

# **MARRIAGE (CELEBRANCY QUALIFICATIONS OR SKILLS) DETERMINATION** **2018**

## **EXPLANATORY STATEMENT**

Issued by the Registrar of Marriage Celebrants under section 39C of the *Marriage Act 1961*

### **PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Marriage Act 1961* (the Act) establishes the legal framework for marriage in Australia, including the requirements for marriages to be validly solemnised under Australian law. This includes a requirement that marriages must be solemnised by an ‘authorised celebrant’. An ‘authorised celebrant’ can be a Minister of religion of a recognised denomination; a person authorised by a State or Territory; or a ‘marriage celebrant’ (which includes a ‘religious marriage celebrant’).

The Act establishes the position of ‘Registrar of Marriage Celebrants’ (section 39A of the Act) (the Registrar). The Registrar is required to maintain the Register of Marriage Celebrants (section 39B of the Act), and is responsible for administering the Marriage Celebrants Programme. The Registrar registers and regulates marriage celebrants. The Programme has the legitimate aims of applying appropriate scrutiny to aspiring marriage celebrants; supporting the availability of marriage services across Australia; and regulating marriage celebrants’ performance to ensure delivery of professional, knowledgeable and legally correct marriage services to the community.

Commonwealth-registered marriage celebrants are the only category of ‘authorised celebrant’ regulated by the Commonwealth under the Act and the Marriage Regulations 2017 (the Regulations). Ministers of religion of recognised denominations, and persons authorised by a State or Territory, are regulated by state and territory authorities.

Individuals apply to the Registrar for registration as a marriage celebrant. In determining whether to register an individual as a marriage celebrant, the Registrar is required to be satisfied that person is aged 18 years or over; has all the qualifications, and/or skills, determined in writing to be necessary by the Registrar; and is a fit and proper person to be a marriage celebrant (section 39C of the Act). This instrument sets out the skills and qualifications determined by the Registrar as necessary for registration as a marriage celebrant.

Section 120 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act, or necessary or convenient for carrying out and giving effect to the Act.

Section 39 of the Regulations requires that a determination issued by the Registrar specifying the skills and qualifications necessary for registration as a marriage celebrant (for the purposes of section 39C of the Act) must provide that it is necessary for the person to possess a ‘Certificate IV in Celebrancy’, a ‘celebrancy qualification’ or ‘celebrancy skills’ (paragraph 39(1)(a) of the Regulations).

‘Certificate IV in Celebrancy’ is defined in Section 39(2) of the Regulations as a qualification with that name that is awarded by a registered training organisation or NVR registered training organisation (both within the meaning of the *National Vocational Education and Training Regulator Act 2011*) and includes each unit, and uses all the materials, specified in the determination.

‘Celebrancy Qualification’ is defined in section 39(3) of the Regulations as a celebrancy qualification awarded by a university specified in the determination, and includes each unit, and uses all the materials, specified in the determination.

‘Celebrancy skills’ are defined in section 39(4) of the Regulations as:

- (a) fluency in an Indigenous language; and
- (b) the ability to liaise with the following in planning a marriage ceremony:
  - i. clients;
  - ii. other members of the Indigenous community, if appropriate; and
- (c) the ability to conduct a marriage ceremony and to complete and deal with the required documentation in accordance with the Act and this instrument; and
- (d) the ability to communicate effectively.

Paragraph 39(1)(b) of the Regulations provides that if the Registrar considers that it is necessary for registration as a marriage celebrant a Certificate IV in Celebrancy include certain units and use certain materials, then those units and materials must also be specified in the determination.

Paragraph 39(1)(c) of the Regulations provides that, if the Registrar considers that it is necessary for registration as a marriage celebrant that a celebrancy qualification include certain units and use certain materials, then those units and materials must also be specified in the determination.

Paragraph 39(1)(d) of the Regulations provides that the determination made by the Registrar specify that a celebrancy qualification must be awarded by a university specified in the determination.

