

REPLACEMENT EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General

Marriage Act 1961

Marriage Regulations 2017

The *Marriage Act 1961* (the Act) establishes the legal framework for marriage in Australia, including the requirements for marriages to be validly solemnised under Australian law and foreign marriages to be legally recognised under Australian law.

Section 120 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted, or necessary or convenient, to be prescribed for carrying out or giving effect to the Act.

The *Marriage Regulations 1963* (the current regulations), which will sunset on 1 April 2018, provide procedural and technical support for the marriage framework established by the Act. Broader marriage policy issues, such as eligibility to marry, must be addressed through the Act. The *Marriage Regulations 2017* (the Regulations) will repeal and replace the current regulations from 1 April 2018. The Regulations will support the Act in largely the same manner as the current regulations, streamlining and simplifying many of the requirements of the current regulations, removing obsolete or unnecessary provisions and reducing the regulatory burden imposed on authorised celebrants and other stakeholders. The Regulations will provide for:

- procedural requirements for application to a Judge or magistrate under section 12 of the Act, which requires judicial authorisation for the marriage of a minor, including the practices and procedures to be followed in the conduct of an inquiry into whether such an order should be made, and the requirement for such orders to be provided to a person solemnising a marriage of a minor
- requirements for a valid consent of a person required to consent to an intended marriage of a minor under sections 13 and 14 of the Act, and processes and procedures for: a prescribed authority to dispense with the consent of a person required to consent to a proposed marriage of a minor under section 15 of the Act; and a Judge or magistrate to provide consent in place of a person under section 16 of the Act
- the maintenance of state and territory registers of ministers of religion and the Commonwealth register of marriage celebrants under Subdivisions A and C of Division 1 of Part IV of the Act respectively
- the professionalism of marriage celebrants, by specifying: the qualifications or skills necessary to be entitled to be registered as a marriage celebrant; ongoing professional development requirements for marriage celebrants; performance reviews of marriage celebrants; procedures for dealing with complaints about marriage celebrants relating to the solemnisation of a marriage; and a Code of Practice for marriage celebrants

- the continued implementation of cost recovery arrangements for the registration and ongoing regulation of marriage celebrants, by providing for: the determination of fees; processes to obtain, and grounds on which to grant, exemptions from paying the registration application fee or the celebrant registration charge; internal reviews of exemption decisions; and additional requirements for the notice of liability for, and notice about non-payment of, the celebrant registration charge, respectively issued under sections 39FA and 39FB of the Act
- requirements in relation to the paperwork for a marriage, including for: the identification of the appropriate registering authority for a marriage; the reliability of the certificate of marriage issued to couples under section 50 of the Act, and protection of that certificate against fraud or misuse; dealing with official certificates of marriage, including lost certificates; and completing marriage paperwork if a second marriage ceremony is being performed under section 113 of the Act
- requirements to support Defence Force chaplains solemnising marriages under Part V of the Act
- circumstances in which a prescribed authority may authorise a marriage despite less than one month's notice being received by an authorised celebrant, and
- the repeal of, and arrangements to manage the transition from, the current regulations.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised. However, section 17 of the *Legislation Act 2003* requires the rule-maker to be satisfied that appropriate and reasonably practicable consultation has been undertaken, before making a legislative instrument.

The Attorney-General's Department sought stakeholder views in 2015, to inform a review of the current regulations and develop the *Exposure Draft Marriage Regulations 2017* (the Exposure Draft). In July 2017, a targeted consultation was undertaken on the Exposure Draft with the following stakeholders: state and territory registries of births, deaths and marriages (including Norfolk Island); marriage celebrant associations; registered training organisations approved to deliver the Certificate IV in Celebrancy; the Department of Defence; the Australian Bureau of Statistics; the Australian Skills Quality Authority; the National Accreditation Authority for Translators and Interpreters Ltd; the Disability Discrimination Commissioner of the Australian Human Rights Commission; the Family Court of Australia; the Federal Circuit Court of Australia; and the Chief Magistrate of the New South Wales Local Court (other state and territory local courts were consulted via state and territory justice departments). The Regulations reflect the feedback and comments received on the Exposure Draft.

