

EXPLANATORY STATEMENT

Issued by the Authority of the Attorney-General

Marriage Act 1961

Marriage Act (Proclaimed Overseas Countries) Proclamation 2016

The *Marriage Act 1961* (the Act) establishes a uniform marriage law throughout the Commonwealth. It sets out who may marry, who may perform the marriage ceremony, how the ceremony is to be conducted and where and when it may be performed.

Section 54 of the Act provides that the Governor-General may, by Proclamation, declare that a country is a proclaimed overseas country for the purposes of Part IV, Division 3 of the Act.

The proclamation of a country enables consular and diplomatic marriages conducted according to the laws of that country to be solemnised in Australia in accordance with the Division.

The original proclamation, which was made on 18 August 1967, sunsets on 1 April 2016. The new proclamation is intended to replace the sunseting proclamation on the same terms. The sunseting proclamation included 13 countries, including Czechoslovakia. As Czechoslovakia is no longer a nation state, it is being removed from the proclamation. The remaining 12 countries are proposed to be re-proclaimed.

The Act specifies no conditions that need to be satisfied before the power to make the proposed proclamation may be exercised.

The proposed proclamation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Pursuant to section 17 of the *Legislative Instruments Act 2003*, consultation was undertaken with the Department of Foreign Affairs and Trade regarding the proposed new proclamation.

Authority: Section 54 of the *Marriage Act 1961*

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Marriage Act (Proclaimed Overseas Countries) Proclamation 2016

This proclamation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the proclamation

The purpose of this proclamation, made under section 54 of the *Marriage Act 1961*, is to declare that a country is a proclaimed overseas country for the purposes of Part IV, Division 3 of the Act.

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Human rights implications

This proclamation engages the right to marry and to found a family, in Article 23 of the International Covenant on Civil and Political Rights (ICCPR).

By recognising a marriage solemnised before a diplomatic or consular official according to the laws or customs of a proclaimed overseas country, and permitting the marriage to be registered in Australia, the proclamation will promote the rights of individuals in Article 23 of the ICCPR by providing for recognition of the relationship and the registration of a marriage based on the laws and customs of the individuals' country.

Conclusion

This proclamation is compatible with human rights as it advances the protection of human rights.