

EXPLANATORY STATEMENT

Select Legislative Instrument No. 71, 2014

Marriage Amendment (Celebrant Fees and Charges) Regulation 2014

Prepared by the Attorney-General's Department

Marriage Act 1961

*Marriage Amendment (Celebrant Fees and Charges)
Regulation 2014*

Legislation

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

The *Marriage Amendment (Celebrant Administration and Fees) Act 2014* (the Marriage Fees Act) amends the Marriage Act to implement a 2011-12 Budget measure to introduce cost recovery arrangements for the regulation of Commonwealth registered marriage celebrants. It provides that regulations may prescribe matters relating to:

- the notices concerning payment of the celebrant registration charge;
- a registration application fee for prospective marriage celebrants;
- the granting of exemptions from paying the registration application fee or the celebrant registration charge;
- the payment of a fee in respect of an application for an exemption from the celebrant registration charge or registration application fee or from the requirement to undertake professional development; and
- internal review of decisions about applications for exemption from the celebrant registration charge or registration application fee.

The Marriage Fees Act will commence by Proclamation on 1 July 2014.

The *Marriage (Celebrant Registration Charge) Act 2014* (the Marriage Charge Act) provides legislative authority to impose the celebrant registration charge on Commonwealth registered marriage celebrants, with the amount to be determined by the Minister by legislative instrument.

Purpose and operation of the instrument

The purpose of the Regulation is to support the implementation of cost recovery arrangements and to give effect in the *Marriage Regulations 1963* to the amendments to the Marriage Act. The Regulation provides for:

- additional requirements to be included in the notice outlining the annual celebrant registration charge for marriage celebrants. These include notifying

- celebrants that the charge is a debt due to the Commonwealth and can be recovered by court action, and providing information about how to seek an exemption and the consequences of non-payment of the charge;
- additional requirements to be included in the notice for deregistration, including notifying celebrants that the charge is a debt due to the Commonwealth and can be recovered by court action, and advising that the decision to deregister a celebrant can be reviewed by the Administrative Appeals Tribunal;
- a requirement to pay the registration application fee (or obtain an exemption) before an application for registration as a marriage celebrant will be accepted for consideration;
- processes by which a person may apply for an exemption from the annual celebrant registration charge, the celebrant registration application fee, or ongoing professional development;
- the grounds for granting such exemptions to celebrants or prospective celebrants. A person whose principal residential address is in a remote or very remote area may be eligible for exemption from the registration application fee or the annual celebrant registration charge. A celebrant who does not live in Australia during the whole of the financial year or who has a serious illness or caring responsibilities resulting in the person being unable to perform as a celebrant for more than six months of the year may be eligible for an exemption from the annual charge;
- the process for internal review of a decision not to grant an exemption from the celebrant registration charge or the registration application fee; and
- the Minister to determine, by legislative instrument, the amount of the registration application fee and for fees charged in relation to exemption applications.

In addition, the Regulation removes all of the prescribed forms from the Marriage Regulations, with the exception of the Form 15 Certificate of Marriage. It also makes other minor amendments to the Marriage Regulations.

Details of the Regulation are set out in the [Attachment](#).

The Act does not specify any conditions that need to be satisfied before the Regulation is made.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Commencement

The Regulation commences on the commencement of Schedule 1 to the *Marriage Amendment (Celebrant Administration and Fees) Act 2014*.

Consultation

There has been extensive consultation between the department, marriage celebrants and other stakeholders. National consultations for celebrants took place at 17 locations between October and November 2011 with 280 written submissions also received during that time. In August 2012, the department released a consultation

paper outlining the amount and structure of the proposed fees and charges, resulting in a further 73 submissions. Ongoing consultations have also taken place with the celebrant peak body, the Coalition of Celebrant Associations (CoCA) and with state and territory registries of births, deaths and marriages. The department used feedback from consultations in developing the legislative response to implement cost recovery of the Marriage Celebrants Program.

The Department of Finance and Deregulation was consulted and a Cost Recovery Impact Statement will be published on the Attorney-General's Department website.

The Office of Best Practice Regulation has been consulted and has advised that these measures are considered machinery to the measures contained in *Marriage Amendment (Celebrant Registration Charge) Act 2014* and the *Marriage Amendment (Celebrant Administration and Fees) Act 2014*, which were subject to a RIS. Therefore no additional RIS analysis is required. The RIS for these Acts was included in their Explanatory Memoranda.

Statement of Compatibility with Human Rights

This Regulation is 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*.

Background

This Regulation has been prepared to support the implementation of cost recovery arrangements for the Marriage Celebrants Program. The cost recovery arrangements will apply to Commonwealth registered marriage celebrants, who are authorised and regulated by the Attorney-General's Department under this Program. This group includes both civil celebrants and celebrants performing marriages for religious organisations that are not recognised denominations proclaimed under section 26 of the *Marriage Act 1961*.

The Regulation contains the grounds and processes under which a celebrant may apply for an exemption from the annual celebrant registration charge. Exemptions from the registration application fee are also available for prospective celebrants. A marriage celebrant who does not pay the registration charge (unless an exemption was granted) will be deregistered. The regulation prescribes the notice a marriage celebrant must receive if he or she is to be deregistered for non-payment of the celebrant registration charge.

Human rights implications

Rights of equality and non-discrimination

Rights of equality and non-discrimination are contained in articles 2(1) and 26 of the International Covenant on Civil and Political Rights ('ICCPR'). These rights are not limited by the Regulation.

All Commonwealth registered marriage celebrants must pay the annual registration charge, unless an exemption is granted. The charge is to recover the cost of regulation of all celebrants registered under the Marriage Celebrants Program. The charge (and

exemption) provisions contained in the Regulation apply equally to all such celebrants, regardless of whether the celebrant provides a civil or a religious marriage ceremony.

The Regulation is only applicable to Commonwealth registered marriage celebrants. Any distinction between the treatment of this category and other categories of marriage celebrant is legitimate; other categories of marriage celebrant are regulated by state and territory authorities.

The Regulation provides for an exemption on the basis that the applicant resides in a remote area, and there is no more than one other marriage celebrant in that area. This distinction is legitimate as it for the purpose of ensuring the registration application fee does not prevent a remote area from having access to a marriage celebrant.

Rights to freedom of thought, conscience and religion or belief

The rights to freedom of thought, conscience and religion or belief, contained in article 18 of the ICCPR, are not limited by this Regulation. Ministers from independent religious organisations may offer religious ceremonies of marriage to couples in their congregations, even if they are not registered under the Program. Section 113 of the Marriage Act allows couples who are legally married to then undertake a religious ceremony of marriage. While the second religious ceremony has no legal effect, it provides an opportunity for couples to reflect important religious practices and beliefs related to marriage. Ministers of religion do not need to be authorised celebrants under the Act if they are conducting second religious marriage ceremonies under section 113. This practice is one followed in a number of countries and has been available in Australia under section 113 of the Marriage Act since it was enacted in 1961.

