

# **MARRIAGE (CELEBRANT REGISTRATION CHARGE) DETERMINATION 2021**

## **EXPLANATORY STATEMENT**

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

The Marriage (Celebrant Registration Charge) Determination 2021 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 from 1 July 2021.

Section 39FA of the *Marriage Act 1961* 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 2021 establishes the Charge at \$170 for a person who is a registered marriage celebrant on 1 July 2021 and for all marriage celebrants registered after 1 July. Setting the Charge at \$170 is a reduction from the Charge set at the commencement of cost recovery in the Marriage (Celebrant Registration Charge) Determination 2014 (\$240), and which applied until the Charge was reduced to \$0 in 2020. The Marriage (Celebrant Registration Charge) Determination 2020 established the Charge at \$0 as a one-off measure for 2020-21 to address a modest over recovery of revenue since July 2014. Forecasts indicate a close to cost neutral outcome by the end of 2020-21. Setting the Charge at \$170 establishes a value that is sustainable into the future.

The Marriage (Celebrant Registration Charge) Determination 2021 sets the Charge at \$170 for a person who is a registered marriage celebrant on 1 July of the financial year. For a person who becomes a registered celebrant after 1 July of the financial year, the Charge is pro-rated as follows:

- between 2 July and 30 September - \$170
- between 1 October and 31 December - \$127.50
- between 1 January and 31 March - \$85
- between 1 April and 30 June - \$42.50

The Marriage (Celebrant Registration Charge) Determination 2021 commences on 1 July 2021.

The Marriage (Celebrant Registration Charge) Determination 2021 repeals the Marriage (Celebrant Registration Charge) Determination 2020.

## **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. Marriage celebrants are aware that the annual charge was set to \$0 for one year only and are expecting it to change from 1 July 2021.

The department has not consulted directly with marriage celebrants or celebrant associations or networks on the drafting of this instrument. The department has an obligation under the Guidelines to ensure that the revenue generated through the Charge and associated fees generally align with the costs for administering the Program.

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 43623).

## **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 2021.

**Section 2 - Commencement**

Section 2 provides that the determination commences on 1 July 2021.

**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 \$170.

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 as follows:

- for a marriage celebrant registered between 2 July and 30 September - \$170
- for a marriage celebrant registered between 1 October and 31 December - \$127.50
- for a marriage celebrant registered between 1 January and 31 March - \$85
- for a marriage celebrant registered between 1 April and 30 June - \$42.50.

**SCHEDULE 1 – Repeals**

Schedule 1 repeals the Marriage (Celebrant Registration Charge) Determination 2020.

**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 2021**

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 2021 (the Determination) sets the marriage celebrant charge at \$170 for marriage celebrants registered under Part IV, Division 1, Subdivision C of the Marriage Act on 1 July of a financial year.

The Determination also provides that if a person becomes a marriage celebrant after 1 July in a financial year, the celebrant registration charge is reduced relative to the proportion of the year that they will be registered. In these circumstances, the celebrant registration charge is as follows:

- for a marriage celebrant registered between 1 July and 30 September - \$170
- for a marriage celebrant registered between 1 October and 31 December - \$127.50
- for a marriage celebrant registered between 1 January and 31 March - \$85
- for a marriage celebrant registered between 1 April and 30 June - \$42.50.

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.

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.

**Human rights implications**

This Legislative Instrument engages the following rights:

- Right to work and rights in work
- Right to respect for the family.

### *Rights to work and rights in work*

The Legislative Instrument limits the right to work set out in Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) by requiring payment of an annual charge to recover regulatory costs from those who receive the benefit of registration.

Article 6 of ICESCR provides that the right to work includes the right of everyone to the opportunity to gain a living by work which he or she freely chooses or accepts. The right also encompasses the right not to be unjustly deprived of work.

However, the right to work in Article 6 of ICESCR does not equate to a guarantee of full employment. Article 4 of ICESCR provides that countries may subject economic social and cultural rights only to such limitations ‘as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society’. The UN Committee on Economic, Social and Cultural Rights has stated that such limitations must be proportional, and must be the least restrictive alternative where several types of limitations are available, and that even where such limitations are permitted, they should be of limited duration and subject to review.

The Legislative Instrument limits the right to work by providing that an annual charge must be paid for a person to remain registered as a marriage celebrant under Part IV, Division 1, Subdivision C of the Marriage Act. Exemptions may be sought from the requirement to pay the celebrant registration charge. The limitation on the right to work imposed by this Legislative Instrument is intended to ensure that the Attorney-General’s Department has sufficient resources to apply to regulating marriage celebrants who perform an important role in the community, including monitoring performance of celebrants, handling enquiries, producing information material, administering the fees and charges and deregistering celebrants where appropriate.

The charge determined by the Legislative Instrument has been developed using the Australian Government’s Cost Recovery Guidelines and has been designed to ensure that only the efficient costs of regulating marriage celebrants is passed on through the charge. In addition, exemptions are available from liability to pay the charge in limited circumstances, including to ensure that marriage celebrant services remain accessible in remote areas of Australia.

### *Right to respect for the family*

The Legislative Instrument promotes the right to respect for the family set out in Article 23 of the *International Covenant on Civil and Political Rights*. The right to respect for the family includes the right of two people of marriageable age to marry.

The imposition of a charge through this Legislative Instrument will ensure that marriage celebrants in Australia undertake their role in accordance with relevant standards and legal obligations and have access to improved services and regulation by the department. This ensures that marrying couples are provided with professional services that result in valid marriages, thereby supporting respect for the family.

### **Conclusion**

This Legislative Instrument is compatible with the human rights because it advances the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.