

# Marriage Amendment Regulations 2003 (No. 2) 2003 No. 198

## EXPLANATORY STATEMENT

### STATUTORY RULES 2003 No. 198

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

*Marriage Act 1961*

#### MARRIAGE AMENDMENT REGULATIONS 2003 (No. 2)

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.

Schedule 1 of the *Marriage Amendment Act 2002* (the Amendment Act), which commences on 1 September 2003, introduces a revised method of appointment for new marriage celebrants based on completion of an appropriate course of training and a detailed fit and proper person test, provides for the statutory appointment of a Registrar of Marriage Celebrants and for the creation of a public register of marriage celebrants. Schedule 1 also aims to raise the standard of marriage celebrancy services by introducing ongoing professional development requirements and regular performance reviews, providing for a legislated code of practice and for a transparent complaint handling procedure.

The purpose of the Regulations is to make necessary provision to support the operation of Schedule 1 of the Amendment Act.

Details of the Regulations are as follows:

Regulation 1 is formal.

Regulation 2 provides for the commencement of the Regulations on commencement of Schedule 1 of the Amendment Act, that is 1 September 2003.

Regulation 3 states that Schedule 1 amends the Marriage Regulations 1963.

Item 1 of Schedule 1 inserts definitions of *Registrar of Marriage Celebrants* and of *registration year*.

Items 2 inserts a new heading for Division 1 of Part III to make it consistent with the Act.

Item 3 inserts Division 1A into the Regulations. This new Division contains the substance of the new regulations.

Regulation 37E sets out that Subdivision 1 of Division 1A prescribes certain matters in relation to marriage celebrants.

Regulation 37F sets out the definitions covering the qualifications and skills required for registration as a marriage celebrant as set out in Regulation 37G. The definition of 'marriage celebrancy unit' refers to the training course CHCMCEL401A entitled 'Plan, Conduct and Review a Marriage Ceremony' developed under the auspices of Community Services and Health Training Australia with input from marriage celebrants.

Regulation 37G sets out the qualifications or skills required for registration as a marriage celebrant. The Regulation lists relevant qualifications including a qualification awarded by a university (as long as the course completed includes the marriage celebrancy unit) and qualifications at either Statement of Attainment or Certificate IV level in marriage celebrancy awarded by a registered training organisation accredited to conduct the course.

The qualifications also include a written assessment given by a qualified assessor showing attainment of competency in the marriage celebrancy unit. A 'qualified assessor' is defined as someone who holds a qualification at or above the level of Certificate IV in Assessment and Workplace Training. A qualified assessor may assess someone who may have prior learning, qualifications or experience in the solemnization of marriages and provide a written assessment of their competency in the skills required in the marriage celebrancy unit.

In the case of a person who attained a qualification in marriage celebrancy from an institution that was not either a university or a registered training organisation accredited to deliver the marriage celebrancy unit, the assessment would need to be undertaken by a qualified assessor independent of the institution at which the qualification was obtained.

The Regulation also provides, as an alternative to the above qualifications, that a person who is fluent in an indigenous language and possesses the skills listed in Regulation 37G(3) may apply on the basis of these skills without the need to complete a formal course of training. This enables the appointment of marriage celebrants in circumstances where undertaking the training may prove too onerous.

Regulation 37H inserts Form 12A, the application form for registration as a marriage celebrant, into the Regulations.

Regulation 37I sets out the details to be entered in the register of marriage celebrants. In accordance with the Act, the register will be published on the Internet. The details to be entered will enable members of the public to locate suitable marriage celebrants. The regulation provides that the Registrar of Marriage Celebrants must change the details in the register in the circumstances listed. Any change to the register takes effect on the date of the change.

Regulation 37J inserts Form 12B for the notification of decisions in relation to applications for registration as a marriage celebrant. If the Registrar of Marriage Celebrants decides to register a person as a marriage celebrant then the notice must be in accordance with Part A of the form. If the Registrar decides not to register a person as a marriage celebrant because he or she does not meet the requirements stipulated in the Act, the notice must be in accordance with Form 12B and state the reasons for the decision. If the ground for not registering the person is that the registration would breach section 39E of the Act, which provides for the imposition of a cap on the number of marriage celebrants that can be appointed for a period of five years, the form must be in accordance with Part C of Form 1.2B.

Regulation 37K provides for a system for capping; the number of marriage celebrants registered for a period of five years in accordance with section 39E of the Act. The Regulation sets out the applicable limit on the number of marriage celebrants that can be registered and the method of calculating and applying the limit.

Each State, except Tasmania, is divided into a 'capital city region' and a region consisting of the rest of the State. The 'capital city region' is defined in accordance with standard Australian Bureau of Statistics divisions. Tasmania, the Australian Capital Territory, the Northern Territory and each of the external territories listed constitute one region apiece.

The 'applicable limit' for the first year is 10% of the number of marriage celebrants authorised by the Commonwealth as at the date of commencement of Schedule 1 of the Act. In subsequent years the 'applicable limit' is 10% of the number of marriage celebrants in that region at the end

of the previous registration year. Special provision has been made for the external territories where there are insufficient marriage celebrants to be able to apply a percentage cap.

Regulation 37L indicates that the Code of Practice for marriage celebrants under paragraph 39G(a) of the Act is set out in Schedule 1A.

Regulation 37M sets out the requirements for professional development for marriage celebrants provided for in paragraph 39G(b) of the Act. The Registrar of Marriage Celebrants must publish on the Internet a list of professional development activities for the registration year as soon as practicable after 1 September in each year. The list may include compulsory as well as optional activities.