Rights to an effective remedy

The Regulation does not limit the right to an effective remedy, contained in article 2(3) of the ICCPR. Under the Marriage Act, a celebrant will be deregistered if he or she does not pay the celebrant registration charge by the due date (unless an exemption has been granted).

The Regulation contains provisions for the review of decisions made in relation to exemption applications. The exemption application process set out in this Regulation provides that if a celebrant is refused an exemption from the annual registration charge, he or she may seek an internal review of that decision.

A celebrant deregistered for non-payment of the charge may seek review of the deregistration decision at the Administrative Appeals Tribunal under the Marriage Act.

Rights to work and rights in work

Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which concerns the right to enjoyment of just and favourable conditions of work, including remuneration, is not limited by this Regulation.

Prior to the introduction of the celebrant registration charge, a celebrant was authorised to solemnise marriages in Australia, subject to compliance with obligations under section 39G of the Marriage Act. Compliance with section 39G remains but the Regulation introduces an additional requirement to pay the annual registration charge (or obtain an exemption) to remain registered. The purpose of the charge is to recover the service delivery and regulatory costs from those receiving the benefit of authorisation under the Marriage Celebrants Program.

Conclusion

This Regulation is 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.

ATTACHMENT

Details of the *Marriage Amendment (Celebrant Fees and Charges) Regulation 2014*

Section 1 – Name of regulation

This regulation provides that the name of the Regulations is the *Marriage Amendment (Celebrant Fees and Charges) Regulation 2014*.

Section 2 – Commencement

This regulation provides for the Regulations to commence on the commencement of Schedule 1 to the *Marriage Amendment (Celebrant Administration and Fees) Act 2014*.

Section 3 – Authority

This regulation provides for the Regulations to be made under the *Marriage Act 1961*.

Section 4 – Schedule(s)

This regulation provides for the Schedules to the Regulations to amend the *Marriage Regulations 1963* by including amendments under the title of the relevant regulation.

Schedule 1 – Amendments

Marriage Regulations 1963

Item 1 - Subregulation 4(1) (definition of registration year)

Item 1 repeals the definition of *registration year*. This definition establishes the period during which a celebrant must complete the professional development activities required under regulation 37M. Regulation 37M is amended so the professional development year is described as corresponding to the calendar year.

The new annual celebrant registration charge imposed in the *Marriage Act 1961* will apply to the financial year. The repeal of the definition of *registration year* clarifies that the financial year, as defined in section 2B of the *Acts Interpretation Act 1901* (“a period of 12 months starting on 1 July”) corresponds to the registration year for this charge.

Item 2 - Regulation 6

Regulation 6 currently provides that strict compliance with the forms in Schedule 1 is not necessary, and that ‘such compliance as the circumstances of the particular case allows’ is sufficient. It also provides that a form must be completed in accordance with any directions contained in that form.

This item repeals regulation 6. These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of

Marriage. In the absence of this specific provision, section 25C of the *Acts Interpretation Act 1901* (Cth) will apply to Form 15. Section 25C provides that where an Act prescribes a form, then strict compliance with the form is not required and substantial compliance is sufficient.

This is consistent with the approach taken to forms under other legislation.

Item 3 - Paragraph 10(a)

Regulation 10 deals with an application to dispense with the consent of a person whose consent is required to the proposed marriage of a minor. This item repeals paragraph 10(a), removing the requirement for the application to be in accordance with prescribed Form 1. The requirement in paragraph 15(a) of the *Marriage Act 1961* that the application be made in writing will still apply.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the Marriage Act, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the applicant.

The removal of the prescribed forms will allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 4 - Subregulation 11(1)

Regulation 11 sets out the way in which a prescribed authority must advise a minor of their decision regarding dispensation of the consent of a person whose consent is required to a proposed marriage of the minor.

This item removes the requirement under section 15 of the *Marriage Act 1961* that the dispensation be furnished in accordance with prescribed Form 2. It substitutes a requirement that the minor is provided with dispensation in writing. The effect is to remove the obligation for a prescribed authority to use the prescribed form when dispensing with the consent of a person to the proposed marriage of a minor.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the Marriage Act, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the prescribed authority.

The removal of the prescribed forms will allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 5 - Subregulation 11(2)

Regulation 11 sets out the way in which a prescribed authority must advise a minor of their decision regarding dispensation of the consent of a person whose consent is required to a proposed marriage of the minor.

This item removes the requirement for a notice of a refusal to dispense with consent under section 15 of the *Marriage Act 1961* to be provided in accordance with

prescribed Form 3. It substitutes a requirement that notice of the refusal to dispense with consent is provided in writing.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the Marriage Act, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the prescribed authority.

The removal of the prescribed forms will allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 6 - Paragraphs 12(2)(a) and (aa)

Subregulation 12(2) sets out the requirements under subsection 16(1) of the *Marriage Act 1961* for a notice of an application for the consent of a Judge or magistrate to the proposed marriage of a minor.

This item removes the requirement for the notice of application to a Judge or magistrate to be in accordance with prescribed Form 4. It substitutes a requirement that the notice of application is made in writing.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the Marriage Act, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the applicant.

The removal of the prescribed forms will allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

This item will also remove a requirement that the application is accompanied by a certificate in accordance with Form 5. The removal of prescribed Form 5 will enable the judge or magistrate to accept a written certificate signed by a family counsellor that meets the requirements of paragraph 16(2A)(a) of the Marriage Act, without the need for it to be in the format of a prescribed form.

Item 7 - Subregulations 12(7) and (8)

This item removes the requirement for a Judge or magistrate to use either Form 5A or Form 5B when providing their consent to the proposed marriage of a minor in the place of another person. It substitutes a requirement that the consent be given in writing.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the *Marriage Act 1961*, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the Judge or magistrate.

The removal of the prescribed forms is administratively less burdensome as Judges and magistrates will be able to provide their consent as part of their written orders, without the need for it to be in the format of a prescribed form.

The removal of the prescribed forms will also allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 8 - Paragraph 13(3)(a)

Paragraph 13(3)(a) sets out the requirements for a request for re-hearing under section 17 of the *Marriage Act 1961*, which relates to an application made to a magistrate regarding the consent of a required person to the proposed marriage of a minor.

This item removes the requirement for a request for re-hearing to be made in accordance with Form 6. It substitutes a requirement that the request is made in writing.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the Marriage Act, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the applicant.

