

MARRIAGE (CELEBRANT FEES) DETERMINATION 2021

EXPLANATORY STATEMENT

PURPOSE AND OPERATION OF THE INSTRUMENT

The Marriage (Celebrant Fees) Determination 2021 is made by the Attorney-General under sections 40, 47, and 56 of the Marriage Regulations 2017 (the Regulations).

The Determination sets out the fee to be paid to lodge an application for registration as a marriage celebrant, and the fees to be paid to apply for an exemption from the application fee, the celebrant registration charge, and the Ongoing Professional Development obligation respectively.

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 Marriage 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 Marriage 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.

Section 39D of the Act provides that a person may apply to the Registrar to be registered as a marriage celebrant. An application is taken to be made, if and only if, the application has been made in writing on the approved form, and that an application fee has been paid, or an exemption from the liability to pay the application fee has been granted.

Subsection 40(1) of the Regulations provides that for the purposes of subsection 39D(1B) of the Act, the Minister may, by legislative instrument, determine the fee to be paid in respect of making an application for registration as a marriage celebrant.

Subsection 40(2) of the Regulations provides that for the purposes of paragraph 39D(1C)(b) of the Act, the Minister, may by legislative instrument, determine the fee to be paid in respect of an application for an exemption from the liability to a registration application fee.

Subsection 39FA of the Act provides that the Regulations may provide for the granting of exemptions from the liability to pay the celebrant registration charge in respect of a financial year, and that if a person makes an application for exemption a fee may be required. Section 47 of the Regulations provides that the Minister may, by legislative instrument, determine the fee to be paid in respect of an application for an exemption from the liability to pay the celebrant registration charge.

Paragraph 39G(1) of the Act provides that a marriage celebrant undertake all professional development activities required by the Registrar in accordance with the Regulations. Subsection 39G(2) of the Act provides that the Regulations may require a fee to be paid in respect of an application for exemption from the professional development activities, and that the Regulations may specify the fee, or provide for the fee to be determined by the Minister by legislative instrument. Section 56 of the Regulations provides that the Minister, by legislative instrument, may determine the fee to be paid in respect of an application for exemption from professional development activities for the calendar year.

In accordance with the Australian Government Cost Recovery Guidelines, the fees set for an activity are to be aligned with the costs of providing the activity. Accordingly, the Marriage (Celebrant Fees) Determination 2014 was made by the Attorney-General at that time and commenced on 1 July 2014. The Determination set the application fee for registration as a marriage celebrant at \$600, and the exemption fee at \$30 for an exemption from the application fee, the celebrant registration charge, and ongoing professional activities respectively. The Fees have remained at the same value since 1 July 2014.

The Marriage (Celebrant Fees) Determination 2021 sets the application fee for registration as a marriage celebrant at \$400. The fees for seeking an exemption from the application fee, the celebrant registration charge, and professional development activities remain at \$30 respectively.

The Marriage (Celebrant Fees) Determination 2021 commences on 1 July 2021 and repeals the Marriage (Celebrant Fees) 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, celebrant 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.

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 celebrant registration charge and associated fees align with the costs for administering the Program.

The Program has modestly over recovered revenue since July 2014. Additionally, the department has improved the efficiency of its application assessment processes whereby the existing effort to assess

an application is not commensurate with the fee charge. A reduction in the amount of the fee charged for making an application for registration is appropriate in order for the department to meet requirements under the 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 Statement 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**.

PART 1 – Preliminary

Section 1 – Name

Section 1 provides that the title of the determination is the Marriage (Celebrant Fees) 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 the Marriage Regulations 2017.

Section 4 – Definitions

Section 4 provides that the definition of ‘Regulations’ in the determination is the Marriage Regulations 2017.

Section 5 – 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 6 – Registration application fee

Section 6 provides that for the purposes of subsection 40(1) of the Regulations, the registration application fee is \$400.

Section 7 – Registration exemption application fee

Section 7 provides that for the purposes of subsection 40(2) of the Regulations, the registration exemption application fee is \$30.

Section 8 – Charge exemption application fee

Section 8 provides that for the purposes of section 47 of the Regulations, the charge exemption application fee is \$30.

Section 9 – Professional development exemption application fee

Section 9 provides that for the purposes of section 56 of the Regulations, the professional development exemption application fee is \$30.

SCHEDULE 1 – Repeals

Schedule 1 repeals the Marriage (Celebrant Fees) 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 Fees) 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

The Legislative Instrument sets fees for a range of services under the *Marriage Act 1961* (the Marriage Act) and the Marriage Regulations 2017. These include the fee of \$400 for aspiring marriage celebrants seeking registration under Part IV, Division 1, Subdivision C of the Marriage Act. It also sets a fee of \$30 for each application for exemption from liability to pay the registration application fee, the celebrant registration charge, and the requirement to complete ongoing professional development for the calendar year.

Prior to the introduction of the fees set out above, there was no requirement to pay fees when applying to become registered as a marriage celebrant or when applying for an exemption from professional development obligations. The purpose of these fees is to recover the Attorney-General's Department's service delivery and regulatory costs of assessing applications from aspiring and existing marriage celebrants. Marriage celebrants will continue to be able to charge marrying couples for their professional services.

Human rights implications

This Legislative Instrument engages the following rights:

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

Right 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 placing additional limits on registration as a marriage celebrant by requiring payment of fees 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 a fee must be paid before a person can be 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 this registration application fee. An aspiring marriage celebrant must pay a nominal fee in order to apply for an exemption.

Marriage celebrants perform an important role that carries significant legal responsibilities. A key part of upholding the institution of marriage is to ensure that marriage celebrants undertake their role professionally and in accordance with relevant standards and legal obligations. 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 scrutiny to applications for persons to be registered as marriage celebrants.

The fees determined by the Legislative Instrument have been developed using the Australian Government's Cost Recovery Guidelines (the Guidelines) and have been designed to ensure that only the efficient costs of registering and regulating marriage celebrants are passed on through the fees. In addition, exemptions are available from liability to pay the fees in limited circumstances. The limit imposed through the fees is reasonable, necessary and proportionate to the costs of operating the Program, and is regularly reviewed in accordance with the Guidelines.

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 determination of fees through this Legislative Instrument will ensure that marriage celebrants in Australia are scrutinised prior to registration and undertake their role in accordance with relevant standards and legal obligations. 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.