodies to be able to have members authorised to solemnise marriages, to allow some Justices of the Peace and persons of similar standing to solemnise marriages, and to allow Registrars to solemnise marriages outside normal office hours. It does, however, make some other amendments to the Marriage Act 1955.

Clause 1 gives the Short Title and commencement date.

Clause 2 substitutes the expression "marriage celebrant" for "officiating minister".

Clause 3 repeals sections 9, 10, and 11 of the principal Act and substitutes three new sections.

New *section 9* provides that organisations may be approved to nominate adults to be marriage celebrants if the Minister of Justice is satisfied that their principal object or one of their principal objects is to uphold or promote religious beliefs or philosophical or humanitarian convictions. Every decision by the Minister is to be made in the light of a recommendation by the Registrar-General.

Subsection (7) provides for the withdrawal of approval if the Minister is satisfied that an approved organisation should not continue to be able to nominate marriage celebrants, or if the organisation has had no member as a marriage celebrant for a year.

New *section 10* provides for the nomination of adult members of approved organisations to be marriage celebrants. If the Registrar-General is satisfied that a person nominated is of good character and otherwise qualified to act as a marriage celebrant he will enter that person's name in the list. Where the Registrar-General is not so satisfied, that nomination may be referred to the Minister who may direct the Registrar-General to enter that person's name in the list.

New *section 11* provides for the appointment as a marriage celebrant of a Justice of the Peace or other person of good character in a locality, in circumstances where the presence of such a marriage celebrant would be of convenience to the residents of that locality. A person so appointed would not have custody of a register book, but would be obliged from time to time to obtain from and return to a Registrar a part of the register.

Clause 4 relates to the removal of names of marriage celebrants from the list, taking into account the different circumstances in which such names may now be entered in the list.

Clause 5 provides for a marriage licence to specify alternative places for the solemnisation of the marriage in respect of which it is issued.

Clause 6 prescribes a minimum form of ceremony (which will in the main be relevant only to those organisations and individuals without a customary form of service.)

Clause 7 extends the hours during which a Registrar may solemnise marriages, and slightly alters the form of words to be used.

Clause 8 allows the Registrar-General and Deputy Registrar-General, if they wish, to solemnise marriages in their offices.

Clause 9 repeals that section of the principal Act relating to offences generally, leaving only those offences set out explicitly in the principal Act.

Clause 10 substitutes for sections 64 and 65 of the principal Act a single section setting out in the form now usual the power to make regulations, including the power to prescribe higher fees for marriages solemnised by Registrars outside office hours.

Clause 11 provides for the retention by Registrars of a prescribed portion of the fees paid in respect of marriages solemnised by them outside office hours.

Clause 12 amends the definition of "Minister" in the Evidence Act 1908. Under that Act confessions made to a minister in his professional capacity attract privilege; and now that persons who are not ministers of religion may be marriage celebrants the old definition is not sufficiently narrow.

Hon. Dr Finlay

MARRIAGE AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Marriage Act 1955

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title and commencement—(1) This Act may be cited as the Marriage Amendment Act 1975, and shall be read together with and deemed part of the Marriage Act 1955 (hereinafter referred to as the principal Act).

10 (2) This Act shall come into force on the 1st day of April 1976.

2. Marriage celebrant—(1) The principal Act is hereby amended by omitting, wherever it appears, the expression, “officiating minister”, and substituting in each case the
15 expression “marriage celebrant”.

(2) Every person who was, immediately before the commencement of this Act, an officiating minister is hereby declared to be a marriage celebrant.

3. Approved organisations—(1) The principal Act is hereby further amended by repealing sections 9, 10, and 11 and substituting the following sections: 5

“9. **Approval of organisations**—(1) Any organisation may apply to the Registrar-General in the manner hereinafter provided for approval as an organisation which may, pursuant to section 10 of this Act, nominate persons to solemnise 10 marriages, (therein and in this section referred to as an approved organisation).

“(2) Every such application shall be accompanied by a statement signed by the chief office bearer and 10 members of the organisation, all being of or over the age of 18 years, each of whom shall append his age and address, setting out: 15

“(a) The objects and beliefs of the organisation; and

“(b) The number or, if this cannot accurately be ascertained, the approximate number of members of the organisation of or over the age of 18 years: 20

“Provided that in the case of any organisation the constitution or tenets of which do not recognise any chief office bearer an application signed as aforesaid by 10 members only shall be sufficient.

