

MARRIAGE (CELEBRANT PROFESSIONAL DEVELOPMENT) STATEMENT 2022

EXPLANATORY STATEMENT

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

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Marriage (Celebrant Professional Development) Statement 2022* (the Statement) is a published list of activities available to Commonwealth-registered celebrants to meet their professional development obligations under paragraph 39G(1)(b) of the *Marriage Act 1961* Act (the Marriage Act). The Statement also provides for professional development activities that may be imposed by the Registrar as a disciplinary measure under section 39I of Marriage Act.

The Statement is only applicable to Commonwealth-registered marriage celebrants, including religious marriage celebrants, who are registered under Subdivisions C and D of Division 1 of Part IV of the Marriage Act.

All activities included in the Statement focus on ensuring professional, knowledgeable and legally correct marriage services for marrying couples, and targeting the legal aspects of the role of a marriage celebrant.

BACKGROUND

The Marriage Act

The Marriage 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 Marriage 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 prescribed authorities.

The Marriage Act establishes the position of ‘Registrar of Marriage Celebrants’ (section 39A of the Marriage Act) (the Registrar). The Registrar is required to maintain the public 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 Marriage Act provides that the Governor-General may make regulations, not inconsistent with the Marriage 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 Marriage Act requires that a marriage celebrant must undertake all professional development activities required by the Registrar in accordance with the Regulations.

Section 39I of the Marriage Act provides that the Registrar may impose disciplinary measures, and that these disciplinary measures may take the form of professional development activities.

The Regulations

In 2021, the Marriage Amendment (2021 Measures No. 1) Regulations 2021 repealed sections 53(1), (3) to (7) of the Regulations and replaced them with sections 53(1), (3) to (6). From 1 January 2022, marriage celebrants are only required to undertake professional development activities that are determined to be compulsory for the year. The amendment to subsection 53(4) of the Regulations reduced the number of professional development hours from 5 to activities that would take between 1 to 2 hours to complete:

- subsection 53(1) provides that a marriage celebrant must, each calendar year, undertake the completion of any activities determined by the Registrar as compulsory activities for the year
- subsection 53(3) provides that, as soon as practicable after the start of each calendar year, the Registrar must, by legislative instrument, make a statement that lists professional development activities for the year (the listed activities), and determine one or more of the listed activities to be compulsory for the year
- subsection 53(4) provides that the Registrar must not determine that an activity is compulsory unless satisfied that the marriage celebrant would likely take between 1 and 2 hours to complete the compulsory activity or activities
- subsection 53(5) provides that the Statement may specify one or more ways in which a listed activity may be undertaken, and/or one or more providers for such a listed activity, and
- subsection 53(6) recognises the Registrar may vary the statement throughout the year to list additional activities, however the Registrar will not be able to add a compulsory activity later in the year. The listed additional professional development activities are activities which the Registrar can require a marriage celebrant to undertake as a disciplinary measure.

The Statement

In 2022, the Registrar has specified two, one-hour activities as compulsory activities in accordance with paragraph 53(3)(b) of the Regulations, and these will be delivered to marriage celebrants free of charge by the Attorney-General's Department (the Department):

1. Real consent – Refresher – Compulsory, and
2. Knowledge of the Law No 1 – Compulsory.

On commencement of this instrument, the two compulsory professional development activities will be available through the online self-service portal for Commonwealth-registered marriage celebrants, or via email or in hard copy for those who do not have access to the portal.

On commencement of this instrument, the additional listed activities, Knowledge of the Law No 2 and Knowledge of the Law No 3, will be available for the purposes of

imposing a disciplinary measure under section 39I of the Marriage Act. In 2022, these listed activities will also be delivered free of charge by the Department and will be accessible, as required, via the online portal or by email or hard copy (for those who cannot access the portal).

The Statement will be available on the Department's website, www.ag.gov.au as soon as the Statement commences. The Statement will also be available on the Federal Register of Legislation website at www.legislation.gov.au.

The Statement repeals the *Marriage (Celebrant Professional Development) Statement 2021*.

CONSULTATION

Since 2003, marriage celebrants have been required to complete professional development requirements. Over time, and following separate consultation processes with stakeholders, the Department implemented administrative changes to: streamline the approach for the delivery of professional development activities; and provide for activities that support marriage celebrants in providing legally correct marriage services. Professional development has also provided the opportunity for marriage celebrants who did not undertake pre-registration training to update their knowledge and skills.

In February 2021, the Department consulted with marriage celebrants, marriage celebrant associations and the Professional Development panel to finalise a discussion paper about the future of professional development. The discussion paper was published on the Department's website in February 2021 together with a short survey seeking celebrant views. Marriage celebrants were invited to respond to the discussion paper and survey. Survey results are available on the Department's website and supported a reduction in the professional development requirement from 5 hours to activities of 1-2 hours per calendar year.

In October 2021, following the registration of the Marriage Amendment (2021 Measures No. 1) Regulations 2021 on the Federal Register of Legislation, marriage celebrant associations and networks, and state and territory Registries of Births, Deaths and Marriages, were consulted in relation to potential topics for professional development for 2022. Professional development is regularly discussed at biannual meetings held by the Department with associations and networks. In developing a compulsory activity for 2022 on real consent, the Department also consulted with the Australian Border Force and the Australian Federal Police in relation to forced marriage.

The 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 22-01578).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The Statement 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*. A Statement of Compatibility with Human Rights is set out in **Attachment B**.

NOTES ON SECTIONS

Details of the *Marriage (Celebrant Professional Development) Statement 2022*

Section 1 – Name

Section 1 provides that the title of the instrument is the *Marriage (Celebrant Professional Development) Statement 2022*.

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 – Schedules

Section 4 provides that each instrument in a Schedule to the instrument is amended or repealed as set out in the applicable terms and any other item has effect according to its terms.

Section 5 – Definitions

Section 5 defines the following terms:

In this instrument:

Regulations means the Marriage Regulations 2017.

Section 6 – Professional development activities

Section 6 provides the list of professional development activities for 2022 in a table. In order to meet the obligation in subparagraph 39G(1)(b) of the Marriage Act for 2022, a celebrant must complete the two, one-hour, compulsory activities listed unless a relevant exemption applies.

Section 6 also lists the additional professional development activities available for the purpose of imposing a disciplinary measure under section 39I of the Marriage Act.

The table lists:

- the activity
- the course code
- the length in minutes for the activities, and
- the name of the provider offering the activity.

Schedule 1 – Repeals

Schedule 1 repeals the *Marriage (Celebrant Professional Development) Statement 2021*.

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 2022

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) Statement 2022* (the Statement) is a published list of activities which Commonwealth-registered celebrants must complete to meet their 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).

The amendments to the Regulations by the Marriage Amendment (2021 Measures No.1) Regulations 2021, reflected the outcome of extensive stakeholder consultation on the future of professional development. The amendments to the Regulations commenced 1 January 2022, and have reduced the number of hours of professional development to compulsory activities, and made it easier for marriage celebrants to complete their professional development, which will be offered online by the Department.

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 specify which of those activities are compulsory.

The purpose of this Legislative Instrument is to list the professional development activities available to marriage celebrants in accordance with subsection 53(3) 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.