

MARRIAGE AMENDMENT (AUTHORISED CELEBRANTS AND OTHER MEASURES) REGULATIONS 2024

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

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 and foreign marriages to be legally recognised under Australian law.

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

The purpose of the *Marriage Amendment (Authorised Celebrants and Other Measures) Regulations 2024* (the Proposed Regulations) is to make consequential amendments to the *Marriage Regulations 2017* (the Principal Regulations). This implements changes made to the Act by the *Attorney General's Portfolio Miscellaneous Measures Act 2024*. The Proposed Regulations will support the Act by clarifying the circumstances in which the Registrar of Marriage Celebrants (the Registrar) must remove a person from the Register of Marriage Celebrants. This will clarify that the three categories of authorised celebrants in Australia (Ministers of Religion of recognised denominations (Subdivision A), State and Territory Officers (Subdivision B), and Commonwealth-registered civil/religious celebrants (Subdivision C)) cannot be registered in more than one Subdivision at the same time. This is intended to ensure authorised celebrants and regulators have clear and unambiguous obligations which will better support legal marriage, and remove risks, administrative complexity and costs associated with individual celebrants being authorised under multiple regulatory regimes with different regulators.

The Proposed Regulations will also provide for additional professional standards for marriage celebrants by requiring reasonable and timely responses to requests by the parties to an intended marriage. This amendment will include the provision allowing authorised celebrants to transfer the Notice of Intention to Marry (NOIM) to another authorised celebrant at the request of the parties. This will benefit marrying couples by ensuring celebrants provide reasonable and timely responses to a request by the parties to an intended marriage.

CONSULTATION

A targeted confidential consultation on the measures contained in the *Attorney General's Portfolio Miscellaneous Measures Act 2024* was conducted with key stakeholders, including the state and territory Registries of Births, Deaths and Marriages (BDMs), recognised denominations and marriage celebrant associations in October 2023. The measures were well received.

Stakeholders expressed a view that simply expanding the reasons for which a NOIM could be transferred may not be sufficient to ensure that celebrants will comply with the wishes of marrying couples. Conversely couples may ask for the NOIM to be transferred in unreasonable circumstances. An addition to the Code of Conduct was proposed requiring celebrants to respond in a reasonable and timely manner to requests from marrying couples.

IMPACT ANALYSIS

The Office of Impact Analysis was consulted about the Regulations and advised that a Public Impact Analysis was not required (OIA24-07592).

Statement of Compatibility with Human Rights

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

The Proposed Regulations are 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 Proposed Regulations define the circumstances in which the Registrar must remove a marriage celebrant's name from the Register of Marriage Celebrants. The proposed amendments to the Act prevent the registration of marriage celebrants in more than one subdivision of the Act. Currently, the Principal Regulations do not clearly preclude the registration of marriage celebrants under more than one subdivision.

The Proposed Regulations also create a new obligation for marriage celebrants to make reasonable and timely responses to requests made of them by parties to a marriage.

Human rights implications

The Proposed Regulations engage the following:

- the right to freedom of thought, conscience and religion or belief
- the right to work

Right to freedom of thought, conscience and religion or belief

Article 18 of the ICCPR provides that everyone shall have the right to freedom of thought, conscience and religion.

Marriage Celebrants cannot be registered under multiple subdivisions

Proposed Regulation 43 has the effect that minister of religion for a recognised denomination cannot be registered under Subdivision C of the Act while maintaining their registration under Subdivision A of the Act. The Proposed Regulation does not affect a minister of religion's ability to solemnise a marriage according to the rites of their church.

This requirement is reasonable, necessary and proportionate to achieve the legitimate objective of ensuring celebrants and regulators have clear and unambiguous obligations, which will better support legal marriage, and remove risks, administrative complexity and costs associated with individual celebrants being authorised under multiple regulatory regimes. Commonwealth-registered marriage celebrants will retain the choice to identify as religious marriage celebrant.

Right to Work and Rights at Work

Article 6(1) of the International Covenant on Economic, Social and Cultural Rights protects the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.

