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**Issues Paper No.2 of 2014**

**A Review of the Marriage Act**

**[CAP 60]**

*You are invited to make a submission or comment on this Issues Paper.*

**Submissions Close on the 30th of June 2014, 4:30pm**

**About the Vanuatu Law Commission**

The Vanuatu Law Commission was established on 30 July 1980 by the *Law Commission Act* [CAP115] and was finally constituted in 2009.

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**Making Submissions**

Any public contribution to an inquiry is called a submission. The Vanuatu Law Commission seeks submissions from a broad cross-section of the community as well as those with a special interest in a particular inquiry. Comments and submissions from the public are welcome.

The closing date for submissions is 30th of June 2014. There are a range of ways that a submission can be made and you can respond to as many or as few questions and proposals as you wish. You can write a submission, send an email or fax, or ring the Commission and speak to one of our staff.

You must indicate in your submission whether you wish your submission to be confidential as in the absence of such an indication your submission will be treated as non-confidential.

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**Introduction and Background**

In all parts of Vanuatu, people live according to their church rules, custom rules or according to the national laws. Hence, all activities that happen in Vanuatu are governed by customary, church beliefs or national laws. Marriage is an activity that is an important event to the people of Vanuatu. Not only is a marriage a ceremony that binds two people but it is an event that grants these two people certain benefits and rights. A couple’s marital status also helps to determine their children’s status that is whether they are legitimate or illegitimate. When the marriage comes to an end and the parties file for divorce, the courts will need to determine whether or not the parties were married according to the laws of the country in order to determine which party will take control of their family properties such as the family home, family car so forth. When fighting for custody, the national laws require that the marital status of the parties must be determined in order for the issue of custody to be settled.[[1]](#footnote-1) Marriage in Vanuatu is shaped by different influences such as custom and Christian beliefs and there are various formalities that must be satisfied.

In Vanuatu marriage is governed by the ***Marriage Act*** [CAP 60] of Vanuatu. The Act first came into existence on the 21st of June 1971 and has been amended four times ever since then. The latest amendment made to this act was in 1993. It comprises of 21 provisions and provides for civil, custom and church marriage. The first part of the Act establishes the three types of marriages and the persons that may perform marriage. It goes on to provide that a marriage is recognized by law to be a valid one when it is made before a District Registrar, or by a minister in a denomination that is responsible for celebrating marriages and in accordance with custom. The second part provides for the formalities that must be complied with before the marriage can occur. It then continues on to regulate the celebration of marriages while the other parts provide for the formalities that must be satisfied after the celebration of marriage and any other relating matters connected to marriage in Vanuatu.

This paper is the product of a research carried out in the process of reforming the *Civil Status Act* *2014[[2]](#footnote-2)* of Vanuatu. Hence why, the *Marriage Act* [CAP 60] is also looked at. It is timely that the provision of the *Civil Status Act* and the *Marriage Act* undergo a review in order for the terms and provisions of one Act corresponds the other. A thorough discussion of the issues in relation to the *Marriage Act*[CAP 60] is provided in this paper in order for proper recommendation to be made.

**Issue One: Interpretation of terms**

Some important terms are not interpreted clearly in the current *Marriage Act*[CAP 60]. These terms include district registrars, home affairs, a minister of religion and the three different types of marriage that is recognized by the Act which are civil, custom and church marriage. Under this chapter, issues concerning these terms are stated after relevant information is provided for each of these term.

*a)Should the Act be amended in order for these terms to be changed to suit the current circumstances?*

*b) Should the terms in the marriage act also be amended to be consistent with other laws?*

*c) Also should the term “home affairs” be amended and changed to “internal affairs”?*

To begin with, the terms “district registrar” and “home affairs” are rather outdated. The act came into existence nine years prior to independence which means that some of the terms that are used in the Act suited the circumstances before Vanuatu’s independence and the circumstances a few years after independence. These days, some of these terms are no longer in use. For instance, the “District registrar” and “home affairs” are outdated as what used to be “districts” are now termed “provinces” while the term “home affair” has not been changed to “internal affairs” in Vanuatu.

