

MARRIAGE (CELEBRANT REGISTRATION CHARGE) DETERMINATION 2020

EXPLANATORY STATEMENT

PURPOSE AND OPERATION OF THE INSTRUMENT

The Marriage (Celebrant Registration Charge) Determination 2020 is made by the Attorney-General under section 7 of the *Marriage (Celebrant Registration Charge) Act 2014* (the Registration Charge Act).

The purpose of this determination is to set the value of the celebrant registration charge (the Charge) payable by Commonwealth-registered marriage celebrants for the 2020-2021 financial year.

Section 39FA of the Marriage Act provides for the Commonwealth to charge marriage celebrants an annual cost recovery charge. Each person who is a registered marriage celebrant on 1 July becomes liable to pay the Charge. If a person becomes a registered marriage celebrant later in the financial year they become liable to pay the Charge, which is pro-rated depending on the time of year the person is registered.

The Registrar of Marriage Celebrants is required (subsection 39FA(2) of the Marriage Act) to send each liable marriage celebrant a notice which specifies the amount of Charge that is payable and the date by which the charge must be paid, being a day that is at least 30 days after the day in which the notice was sent (the charge payment day).

The Registration Charge Act provides authority for the Attorney-General to set the value of the Charge via legislative instrument. The authority also provides that a pro-rata of the value of the Charge for marriage celebrants registered after 1 July can be set.

The Marriage (Celebrant Registration Charge) Determination 2020 establishes the Charge at \$0 for a person who was a registered marriage celebrant on 1 July 2020 and for all marriage celebrants registered after 1 July.

The decision to set the Charge at \$0 for 2020-21 is appropriate and timely. Marriage celebrants have been impacted economically by measures introduced to contain the spread of COVID-19. The Program has also modestly over-recovered revenue since July 2014, and, while the impacts of COVID-19 on cost recovery for the 2019-20 financial year are still to be fully determined, an over-recovery is expected due to continued efficiency gains in administering the Program and applications exceeding forecasts. As such setting the Charge at \$0 for one year will still allow a cost neutral outcome to occur over the longer term. This approach is consistent with the Government's Cost Recovery Guidelines.

Setting the Charge at \$0 is a one-off measure for 2020-21. The Charge will be reviewed prior to the 2021-22 financial year with a view to establishing a value that is sustainable for the longer term through a new determination.

The Marriage (Celebrant Registration Charge) Determination 2014, made by the then Attorney-General, commenced on 1 July 2014 setting the Charge at \$240 for people who were a registered marriage celebrant on 1 July of the financial year. For people who became a registered celebrant after 1 July of the financial year, the Charge was pro-rated as follows:

- between 2 July and 30 September - \$240
- between 1 October and 31 December - \$180
- between 1 January and 31 March - \$120
- between 1 April and 30 June - \$60

The Charge has not been amended since commencing on 1 July 2014.

The Marriage (Celebrant Registration Charge) Determination 2020 commences on 1 July 2020.

The Marriage (Celebrant Registration Charge) Determination 2020 repeals the Marriage (Celebrant Registration Charge) Determination 2014.

CONSULTATION

Prior to cost recovery commencing the Attorney-General's Department (the department) undertook extensive consultation with state and territory registries of births, deaths and marriages, marriage celebrants and associations and networks, and the general public. A Cost Recovery Implementation Statement (CRIS) was developed in compliance with the Australian Government Cost Recovery Guidelines (the Guidelines) and the charges set out in the 2014 instrument were derived from that CRIS. The charges were linked to the estimated cost of performing the function, including both direct and indirect costs.

The department consults with celebrant associations and networks throughout the year and specifically at two face-to-face meetings normally held in May and October. The department provides a copy of the Cost Recovery Implementation Statement to associations and networks each year, and provides an update on the performance of the Program and the celebrant costs for the upcoming financial year. Since State and Territory Governments implementation of social distancing measures and limits on the number of people who can attend the solemnisation of a marriage, the department has received coordinated requests to waive the Charge for 2020-21.

The department has not consulted directly with marriage celebrants or celebrant associations or networks on the drafting of this instrument, but it responds to requests made to the department. Reducing the celebrant registration charge for 2020-21 will assist marriage celebrants manage their business during restrictions put in place as measures to prevent the spread of COVID-19. The reduction is also consistent with the Government's Cost Recovery Guidelines.

The determination 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 instrument 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**.

Section 1 – Name

Section 1 provides that the title of the determination is the Marriage (Celebrant Registration Charge) Determination 2020.

Section 2 - Commencement

Section 2 provides that the determination commences on 1 July 2020.

Section 3 – Authority

Section 3 provides that the determination is made by the Attorney-General under subsection 7(1) of the *Marriage (Celebrant Registration Charge) Act 2014*.

Section 4 – Schedules

This section provides that 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 – Celebrant registration charge

Subsection 5(a) of the determination provides that the amount of celebrant registration charge payable for a person who is a marriage celebrant on 1 July of a financial year is \$0.

Subsection 5(b) of the determination provides that, if a person becomes a marriage celebrant after 1 July in a financial year, the celebrant registration charge is \$0.

SCHEDULE 1 – Repeals

Schedule 1 repeals the Marriage (Celebrant Registration Charge) Determination 2014.

Attachment B

Statement of Compatibility with Human Rights

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

Marriage (Celebrant Registration Charge) Determination 2020

This 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 Legislative Instrument

Section 39FA of the *Marriage Act 1961* (the Marriage Act) provides that a person who is a registered marriage celebrant on 1 July of the financial year becomes liable for the celebrant registration charge, or if a person becomes a registered marriage celebrant after 1 July of the financial year, they become liable for the charge on the day they are registered.

The Marriage (Celebrant Registration Charge) Determination 2020 (the Determination) sets the marriage celebrant charge at \$0 for marriage celebrants registered under Part IV, Division 1, Subdivision C of the Marriage Act on 1 July 2020. The Charge will also be set to \$0 for all marriage celebrants registered after 1 July.

Setting the Charge at \$0 is intended to only apply for the 2020-21 financial year. The financial position of the Marriage Celebrants Program will be reviewed prior to the end of financial year and a sustainable Charge value will be introduced through a new determination for 2021-22.

Under paragraph 49(2) of the Marriage Regulations 2017, exemptions from the liability to pay the celebrant registration charge may be granted if a marriage celebrant lives in a remote area and not more than one other registered celebrant resides in the postcode, will not reside in Australia during the financial year or is unable to perform as a marriage celebrant for six months due to serious illness or caring responsibilities. Exemptions from the Charge will be redundant for 2020-21 while the Charge value is \$0.

Under section 39FB of the Marriage Act, the Registrar of Marriage Celebrants must deregister a marriage celebrant if they have not paid the celebrant registration charge by the charge payment day, or received an exemption from the liability to pay the charge. With the Charge value set at \$0 for 2020-21, marriage celebrants will not have to make a payment to the department or apply for an exemption.

Human rights implications

The Marriage (Celebrant Registration Charge) Determination 2014 engaged the right to work and rights in work and the right to respect for the family. This was because the Determination established the celebrant registration charge value at \$240 per annum. A failure to pay the celebrant registration charge results in the marriage celebrant being deregistered and no longer being able to solemnise marriages.

As the charge value established by the Marriage (Celebrant Registration Charge) Determination 2020 is \$0, there are no human rights engaged by the legislative instrument.

Conclusion

This Legislative Instrument is compatible with the human rights.