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INFO SHEET BASIC INFORMATION ABOUT HOW TO GET MARRIED UNDER THE CIVIL UNION ACT

29 November 2006¹

The Joint Working Group (JWG) is a national network of lesbian, gay, bisexual and transgender organizations, as follows: *Activate WITS; Behind the Mask; Cape Town Pride Festival; Durban Lesbian and Gay Community and Health Centre; Forum for the Empowerment of Women; Gay and Lesbian Archives; Gender DynamiX; Glorious Light Metropolitan Community Church; Good Hope Metropolitan Community Church; Hope and Unity Metropolitan Community Church; Inner Circle; Jewish OUTlook; LEGBO Northern Cape; Lesbian and Gay Equality Project; Pietermaritzberg Gay and Lesbian Network; OUT LGBT Well-being; Out In Africa South African Gay & Lesbian Film Festival; Rainbow UCT; Triangle Project; XX/Y FLAME*

This info sheet was drafted by OUT LGBT Well-being on behalf of the Joint Working Group (JWG).



¹ Please note that the content of this document is based on information available at the time of its release. The Civil Union Act is a new piece of legislation and as a result, specific information pertaining to the Act's regulation and its implementation are presently limited.

1. What is the Civil Union Act?

This is the law that now provides for the legal recognition of marriages and civil partnerships, collectively referred to as civil unions, between two persons regardless of their sexual orientation or gender identity.

2. What does the Civil Union Act provide to lesbian, gay and transgender couples?

- (i) A couple has a choice to have their relationship legally registered as a marriage or a civil partnership.
- (ii) A couple will get a certificate that indicates that they have either entered into a marriage or a civil partnership, depending on their choice. Described as a registration certificate, the certificate indicates registration under this Act and is not a marriage certificate under the Marriage Act. The certificate will serve as a legal proof that the two partners are married or civil partnered under this Act.
- (iii) All the legal and material benefits and responsibilities that flow from marriages concluded under the Marriage Act of 1961 will also apply to marriages or civil partnerships concluded under the Civil Union Act (hereafter referred to as “the Act”).

3. Who can conduct marriages and/or civil partnerships under this Act?

- (i) Any civil marriage officer (e.g. Magistrate; selected government officials and diplomats; special justice of the peace) recognised by the Marriage Act are automatically entitled to conduct marriages and civil partnerships under the Act.
- (ii) Any minister of religion who has been granted authorization by the Minister and where the religious organization or denomination has also been granted permission by the Minister. This permission must be granted in writing, allowing the minister of religion and the denomination or organization to conduct marriages and/or civil partnerships under the Civil Union Act.

4. Important information for ministers of religion who want to be marriage officers under this Act

- (i) Apply immediately to the Minister of Home Affairs to have your religious organization or denomination designated as an accredited marriage institution in terms of this Act.
- (ii) Then as an individual religious minister, you will be required to make an application to marry under this Act, after your denomination has made an application.
- (iii) Once you have applied, follow up with the Minister to get a written commitment from her office. It may take time before your application is approved. Even if you are registered to conduct marriages under the Marriage Act, you cannot conduct same sex marriages under the Civil Union Act until permission is granted by the Minister.
- (iv) You could also refer couples wishing to marry under this Act to a civil marriage officer that you know has a permit to conduct marriages and/or civil partnerships in terms of the Marriages Act or the Civil Union Act.

5. Who cannot conduct marriages and /or civil partnerships under this Act?

- (i) Any marriage officer that works for government and has been exempted in writing by the Minister from conducting marriages and civil partnerships on the basis that it is against his/her religion, belief and conscience.
- (ii) Any minister of religion that has not been granted permission in writing from the Minister to conduct marriages and/or civil partnerships under this Act. Such a person would have applied to the Minister after his or her denomination or organisation had been designated under this Act (see point 4 above).

6. Who qualifies to get married or civil partnered under this Act?

- (i) Any unmarried person who is over the age of 18 years
- (ii) Any person who has been married before and has proof of divorce or a death certificate of his or her deceased spouse
- (iii) A foreign national with a valid ID or passport

7. Who does not qualify to get married or civil partnered under this Act?

- (i) Any person who is already married or civil partnered under this Act.
- (ii) Any person who is currently married under the Marriage Act of 1961 or the Recognition of Customary Marriages Act of 1998.