Although the Act does not expressly define the term “Civil marriage,” it means a valid marriage of two people who willingly consented to the marriage and it is celebrated before a district registrar in the district where the district registrar and the parties of the marriage are located. It is not necessarily celebrated before a church minister or according to a custom.[[3]](#footnote-3)

Then there is the “custom marriage” which is interpreted as marriage that is celebrated in accordance with custom prevailing in the tribe or group to which the parties of the marriage belong. In this category of marriage, the parties to the marriage may not willingly consent to the marriage. This special event is practiced differently from place to place. [[4]](#footnote-4)

And finally the third kind of marriage is a “Church Marriage” which means a marriage that is celebrated before a minister of religion and according to the forms of practices of the denomination. Like in a civil marriage, in a church marriage, both parties of the marriage must consent to the marriage.[[5]](#footnote-5)

*h) Should the Civil status Act prohibit the registration of marriage that does not fully comply with the authorized marriages provided for in the Marriage Act?*

*a) Should Vanuatu’s Marriage Act be amended and follow Papua New Guinea’s approach to have the various types of marriage dealt with in three different parts?*

*b) Should the terms of ‘Civil marriage’ and ‘church marriage’ be defined separately and should they all be put under the interpretation provision?*

*c) Should each part that defines and provides for each type of marriage include the formalities required before, during and after marriage including which person is required to celebrate which type of marriage?*

*d) Should these other formalities required before, during and after a marriage ceremony be provided in other sections and not under the heading of each type of marriage?*

*e) Should the Civil Status (Registration) Act be amended so the term marriage also refers to civil, custom and church marriage as in the Marriage Act?*

*f) Should the three types of marriage (civil, custom and church) in the Marriage Act also be defined in the Civil Status Act?*

*g) Should the civil status Act only recognize and registers these three types of marriages under the Marriage Act?*

In all these marriages, there is no separate section that deals with each type of marriage separately. Rather the Act is divided into parts with headings such as the various forms of marriages and persons authorized to celebrate marriages, formalities before the marriage, celebration of marriages, formalities after the marriage and another part which provides for other matters.

In Papua New Guinea, although the provisions are not clearly explained, the ***Marriage Act*** [1963] has a separate part which deals with customary marriage exclusively.[[6]](#footnote-6) This allows for clarity when it comes to registering marriages. That is to ascertain whether the marriage has been performed by way of civil, church or custom.

**Issue Two: Process of Acquiring License for marriage celebrants**

The Marriage Act authorizes ministers in any denomination in Vanuatu to celebrate church marriage. Reference is also made to the minister responsible for religious affairs who is the Minister for Home affairs at the same time. The process in which a minister is certified to celebrate a marriage is provided for in section 3 of the Act. That is, a head of a denomination in Vanuatu must first submit the names of the ministers in his denomination (who practice in Vanuatu) to the Minister responsible for Home Affairs. When the Minister responsible for Home Affairs receives the names of these religious ministers, he may then register the names that were put forward as ministers for celebrating marriages. The Minister responsible for Home Affairs must publish the names of the registered ministers for celebrating marriage in the gazettes.

These ministers celebrating marriages can also be removed from the registered list by the Minister responsible for Home Affairs due to death or permanent departure from Vanuatu. Another ground in which the Minister for Home Affairs can remove these registered celebrants is when the head of the denomination notifies him that these registered marriage celebrants have been deprived of their office. In other words, they are no longer practicing as ministers under that same denomination in which they were first registered as ministers to celebrate marriage. At present however, there seems to be no notice published in the gazettes in Vanuatu which states that a minister has been removed from the list as marriage celebrants. Hence, a citizen may not be aware of any marriage celebrant that is not authorized to celebrate marriages.