The removal of the prescribed forms will allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 9 - Subregulation 13(4)

Item 9 arises as a consequence of the removal of the requirement to use Form 4 in item 6. It removes the reference to Form 4 in subregulation 13(4), and amends the requirements for what must be included with a request for re-hearing under section 17 (relating to the consent of a required person to the proposed marriage of a minor).

New subregulation 13(4) will provide that a request for re-hearing must be accompanied by a copy of the original notice of application for consent under section 16(1) (formerly made on Form 4), and, for the avoidance of doubt, must include any accompanying documents and attachments provided with the notice as required by regulation 12.

Item 10 - Paragraph 16(a)

Regulation 16 sets out the requirements for a notice of an application under section 12 of the *Marriage Act 1961*.

This item removes the requirement to use prescribed Form 7 when applying for authorisation to marry where one party is between 16 and 18 years of age. It substitutes a requirement that the notice must be in writing.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the Marriage Act, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the applicant.

The removal of the prescribed forms will allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 11 - At the end of regulation 16

This item arises as a consequence of the removal of prescribed Form 7 in subregulation 16(a) (item 10). This item inserts subregulation 16(d) after subregulation 16(c).

New subregulation 16(d) requires the applicant to include particulars of any previous applications made under section 12 of the *Marriage Act 1961*. This requirement was previously contained in prescribed Form 7 in Schedule 2 of the *Marriage Regulations 1963*.

These Regulations remove all prescribed forms from the Marriage Regulations, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the Marriage Act, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the applicant.

The removal of the prescribed forms will allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 12 - Subregulation 20(4)

Subregulation 20(4) requires an applicant to serve personally on each person who is required by section 18 of the *Marriage Act 1961* to be given an opportunity of being heard at that inquiry, notice of the time, date and place fixed for the inquiry, as well as a copy of the notice of the application.

This item removes the requirement for an applicant to use prescribed Form 8 when providing notice of an inquiry. Subregulation 20(4) has also been redrafted in line with more contemporary drafting conventions. Apart from removing both the requirement to use prescribed Form 8 and the phrase ‘subject to the next succeeding subregulation’, the substance of the subregulation has not changed. Item 13 makes an amendment to subregulation 20(5) which has the same effect as the phrase ‘subject to the next succeeding subregulation’ removed by this item.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the Marriage Act, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the applicant.

The removal of the prescribed forms will allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 13 - Subregulation 20(5)

This item arises in consequence of the removal of the phrase ‘subject to the next succeeding subregulation’ in subregulation 20(4) (item 12). It substitutes the words ‘However, if’ in place of ‘Where’ at the beginning of subregulation 20(5) to clarify that the requirements of subregulation 20(4) remain subject to subregulation 20(5). This is in line with more contemporary drafting conventions.

Item 14 - Subregulations 23(1) and (2)

This item removes the requirement for a Judge or magistrate to use Form 9 when issuing a summons which requires a person to appear at a hearing relating to the proposed marriage of a minor.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the *Marriage Act 1961*, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the Judge or magistrate.

The removal of the prescribed form will allow Judges and magistrates to use the form of summons commonly used by that court, without the need for it to be in the format of a prescribed form.

The removal of the prescribed forms will also allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 15 - Regulations 31 and 32

Item 15 repeals regulation 32, removing the requirement for an application for registration as a minister of religion to be made in accordance with prescribed Form 11.

The effect is to remove the obligation for a person to apply in accordance with the prescribed form. This obligation is replaced with a requirement that the application for registration be made in accordance with a form approved by the Minister. Paragraph 119(3)(a) of the *Marriage Act 1961* requires the Minister to ensure that there is an approved form in force for this purpose.

Item 15 also repeals regulation 31, removing the requirement for the accompanying nomination (completed by the minister's recognised religious denomination) to be in accordance with prescribed Form 10. Under section 119(1) of the *Marriage Act*, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the person authorised by the recognised denomination to make the nomination.

The removal of the prescribed forms will allow the Minister to update these forms in line with future needs without requiring amendments to the regulations.

Item 16 - Subregulation 33(1)

Subregulation 33(1) requires notice of the Registrar of Ministers of Religion's intention to remove a Minister of Religion's name from the register to be in accordance with prescribed Form 12. This item repeals subregulation 33(1).

The effect is to remove the Registrar's obligation to issue the notice in accordance with prescribed Form 12. The Registrar will continue to be obliged to serve on the Minister of Religion notice in writing of their intention to remove their name from the Register. This obligation arises under subsection 33(2) of the *Marriage Act 1961*.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the Marriage Act, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the Registrar.

The removal of the prescribed form will allow the Minister to update these forms in line with future needs without requiring amendments to the regulations.

Item 17 - Regulation 37F

This item inserts a definition for '*ASGS Volume 5*' into regulation 37F which contains the definitions applying to Part III, Divisions 1A, Subdivision 1 of the *Marriage Regulations 1963* relating to marriage celebrants.

Celebrants or aspiring celebrants who live in remote or very remote areas will be eligible to apply for exemptions from the celebrant registration charge and from the registration application fee.

Remote and very remote areas are defined by the *Australian Statistical Geography Standard (ASGS): Volume 5 - Remoteness Structure* (ASGS Volume 5) which describes the Australian Bureau of Statistics Remoteness Structure used to define remote areas. ASGS Volumes are amended five-yearly, following each census. The use of this term gives greater certainty in defining remoteness for applicants who may be exempt.

A definition of remote area has also been inserted into regulation 37F at item 22.

Item 18 - Regulation 37F (definition of Certificate IV in Celebrancy)

Item 18 repeals the current definition of '*Certificate IV in Celebrancy*', replacing it with a new definition which refers to the current version of the CHC08: Community Services Training Package (Release 4.2) as in force on the date the Regulations come into effect.

The new definition will also incorporate the units set out in the *Marriage (Celebrancy qualifications or skills) Determination 2009*. The incorporation of the Determination in the definition clarifies the importance of the Determination in the Certificate IV in Celebrancy qualification.

This item also amends the note to regulation 37F in order to update the internet address of the Australian Government Training website. This website provides information about the CHC08 Community Services Training Package.

As a consequence of the amended definition of '*Certificate IV in Celebrancy*', the definition of '*formal course of training*' in regulation 37F is simplified together with regulation 37G (see items 20 and 23 below). This simplifies the drafting without changing the substance of these provisions.

Item 19 - Regulation 37F

This item inserts a new definition of '*charge exemption application fee*' into regulation 37F.

The ‘charge exemption application fee’ is the fee a marriage celebrant must pay to make an application for an exemption from the annual celebrant registration charge imposed on celebrants by the *Marriage (Celebrant Registration Charge) Act 2014*.