8. Will the marriage or civil partnership under this Act be recognized outside of South Africa?

- (i) The recognition of marriage and civil partnership under this Act will only be recognized outside of Africa in countries that have a civil union or same sex marriage with similar provisions as in South Africa.
- (ii) Each country would have to be assessed on a case-by-case basis.
- (iii) Marriages under this Act are more likely to be recognized as marriages abroad, with civil partnerships more likely to attract only civil union (less than marriage in many countries) status].
- (iv) The marriages and civil partnerships under this Act will not be recognized in countries where homosexuality is still penalized by law.

9. Where can couples get married in terms of this Act?

- (i) Any public office, including the department of home affairs and magistrates court in your area.
- (ii) Any private dwelling, including your house.
- (iii) Any other place that is used for the purposes of marriages or civil partnerships.
- (iv) In case of illness, bodily injuries and other physical limitations, the marriage officer may use any other suitable place to marry couples.

10. What documents do you need to be able to enter into a marriage or civil partnership?

- (i) Identity Document.
- (ii) Affidavit (when you don't have an ID or passport) confirming your identification.
- (iii) Application forms specific to the Civil Union Act. These are obtainable from the department of home affairs in your area.
- (iv) Divorce decree or death certificate of your deceased spouse, if you were married before.
- (v) Two witnesses will be required in order to conduct a marriage or civil partnership.

11. Under this Act, the following acts are prohibited and may result in prosecution?

- (i) Conducting marriages or civil partnerships without written permit from the Minister of Home Affairs, where required.
- (ii) Receiving and/or demanding payment, gifts and/or fees for services rendered in conducting a marriage or civil partnership.
- (iii) Making false representations or false statements.

12. How will this Act affect same sex partners who have signed domestic partnership agreements and live in domestic partnerships?

- (i) Couples in domestic partnerships who do not wish to marry or have a civil partnership under this Act will not lose their legal benefit that they currently enjoy under that arrangement.
- (ii) A domestic partnership law will still be dealt with by government early next year.

Please note:

- The right to marry under the Act will only come into effect when the President passes the legislation.
- When the Act is passed it does not guarantee that couples will immediately be able to marry. Specific mechanisms, such as the relevant forms and regulations, will need to be put into place by the Department of Home Affairs.
- All solemnization ceremonies that do not prescribe to the requirements of the Act, or that take place before the Act comes into effect will not be legally valid.

Where to get further assistance

The Joint Working Group promotes access to rights and services for lesbian, gay, bisexual and transgender people nationally. If you experience any challenges when getting married under the Civil Union Act, or if you need more clarity and assistance, please contact the following organizations in your area.

Behind the Mask
Tel: 011-4035566
Email: thuli@mask.org.za

Durban Lesbian and Gay Community and Health Centre
Tel: 031-3012145
Email: info@gaycentre.org.za

Forum for the Empowerment of Women
Tel: 011-339-1882
Email: ceo_few@absa.co.za

Gender DynamiX
Tel: 021-4476519 or 0833207691
Email: liesl@genderdynamix

Glorious Light Metropolitan Community Church
Tel: 012-3311433 or 0828891493
Email: JPreesma@unisa.ac.za

Good Hope Metropolitan Community Church
Sharon Cox
Tel: 021-7885769 or 0832933923
Email: welcome@goodhopemcc.org

Hope and Unity Metropolitan Community Church
Tel: 011-482-8024 or 0829280062
Email: anerela@yahoo.com

Jewish OutLook
Tel: 084 9515316
Email: info@jewishoutlook.org.za

Lesbian and Gay Equality Project
Tel: 011 4873811
Email: director@equality.org.za

OUT LGBT Well-being
Tel: 012 3445108
Email: director@out.org.za

Pietermaritzberg Gay and Lesbian Network
Tel: 033 3426165
Cell: 072 536 2978
Email: waldhausen@yahoo.com

Triangle Project
Tel: 021-4483812
Email: dawn@triangle.org.za
Website: www.triangleproject.org.