

**AN EMBARRASSMENT OF RICHES OR A PROFUSION OF CONFUSION? AN  
EVALUATION OF THE CONTINUED EXISTENCE OF THE *CIVIL UNION ACT 17*  
OF 2006 IN THE LIGHT OF PROSPECTIVE DOMESTIC PARTNERSHIPS  
LEGISLATION IN SOUTH AFRICA**

**BS Smith and JA Robinson**

**Summary**

As it stands, South African family law currently holds that the *Marriage Act 25* of 1961 applies exclusively to the solemnisation of heterosexual civil marriages while same-sex couples have no choice but to formalise their relationships in terms of the *Civil Union Act 17* of 2006. In addition, the legal position is complicated by the fact that the latter Act not only allows both heterosexual and homosexual couples to conclude a civil union, but also provides that a civil union may take the form of either a marriage or a civil partnership, both of which enjoy the same legal recognition as, and give rise to the same legal consequences, as a civil marriage under the *Marriage Act*.

In January 2008, a draft *Domestic Partnerships Bill* saw the light of day, the potential enactment of which casts significant doubt as to whether the prevailing framework should be retained. With this potential development in mind, this paper considers the desirability of maintaining the "separate but equal" *status quo* by: (a) comparing the South African Law Reform Commission's pre-*Civil Union Act* proposals with the approach eventually adopted by the legislature; (b) comparing and contrasting the post-*Civil Union Act* position in South Africa with that of an established and well-ordered jurisdiction such as the Netherlands and, in the light hereof, considering the cases for and against repealing the *Civil Union Act*; and (c) by considering the desirability and practicality of the civil partnership's potential co-existence with the *Domestic Partnerships Bill* (as modified in accordance with a recent study). A proposal is made that could provide a less complex and better streamlined family law dispensation in South Africa.

**Keywords:** Domestic partnership; Life partnership; *Domestic Partnerships Bill*, 2008; *Civil Union Act 17* of 2006; Civil union; Civil partnership; *Marriage Act 25* of 1961; Marriage; Civil marriage