The units determined by the Registrar to be necessary for inclusion in a Certificate IV in Celebrancy or a celebrancy qualification are set out in Part 2 of the Instrument. These are the same units as those required immediately before the commencement of this Instrument (under the *Marriage (Celebrancy qualifications or skills) Determination 2009* (2009 Determination), which is to be repealed upon commencement of this Instrument). This Instrument does not place any new obligations on applicants in relation to the qualifications required, or the units which make up the required qualifications, for registration as a marriage celebrant.

The 2009 Determination was made under section 39C of the Act and in accordance with subregulation 37G of the *Marriage Regulations 1963* (the previous regulations).

The previous regulations were repealed and replaced by the Regulations on 1 April 2018.

Paragraph 37G(2)(a) of the previous regulations provided that the Certificate IV in Celebrancy units that relate to marriage were required to be delivered by a Commonwealth-registered marriage celebrant with the qualifications, skills, training and experience as determined by the Registrar (which were specified in the 2009 Determination). Paragraph 37G(2)(b) of the previous regulations further provided that the units could not be delivered by a marriage celebrant against whom the Registrar is taking, or has taken, a disciplinary measure mentioned in section 39I(2) of the Act during the period that the Registrar determines.

The requirements set out in paragraphs 37G(2)(a) and 37G(2)(b) of the previous regulations are not included in the Regulations. Instead, the Registrar now relies on the Registered Training Organisations (RTO) trainer framework, as set out in the *Standards for Registered Training*

*Organisations (RTOs) 2015*, which relevantly include requirements for organisations to ensure trainers are appropriately qualified, with current industry skills.

Paragraph 37G(1)(b) of the previous regulations provided that the skills that a person could have, to meet the requirements for registration as a marriage celebrant were to be included in the determination. These skills included fluency in an indigenous language; the ability to liaise with clients, and if appropriate, the indigenous community in planning a marriage ceremony; the ability to conduct a marriage ceremony and register a marriage, as required under the Act (including completing the required documentation); and the ability to communicate effectively. These skills are now specified in subsection 39(4) of the Regulations, and therefore do not need to be specified in the determination.

Section 95 of the Regulations is a savings provision which has the effect of providing that the 2009 Determination remains in force on and after 1 April 2018, despite the repeal of the previous regulations, for applications for registration made before 1 April 2018, and on which a decision had not been made as at 1 April 2018. In addition, subsection 9(2) of this Instrument (the *Marriage (Celebrancy Qualifications or Skills) Determination 2018* (the 2018 Determination)) provides that, despite the repeal of the 2009 Determination, the 2009 Determination continues to apply to an application for registration made in these circumstances.

The Attorney-General's Department receives approximately 700 applications for registration as a marriage celebrant each year. Applications are received throughout the year. Approximately 30 applications were received before the commencement of the Regulations and have not yet been finally assessed by the Registrar.

Subsection 9(1) of the 2018 Determination is an application provision which provides that the 2018 Determination applies in relation to an application for registration as a marriage celebrant made under section 39D of the Act on or after 1 April 2018. The application provision provides a basis on which applications for registration received after 1 April 2018, and before the commencement of this Instrument, are to be assessed.

The Attorney-General's Department has received approximately 190 applications for registration since 1 April 2018, none of which have been processed prior to the commencement of this Instrument—subsection 39D(2) of the Act requires that the Registrar deal with applications in the order in which they are received; as at the date of commencement of this Instrument, the Registrar is yet to consider applications received after 1 April 2018. Due to the fact that the 2018 Determination does not place any new obligations on applicants in relation to the skills and qualifications required for registration as a marriage celebrant, the 190 applicants who lodged their application after 1 April 2018 will not be disadvantaged (as they will not be subject to additional requirements beyond those that were in force immediately before the commencement of this Instrument).

The instrument repeals the 2009 Determination.