“(3) The signatures of the signatories to every application shall be attested by some other person who shall, by statutory declaration attached to the statement, verify the signatures as the genuine signatures of the persons whose signatures they purport to be. 25

“(4) The Registrar-General shall forward every application to the Minister of Justice together with either a favourable or an unfavourable recommendation. 30

“(5) The Registrar-General shall not make a favourable recommendation on any application unless he is satisfied that the principal object or one of the principal objects of the organisation is to uphold or promote religious beliefs or philosophical or humanitarian convictions. 35

“(6) If the Minister is satisfied that the principal object or one of the principal objects of the organisation is to uphold or promote beliefs or convictions as aforesaid, he may, by notice in the *Gazette* declare the organisation an approved organisation. 40

“(7) If at any time the Minister becomes satisfied that, in the light of information not available to him at the time he approved an organisation or by virtue of a change in the circumstances of an organisation, the organisation should not
 5 continue to be an approved organisation, or if for a continuous period of at least 12 months no person nominated by an approved organisation has his name on the list, the Minister may, by notice in the *Gazette*, withdraw his approval of the organisation; and from the date of the publication of the
 10 notice the organisation shall cease to be an approved organisation.

“(8) Every religious body not enumerated in the First Schedule to this Act of which a member was an officiating minister immediately before the commencement of the
 15 Marriage Amendment Act 1975 is hereby declared to be an approved organisation.

“10. Marriage celebrants from approved organisations—

(1) The name of every adult member of an approved organisation nominated to be a marriage celebrant shall be
 20 sent to the Registrar-General together with a certificate from the organisation declaring that it wishes the member to be a marriage celebrant.

“(2) The certificate shall be signed and attested in the manner specified in section 9 of this Act for applications for
 25 approval.

“(3) If the Registrar-General is satisfied that any person so nominated is of good character and otherwise qualified to act as a marriage celebrant, and that the provisions of this Act in respect of the submission of his name have been com-
 30 plied with, he shall enter the name of the person on the list.

“(4) If the Registrar-General fails or refuses to enter in the list the name of any person nominated pursuant to this section he shall, if required to do so by any signatory to the certificate accompanying the person’s nomination, refer the
 35 nomination to the Minister of Justice, who may direct the Registrar-General to enter the person’s name in the list and in that case the Registrar-General shall forthwith enter the person’s name in the list.

“11. Justices of the Peace, etc., may be marriage cele-
 40 brants—(1) Where the Registrar-General is satisfied that for geographical, administrative, or other reasons it would be convenient for the residents of any locality for a Justice of the Peace or other person of good character residing in that

locality, who wishes to be a marriage celebrant, to be able to solemnise marriages, the Registrar-General may enter that person's name in the list.

“(2) Notwithstanding Part VI of this Act, a marriage celebrant whose name has been entered in the list pursuant to this section shall not have custody of a register book, and shall not solemnise any intended marriage without having obtained from a Registrar in respect of that intended marriage such part of the register as he may make available, which shall be returned to the Registrar within 10 days after the date of the solemnisation of the marriage.”

(2) Section 35 (1) of the principal Act is hereby amended by omitting the word “Every”, and substituting the words “Subject to section 11 (2) of this Act, every”.

(3) Section 36 (1) of the principal Act is hereby amended by inserting, after the word “book”, the words “or, in the case of a marriage celebrant whose name has been entered in the list pursuant to section 11 of this Act, the part of the register obtained by him from a Registrar in respect of that marriage,”.

(4) Section 36 (3) of the principal Act is hereby amended by inserting, after the word “book”, the words “or any part of the register,”.

4. Removal of names from list—The principal Act is hereby further amended by repealing section 13 and substituting the following section:

“13. (1) Where the Registrar-General is satisfied that—

“(a) A marriage celebrant has died; or

“(b) A marriage celebrant no longer wishes to be a marriage celebrant; or

“(c) The organisation or religious body which submitted the name of a marriage celebrant no longer wishes him to be a marriage celebrant; or

“(d) The organisation which submitted the name of a marriage celebrant is no longer an approved organisation,—

he shall remove the name of the marriage celebrant from the list and shall publish in the *Gazette* a correction to that effect.

“(2) If the Minister of Justice is satisfied—

“(a) That a marriage celebrant has wilfully failed or persistently neglected to register the particulars of any marriages or to forward or return to a Registrar or to the Registrar-General any documents required so to be forwarded or returned by this Act; or

“(b) That a marriage celebrant whose name has been entered in the list pursuant to section 11 of this Act should not continue to be a marriage celebrant—
 he may direct the Registrar-General to remove the name of
 5 that marriage celebrant from the list and the Registrar-General shall remove the name from the list and shall publish in the *Gazette* a correction to that effect.”