The Office of Best Practice Regulation was consulted about the Regulations and advised that a Regulatory Impact Statement is not necessary (OBPR ID 20639).

The Regulations will be 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*. A Statement of Compatibility with Human Rights is set out in Attachment A.

The Regulations will be a legislative instrument for the purposes of the *Legislation Act 2003*. Details of the Regulations are set out in Attachment B.

The Regulations will commence on 1 April 2018.

Authority: Section 120 of the *Marriage Act 1961*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Marriage Regulations 2017

This Disallowable Legislative Instrument 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*.

Overview of the Regulations

The *Marriage Regulations 2017* (the Regulations) will repeal and replace the *Marriage Regulations 1963* (the current regulations), which will sunset on 1 April 2018.

The Regulations will provide procedural and technical support for the marriage framework established by the *Marriage Act 1961* (the Act). Broader marriage policy issues, such as eligibility to marry, must be addressed through the Act. The Regulations will continue to support the Act in largely the same manner as the current regulations, streamlining and simplifying many of the requirements of the current regulations, removing obsolete or unnecessary provisions and reducing the regulatory burden imposed on authorised celebrants and other stakeholders.

Human rights implications

The Regulations will engage the following human rights:

- freedom of thought, conscience and religion or belief in Article 18 of the *International Covenant on Civil and Political Rights* (ICCPR)
- privacy in Article 17 of the ICCPR
- fair trial and fair hearing in Article 14 of the ICCPR, and
- presumption of innocence in Article 14(2) of the ICCPR.

The right to respect for the family, including the right of men and women of marriageable age to marry contained in Article 23(2) of the ICCPR, will not be directly engaged by the Regulations. The Regulations merely support the Act's engagement with this right.

Right to freedom of thought, conscience and religion or belief

Article 18 of the ICCPR provides that everyone shall have the right to freedom of thought, conscience and religion.

Disclosure of religion

When registering a person on the register of marriage celebrants established under the Act, paragraph 43(1)(d) of the Regulations will require the Registrar of Marriage Celebrants to enter details about whether the person will conduct religious ceremonies and, if so, details of the religious body or religious organisation under whose authority the person will conduct those ceremonies.

This requirement is reasonable, necessary and proportionate to achieve the legitimate objective of assisting members of the public to identify the type of marriage services a marriage celebrant will provide.

Regulation of persons performing religious marriage ceremonies

The Act regulates *legal* marriages and provides a framework by which *religious* marriages can have legal status or recognition if certain requirements are met. A key requirement is that the person solemnising the marriage is an authorised celebrant.

A person wishing to solemnise legally recognised religious marriage ceremonies in Australia has two pathways under the Act to become an authorised celebrant: registering as a marriage celebrant under section 39D of the Act; or registering as a minister of religion of a recognised denomination under section 30 of the Act. The Regulations impose requirements in relation to marriage celebrants (regardless of whether they perform civil or religious marriage ceremonies) that are not imposed in relation to ministers of religion of recognised denominations.

A person seeking registration as a marriage celebrant will be required, by section 39 of the Regulations, to have a Certificate IV in Celebrancy, a celebrancy qualification awarded by a university or specified celebrancy skills. Additionally, to support obligations imposed on marriage celebrants by section 39G of the Act, the Regulations will create a Code of Practice for marriage celebrants (section 52 and Schedule 2) and impose requirements about undertaking professional development activities (section 53). The Act also subjects marriage celebrants to performance reviews, complaint processes, and the imposition of disciplinary measures, all matters that will be supported by the Regulations.

These requirements are reasonable, necessary and proportionate to support the cost recovered Marriage Celebrants Programme, administered by the Registrar of Marriage Celebrants. Marriage celebrants are the only category of authorised celebrants regulated by the Commonwealth under the Act and the Regulations. Ministers of religion of recognised denominations are regulated by state and territory authorities, making it impracticable to impose these requirements for that category of authorised celebrant. The Programme has the legitimate aims of applying appropriate scrutiny to aspiring marriage celebrants, supporting the availability of marriage services across Australia and regulating marriage celebrants' performance to ensure delivery of professional, knowledgeable and legally correct marriage services to the community.