## **DOCUMENTS INCORPORATED BY REFERENCE**

The following documents are incorporated by reference in subsection 7(4) of the instrument:

1. The *Marriage Act 1961* incorporated as in force from time to time.
2. The *Marriage Regulations 2017* incorporated as in force from time to time.
3. The *Marriage Regulations 1963* incorporated as in force from time to time.
4. *The Guidelines on the Marriage Act 1961 for marriage celebrants*. The document is incorporated as in existence up to 1 July 2018.

5. *The Guidelines on the Marriage Act 1961 for authorised celebrants* July 2018. The document is incorporated as in existence at the date of commencement of the instrument. The document is available on the Attorney-General's Department website.
6. Authorisation of marriage of a minor form (section 12 of the Act).
7. Dispensation with consent to marriage of minor form (section 15 of the Act).
8. Consent by Judge or magistrate to marriage of minor form (section 16 of the Act).
9. Application for registration as a marriage celebrant form (subsection 39D(1) of the Act).
10. Notice of intended marriage form (paragraph 42(1)(a) of the Act).
11. Declaration by parties to marriage form (paragraph 42(1)(c) of the Act).
12. Obligations of marriage form (subsection 42(5A) of the Act).
13. Official certificate of marriage form (paragraph 50(1)(b) of the Act).
14. Interpreter's certificate (subsection 112(3) of the Act).

The documents listed 6-14 above are incorporated as in force from time to time.

The documents listed 6-14 above are all available on the Attorney-General's Department website.

## **CONSULTATION**

Subparagraphs 37G(2)(a) and (b) of the previous regulations required the Registrar to determine the skills of trainers delivering the Certificate IV qualification. This requirement was removed in the making of the Regulations and instead the Registrar will rely on the RTO trainer framework set out in the *Standards for Registered Training Organisations (RTOs) 2015*. The RTO trainer framework requires registered training organisations to implement strategies to ensure trainers are appropriately qualified, including ensuring that trainers and assessors have current industry skills.

In mid-2017, the Attorney-General's Department consulted with a broad range of stakeholders on an Exposure Draft of the *Marriage Regulations 2017*. The Exposure Draft included this change in approach as a proposed reform. The stakeholders that were consulted included: individual celebrants; celebrant associations; state and territory Registries of Births, Deaths and Marriages; the Australian Skills Quality Authority; and RTOs who were authorised to deliver the Certificate IV in Celebrancy. There was no adverse feedback received.

This approach is consistent with the Australian Government's policy for cutting red tape, which includes avoiding overlapping regulatory requirements.

This determination is a legislative instrument for the purposes of the *Legislation Act 2003*. Details of the determination are set out in **Attachment A**.

## **REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation was consulted about the determination and advised that a Regulatory Impact Statement is not necessary (OBPR ID 23697).

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

The Statement of Compatibility with Human Rights is at **Attachment B**.

## NOTES ON SECTIONS

### **PART 1 – Preliminary**

#### **Section 1 – Name**

Section 1 provides that the title of the instrument is the *Marriage (Celebrancy Qualifications or Skills) Determination 2018*.

#### **Section 2 – Commencement**

The instrument commences on the day the instrument is registered.

#### **Section 3 – Authority**

The instrument is made by the Registrar of Marriage Celebrants under section 39C(1)(b) of the *Marriage Act 1961* and in accordance with section 39 of the *Marriage Regulations 2017*.

#### **Section 4 – Schedules**

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

#### **Section 5 – Definitions**

Section 5 provides that, for the purposes of the Instrument, ‘Act’ means the *Marriage Act 1961*.

Section 5 also includes a note which explains that terms and expressions used in the Instrument are defined in the Act or the *Marriage Regulations 2017*. Four examples are provided:

- a) ‘celebrancy qualification’ – defined in regulation 39(3) of the *Marriage Regulations 2017*;
- b) ‘celebrancy skills’ – defined in regulation 39(4) of the *Marriage Regulations 2017*;
- c) ‘Certificate IV in Celebrancy’ – defined in regulation 39(2) of the *Marriage Regulations 2017*; and
- d) ‘marriage celebrant’ – defined in section 5 of the Act.

