

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 122

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

Marriage Act 1961

MARRIAGE AMENDMENT REGULATIONS 2005 (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 the marriage certificate issued to couples a more reliable document and more secure against fraud or misuse.

Paragraph 50(1)(a) of the Act provides that an authorised celebrant, when solemnising a marriage, shall prepare a certificate of marriage in accordance with the prescribed form to issue to the parties to the marriage. Form 15 is the form prescribed in the *Marriage Regulations 1963* (the Principal Regulations).

The Regulations require that the marriage certificate prepared in accordance with paragraph 50(1)(a) must include wording in strict compliance with Form 15, and prescribe a general requirement that the document be accountable as a unique document through the application of measures to the satisfaction of the Minister, that is the Attorney-General.

The Regulations reflect the need to make a Form 15 marriage certificate more secure against fraud or misuse by amending Regulation 40 of the Principal Regulations to require the wording of the certificate be in strict compliance with Form 15, by incorporating security measures into the printing of the uncompleted certificate and by requiring marriage celebrants to obtain the uncompleted certificate from a single authorised supplier.

In order that the more secure certificates be readily traceable, Regulation 40 also requires marriage celebrants keep records for each Form 15 marriage certificate supplied to them and provide a copy of their records in relation to their Form 15 marriage certificates if requested in writing by the Minister to do so.

The Regulations provide for the same arrangement with regard to Form 15 marriage certificates prepared for marriages solemnised overseas.

Details of the Regulations are as follows:

Regulation 1 – Name of Regulations

This regulation provides that the title of the regulations is the *Marriage Amendment Regulations 2005 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the regulations to commence the day after they are registered.

Regulation 3 – Amendment of the *Marriage Regulations 1963*

This regulation provides that the *Marriage Regulations 1963* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Regulation 40, substituted

Item 1 substitutes a new regulation 40 for that existing in the *Marriage Regulations 1963*.

Subregulation 40(1) prescribes that Form 15 is prescribed for a certificate of marriage in paragraph 50(1)(a) of the Act. This is the certificate given to the marrying couple at the conclusion of the wedding ceremony.

Subregulation 40(2) imposes conditions on certificates of marriage for marriages solemnised after 1 September 2005.

Paragraph 40(2)(a) indicates that those certificates would not be in the prescribed form unless the wording on the form is in strict compliance with Form 15.

Paragraph 40(2)(b) requires the wording of the marriage certificate to be in a document supplied to marriage celebrants by a supplier authorised by the Minister and that the document needs to contain measures to make the document unique. It is proposed that in order to make the document unique each Form 15 marriage certificate will be printed with a fugitive ink background on some or all of the document. A fugitive background is extremely difficult to copy or reproduce. In addition each certificate will be numbered, with that unique number printed on the back of the certificate with security ink.

Subregulation 40(3) requires that only one supplier of the uncompleted certificate be approved at any time. This is so that the numbering of the documents can be kept unique and certificates readily traced.

Paragraph 40(4)(a) requires authorised celebrants to keep records for every Form 15 marriage certificate supplied to them. That record includes the serial number printed on the certificate, the date of use of the certificate and the manner in which the certificate is used. In practice the majority of certificates are issued to marrying couples but some may be destroyed as a result of spoilage by the celebrant, some may be transferred between celebrants and other events may occur which would also need to be recorded by the celebrant. Some may be lost by, or stolen from, celebrants and this event will need to be recorded.

Paragraph 40(4)(b) requires celebrants, upon receiving a written request from the Minister, to provide a copy of their records to the person and within the time period specified in the request. Failure to comply with the requirements of subregulation 40(4) is be an offence subject to a penalty of two penalty units.

Subregulation 40(5) provides that an offence against subregulation 40(4) is an offence of strict liability. An offence of strict liability is in keeping with other offences contained in the regulations concerning the performance of marriage celebrants in meeting their obligations with regard to recordkeeping and production of documents. The possible penalty of two penalty units is at the very low end of the scale of penalties allowed for offences of strict liability.