In Tonga, marriages that had been solemnized or celebrated by a minister that was not authorized to celebrate a marriage are not recognized as legal marriages.[[7]](#footnote-7) In Fiji[[8]](#footnote-8) and Papua New Guinea[[9]](#footnote-9), there are sections in the Act that relates to Marriage which provides that a list of registered ministers to celebrate marriage must be published every year. This way, the people are aware of the ministers in denominations that are still authorized to celebrate marriage. The importance is realized when there is a need for evidence to show that the marriage between the two parties took place and at what place and time and by whom.[[10]](#footnote-10)

*a) Should Vanuatu follow the approach taken in Papua New Guinea and Fiji?*

*b) Does the phrase “deprived of his office” also include situations where the registered Minister changes denominations?*

*c) If the registered minister for celebrating marriage does change denomination, is he still authorized to celebrate marriage? or does he lose all his rights to celebrate marriage as was granted to him in his previous denomination?*

*d) Should the Civil Status Act be amended to not register and recognize any marriage made where the celebrant was not published in the gazette?*

Furthermore, the Act only provides that in a custom marriage, the custom of the people in relation to marriage must be followed. No provision is provided as to who may celebrate a marriage in custom. This is different to a church and civil marriage where the authorized person to celebrate marriage in these two types of marriage must be a minister of religion (endorsed by the head of denomination) or the district registrar.

*a) Which approach should the Vanuatu model follow?*

*b) Should it increase the amount of money in the fines imposed and extend the imprisonment time like Samoa’s approach?*

*c) Should the Act be amended that there is a reduction in the amount of fine that needs to be paid and reduce prison time?*

*d) In any case, what would be a reasonable amount of fine to pay and prison time to serve?*

*e) Should the Civil Status Act be amended to revoke any registration of marriage that was celebrated by unauthorized person?*

*e) Should Vanuatu take the same approach as that used in Samoa but grant the rights to chiefs of each place to celebrate marriage by custom?*

*f) If so, what would be the process that leads to the registration of a chief as a marriage celebrant?*

*g) Also what type of marriages should the Civil Status (Registration) Act register?*

In Samoa, the ***Marriage Ordinance 1961*** authorizes the head of state to warrant a person to celebrate marriage even if he is not a minister of religion (or denomination) as long as the head of state believes the person to be fit and be a proper person.[[11]](#footnote-11)

**Issue Three: Specified period of a Marriage Celebrant to remain Effective**

The current Act does not specify the period in which the registered ministers’ license is to remain effective. A clear record of the ministers authorized to celebrate marriage can be obtained where a celebrant is authorized to celebrate marriage in a period of time. Nevertheless, all churches and denominations have their own internal processes and rules in regulating their activities. It is general perception that the state does not interfere with the internal affairs of the church which is a democratic principle.[[12]](#footnote-12)

*a) Would it make the Marriage Act be more clear and concise if it restricts the number of years that a Minister is allowed to celebrate marriage?*

*b) If so, how many years would be reasonable?*

*c) Would including a provision that restricts the number of years that a minister may celebrate marriage be interference of state in the internal affairs of a church?*

*a) Which approach should the Vanuatu model follow?*

*b) Should it increase the amount of money in the fines imposed and extend the imprisonment time like Samoa’s approach?*

*c) Should the Act be amended that there is a reduction in the amount of fine that needs to be paid and reduce prison time?*

*d) In any case, what would be a reasonable amount of fine to pay and prison time to serve?*

*e) Should the Civil Status Act be amended to revoke any registration of marriage that was celebrated by unauthorized person?*

**Issue Four: Offence in relation to Marriage Celebration**

Any person who celebrates a marriage but was not authorized to do so commits an offence and must pay a fine not exceeding VT50, 000 or must be imprisoned for 6 months or must be liable to face both consequences. Moreover, any person who is not authorized but has made false declaration to contract a marriage also commits an offence and must pay a fine of VT50, 000 or must be imprisoned for a term of 6months or maybe liable to face both consequences.[[13]](#footnote-13)

In terms of offences concerning marriage, laws from other Pacific island countries have been considered. The *Marriage Ordinance* 1961 in Samoa provides that a person must pay a fine not exceeding $600 and or faces imprisonment for a term not exceeding 5 years if he willingly solemnizes a marriage in contradiction to the provisions of the ordinance and also for pretending to be an authorized person for solemnizing marriage.[[14]](#footnote-14) But in Papua New Guinea, the same offence has the consequence of paying a fine of K400.000 which is estimated to be a little over 13,000vt and or facing imprisonment for a period of six months.[[15]](#footnote-15) Another approach is seen in Tonga where one face the penalty of paying a fine and or face prison time for a period not exceeding one year.[[16]](#footnote-16) The offence procures various penalties in different countries.