## **PART 2 – Qualifications or skills**

### **Section 6 – Qualifications or skills required of a marriage celebrant**

For the purposes of paragraph 39C(1)(b) of the Act, it necessary for a person to have a Certificate IV in Celebrancy, a celebrancy qualification, or celebrancy skills before an application for registration as a marriage celebrant can be accepted by the Registrar of Marriage Celebrants.

### **Section 7 – Requirements for Certificate IV in Celebrancy**

For paragraph 39(1)(b) of the Regulations, it is necessary that a Certificate IV in Celebrancy include all of the units specified in Table 1, or all of the units specified in Table 2, both below.

Table 1

<b>Item</b>	<b>Unit code</b>	<b>Unit description</b>
1	CHCCEL402A	Establish and maintain knowledge of legal responsibilities of a marriage celebrant
2	CHCCEL403A	Develop an effective relationship with a marrying couple
3	CHCCEL404A	Plan a marriage ceremony in line with legal requirements
4	CHCCEL405A	Conduct and review a marriage ceremony in line with legal requirements

Or

Table 2

<b>Item</b>	<b>Unit code</b>	<b>Unit description</b>
1	CHCCEL005	Establish and maintain marriage celebrancy practice
2	CHCCEL006	Interview clients and plan marriage ceremonies
3	CHCCEL007	Prepare for, present and evaluate marriage ceremonies

The units specified in Table 1 above relate to the Certificate IV in Celebrancy that was superseded in June 2017.

From July 2017, registered training organisations delivering the Certificate IV in Celebrancy are required to deliver the units specified in Table 2 above.

A Certificate IV in Celebrancy that contains all of the units in either Table 1 or Table 2 will meet with the requirements of paragraph 39C(1)(b) of the Act.

For the purposes of paragraph 39(1)(b) of the Regulations it is necessary that the Certificate IV in Celebrancy use the following materials:

- a) The *Marriage Act 1961* incorporated as in force from time to time

- b) The *Marriage Regulations 2017* incorporated as in force from time to time
- c) The *Marriage Regulations 1963* incorporated as in force from time to time
- d) *The Guidelines on the Marriage Act 1961 for marriage celebrants*. The document is incorporated as in existence up to 1 July 2018
- e) *The Guidelines on the Marriage Act 1961 for authorised celebrants* July 2018 at the date of commencement of the instrument. The document is available on the Attorney-General's Department website, and
- f) The forms approved by the Minister under subsection 119(1) of the Act for the purposes of the following provisions of the Act:
  - (i) section 12 (authorisation of marriage of a minor)
  - (ii) section 15 (dispensation with consent to marriage of minor)
  - (iii) section 16 of the Act (consent by Judge or magistrate to marriage of minor)
  - (iv) subsection 39D(1) of the Act (application for registration as a marriage celebrant)
  - (v) paragraph 42(1)(a) (notice of intended marriage)
  - (vi) paragraph 42(1)(c) (declaration by parties to marriage)
  - (vii) subsection 42(5A) of the Act (obligations of marriage)
  - (viii) paragraph 50(1)(b) of the Act (official certificate of marriage), and
  - (ix) subsection 112(3) (interpreter's certificate).

The documents listed at (f)(i)-(ix) above are incorporated as in force from time to time and are available on the Attorney-General's Department website.

Recognising that some applicants will have either completed or commenced their Certificate IV in Celebrancy qualification prior to the sunset of the *Marriage Regulations 1963*, the *Marriage Regulations 2017* and the *Marriage Regulations 1963*, both as incorporated in force from time to time, have been listed as materials necessary for the delivery of the qualification.

*The Guidelines on the Marriage Act 1961 for marriage celebrants* (the guidelines) have been available, in various iterations, on the Attorney-General's Department website since 2012. At the commencement of this instrument the guidelines were removed and replaced by *the Guidelines on the Marriage Act 1961 for authorised celebrants* July 2018. *The Guidelines on the Marriage Act 1961 for authorised celebrants* July 2018 are to be used on and from 2 July 2018.