5. Issue of marriage licence—(1) Section 24 (1) of the principal Act is hereby amended by inserting, after the word
 10 “therein”, the words “or at either of two places described therein”.

(2) Section 32 (1) of the principal Act is hereby amended by omitting the second proviso and substituting the following proviso:

15 “Provided also that every such marriage shall be solemnised with open doors at a place stated in the marriage licence.”

6. Place and form of marriage before marriage celebrant—

The principal Act is hereby further amended by repealing section 31 and substituting the following section:

20 “31. (1) Every marriage solemnised by a marriage celebrant shall be solemnised at a place described in the marriage licence issued in respect of that marriage.

“(2) Subject to subsection (3) of this section every such marriage shall take place between the persons named in the
 25 licence according to such form and ceremony as they may think fit to adopt, and shall be solemnised with open doors in the presence of a marriage celebrant and 2 or more witnesses at any time between 6 a.m. and 10 p.m.

“(3) During the solemnisation of every such marriage each
 30 party to it shall say to the other:

I call on the people present here to witness that I, A.B.,
 take you C.D., to be my legal wife (*or* husband),
 or words to similar effect.”

7. Marriages before Registrar—(1) The principal Act is
 35 hereby further amended by repealing section 33 and substituting the following section:

“33. (1) After compliance with the provisions of this Act any marriage may be solemnised with open doors at the office of and before the Registrar and in the presence of 2 or more
 40 witnesses at any time between 6 a.m. and 10 p.m. on any day (not being a Sunday, Good Friday, Anzac Day, or Christmas Day).

“(2) During the solemnisation of every such marriage each party to it shall declare:

I solemnly declare that I do not know of any impediment to this marriage between me A.B. and C.D.,
And shall say to the other party: 5

I call on the people present here to witness that I, A.B., take you, C.D., to be my legal wife (*or* husband),
or words to similar effect.”

(2) Section 28 of the principal Act is hereby amended by adding the following proviso: 10

“Provided that no Registrar shall be required to solemnise a marriage at a time or on a day when his office is not ordinarily open for the transaction of public business under this Act unless he has agreed to do so.”

8. Registrar-General may solemnise marriage—The principal Act is hereby further amended by inserting after section 33, the following section: 15

“33A. With his prior consent, notice of an intended marriage may be given to the Registrar-General or Deputy Registrar-General, and the marriage may be solemnised before him, in the same manner and subject to the same requirements and conditions as if he were a Registrar.” 20

9. Offences generally—The principal Act is hereby further amended by repealing section 61.

10. Regulations—The principal Act is hereby further amended by repealing sections 64 and 65 and substituting the following section: 25

“64. (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes: 30

“(a) Prescribing fees for the doing of any act under this Act:

“(b) Prescribing the proportion of any fee paid in respect of a marriage solemnised by a Registrar, the Registrar-General, or the Deputy Registrar-General outside normal office hours to be paid to him: 35

“(c) Prescribing forms to be used for the purposes of this Act and the matters to be specified in such forms:

“(d) Providing for such other matters as are contemplated by or necessary to give full effect to the provisions of this Act and its due administration. 40

“(2) Where the Registrar-General or any Registrar is empowered by this Act to do any act for which a fee is payable he may refuse to do the act until the fee is paid.

5 “(3) Notwithstanding the provisions of any regulations under this Act, the Registrar-General may dispense with the payment of any fee payable under this Act.”

11. Disposition of fines and fees—The principal Act is hereby further amended by repealing section 66 and substituting the following section:

10 “66. All fines and, subject to the payment to the Registrar-General, the Deputy Registrar-General, or a Registrar of the prescribed proportion of any fee received which relates to a marriage solemnised by him outside normal office hours, all
15 fees received under this Act shall be paid into the Public Account and form part of the Consolidated Fund.”

12. Communications to clergymen—Section 2 of the Evidence Act 1908 is hereby amended by omitting the definition of “minister” (as amended by the Marriage Act 1955) and substituting the following definition:

20 “‘Minister’ means a minister of religion, and, in relation to a religious body the constitution or tenets of which do not recognise the office of minister of religion, includes a person for the time being exercising functions analogous to those of a minister of
25 religion:”.