**Issue 5: Same Sex Marriage and Registration**

Recently, same sex marriage or the marriage between persons of the same gender has become a concern the South Pacific and in Vanuatu. It is a broad and sensitive issue that requires careful consideration as to whether or not the laws in Vanuatu should regulate it. As such the issue of same sex marriage warrants and needs a review of its own. There with regards to this chapter, same sex marriage is discussed only in relation to the Civil Status (Registration) Act and the registry of marriages in Vanuatu.

In 2013, the topic of same sex marriage made headlines in the local newspaper, alleging that the practice has been happening in Vanuatu.[[17]](#footnote-17) Also a recent interview by radio New Zealand saw a church leader calling all churches to come together to discuss same-sex marriage and push the government to legislate against it[[18]](#footnote-18).

The current *Marriage Act*[60] does not expressly prohibit same sex marriage nor does it allow the act. It is silent on this issue.

On one hand, the Constitution of the Republic of Vanuatu establishes the fundamental rights and freedoms in which a citizen is entitled to. That is for a citizen not to face any sort of discrimination on the grounds of sex. Moreover, movement towards a more liberal social attitudes and laws that are more human rights based are slowly driving changes to legislations in the South Pacific. New Zealand for instance has legally recognized the same sex marriage. [[19]](#footnote-19) In England marriage is still taken as a union between members of the opposite sex. Hence the issue of same sex marriage was dealt with by the introduction of the *Gender Recognition Act*which came into existence in 2004. This Act, subject to certain criteria, establishes that a person may change his or her gender as shown in the original Birth Certificate and hence allow the person to marry in their new gender[[20]](#footnote-20)

A similar approach is also taken in Australia.[[21]](#footnote-21) Pacific Island People who lives in places like Australia may fulfill their sexual preference or sexual orientation without repression or fear of being prosecuted because of the recognition of laws relating to sexual orientation and sexual preference.[[22]](#footnote-22) It can be wondered if Ni Vanuatu people in the same category may also wish to move to these other countries that recognize such laws to fulfill their sexual preference, or sexual orientation and even get married legally.

*a) Should Vanuatu follow the approach taken by Australia, New Zealand and England and have the Civil Status Act to recognize and register same sex marriage?*

*b) Should it restrict its laws to be dominated by the traditional and Christian beliefs and prohibit the registration of same sex marriage in its laws?*

On the other hand, in church and tradition beliefs of the people of Vanuatu, it is widely accepted that marriage is a union between the opposite sexes although this is not explicitly stated in the legislations.[[23]](#footnote-23) Vanuatu’s Constitution is established on Christian values as the dictated in the preamble. Christian values states that provision of same sex marriage is unacceptable and is improper. In a place where the custom and Christian beliefs and practice of the people dominates their lives, recognizing same sex marriage may be an issue.

Before 2010, a few Criminal court cases involved same sex marriage were conducted in Fiji on the basis of homosexuality.[[24]](#footnote-24) The *Fiji Penal Code* [17] prohibits homosexual acts among two consenting adults. Although homosexuality is not exactly the same as sex marriage, one can see that the idea of accepting same sex marriage in a Country might not be accepted easily. Same sex marriage is still looked at as a foreign concept.

Everyone is a part of a family and a citizen of a country. Those who have feelings for the same sex may try to repress their natural feelings and unhappily try to live according to the standard expected from their families.[[25]](#footnote-25) The Law would not benefit all people of the country if it simply ignores these individuals.

**Opinions and Submissions**

Any opinions expressed in this Paper do not represent the policy position of the Government of Vanuatu, The Civil Status department or the Vanuatu Law Commission.

You are invited to make a submission on any matter raised in the Paper or anything you think is relevant to the *Marriage Act* of Vanuatu. Information on where and how to make submissions is found on page 2 of this Paper.