## **Section 8 – Requirements for celebrancy qualification**

For the purposes of paragraph 39(1)(c) of the Regulations it is necessary that a celebrancy qualification include the units set out in the below table:

<b>Item</b>	<b>Unit code</b>	<b>Unit description</b>
1	APG4729 (formerly CVL4010)	Rites of passage: Culture and celebrating life cycle events
2	APG4730 (formerly CVL4020)	Life cycle events: Literature, music and life stories
3	APG4731 (formerly CVL4030)	Celebrant and client: Legal, ethical and personal issues
4	APG4732 (formerly CVL4040)	Professional celebration of rites of passage

For the purposes of paragraph 39(1)(c) of the Regulations, it is necessary that a celebrant qualification uses the Act and the Regulations in the delivery of the required units. Recognising that some applicants will have either completed or commenced their celebrancy qualification prior to the sunset of the *Marriage Regulations 1963*, the *Marriage Regulations 2017* and the *Marriage Regulations 1963*, both as incorporated in force from time to time, have been listed as materials necessary for the delivery of the qualification.

For the purposes of paragraph 39(1)(d) of the Regulations, the only university that is authorised to deliver the celebrancy qualification is Monash University.

## **PART 3 – Application, saving and transitional provisions**

### **Section 9 – Application provision relating to *Marriage (Celebrancy qualifications or skills) Determination 2018*.**

This instrument applies in relation to an application for registration as a marriage celebrant made under section 39D of the Act on or after 1 April 2018 even though the instrument commences after 1 April 2018.

Despite the repeal the *Marriage (Celebrancy qualifications or skills) Determination 2009* (the previous instrument), the previous instrument will continue to apply to applications made under section 39D of the Act before 1 April 2018, and on which a decision had not been made on 1 April 2018. Applications made after 1 April 2018 will be considered under this Instrument.

## **SCHEDULE 1 – Repeals**

Schedule 1 repeals the whole of the *Marriage (Celebrancy qualifications or skills) Determination 2009*.



## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### **Marriage (Celebrancy Qualifications or Skills) Determination 2018**

This Disallowable Legislative Instrument 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 Disallowable Legislative Instrument**

The *Marriage (Celebrancy Qualifications or Skills) Determination 2018* is made by the Registrar of Marriage Celebrants (Registrar) under paragraph 39C(1)(b) of the *Marriage Act 1961* (the Act) and in accordance with section 39 of the *Marriage Regulations 2017* (the Regulations), to set out the qualifications and/or skills a person must have before they can make an application to become a Commonwealth-registered marriage celebrant.

Paragraph 39(1)(a) of the Regulations provides that a person must have either a Certificate IV in Celebrancy (Certificate IV), a celebrancy qualification issued by a university, or celebrancy skills before they can apply to become a marriage celebrant. In practice, the majority of applicants for registration as a marriage celebrant hold a Certificate IV.

The details of the Certificate IV and celebrancy qualification are set out in the instrument. This includes that a Certificate IV must be awarded by a registered training organisation or NVR registered training organisation (both within the meaning of the *National Vocational Education and Training Regulator Act 2011*), and that it must include each unit and use all materials as specified by the Registrar in the instrument. The celebrancy qualification must be awarded by Monash University, and include each unit and use all materials as specified by the Registrar in the determination.

The requirements for the celebrancy skills are set out in the Regulations and are not required to be included in the determination.

The ability to attain a Certificate IV or celebrancy qualification is open to all people on a cost for service basis.

The instrument contains an application provision which provides that an application received on or after 1 April 2018 is subject to the instrument. The application provision of the instrument is required to ensure that there is continuity to legally assess applications for registration received after 1 April 2018 and before the commencement of the Instrument.

The instrument does not introduce any new obligations in relation to the qualifications required, or the units which make up the required qualifications for registration as a marriage celebrant. Therefore applicants will suffer no disadvantage nor have any additional liabilities imposed in respect of the application provision.

**Human rights implications**

This Disallowable Legislative Instrument does not engage any of the applicable human rights or freedoms.

**Conclusion**

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.