A maximum of two activities may be made compulsory. The Registrar of Marriage Celebrants may add additional activities to the list during the year provided that any new activities are not compulsory. Each marriage celebrant must undertake at least 2 professional development activities listed for that year including any compulsory activities. The activities must not include any activities undertaken by the marriage celebrant in the previous five years and the activities must take a total of not less than five hours to complete.

If a marriage celebrant is registered after 31 January in any registration year the obligation to undertake professional development does not commence until the next registration year. If a marriage celebrant is registered after 31 January in an earlier registration year and the marriage celebrant completed a formal course of training in the six months immediately before his or her registration the obligation to undertake professional development does not commence until the next registration year.

The Regulation enables a marriage celebrant to seek an exemption from undertaking professional development in the registration year due to exceptional circumstances such as illness. Each marriage celebrant will be required to complete an annual return in accordance with Form 12C detailing the professional development activities undertaken by the marriage celebrant in the previous registration year.

Regulation 37N sets out the procedure for conducting performance reviews of marriage celebrants provided for in section 39H of the Act. The Regulation lists the matters that must be taken into account by the Registrar of Marriage Celebrants when conducting a performance review.

If the Registrar intends to determine that a marriage celebrant's performance has been unsatisfactory a notice must be provided to the marriage celebrant in accordance with Form 12D. In accordance with section 39H of the Act the marriage celebrant has the opportunity to make representations to the Registrar of Marriage Celebrants before any final decision is made. The Regulation provides that the Registrar of Marriage Celebrants must inform the marriage celebrant of the result of the review.

Regulation 37O provides that a marriage celebrant may be required to undertake particular professional development activities as a disciplinary measure.

Regulation 37P sets out the records that must be kept about each marriage celebrant by the Registrar of Marriage Celebrants.

Regulation 37Q describes the application of Subdivision 2 which sets out the procedures for making and resolving complaints about the solemnization of marriages by marriage celebrants.

Regulation 37R indicates who may make a complaint. This includes a party to the marriage, a member of the public, a State or Territory Registry of Births, Deaths and Marriages or a person on behalf of a Commonwealth, State or Territory department or agency.

Regulation 37S describes how to make a complaint. A complaint must be in writing, cannot be anonymous, and must provide sufficient detail so the Registrar of Marriage Celebrants can make a preliminary assessment without seeking further information.

The regulation allows for assistance to be provided to the complainant in making the complaint if it is required.

Regulation 37T sets out the process for making a preliminary assessment of a complaint. This process requires the Registrar of Marriage Celebrants to make a decision whether or not to deal with the complaint. The Regulation lists the grounds on which the Registrar may decide not to deal with the complaint. The Registrar must inform the complainant of the outcome of the preliminary assessment and seek the permission of the complainant to provide the details of the complaint to the marriage celebrant, the subject of the complaint. The Registrar cannot deal with the complaint unless that permission has been received.

Regulation 37U sets out the procedure if the Registrar of Marriage Celebrants decides to deal with a complaint. The Registrar must give the complainant an opportunity to provide further information and supporting witness statements and the marriage celebrant the opportunity to answer the complaint. After receiving and considering this material the Registrar must decide whether to try to resolve the complaint by conciliation or whether to proceed to a determination of the complaint.

Regulation 37V sets out the procedures for resolving a complaint by conciliation. The Registrar of Marriage Celebrants would be seeking a resolution which is agreeable to both parties. Resolution by conciliation would not result in disciplinary measures being taken against the marriage celebrant but a record of the resolution would be kept on the marriage celebrant's file. It may be taken into account in the marriage celebrant's performance review. If the complaint is unable to be resolved by conciliation the Registrar must proceed to resolve the complaint by determination.

Regulation 37W sets out the procedures for resolving a complaint by determination. The Registrar of Marriage Celebrants must consider all material provided by the parties in determining whether or not the complaint is well-founded.

Regulation 37X sets out the measures the Registrar of Marriage Celebrants must take if a complaint is determined to be well-founded. If the Registrar of Marriage Celebrants determines that taking a disciplinary measure under section 39I of the Act against the celebrant is warranted, he or she may take into account any written information held by him or her in relation to the marriage celebrant in deciding on the appropriate disciplinary measure to impose. The marriage celebrant must be given notice of the proposed disciplinary measure and any additional written material being considered, and be given the opportunity to comment. The Registrar of Marriage Celebrants may then vary or confirm the disciplinary measure to be taken. The Registrar may also take other action such as make a request or recommendation to the marriage celebrant to offer redress to the complainant.

Regulation 37Y describes the notice of determination which will be provided to the complainant and the marriage celebrant following the determination. In a case where the complaint is determined not to be well-founded the notice must be in writing, signed and dated by the Registrar and must state the reasons for the determination.

Where the complaint is determined to be well-founded the notice must also include the disciplinary measure or other action taken by the Registrar of Marriage Celebrants.

Regulation 37Z sets out the records which must be kept by the Registrar of Marriage Celebrants in accordance with section 39K of the Act concerning complaints made against marriage celebrants.

Item 4 inserts a number of forms into Schedule 1. These are Form 12A, Application for registration as a marriage celebrant; Form 12B, Notification of decision in relation to an application for registration as a marriage celebrant; Form 12C, Annual return relating to professional development activities and Form 12D, Notice to celebrant of unsatisfactory performance.

Item 5 inserts Schedule 1A, Code of practice for marriage celebrants. The Code was developed after extensive consultation with marriage celebrants.

Item 6 amends the note to the heading of Schedule 2.