1. Section 41, 42, *Matrimonial Causes Act* [CAP18] (Vanuatu) <http://www.paclii.org> (Accessed 9th of May 2014). [↑](#footnote-ref-1)
2. *Civil Status Act 2014* (Vanuatu) <http://www.paclii.org> (Accessed 9th of May 2014). [↑](#footnote-ref-2)
3. Elizabeth A. Martin and Jonathan Law, *Oxford Dictionary of Law,* (6th Ed, 2006). [↑](#footnote-ref-3)
4. Elizabeth A. Martin and Jonathan Law, *Oxford Dictionary of Law,* (6th Ed, 2006). [↑](#footnote-ref-4)
5. Section 1.b, *Marriage Act* [CAP 61] (Vanuatu) <http://www.paclii.org> (Accessed on the 9th of May 2014). [↑](#footnote-ref-5)
6. *Marriage Act*1963 (Papua New Guinea) <http://www.paclii.org> (Accessed 15th of May 2014) [↑](#footnote-ref-6)
7. Section 16, *Births, Deaths and Marriages Registration Act* [Cap 42] (Tonga) [www.paclii.org](http://www.paclii.org) (Accessed 9th May 2014). [↑](#footnote-ref-7)
8. Section 9, *Marriage Act* [CAP 50] (Fiji) <http://www.paclii.org> (Accessed 9th May 2014). [↑](#footnote-ref-8)
9. Section 33, *Marriage Act* (Vanuatu)<http://www.paclii.org> (Accessed 16th of May 2014). [↑](#footnote-ref-9)
10. Sue Farran, *Law and the Family in the South Pacific,* (2011), 76. [↑](#footnote-ref-10)
11. Section 6, *Marriage Ordinance*1961(Samoa)<http://www.paclii.org> (Accessed on 16th of May 2014). [↑](#footnote-ref-11)
12. Noelene Nabulivou 30 August 2005, *Fiji Times:* [http://www.fijitimes.com*/*](http://www.fijitimes.com/)(Accessed 11 June 2008). [↑](#footnote-ref-12)
13. *Marriage Act* [CAP 61] Vanuatu, <http://www.paclii.org> (Accessed on the 9th of May 2014). [↑](#footnote-ref-13)
14. Section 30, 31, *Marriage Ordinance*1961 (Samoa)***,*** <http://www.paclii.org> (Accessed on 16th of May 2014). [↑](#footnote-ref-14)
15. Section 46, *Marriage Act* 1963(Papua New Guinea), <http://www.paclii.org> (Accessed 9th of May 2014). [↑](#footnote-ref-15)
16. Section 13, *Births, Deaths and Marriages Registration Act* [Cap 42] (Tonga) [<http://www.paclii.org>](http://www.paclii.org) (Accessed 9th May 2014). [↑](#footnote-ref-16)
17. Len Garae, *“Same Sex Marriage”* <http://www.dailypost.vu/content/same-sex-marriage>, (Accessed 9th May 2014). [↑](#footnote-ref-17)
18. <http://www.radionz.co.nz/international/programmes/datelinepacific/audio/2572502/vanuatu-presbyterian-church-calling-for-same-sex-marriage-ban> (Accessed 9th of May 2014). [↑](#footnote-ref-18)
19. <http://www.abc.net.au/news/2013-08-19/australian-gay-couple-marry-in-nz/4895330> (Accessed 9th of May 2014). [↑](#footnote-ref-19)
20. *Gender Recognition Act* 2004 (United Kingdom), <http://www.legislation.gov.uk/ukpga/2004/7/contents> (Accessed on the 16th of May 2014). [↑](#footnote-ref-20)
21. *Gender Reassignment Act* 2000 (Australia) <http://www.austlii.edu.au/au/legis/wa/consol_act/gra2000200/> (Accessed 16th May 2014). [↑](#footnote-ref-21)
22. Sue Farran, *Law and the Family in the South Pacific,* (2011) 213. [↑](#footnote-ref-22)
23. Elizabeth A. Martin and Jonathan Law, *Oxford Dictionary of Law,* (6th Ed, 2006). [↑](#footnote-ref-23)
24. ***McCoskar v the State*** [2005] FJHC 500. [↑](#footnote-ref-24)
25. Sue Farran, *Law and the Family in the South Pacific,* (2011) 210. [↑](#footnote-ref-25)