New regulation 37JD allows the Minister to determine this fee by legislative instrument.

Item 20 - Regulation 37F (paragraph (b) of the definition of formal course of training)

This item repeals paragraph (b) of the definition of ‘*formal course of training*’, substituting a reference to the Certificate IV in Celebrancy.

The new definition of *Certificate IV in Celebrancy* (item 18) clarifies the requirement that the qualification is to include specific units. As such, it is appropriate to remove reference to these units from the definition of ‘*formal course of training*’ and to refer only to the Certificate IV in Celebrancy in paragraph (b).

Item 21 - Regulation 37F

This item inserts a new definition of ‘*professional development exemption application fee*’ into regulation 37F.

The ‘professional development exemption application fee’ is the fee a marriage celebrant must pay to apply for an exemption from completing his or her annual professional development obligations pursuant to regulation 37MC. The authority for this fee is subsection 39G(2) of the *Marriage Act 1961*.

Item 22 - Regulation 37F

This item inserts three new definitions into regulation 37F:

‘*registration application fee*’ - This is the fee a prospective celebrant must pay when applying for registration as a marriage celebrant. The authority for this fee is subsection 39D(1B) of the *Marriage Act 1961*.

‘*registration exemption application fee*’ - This is the fee a prospective celebrant must pay to make an application for an exemption from the registration application fee. The authority for this fee is subsection 39D(1C) of the Marriage Act.

‘*remote area*’ - This means remote Australia or very remote Australia as described in the Remoteness Structure in the ASGS Volume 5, outlined in item 17 above.

Item 23 - Subparagraph 37G(1)(a)(ii)

This item repeals subparagraph 37G(1)(a)(ii) which refers to the units necessary for registration as a marriage celebrant. It substitutes the words ‘a Certificate IV in Celebrancy’.

The new definition of Certificate IV in Celebrancy inserted by item 18 refers to the requirement that the qualification include specific units. As such, it is appropriate to remove reference to these units from subparagraph 37G(1)(a)(ii) and to just refer to the requisite qualification.

Item 24 - 37G(1)(b)(i)

This amendment changes the term ‘indigenous’ to ‘Indigenous’, which is consistent with drafting conventions in other legislation that refers to Indigenous Australians. It does not change the meaning or substance of the provision.

Item 25 - Regulation 37H and 37HA

This item repeals regulations 37H and 37HA and replaces them with new regulations 37H, 37HA and 37HB.

Repeal of regulation 37H

Regulation 37H currently provides that an application for registration as a marriage celebrant must be in accordance with Form 12A. Consistent with the desire to remove all prescribed forms from the *Marriage Regulations 1963* (with the exception of the Form 15 Certificate of Marriage), this regulation is repealed.

The effect is to remove the obligation for a person to apply for registration in accordance with the prescribed form. This obligation is replaced with a requirement that the application for registration be made in accordance with a form approved by the Minister. Paragraph 119(3)(b) of the *Marriage Act 1961* requires the Minister to ensure that there is an approved form in force for this purpose.

The removal of the prescribed form will allow the Minister to update these forms in line with future needs without requiring amendments to the regulations.

Repeal of regulation 37HA

This item repeals regulation 37HA, as it expired after 3 February 2010 when the Certificate IV in Celebrancy became the recognised qualification.

New regulations 37H, 37HA and 37HB

New regulation 37H provides for the making of applications for exemption from the registration application fee. This item requires a prospective celebrant to make an application for this exemption in writing and by paying the registration exemption application fee. It empowers the Registrar to seek additional information from the applicant about their application within a specified timeframe. If the applicant does not reply within that specified timeframe, the application will be taken to have been withdrawn.

New regulation 37HA states the circumstances in which the Registrar may grant an exemption from the registration application fee. Under the regulation, a person whose principal residential address is in a remote or very remote area may be eligible for exemption from the registration application fee. The exemption will only be granted if there is no more than one Commonwealth registered marriage celebrant already living in the remote area, within the same postcode as the applicant.

The purpose of the exemption is to support remote or very remote area communities that have limited or no existing marriage celebrant services by exempting them from the fee for new applicants.

New subregulation 37HB(1) provides that the amount of the registration application fee is to be determined by the Minister in a legislative instrument. New subregulation 37HB(2) states that the amount of the registration exemption application fee is to be determined by the Minister in a legislative instrument.

The purpose of the registration exemption application fee is to recover the costs of the Commonwealth assessing a person's application for exemption from the registration application fee.

Item 26 - Paragraph 37I(1)(b)

Paragraph 37I(1)(b) requires a celebrant's contact details to be entered in the public Register of Marriage Celebrants. This amendment expands the definition of contact details to clarify that a celebrant's details must include a person's suburb, town or locality, and postcode, and state or territory (but does not require a celebrant's street number or street address).

A number of celebrants have requested for privacy reasons that their full residential address does not appear on the public Register of Marriage Celebrants. In such circumstances, a celebrant's suburb and contact details provide sufficient information for the public. This amendment does not preclude celebrants from publishing on the Register their full residential address, should they so wish.

A celebrant's postcode is relevant to the exemption provisions based on remoteness under regulations 37HA and 37JD (see items 25 and 27) in these Regulations.

Item 27 - Regulation 37J

Item 27 repeals regulation 37J. Several new regulations – 37J, 37JA, 37JB, 37JC, 37JD, and 37JE – are inserted in its place.

Repeal of regulation 37J

Regulation 37J requires the Registrar of Marriage Celebrants to use Form 12B when advising a prospective celebrant of the outcome of their application for registration as a marriage celebrant. This item repeals regulation 37J as these Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage.

The effect is to remove the Registrar's obligation to provide a notice in accordance with prescribed Form 12B. The Registrar will continue to be obliged to provide a notice in writing of their decision to the applicant.

Under section 119 of the *Marriage Act 1961*, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the Registrar.

The removal of the prescribed form will allow the Minister to update these forms in line with future needs without requiring amendments to the regulations.

New Regulation 37J – Notices in relation to celebrant registration charge – other requirements

Subsection 39FA(2) of the *Marriage Act 1961* states that the Registrar of Marriage Celebrants must send to all marriage celebrants registered on 1 July (or who become registered later in the financial year) a notice specifying the amount of the celebrant registration charge, the charge payment day and any other matters prescribed by the regulation.

New regulation 37J states that the notice must state the following additional matters:

- that the celebrant is liable to pay the charge before the end of the charge payment day, unless granted an exemption;
- that if the amount of the celebrant registration charge is unpaid on the charge payment day (without an exemption having been granted) it will become a debt to the Commonwealth, recoverable in a court of competent jurisdiction;
- that the celebrant may seek an exemption from the liability to pay the charge – the celebrant must apply for the exemption no later than 14 days after the day on which the notice is sent and must pay the exemption application fee; and
- that the failure to pay the charge by the end of the charge payment day will result in deregistration.

