

MARRIAGE (CELEBRANT PROFESSIONAL DEVELOPMENT) AMENDMENT STATEMENT 2020

EXPLANATORY STATEMENT

Issued by the Registrar of Marriage Celebrants under subsection 53(3) of the *Marriage Regulations 2017*.

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’). Marriage celebrants are the only category of authorised celebrants 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.

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 Program (the Program). The Registrar registers and regulates marriage celebrants. The Program 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.

Section 120 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that the Act requires or permits to be prescribed or are necessary or convenient to be prescribed for carrying out and giving effect to the Act.

Paragraph 39G(1)(b) of the Act requires that a marriage celebrant must undertake all professional development activities required by the Registrar in accordance with the Regulations.

Subsection 53(1) of the Regulations provides that a marriage celebrant must, each calendar year, undertake listed professional development activities that take at least five hours to complete. This must include the completion of any activities determined by the Registrar as compulsory activities for the year.

The Registrar may take disciplinary measures against a celebrant who has not complied with their professional development obligations for a given year (paragraph 39I(1)(b) of the Act).

Subsection 53(3) of the Regulations requires that the Registrar must, as soon as practicable after the start of each calendar year, publish a written statement that sets out the professional development activities for the year, and specify which of those activities (if any) are compulsory.

Subsection 53(5) of the Regulations requires that the Registrar publish the statement on the internet and in any other way the Registrar considers appropriate.

Subsection 53(6) of the Regulations provides that the Registrar may add professional development activities to a list that is set out in a statement published under subsection 53(3) for a calendar year, however, those activities cannot be compulsory activities for that year.

The *Marriage (Celebrant Professional Development) Statement 2020* (the Statement) commenced on 14 February 2020 and is available on the Attorney-General's Department (the department) website, www.ag.gov.au. Schedule 1 to that Instrument (comprising Tables 1 and 2) lists all of the professional development activities which Commonwealth-registered marriage celebrants may undertake in 2020 to meet their obligations under paragraph 39G(1)(b) of the Act.

The *Marriage (Celebrant Professional Development) Amendment Statement 2020* (the Amendment Statement) amends the Statement. Schedule 1 of this Amendment Statement updates the list of professional activities in Table 2 of Schedule 1 to the Statement to include three new activities approved by the Registrar, namely: 'Knowledge of the Law – Online' (at Item 158); 'How to use the celebrant self-service portal' (at Item 159); and 'How to navigate the celebrant self-service portal' (at Item 160).

The online activity in Table 2 of the Amendment Statement, Knowledge of the Law – Online, is a set of 25 questions available through the marriage celebrants self-service portal hosted on the department's website. Completion of 25 questions counts as meeting one hour of a celebrants OPD obligations. The two activities 'How to use the celebrant self-service portal'; and 'How to navigate the celebrant self-service portal' have been developed by two training providers, QualTrain and Australian Celebrations Training, as complementary activities to 'Knowledge of the Law'. Both activities count as 1 hour towards the 2020 OPD obligation.

There is no change to the existing OPD activities and no activities have been removed from Schedule 1 in the Statement.

By virtue of subsection 92(1) of the Regulations, the amendments set out at Schedule 1 of the Amendment Statement apply to the OPD year beginning on 1 January 2020.

CONSULTATION

The Department has established a panel of training providers to deliver OPD activities (OPD Panel). The OPD Panel are requested to submit a full list of their training activities for delivery in the OPD year to the Registrar for assessment and approval. The OPD Panel were consulted in the development of both the Statement and the Amendment Statement.

On 11 December 2019, the Registrar wrote to the four OPD providers notifying of the department's intention to introduce a one hour online elective activity through the marriage celebrant self-service portal. While the OPD Panel suggested the activity be designed as a compulsory activity for 2020, it was decided the activity would not be compulsory as some celebrants do not use their self-service portal or require assistance in doing so.

The Registrar wrote again on 12 December 2019, inviting OPD Providers to develop a one hour complementary activity to the online legal questions such as a face-to-face elective on how to access the celebrant self-service portal. Two OPD Providers, Qualtrain and Australian Celebrants Training, each submitted an (complementary) elective activity. Both activities were approved by the Registrar (Items 159 and 160 of Table 2, respectively).

As the legal questions are being delivered through the marriage celebrant self-service portal, there was a technical component which delayed the commencement of these OPD activities until March 2020, after the commencement of the *Marriage (Celebrant Professional Development) Statement 2020*.

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

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation was consulted about the Statement and advised that a Regulatory Impact Statement was not necessary (OBPR ID 26119).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

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

Attachment A

NOTES ON SECTIONS

PART 1 – Preliminary

Section 1 – Name

Section 1 provides that the title of the instrument is the *Marriage (Celebrant Professional Development) Amendment Statement 2020*.

Section 2 – Commencement

The instrument commences on the day after the instrument is registered.

Section 3 – Authority

Section 3 provides that the instrument is made by the Registrar of Marriage Celebrants under subsection 53(3) of the Marriage Regulations 2017.

Section 4 – Definitions

Section 4 defines the following terms:

Australian Celebrations Training means Australian Celebrations Training Pty Ltd (ACN 104 287 112).

QualTrain means QualTrain Australia Pty Ltd (ACN 622 208 182).

SCHEDULE 1 – Professional development activities

Section 1 of Schedule 1 amends Table 2 of Schedule 1 of the *Marriage (Celebrant Professional Development) Statement 2020* by including three new items.

Item number 158 is ‘Knowledge of the Law – Online’, a set of 25 questions on knowledge of the law relating to the solemnisation of marriage in Australia accessible via the marriage celebrant self-service portal on the Attorney-General’s Department website.

Item number 159 is ‘How to use the celebrant self-service portal’ delivered by Qualtrain Australia.

Item number 160 is ‘How to navigate the celebrant self-service portal’ delivered by Australian Celebrants Training.

Attachment B

Statement of Compatibility with Human Rights

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

Marriage (Celebrant Professional Development) Statement 2020

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 (Celebrant Professional Development) Amendment Statement 2020* amends the *Marriage (Celebrant Professional Development) Statement 2020* (the Statement) which is a published list of activities which Commonwealth-registered celebrants can complete to meet their ongoing professional development obligations. The Statement is only applicable to marriage celebrants, including religious marriage celebrants, who are registered under Subdivisions C and D of Division 1 of Part IV of the *Marriage Act 1961* (the Marriage Act).

Under paragraph 39G(1)(b) of the Marriage Act, Commonwealth-registered marriage celebrants are required to undertake all professional development activities required by the Registrar of Marriage Celebrants in accordance with the *Marriage Regulations 2017* (the Regulations).

Under subsection 53(3) of the Regulations, the Registrar must, as soon as practicable, after the start of each calendar year, publish a written statement that sets out the professional development activities for the year, and specifies which of those activities (if any) are compulsory. The Statement was published on 13 February 2020 and commenced on 14 February 2020.

The purpose of this Legislative Instrument is to amend the Statement to add three additional elective activities to the list of professional development activities available to marriage celebrants in Table 2, in accordance with subsection 53(6) of the Regulations.

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.