

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE 1420 OF 2022

MR M.G.E HENDRICKS, MP

NOTICE OF INTENTION TO INTRODUCE THE DIVORCE AMENDMENT BILL, 2022, A PRIVATE MEMBER'S BILL, INTO PARLIAMENT AND INVITATION FOR PUBLIC COMMENT THEREON

Mr M.G.E Hendricks, MP, acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996, intends to introduce the Divorce Amendment Bill, 2022 (“draft Bill”), in Parliament. An explanatory summary of the draft Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition).

The Divorce Act, 1979 (Act No. 70 of 1979) (“Divorce Act”), amongst other things, regulates the division of assets and the provision of maintenance of parties dissolving their marriage, with the aim of ensuring justice and fairness between them. The important remedies, contained in the Divorce Act, ensure the protection of interests of parties dissolving their marriage and the welfare of dependent children through access to maintenance, during and after divorce. The Divorce Act further provides for the protection of any assets parties may have brought into a marriage in community of property, but which they would otherwise lose. This protection allows the forfeiture by the other party of the patrimonial benefits of marriage. To date, parties in Muslim marriages are being left destitute, with their children, because they are cut off from the civil remedies available in the Divorce Act upon dissolution of their marriage. The vulnerabilities that this creates for parties in a Muslim marriage and children include risks of violence and abuse, sexual and economic exploitation and increased adverse mental health impacts and harms their human dignity.

In recognition of the above mentioned persisting injustices, the Constitutional Court, in **Women’s Legal Centre Trust v President of the Republic of South Africa and Others**¹ declared the Marriage Act, 1961 (Act No. 25 of 1961), and the Divorce Act to be inconsistent with sections 9, 10, 28 and 34 of the Constitution in that they fail to recognise marriages solemnised in accordance with *Sharia* law (Muslim marriages), which have not been registered as civil marriages, as valid marriages for all purposes in South Africa, and to regulate the consequences of such recognition. The exclusion of Muslim Marriages in this Act, was declared unconstitutional.

Section 6 of the Divorce Act was declared unconstitutional in that the section fails to provide for mechanisms to safeguard the welfare of dependent children born of Muslim marriages, at the time of dissolution of the Muslim marriage in the same or similar manner as it provides for mechanisms to safeguard the welfare of dependent children born of other marriages that are

¹ [2022] ZACC 23

dissolved. Section 7(3) of the Divorce Act was declared unconstitutional in that the section fails to provide for the redistribution of assets, on the dissolution of a Muslim marriage, when such redistribution would be just. Section 9(1) of the Divorce Act was also declared unconstitutional in that the section fails to provide for the forfeiture of the patrimonial benefits of a Muslim marriage at the time of its dissolution in the same or similar terms as it does in respect of other marriages that are dissolved.

The legislative process to address the issues raised have been ongoing for decades, the draft Bill provides an effective, expedient and timely remedy to amend the Divorce Act and to bring it in line with our Constitution, by ensuring that parties in a Muslim marriage and the children born from such marriage are no longer left out, and that the injustices that arise from their exclusion are eradicated.

While the proposed amendment presents an important measure to ensure the immediate and much needed protection of parties in Muslim marriage and the children born from such marriages, the Constitutional Court has set a deadline for November 2024 for the final amendments to the entire legislative scheme.

Interested parties and institutions are invited to submit written representations on the proposed content of the draft Bill to the Speaker of the National Assembly within 30 days of the publication of this notice. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to Speaker, P O Box 15 Cape Town 8000, or emailed to speaker@parliament.gov.za and copied to mhendricks@parliament.gov.za .

Copies of the Divorce Amendment Bill may, after introduction, be obtained from:

Party name: Al Jama -ah

5 Bolton Road, Rondevlei, Weltevreden Valley, Mitchells Plain, 7780

Attention: Hon Ganief Hendricks

Telephone: 081 387 9247

E-mail: gsamodien@parliament.gov.za

CONTINUES ON PAGE 258 OF BOOK 3

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 689

18 November 2022
November

No. 47526

PART 4 OF 4

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes

ISSN 1682-5845



9 771682 584003



AIDS HELPLINE: 0800-0123-22 Prevention is the cure