The notice is to be sent to the celebrant's principal residential address or postal address. A celebrant could also consent to receiving the notice by email and provide an email address for that purpose.

37JA – Notice in relation to deregistration– other requirements

Section 39FB of the *Marriage Act 1961* describes the consequences of non-payment of the celebrant registration charge, including that a celebrant must be sent a second notice before the celebrant is deregistered.

Under the Marriage Act, unless a celebrant's liability to pay the charge might still be affected by the outcome of an internal review of a decision to refuse an exemption (or another circumstance), if a celebrant has not paid the charge by the charge payment day, the Registrar of Marriage Celebrants must send a notice advising the celebrant he or she will be deregistered on a specified day. This deregistration day must be at least seven days after the day the notice is sent. This allows a celebrant to commence the process of contacting couples with whom they may have made arrangements to solemnise a proposed marriage and also to transfer a couple's Notice of Intended Marriage to another celebrant.

Section 39FB of the Marriage Act provides that regulations may prescribe additional requirements of the notice. New regulation 37JA requires the notice to state that the unpaid charge is a debt owing to the Commonwealth, that it is recoverable in a court of competent jurisdiction and that the deregistration decision is reviewable at the Administrative Appeals Tribunal.

New regulation 37JA also provides for the notice to be sent to a celebrant's principal residential address, postal address or email address in the manner outlined above for regulation 37J.

37JB – Applying for exemption from celebrant registration charge

Subsection 39FA(3) of the *Marriage Act 1961* states that the regulations may provide for the granting of exemptions, on grounds specified in the regulations, from liability to pay the celebrant registration charge on respect of a financial year.

New regulation 37JB sets out the process for applying for an exemption. A celebrant who wishes to make an application for exemption from the celebrant registration charge will need to apply in writing within 14 days after the day on which the charge notice is sent. The celebrant will need to provide information or documents to support the application and will need to pay the charge exemption application fee.

The regulation permits the Registrar to ask for additional information, and to give a timeframe for the celebrant's response. If the celebrant did not reply within that timeframe, the application is taken to have been withdrawn.

37JC – Circumstances in which Registrar may grant exemption from the celebrant registration charge

New regulation 37JC sets out three types of circumstances in which an exemption from the celebrant registration charge might be granted. These are as follows:

- (i) the marriage celebrant's principal residential address is in a remote area;
- (ii) the marriage celebrant will be resident outside Australia during the whole of the financial year; and
- (iii) there are personal circumstances such as serious illness or caring responsibilities that cause a celebrant to be unable to perform as a marriage celebrant for at least six months of the financial year.

In all cases, a celebrant is required to provide evidence to support an exemption application.

New subregulation 37JC(2) provides that a celebrant who lives in a remote area may be eligible for the celebrant registration charge exemption. This will only be granted if no more than two Commonwealth registered marriage celebrants (including the celebrant applying for the exemption) live in the remote area with the same postcode as the applicant celebrant. The purpose of this exemption is to support remote area communities with few celebrants to maintain their celebrant services.

New paragraph 37JC(3)(a) provides that a celebrant who does not live in Australia during the whole of the financial year may apply for an exemption from the annual charge. The purpose of this exemption is to allow a celebrant to maintain their registration if work, travel or other circumstances require them to reside outside Australia for a financial year. A celebrant is unable to obtain this exemption if he or she spends any part of the financial year in Australia.

New paragraph 37JC(3)(b) provides that a celebrant who has a serious illness (resulting in the person being unable to perform as a celebrant for more than six months of the year) to apply for an exemption from the charge. Celebrants with caring responsibilities will also be able to apply for this exemption. The purpose of this exemption is to allow celebrants with serious health issues, or significant caring

responsibilities, to continue to remain registered during years when their personal circumstances may cause them to be substantially unavailable in that year to perform as a celebrant.

The Registrar is required to advise applicants in writing of the outcome of an application for an exemption from the celebrant registration charge within 21 days of receiving the application or any additional information requested.

37JD – Charge exemption application fee

Subsection 39FA(3) of the *Marriage Act 1961* provides that regulations may require a fee to be paid in respect of an application for exemption.

Subsection 39FA(4) of the Marriage Act provides that the regulations may specify a fee or provide for the amount to be determined by the Minister by legislative instrument.

New regulation 37JD states that the Minister may, by legislative instrument, determine the charge exemption application fee.

The purpose of the exemption application fee is to recover the costs of the Commonwealth in assessing a celebrant's application for exemption from the annual charge.

37JE – Internal review – refusal to grant certain exemptions

Subsections 39D(1C) and 39FA(3) of the *Marriage Act 1961* provide that regulations may provide for internal review of decisions to refuse to grant exemptions.

Internal review mechanisms are available for decisions regarding exemption from the celebrant registration charge and for decisions about exemptions from the registration application fee paid by prospective celebrants.

New regulation 39JE provides that if the Registrar of Marriage Celebrants refuses to grant either exemption, the affected person may apply for internal review of that decision within 14 days of the original decision being made. To assist the efficiency of the internal review, the internal reviewer is permitted to ask for additional information, and to set a timeframe for the person's response. If the person did not reply within that timeframe, the application for internal review is taken to have been withdrawn (subregulation 37JE(7)).

Under subsections 39D(1E) and 39FA(5) of the Marriage Act and new subregulation 37JE(8), the outcome of the internal review will be (either) that the original decision is confirmed, or that a different decision is substituted with effect from the day of the original decision. A person who is successful in overturning an original charge-exemption decision through the internal review process will not be deregistered.

Item 28 - Regulation 37L

A new subsection was inserted into section 39G of the *Marriage Act 1961* by the *Marriage Amendment (Celebrant Administration and Fees) Act 2014*. This

amendment will correctly reference the Code of Practice in regulation 37L, by amending the reference to paragraph 39G(a) of the Marriage Act to 39G(1)(a).

Item 29 - Subregulation 37M(1)

A new subsection was inserted into section 39G of the *Marriage Act 1961* by the *Marriage Amendment (Celebrant Administration and Fees) Act 2014*. Item 29 amends the reference to paragraph 39G(b) of the Marriage Act in new subregulation 37M(1) to paragraph 39G(1)(b).

Items 30 and 31 - Subregulation 37M(1), (3), (4) and (5) and subregulation 37M(5) (note).

Items 30 and 31 replace the term ‘registration year’ with ‘calendar year’ in subregulations 37M(1), (3), (4) and (5) and in the note to subregulation 37M(5).

