

MEDIA STATEMENT BY THE SOUTH AFRICAN LAW COMMISSION CONCERNING ITS INVESTIGATION INTO THE REVIEW OF THE MARRIAGE ACT 25 OF 1961 (PROJECT 109)

7 January 1998

At the request of the Department of Home Affairs, the Law Commission has included in its programme an investigation into the Marriage Act 25 of 1961. The investigation will focus mainly on whether the provisions contained in the Act are adequate or whether they should be amended and, in that event, the way in which such amendments should be effected.

The Marriage Act presently governs the following aspects of contracting marriages in South Africa. The Act -

- * designates certain persons in the service of the State and in religious denominations as marriage officers; it also regulates matters such as the revocation or limitation of the authority of marriage officers;

- * provides for the solemnisation of marriages outside the Republic and deals with various types of unauthorised solemnisations;

- * regulates the documentary requirements of marriage, such as the furnishing of identity books or other prescribed declarations;

- * deals with the lodging of objections to any proposed marriage, as well as the issue of minors, proof of age and the granting of consent for minors' marriages by parents or guardians, commissioners of child welfare, judges of the High Court or the Minister of Home Affairs, respectively;

- * sets out the requirements for the contracting of a valid marriage, including the prohibition of marriage between people closely related by blood or by affinity ; it also mirrors the common law definition of marriage as being a union between one man and one woman;

- * sets out the formalities that must be gone through in order to contract a valid marriage and these include the requirements that the parties appear in person with witnesses, that the marriage be solemnised by a marriage officer according to a certain formula in a public building within certain times of the day and that the parties sign a marriage register.

The Commission wishes to draw attention to two of its investigations which have a direct bearing on this project, namely *Customary Marriages* and *Islamic Marriages* . The investigation into *Customary Marriages* has already resulted in an [Issue Paper](#) and a [Discussion Paper](#) containing preliminary recommendations, whereas the investigation in *Islamic Marriages* is still in its planning stage.

The Commission invites the comments of all parties who feel that they have an interest in the topic concerned or may be affected by the type of measures set out in the Marriage Act. Individuals, organisations and institutions affected by the Marriage Act or who are likely to be affected by possible amendments to the existing legislation should participate in this debate and are invited to indicate how the present law governing the contracting of marriage affects them, what their concerns are, what solutions they are able to propose and whether there are other issues and/or options affecting the law of marriage that must be explored.

Based on the outcome of these comments a discussion paper setting out the issues and preliminary recommendations and containing draft legislation will be prepared and distributed for general information and comment. Finally, on the basis of these comments and discussions, a report containing the Commission's final recommendations will be prepared and presented to the Minister of Justice.

It would be appreciated if written comments or suggestions could reach the Commission by 20 February 1998 at the address given below.

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ISSUED BY THE SECRETARY, SA LAW COMMISSION, PRETORIA

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