South African Law Reform Commission

FOR IMMEDIATE RELEASE

MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION REGARDING THE RELEASE OF ITS REPORT ON A SINGLE MARRIAGE STATUTE (PROJECT 144)

The South African Law Reform Commission (Commission) is pleased to announce the release of its report on Project 144, which addresses the need for a unified marriage statute in South Africa. This project was initiated in response to a request from the Department of Home Affairs (DHA) to address the fragmentation within the existing South African relationship legal framework, which comprises three statutes: the Marriage Act of 1961, the Recognition of Customary Marriages Act of 1998 (RCMA), and the Civil Union Act of 2006. These statutes impose varying validity requirements for individuals entering into relationships, as outlined below:

1. Minimum Age: The three statutes differ in their minimum age requirements for individuals entering into relationships. While the Civil Union Act sets the minimum age at 18 years for civil unions or marriages, the Marriage Act and RCMA allow individuals under 18 to enter into marriage with parental, guardian, or judicial consent.
2. Consent: While the Marriage Act and Civil Union Act do not explicitly require consent from parties entering into relationships, the RCMA mandates that parties consent to customary marriages under customary law.
3. Prohibited Degrees of Relationship: The Marriage Act prohibits marriage between a person and the relatives of their deceased or divorced spouse, whereas the Civil Union Act does not address such relationships. The RCMA defers the determination of prohibited degrees to customary law.

One major issue identified is that none of the existing statutes require parties entering into relationships to have the mental capacity to understand the responsibilities associated with marriage. Courts have emphasised the importance of parties comprehending the nature of the marriage contract and their ability to provide free consent.

Additionally, the current legislation limits the categories of individuals who can serve as marriage officers, excluding traditional and Khoi-San leaders, individuals (excluding public servants), and members of secular organisations. This exclusion poses challenges to certain communities seeking representation in formalising relationships.

The disparities in validity requirements among the three statutes result in discrimination, impacting individuals irrespective of their religious, cultural, or personal beliefs. These discrepancies contribute to confusion for the general public and marriage officers and complicate the overall marriage framework.

The Commission’s proposed solution is a single unitary statute, titled the "Protected Relationships Bill." This bill aims to rationalise marriage and marriage-like relationships, provide recognition for relationships regardless of belief or conviction, establish clear requirements for protected relationships, and create a registration process for such relationships. The bill encompasses various types of relationships while allowing individuals to define their relationships according to their beliefs and customs.

Key provisions of the proposed bill include:

- Age Requirement: Parties must be at least 18 years old to enter into a protected relationship, with provisions for individuals aged 16 to 18 to seek High Court permission.
- Free and Informed Consent: Parties must provide free and informed consent to formalise a protected relationship.
- Mental Capacity: Parties must have the mental capacity to understand the nature and implications of the protected relationship.
- Prohibited Degrees: Parties must not be related within the prohibited degrees of relationship.
- High Court Approval: A High Court judge may grant approval for minors to enter into a protected relationship, preventing forced relationships.
- Criminal Offense: Entering into a relationship with a minor without High Court approval is a criminal offense.

- Consent Process: Parties must provide consent in the presence of two competent witnesses.
- Notification for Additional Relationships: Parties in an existing protected relationship must notify all parties and obtain consent before entering into another protected relationship.
- Recognition of Unregistered Relationships: Unregistered relationships that meet certain criteria should be recognised and valid.
- Role of Relationship Officers: Relationship officers, including individuals from religious, secular, and traditional communities, may formalise relationships but are not compulsory for validity.
- Rectification of errors: Procedures for rectifying errors in the population register regarding relationship status are established.
- Accessible registration: Efforts to make registration more accessible, especially in rural areas, are encouraged.

The Commission emphasises its commitment to recognising and respecting the diverse beliefs, customs, and practices of South Africa's communities while ensuring equal legal protection for all. We believe that the proposed Protected Relationships Bill represents a significant step toward harmonising the legal framework for relationships in South Africa.

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ISSUED BY THE SECRETARY, SOUTH AFRICAN LAW REFORM COMMISSION
DATE: 03 NOVEMBER 2026