These Regulations repeal the definition of ‘registration year’ (item 1), substituting the term ‘calendar year’. This amendment clearly differentiates the timing of a celebrant’s professional development obligations from the requirements regarding the new annual celebrant registration charge as set out in the *Marriage Act 1961*, which applies to the financial year.

Item 32 - Subregulations 37M(6) and (7)

Under paragraph 39G(1)(b) of the *Marriage Act 1961*, all celebrants must complete the professional development activities required by the Registrar of Marriage Celebrants. The *Marriage Regulations 1963* prescribe that celebrants must complete not less than five hours professional development activities unless the Registrar grants an exemption.

This item repeals subregulations 37M(6) and (7) and inserts a new subregulation 37M(6).

Current paragraph 37M(6)(a) provides that a marriage celebrant does not need to comply with the professional development activities for a registration year if they

- have completed a formal course of training that year (the exemption also applies to the following two years); and
- had enrolled in the course before 1 July 2010; and
- had provided evidence of their enrolment to the Registrar before 14 August 2010.

The Registrar can also grant an exemption where:

- they are satisfied that, because of the date of the marriage celebrants registration, completion of the professional development activities for that registration year is not feasible (paragraph 37M(6)(b)(i)); or
- they are satisfied that granting an exemption is justified because of exceptional circumstances (subregulation 37M(7)).

The new subregulation 37M(6) retains the existing exemption in paragraph (6)(a) for a celebrant who has obtained the Certificate IV in Celebrancy or an approved celebrancy qualification from a university and who enrolled in those qualifications before 1 July 2010 and provided evidence of enrolment before 14 August 2010. The paragraph is amended to refer to calendar year rather than registration year (see also items 30 and 31) and has been redrafted in accordance with contemporary drafting conventions.

The new subregulation also provides that a marriage celebrant is not required to comply with the professional development activities for a calendar year if the Registrar grants an exemption under regulation 37MA or 37MB (see item 33). New subregulation 37MA(1) reflects the exceptional circumstances exception currently provided for in subregulation 37M(7).

Item 33 – After regulation 37M

Regulation 37MA provides for exemptions from professional development obligations due to exceptional circumstances. The ground of exceptional circumstances was previously contained in subregulation 37M(7) of the *Marriage Regulations 1963*, which is repealed by item 32.

37MA Application for professional development exemption because of exceptional circumstances

New subregulation 37MA(1) allows a marriage celebrant to apply in writing for an exemption where he or she believes that exceptional circumstances exist which will prevent them from complying with their obligations under subregulation 37M(4) of the *Marriage Regulations 1963*.

New regulation 37MA requires the exemption application to be made in writing to the Registrar of Marriage Celebrants before 31 December of each calendar year. The application will need to be accompanied by information to assist the Registrar to make a decision and the professional development exemption application fee. The exemption application fee will recover the costs of the Commonwealth assessing an application for exemption.

Regulation 37MA permits the Registrar to ask for additional information to assist the Registrar in making the decision to grant or refuse an exemption. The Registrar will also be permitted to set a timeframe for the person's response. If the person does not reply within that timeframe, the application for exemption from professional development is taken to have been withdrawn.

37MB Other Circumstances in which Registrar may grant professional development exemption

New subregulation 37MB outlines the other circumstances in which a person may be granted an exemption from undertaking professional development activities. It allows the Registrar to grant an exemption from professional development where the Registrar is satisfied that the celebrant would be unable to complete professional development activities because of the date of the celebrant's registration. This provision will allow the Registrar discretion to grant an exemption because a

celebrant is registered so late in the year that it is impracticable to complete the required professional development activities. This mirrors an existing exemption provision in paragraph 37M(6)(b)(i) of the *Marriage Regulations 1963*.

This exemption will be exercised on the Registrar's own motion. Where the Registrar grants an exemption, they must inform the celebrant of this decision by written notice.

In practice, the Registrar will determine a date at which he or she is satisfied that the celebrant would be unable to complete professional development activities because of the date of the celebrant's registration. Celebrants registered after this date will be advised as part of their registration that the exemption had been granted.

37MC Professional development exemption application fee.

New subregulation 37MC states that the professional development exemption application fee is to be determined by the Minister by legislative instrument. The authority for this fee is subsection 39G(2) of the *Marriage Act 1961*.

Item 34 - Paragraph 37N(1)(d)

A new subsection was inserted into section 39G of the *Marriage Act 1961* by the *Marriage Amendment (Celebrant Administration and Fees) Act 2014*. This amendment correctly references 'professional development activities' in paragraph 37N(1)(d) by amending the reference to paragraph 39G(a) of the *Marriage Act* to 39G(1)(a).

Item 35 - Subregulation 37N(2)

Paragraph 39H(4)(a) of the *Marriage Act 1961* requires a Registrar to give a written notice to a marriage celebrant when the Registrar intends to determine that the marriage celebrant's performance in a period has been unsatisfactory.

This item repeals subregulation 37N(2) which provides that this notice must be in accordance with prescribed Form 12D. The effect of this item is to remove the Registrar's obligation to issue this notice in accordance with the prescribed form.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the *Marriage Act*, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the Registrar.

The removal of the prescribed form will allow the Registrar to change the format of the notice in line with future needs without requiring amendments to the regulations.

Item 36 - Subregulation 38(1)

This item repeals subregulation 38(1), which provides that notice of an intended marriage must be made in accordance with prescribed Form 13.

The effect of this amendment is to remove the requirement for couples to give notice of their intended marriage using prescribed Form 13. This will be replaced with a requirement that notice of the intended marriage is given in accordance with a form

approved by the Minister. Paragraph 119(3)(c) of the *Marriage Act 1961* requires the Minister to ensure that there is an approved form in force for this purpose.

The removal of the prescribed form will allow the Minister to update this form in line with future needs without requiring amendments to the regulations.

Item 37 - Regulation 38A

Paragraph 42(1)(c) of the *Marriage Act 1961* provides that a marriage must not be solemnised unless each of the parties to the marriage has made a declaration before the authorised celebrant as to their conjugal status and other matters. Regulation 38A requires the declaration to be made in accordance with Form 14.

This item repeals regulation 38A and substitutes a new regulation. The effect of the amendment is to remove the requirement to use the prescribed form (Form 14) for the declaration. This is replaced with a requirement that the declaration be made in accordance with a form approved by the Minister. Paragraph 119(3)(d) of the *Marriage Act* requires the Minister to ensure that there is an approved form in force for this purpose.

The removal of the prescribed form will allow the Minister to update this form in line with future needs without requiring amendments to the regulations.

