

Marriage Amendment Regulations 2002 (No. 1) 2002 No. 251

EXPLANATORY STATEMENT

STATUTORY RULES 2002 No. 251

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

Marriage Act 1961

MARRIAGE AMENDMENT REGULATIONS 2002 (NO. 1)

Section 120 of the *Marriage Act 1961* (the Act) provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Regulations is to make necessary provision to support the operation of Schedule 2 of the *Marriage Amendment Act 2002* (the *Amendment Act*), and to make other minor technical amendments to the Marriage Regulations 1963 to reflect contemporary drafting practices.

Schedule 2 of the *Amendment Act*, which commenced on 5 November 2002, extends the maximum period for notification of an intention to marry, specifies the different categories of people who can witness the notice of intended marriage, depending on whether it is signed within or outside Australia, allows for passports issued by an overseas country to be used to provide evidence of date and place of birth, redefines a prescribed authority under the Act and repeals those provisions of the Act dealing with marriages performed overseas by marriage officers.

Details of the Regulations are as follows:

Regulation 1 is formal.

Regulation 2 provides for the commencement of the Regulations on 5 November 2002.

Regulation 3 states that Schedule 1 amends the Marriage Regulations.

Items 1, 3 and 4 of Schedule 1 amend the definitions of *notice of intended marriage*, the *official certificate*, the *retained official certificate*, and move the definition of *Act* to reflect contemporary drafting practice.

Item 2 omits the term *marriage officer* from the definition of *celebrant*.

Items 5, 6, 8, 18, 25, 29, and 39 amend the wording of certain headings to reflect contemporary drafting practices.

Items 7, 19 to 24, 28, 32, 35 and 36 amend regulations to reflect the removal of the office of marriage officer from the *Amendment Act*. Marriage officers were formerly appointed to perform marriages overseas but the function has become obsolete.

Item 9 amends Regulation 38 to support subparagraph 42(1)(b)(iii) of the *Amendment Act* which adds "a passport issued by an overseas country, showing date and place of birth", to the documents which may be used by a party to an intended marriage to establish date and place of birth of the party. Item 9 also amends Regulation 39 which concerns the requirements for a declaration made before an authorised celebrant. Regulation 39 now requires a party who has

not turned 18 to declare that he or she has obtained a court order authorising the party to marry a particular person of marriageable age.

Items 10, 12, 13, 26, 37, 38 and 40 amend regulations to reflect changes to the Schedules to the Regulations. Schedule 2 has been updated to reflect present day registering authorities in the States and Territories. Schedule 3 has been amalgamated into Schedule 2, Schedule 5 has been deleted and Schedule 6 has been updated and has become Schedule 3.

Items 11 and 14 to 17 amend certain regulations solely to make their language non-gender specific. Other items referred to in this Explanatory Statement also contain similar amendments.

Item 20 amends Regulation 46 by removing *marriage officer* from the heading and by amending the requirements for a declaration made before a chaplain when a marriage is solemnised overseas. Regulation 46 now requires a party who has not turned 18 to declare that he or she has obtained a court order authorising the party to marry a particular person of marriageable age.

Items 27, 33 and 34, solely amend dates from 19-- to 20--. Other items referred to in this Explanatory Statement also contain a similar amendment.

Item 30 comprises a redraft of Form 13, the Notice of Intended Marriage (NIM). The following amendments had been made:

- The length of time for validity of the NIM has been changed from 6 months to 18 months (paragraph 42(1)(a) as amended by the *Amendment Act*);
- The explanatory note for witnesses to the signature of parties has been expanded to indicate that notaries public and certain overseas recruited Commonwealth officers can now witness the NIM overseas and that there are different categories of people who can witness the NIM depending on whether it is signed within or outside Australia (paragraph 42(b)(2) as amended by the *Amendment Act*);
- The particulars to be completed by the celebrant on the NIM reflect the option of using a passport issued by the government of an overseas country as evidence of date and place of birth (subparagraph 42(1)(b)(iii) as amended by the *Amendment Act*);
- The Note relating to requirements where one party to a marriage is under 18 has been redrafted so parties are made aware of their obligations under sections 12 and 13 of the Act with regard to the obtaining of a court order and the required consents.
- A check box indicating that a Section 12 court order has been obtained has been added to the NIM; and,
- A Privacy Note has been added to the NIM.

Item 31 comprises a redraft of Form 14, the declaration by a party to a proposed marriage, required to be completed under subsection 42(1) of the Act. This form supports amendments to Regulations 39 and 46 which require a party who has not turned 18 to declare that he or she has obtained a court order authorising that person to marry a particular person who is of marriageable age.