Subregulation 40(6) provides that Form 16 is prescribed for an official certificate of marriage for the purposes of paragraph 50(1)(b) of the Act. This provision is included to allow the drafting of Form 16 to be updated by changing 19-- to 20--.

Item [2] – Regulation 47, substituted

Item 2 substitutes a new regulation 47 for that existing in the Principal Regulations. Regulation 47 is identical in its terms to regulation 40 except that regulation 47 concerns marriages performed overseas by Australian Defence Force chaplains.

Subregulation 47(1) prescribes that Form 15 is prescribed for a certificate of marriage in paragraph 80(1)(a) of the Act. This is the certificate given to the marrying couple at the conclusion of the wedding ceremony.

Subregulation 47(2) imposes conditions on Form 15 certificates of marriage for marriages solemnised overseas after 1 September 2005.

Paragraph 47(2)(a) indicates that those certificates would not be in the prescribed form unless the wording on the form is in strict compliance with Form 15.

Paragraph 47(2)(b) requires the wording of the marriage certificate to be in a document supplied to chaplains by a supplier authorised by the Minister and that document needs to contain measures to make the document unique. It is proposed that in order to make the document unique each Form 15 marriage certificate would be printed with a fugitive ink background on some or all of the document. A fugitive

background is extremely difficult to copy or reproduce. In addition each certificate would be numbered, with that unique number printed on the back of the certificate with security ink.

Subregulation 47(3) requires that only one supplier of the uncompleted certificate be approved at any time. This is so that the numbering of the documents can be kept unique and certificates readily traced.

Paragraph 47(4)(a) requires chaplains to keep records for every Form 15 marriage certificate supplied to them. That record includes the serial number printed on the certificate, the date of use of the certificate and the manner in which the certificate is used. In practice the majority of certificates would be issued to marrying couples but some may be destroyed as a result of spoilage by the chaplain, some may be transferred between chaplains or between the chaplain and other celebrants and other events may occur which would also need to be recorded by the celebrant. Some may be lost by, or stolen from, chaplains and this event will need to be recorded.

Paragraph 47(4)(b) requires chaplains, upon receiving a written request from the Minister, to provide a copy of their records to the person and within the time period specified in the request. Failure to comply with the requirements of subregulation 40(3) is an offence subject to a penalty of two penalty units.

Subregulation 47(4) provides that an offence against subregulation 40(3) is an offence of strict liability. An offence of strict liability is in keeping with other offences contained in the regulations concerning the performance of marriage celebrants in meeting their obligations with regard to recordkeeping and production of documents. The possible penalty of two penalty units is at the very low end of the scale of penalties allowed for offences of strict liability.

Subregulation 47(5) provides that Form 16 is prescribed for an official certificate of marriage for the purposes of paragraph 80(1)(b) of the Act. This provision would be included to allow the drafting of Form 16 to be updated by changing 19-- to 20--.

Item [3] Schedule 1, Forms 15 and 16 substituted

Form 15 has been updated by changing 19-- to 'in the year'. These words have been added, rather than updating to 20-- as a result of comments from celebrants. Many celebrants use a computer printer to complete the details on the marriage certificate, and during the consultations on these amendments many celebrants have advised that they found it difficult to align the numbers, for example "05", with the "20" printed on the certificate. As the Form 15 certificate is the one given to marrying couples celebrants are concerned with its final appearance. The words "Signature of witnesses" have been changed to "Signature of witnesses to the marriage" to make it clear that each witness is witnessing both signatures, rather than one witnessing the signature of the bride and one witnessing the signature of the bridegroom.

Form 16 has been updated by changing 19-- to 20--.

Consultation on the content of the Regulations was undertaken under section 17 of the *Legislative Instruments Act 2003* with marriage celebrants associations, all State and Territory Registrars of Births, Deaths and Marriages and all nominating authorities who represent ministers of religion from recognised denominations. All three groups provided comment on the proposed record-keeping processes. Civil marriage celebrants nominated by their representative associations tested a range of samples of possible new Form 15 marriage certificates and provided feedback on those sample certificates. Changes to the format of the certificate and the record-keeping form have been made as a result of these consultations.