Apart from removing the requirement that the declaration be made in accordance with Form 14, the substance of regulation 38A has not been changed. It has been redrafted in accordance with contemporary drafting conventions.

Item 38 - Regulation 39A

This item repeals regulation 39A, removing the requirement for a marriage celebrant use prescribed form 14A for the purposes of subsection 42(5A) of the *Marriage Act 1961*. Subsection 42(5A) requires a marriage celebrant to give the parties a document outlining the obligations and consequences of marriage, and indicating the availability of marriage education and counselling.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the *Marriage Act*, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the prescribed authority.

The removal of the prescribed forms will allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 39 - Subregulation 40(6)

This item repeals subregulation 40(6), removing a marriage celebrant's obligation to prepare the official certificates of marriage in accordance with prescribed Form 16. This obligation is replaced with a requirement that the official certificate of marriage is prepared in accordance with a form approved by the Minister. Subparagraph 119(3)(e) of the *Marriage Act 1961* requires the Minister to ensure that there is an approved form in force for this purpose.

The removal of the prescribed form will allow the Minister to update this form, for example to meet the future needs of state and territory registering authorities, without requiring amendments to the regulations.

Item 40 - Regulation 46

Subsection 74(1) of the *Marriage Act 1961* provides that a marriage must not be solemnised under Part V of the Act unless each of the parties to the marriage has made a declaration before a chaplain as to their conjugal status and other matters. Subsection 74(1) mirrors the requirements of paragraph 42(1)(c) of the Marriage Act (item 37) in relation to marriages of members of the Defence Force overseas.

This item repeals the regulation and inserts a new regulation. The effect of the amendment is to remove the requirement to use prescribed Form 14 for the declaration. This is replaced with a requirement that the declaration be made in accordance with a form approved by the Minister. Paragraph 119(3)(f) of the Act requires the Minister to ensure that there is an approved form in force for this purpose.

The removal of the prescribed form will allow the Minister to update this form in line with future needs without requiring amendments to the regulations.

Apart from removing the requirement for the declaration be made in accordance with Form 14, the substance of regulation 46 has not been changed. It has just been redrafted in accordance with contemporary drafting conventions.

Item 41 - Subregulation 47(6)

This item repeals subregulation 47(6), removing the requirement for a Defence Force chaplain to prepare the official certificates of marriage in accordance with prescribed Form 16. Subsection 47(6) mirrors the requirements of subregulation 40(6) (item 39) in relation to marriages of members of the Defence Force overseas.

Subregulation 47(6) has been replaced with a requirement that the official certificate of marriage be made in accordance with a form approved by the Minister. Paragraph 119(3)(g) of the *Marriage Act 1961* requires the Minister to ensure that there is an approved form in force for this purpose.

The removal of the prescribed form will allow the Minister to update this form, for example to meet the future needs of state and territory registering authorities, without requiring amendments to the regulations.

Item 42 - Regulations 49 and 50

The item repeals regulation 49, which requires a Defence Force chaplain to use prescribed Form 19 to meet the requirements of subsection 80(8) of the *Marriage Act 1961*. Subsection 80(8) of the Marriage Act requires a Defence Force chaplain to forward to the Registrar particulars of any marriages they solemnised in the preceding year.

The removal of prescribed Form 19 will be administratively less burdensome for Defence Force chaplains as the Registrar will be able to accept any document which

meets the requirements of subsection 80(8) of the Act, without the need for the information to be in the format of a prescribed form.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the Marriage Act, the Minister may approve a form for this purpose. If a form is approved, that form must be used by the chaplain.

The removal of the prescribed form will allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

This item also repeals regulation 50, which requires a Defence Force chaplain to forward to the Registrar a certificate, in accordance with prescribed Form 20, in order to register a marriage which took place in the presence of a Defence Force chaplain according to the laws of an overseas country.

This obligation has been replaced with a requirement that the certificate be made in accordance with a form approved by the Minister. Paragraph 119(3)(h) of the Marriage Act requires the Minister to ensure that there is an approved form in force for this purpose.

Item 43 - Subregulation 57(1)

This item omits the words ‘accordance with Form 21’ in subregulation 57(1) and substitutes the word ‘writing’. The effect of this amendment is to remove the requirement for parents of a legitimated child to use prescribed Form 21 when furnishing information to a registering authority in respect of a legitimated child. The obligation to use prescribed Form 21 has been replaced by an obligation to furnish the information in writing.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the *Marriage Act 1961*, the Minister may approve a form for this purpose. If a form is approved, that form must be used.

The removal of the prescribed form will be administratively less burdensome and will permit a greater degree of flexibility with regard to the provision of information regarding a legitimated child. It will allow the registering authority to accept information which meets the requirements of subregulation 57(1) without the need for it to be in the format of prescribed Form 21.

The removal of the prescribed forms will also allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 44 - Subregulation 58(1)

This item arises as a consequence of item 43, which removes the requirement to furnish information in accordance with prescribed Form 21 in relation to the legitimation of a child.

Item 44 repeals subregulation 58(1) and substitutes a new subregulation drafted in line with contemporary drafting conventions. The effect of this amendment is to remove the reference to Form 21 in subregulation 58(1). With the exception of the removal of the reference to Form 21, the substance of subregulation 58(1) has not been changed.

Item 45 - Paragraph 59(4)(d)

This item arises as a consequence of item 43, which removes the requirement to furnish information in accordance with prescribed Form 21 in relation to the legitimisation of a child.

Item 45 repeals paragraph 59(4)(d) and substitutes a new paragraph drafted in line with contemporary drafting conventions. The effect of this amendment is to remove the reference to Form 21 in paragraph 59(4)(d). With the exception of the removal of the reference to Form 21, the substance of paragraph 59(4)(d) has not been changed.

Item 46 - Subregulation 60(1)

Subregulation 60(1) provides that a registering authority may issue a written notice requiring a person to furnish information of the kind indicated in Form 21.

Item 46 repeals subregulation 60(1) and substitutes two new subregulations: 60(1) and (1A). The effect of this amendment is to remove the reference to Form 21 in the subregulation. This item arises as a consequence of the removal of the requirement to furnish information in accordance with prescribed Form 21 in relation to the legitimisation of a child (see item 43).

With the exception of the removal of the reference to Form 21, the substance of subregulation 60(1) has not been changed. It has been redrafted in two new subregulations in accordance with contemporary drafting conventions. A consequential amendment has also been made to subregulation 60(2) (see item 47).

Item 47 - Subregulation 60(2)

This item arises in consequence of the removal of the phrase ‘subject to the next succeeding subregulation’ in subregulation 60(1). It replaces the words ‘A person shall not be required by the registering authority in a State or Territory to furnish information under the last preceding subregulation’ with the phrase ‘However, a person is not required by the registering authority in a State or Territory to furnish information under subregulation (1)’.