Inability to Hold Multiple Registrations

Regulation 43 limits the right to work by prescribing that state and territory officers and ministers of religion for a recognised denomination must be removed from the Register of Marriage Celebrants. This has the effect of removing a potential income stream from these individuals who wish to hold a dual registration for example, a state officer engaged by the BDM's (Subdivision B) will not be able to be simultaneously registered under Subdivision C. This will affect only future applicants who apply for registration as a Commonwealth-registered marriage celebrant. It will not affect those individuals who are already registered in multiple Subdivisions who will be entitled to retain their dual status.

This requirement is reasonable, necessary and proportionate for the reasons outlined above. In addition, celebrants are able to choose a subdivision in which to maintain their registration. For example, a religious organisation may allow their minister of religion to be registered under Subdivision C instead of Subdivision A. This has the effect of allowing authorised celebrants to choose their preferred Subdivision, while maintaining their ability to conduct marriages under the rites of their religious organisation.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights despite any limitations on those rights. This is because the limitations are reasonable, necessary and proportionate to achieve the legitimate objective of providing certainty for the Australian community surrounding the form of marriage ceremonies and ensuring marriage celebrants offer a high standard of service.

NOTES ON SECTIONS

Section 1 – Name

Section 1 provides that the title of the instrument is the *Marriage Amendment (Authorised Celebrants and Other Measures) Regulations 2024* (the Proposed Regulations).

Section 2 – Commencement

This section provides that the Regulations commence either on registration, or on commencement of Part 7 of Schedule 3 to the *Attorney-General's Portfolio Miscellaneous Measures Act 2024* (the Amendment Act), whichever is later.

Section 3 – Authority

Section 3 provides that the Proposed Regulations are made under the *Marriage Act 1961* (the Act).

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.

Schedule 1 – Amendments

Item 1 – Section 5 (at the end of the note after the heading

This item would insert ‘Registrar of Marriage Celebrants’ into the note at the beginning of section 5 of the *Marriage Regulations 2017* (the Principal Regulations). The note provides that terms contained in the note are defined in the Act.

Item 2 – Section 5 (definition of *Registrar of Marriage Celebrants*)

This item would repeal the definition of ‘Registrar of Marriage Celebrants’ contained in the Principal Regulations. This item reflects that the Registrar of Marriage Celebrants is now defined in the Act as a result of amendments made by the Amendment Act.

Item 3 – Paragraph 43(2)(d)

This item would omit “celebrant,” and substitutes this with “celebrant.”. This removes the comma that previously followed the word celebrant and replaces it with a full stop. This change reflects that paragraph (d) will be the last paragraph in subsection 43(2).

Item 4 – Paragraphs 43(2)(e) and (f)

This item would repeal paragraphs 43(2)(e) and (f) which are no longer necessary as a result of the changes made by the Amendment Act.

Item 5 – At the end of section 43

This item would add subsection 43(4) which provides the circumstances in which the Registrar may remove a person's name from the Register of Marriage Celebrants (the Register). This change would implement the amendments made by the Amendment Act that clarifies that an authorised celebrant can only be registered in one Subdivision at any one time.

A person's name may be removed from the Register where they notify the Registrar that they no longer wish to be a marriage celebrant. The Registrar may then remove that person's name from the Register

If the Registrar becomes aware that the person is already registered as a minister of religion of a recognised denomination under Subdivision A of the Act, that person's name must be removed from the Register by the Registrar.

This item also provides that the Registrar may remove a person's name from the Register where that person is already registered under Subdivision B of the Act.

Item 6 – at the end of Part 6

This item would provide that the amendments to paragraph 43(4)(b) do not relate to a person who is a registered marriage celebrant under Subdivision C of the Act if the person was registered under Subdivision A or Subdivision B of Division 1 of Part IV of the Act immediately before the commencement of the Proposed Regulations. This means if a person was authorised under more than one Subdivision immediately before the commencement of the Proposed Regulations, their status will not change.

Item 7 – At the end of clause 2 of Schedule 2

This item would add a requirement to the Code of Practice contained in Schedule 2 of the Principal Regulations that marriage celebrants must ensure reasonable and timely responses are given to requests from parties to an intended marriage. This includes a request from the marrying couple to transfer the NOIM to another celebrant.

It would also improve the professionalism of the sector by providing a clear guidance to celebrants about their professional obligations and a mechanism that can be used by marrying couples if they consider they are not receiving professional services to a sufficiently high standard.