

# **Marriage Amendment Regulations 2001 (No. 1) 2001 No. 265**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 2001 No. 265**

Issued by the authority of the Attorney-General

*Marriage Act 1961*

Marriage Amendment Regulations 2001 (No. 1)

Section 120 of the *Marriage Act 1961* provides that the Governor-General may make regulations for the purposes of the Act.

The purpose of the Regulations is to amend the Marriage Regulations (the principal Regulations) by applying Chapter 2 of the *Criminal Code* to the principal Regulations and making consequential amendments to the offence-creating provisions set out in the principal Regulations. The consequential amendments are designed to ensure that the offence-creating provisions will continue to operate in the same manner as they do at present following application of the *Criminal Code*.

Chapter 2 of the *Criminal Code* (the *Criminal Code*) is contained in a Schedule to the *Criminal Code Act 1995*. Its purpose is to codify the general principles of criminal responsibility under laws of the Commonwealth.

The *Criminal Code* provides that, unless otherwise specified in the relevant legislation, in order for an offence to be proved an accused must not only commit the physical elements of the offence but do so with the relevant fault element or elements, namely intention, knowledge, recklessness or negligence. An offence that does not require proof of the relevant fault element or elements is an offence of strict liability. The *Criminal Code* provides that in order for an offence to be an offence of strict liability it must be expressly stated to be such an offence.

The application of the *Criminal Code* to the principal Regulations is intended not to interfere with the policy underlying existing offences, and if an offence is currently one of strict liability then it is to remain so after the application of the *Criminal Code* to the principal Regulations.

Details of each of the Regulations are set out in the attachment.

The Regulations commence on gazettal.

## ATTACHMENT

Marriage Amendment Regulations 2001 (No. 1)

Regulation 1 refers to the name of the Regulations.

Regulation 2 provides for the Regulations to commence on gazettal.

Regulation 3 refers to the Schedule of the Regulations which contains the amendments to the Marriage Regulations.

Item [1] amends the name of the principal Regulations.

Item [2] inserts regulation 4A which applies Chapter 2 of the *Criminal Code* to all offences against the Marriage Regulations. Chapter 2 establishes the codified general principles of criminal responsibility. The standard note concerning Chapter 2 of the *Criminal Code* setting out the principles of criminal responsibility is added after regulation 4A.

Item [3] consequentially amends subregulation 7(3).

Item [4] converts the penalty for an offence against subregulation 7(3) from a dollar amount to the equivalent penalty units.

Item [5] consequentially amends subregulation 7(5).

Item [6] inserts subregulation 7(6), which provides that an offence against subregulation 7(3) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 7(6). This amendment is necessary to ensure that the offence in subregulation 7(3) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Marriage Regulations.

Item [7] substitutes subregulations 9(2), (3), (4) and (5). The amendment to subregulation 9(2) ensures that the appropriate *Criminal Code* fault elements are matched with their respective fault elements following application of the *Criminal Code*. Subregulation 9(3) is amended by replacing the non-*Criminal Code* fault element of wilfulness with the equivalent *Criminal Code* fault element of intention. Subregulation 9(4) is amended to remove gender specific language and to clarify the physical elements of the offence created by this provision. Existing subregulation 9(5) is repealed and the appropriate penalty provision is inserted by this item after subregulations 9(2), (3) and (4).

This item also inserts new subregulation 9(5), which provides that an offence against subregulation 9(2) or (4) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 9(5). This amendment is necessary to ensure that the offences in subregulations 9(2) and (4) continue to be interpreted as offences of strict liability following application of Chapter 2 of the *Criminal Code* to the Marriage Regulations.

Item [8] consequentially amends regulation 28.

Item [9] converts the penalty for an offence against regulation 28 from a dollar amount to the equivalent penalty units.

Item [10] inserts subregulation 28(2), which provides that an offence against subregulation 28(1) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 28(2). This amendment is necessary to ensure that the offence in subregulation 28(1) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Marriage Regulations.

Item [11] consequentially amends subregulation 29(1).

Item [12] replaces the non-*Criminal Code* fault element of wilfulness in paragraph 29(1)(a) with the equivalent *Criminal Code* fault element of intention.

Item [13] inserts the appropriate penalty provision after subregulation 29(1) to clarify that existing subregulation 29(1) creates a criminal offence and that the relevant penalty is 2 penalty units.

Item [14] consequentially amends subregulation 29(2).

Item [15] converts the penalty for an offence against subregulation 29(2) from a dollar amount to the equivalent penalty units.

Item [16] replaces the non-*Criminal Code* fault element of wilfulness in subregulation 37(4) with the equivalent *Criminal Code* fault element of intention, and amends subregulation 37(5) to clarify that the reference to a notice given under regulation 37 is a notice given under subregulation 37(1). This item further converts the penalty for an offence against subregulation 37(4) or (5) from a dollar amount to the equivalent penalty units, and inserts this penalty after each of subregulation 37(4) and (5).

Item [17] converts the penalty for an offence against subregulation 43(2) from a dollar amount to the equivalent penalty units.

Item [18] inserts subregulation 43(4), which provides that an offence against subregulation 43(2) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 43(4). This amendment is necessary to ensure that the offence in subregulation 43(2) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Marriage Regulations.

Item [19] replaces the non-*Criminal Code* fault element of wilfulness in subregulation 53(2) with the equivalent *Criminal Code* fault element of intention, and converts the penalty for an offence against subregulation 53(2) from a dollar amount to the equivalent penalty units

Item [20] substitutes subregulation 60(5), which is amended as follows:

- (a) the defence of lawful excuse is removed. A defendant may instead place reliance on the *Criminal Code's* general defence of lawful excuse (section 10.5);
- (b) the offence of furnishing to the registering authority any such information that is, to the knowledge of the person, false or misleading in a material particular is removed. Reliance will instead be placed upon the *Criminal Code's* general offence of giving false or misleading information in purported compliance with a statutory requirement (section 137.1); and
- (c) the penalty for an offence against subregulation 60(5) is converted from a dollar amount to the equivalent penalty units.

This item also inserts subregulation 60(6), which provides that an offence against subregulation 60(5) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 60(6). This amendment is necessary to ensure that the offence in subregulation 60(5) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Marriage Regulations.

Item [21] substitutes subregulation 75(2), which is amended to clarify that the reference to a notice given under the last preceding subregulation is a notice given under the subregulation 75(1). The penalty for an offence against subregulation 75(2) is converted from a dollar amount to the equivalent penalty units.

This item also inserts subregulation 75(2A), which provides that an offence against subregulation 75(2) is an offence of strict liability. The standard note that refers to the *Criminal Code* provision governing the principles concerning strict liability (section 6.1) is added after subregulation 75(2A). This amendment is necessary to ensure that the offence in subregulation 75(2) continues to be interpreted as an offence of strict liability following application of Chapter 2 of the *Criminal Code* to the Marriage Regulations.