This amendment clarifies that the requirements of subregulation 60(1) remain subject to subregulation 60(2). The substance of subregulation 60(2) has not been changed. Subregulations 60(1) and (2) have just been redrafted in line with contemporary drafting conventions.

Item 48 - Subregulation 62(1)

Item 48 mirrors the amendments to subregulation 57(1) in respect of a legitimated child of a void marriage (see item 43).

This item omits the words in ‘accordance with Form 21’ in subregulation 62(1) and substitutes the words ‘in writing’. The effect of this amendment is to remove the requirement for a parent of a legitimated child to use prescribed Form 21 when furnishing information to a registering authority in respect of a legitimated child. The obligation to use prescribed Form 21 has been replaced by an obligation to furnish the information in writing.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the *Marriage Act 1961*, the Minister may approve a form for this purpose. If a form is approved, that form must be used.

The removal of the prescribed form will be administratively less burdensome and will permit a greater degree of flexibility with regard to the provision of information regarding a legitimated child. It will allow the registering authority to accept information which meets the requirements of subregulation 62(2) without the need for it to be in the format of prescribed Form 21.

The removal of the prescribed forms will also allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 49 - Subregulation 62(2)

Item 49 mirrors the amendments to subregulation 58(1) in respect of a legitimated child of a void marriage (see item 44).

This item arises as a consequence of the removal of the requirement to furnish information in accordance with prescribed Form 21 in subregulation 62(1) in relation to the legitimation of a child (see item 43).

This item repeals subregulation 62(2) and substitutes a new subregulation drafted in accordance with contemporary drafting conventions. The effect of this amendment is to remove the reference to Form 21 in the subregulation. With the exception of the removal of the reference to Form 21, the substance of subregulation 62(2) has not been changed.

Item 50 - Subregulation 63A(1)

Subregulation 63A(1) provides that where certain requirements are met the parents of a child who is not legitimate, but was registered as legitimate due to a belief that the parents’ marriage was valid, may furnish information in accordance with Form 21 to the relevant registering authority.

This item omits the words in ‘accordance with Form 21’ in subregulation 63A(1) and replaces this with an obligation that the information is provided in writing. The effect of this amendment is to remove the requirement for a parent of a legitimated child to use prescribed Form 21 when furnishing information to a registering authority in respect of a legitimated child. The obligation to use prescribed Form 21 has been replaced by an obligation to furnish the information in writing.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the *Marriage Act 1961*, the Minister may approve a form for this purpose. If a form is approved, that form must be used.

The removal of the reference to Form 21 in subregulation 63A(1) will permit a greater degree of flexibility with regard to the provision of information regarding a legitimated child. It will allow information regarding the legitimation to be furnished to a registering authority in writing, without the need to refer to prescribed Form 21.

The removal of the prescribed forms will also allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 51 - Paragraph 68(2)(a)

This item repeals paragraph 68(2) and substitutes a new paragraph. The effect of this amendment is to remove the requirement for an application to register the legitimation of a child in the Register of Foreign Legitimations to be made in accordance with prescribed Form 22. It will retain a requirement that the application contain such information as is applicable to the circumstances of the particular case.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the *Marriage Act 1961*, the Minister may approve a form for this purpose. If a form is approved, that form must be used.

The removal of the prescribed form will be administratively less burdensome and will permit a greater degree of flexibility with regard to the provision of information regarding a legitimated child. It will allow the Registrar of Births, Deaths and Marriages to accept applications for registration which meet the requirements of regulation 68, without the need for information to be provided in the format of prescribed Form 22.

The removal of the prescribed forms will also allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 52 - Paragraph 70(3)(b)

This item removes the requirement for the Registrar of Births, Deaths and Marriages to issue a certificate in respect of a registration in the Register of Foreign Legitimations in accordance with Form 23.

These Regulations remove all prescribed forms from the *Marriage Regulations 1963*, with the exception of the Form 15 Certificate of Marriage. Under section 119 of the *Marriage Act 1961*, the Minister may approve a form for this purpose. If a form is approved, that form must be used.

The removal of the prescribed forms will allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 53 - Regulation 72

This item repeals regulation 72, which provides that a person who has acted as an interpreter in a marriage ceremony must give the marriage celebrant a certificate in accordance with prescribed Form 24 relating to the faithful performance of their services as an interpreter.

The obligation in regulation 72 is replaced with a requirement that the interpreter's certificate is given in accordance with a form approved by the Minister. Paragraph 119(3)(i) of the *Marriage Act 1961* requires the Minister to ensure that there is an approved form in force for this purpose.

The removal of the prescribed forms will allow the Minister to update this form in line with future needs without requiring amendments to the regulations.

Item 54 - Schedule 1 (Forms 1 to 14A)

Item 54 repeals Form 1 to Form 14A from Schedule 1 of the *Marriage Regulations 1963*.

These Regulations remove all prescribed forms from the Marriage Regulations, with the exception of the Form 15 Certificate of Marriage. Under subsection 119(1) of the *Marriage Act 1961*, the Minister may approve forms for a purpose of a provision of this Act. Subsection 119(3) provides that the Minister must ensure that an approved form is in force for certain provisions of the Act. Where a form is approved by the Minister, that form must be used.

The removal of the prescribed forms will allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 55 - Schedule 1 (Forms 16 to 24)

Item 55 repeals Form 16 to Form 24 from Schedule 1 of the *Marriage Regulations 1963*.

These Regulations remove all prescribed forms from the Marriage Regulations, with the exception of the Form 15 Certificate of Marriage. Under subsection 119(1) of the *Marriage Act 1961*, the Minister may approve forms for a purpose of a provision of this Act. Subsection 119(3) provides that the Minister must ensure that an approved form is in force for certain provisions of the Act. Where a form is approved by the Minister, that form must be used.

The removal of the prescribed forms will allow the Minister to approve and update a form in line with future needs without requiring amendments to the regulations.

Item 56 – Schedule 3 (after table item 1)

Subregulation 42A(1) provides that an authorised celebrant holding a specified position within an office of an state or territory may prepare only one official certificate of marriage in accordance with subsection 50(1A) of the *Marriage Act 1961*. Schedule 3 of the *Marriage Regulations 1963* sets out the specified positions for the purposes of subregulation 42A(1).

This item lists specified positions within the Victorian Registry of Births, Deaths and Marriages in Schedule 3 of the Marriage Regulations. The effect of this amendment is that marriage celebrants holding specified positions within the Victorian Registry will not be required to prepare two official certificates of marriage in accordance with paragraph 50(1)(b) of the Marriage Act.