The ability of a religious body or religious organisation to become a recognised denomination, and thus open up that registration pathway for its ministers, is a matter dealt with under the Act, not the Regulations.

Privacy

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, or attacks on their reputation.

The Regulations will provide for the lawful collection, storage, use, disclosure and publication of personal information, by the Registrar of Marriage Celebrants, Registrars of Ministers of Religion, registering authorities, authorised celebrants, religious bodies and religious organisations, chaplains and army, naval and air force headquarters. The measures are reasonably necessary in order to achieve the legitimate objectives of upholding the legal framework for marriage in Australia, regulating marriage celebrants, enabling registration of marriages by registering authorities and ensuring details of a marriage can be confirmed after the marriage has taken place.

The Registrar of Marriage Celebrants is an APS employee (see section 39A of the Act), bound by the requirements established under the *Archives Act 1983* and *Privacy Act 1988* with regards to collecting, storing, using and disclosing personal information. Registrars of Ministers of Religion and registering authorities are state and territory government officers and agencies, required to comply with similar schemes for protecting personal information established in their state or territory.

Under the Act, there are three categories of authorised celebrants: marriage celebrants (registered under section 39D of the Act); ministers of religion of recognised denominations (registered under section 30 of the Act); and state and territory officers (authorised under section 39 of the Act). Marriage celebrants will be obliged under the Code of Practice in Schedule 2 of the Regulations to ensure personal information is dealt with appropriately and securely stored. Ministers of religion will incorporate marriage paperwork into the records of their religious body or religious organisation. Religious bodies and religious organisations will generally be subject to the requirements of the *Privacy Act 1988*. State and territory officers will generally be bound by state and territory schemes for protecting personal information.

Chaplains will retain marriage paperwork for a short period before sending it to army, naval, or air force headquarters, which, as Australian Government agencies, will be subject to the requirements of the *Archives Act 1983* and *Privacy Act 1988*.

Fair hearing rights

Article 14 of the ICCPR provides that all persons shall be equal before courts and tribunals. This includes the right to a fair and public hearing before a competent, independent and impartial court or tribunal established by law.

Under the Act, a Judge or magistrate may conduct an inquiry into the proposed marriage of a minor. In conducting such an inquiry, Judges or magistrates are acting in their personal capacity and do not have access to the powers, and practice and procedures, they can access in respect of their general functions as Judges and magistrates. As such, the Regulations will establish the practice and procedure for the conduct of these inquiries.

The Regulations will support the right to a fair hearing by: specifying requirements designed to ensure all persons with an interest in the inquiry are given an opportunity to be heard; enabling persons to be summoned to attend or provide documents to an inquiry; requiring written evidence to be provided by affidavit and enabling oral evidence to be given under oath or affirmation; and providing protections for Judges and magistrates conducting inquiries, barristers and solicitors representing persons at inquiries, self-represented persons, and persons summoned to attend or appearing at inquiries.

Presumption of innocence

Article 14(2) of the ICCPR provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to the law.

Strict liability offences engage the presumption of innocence through the imposition of liability without the need to prove fault. The Regulations will impose two strict liability offences (subsections 74(1) and 81(1)) for failure to keep records relating to certificates of marriage (required by sections 73(5) and 80(5)). The offences will be identical, aside from who may potentially commit the offence. Imposing strict liability will remove the fault element for the offences. The defence of honest and reasonable mistake of fact, provided in clause 9.2 of the Criminal Code, will be available for these offences.

The record keeping frameworks established in sections 73 and 80 are designed to ensure the integrity of individual certificates of marriage, protect certificates against misuse and fraud, and ensure certificates are traceable for a minimum period of time. Failure by a person to keep the records as required would frustrate the objectives of the frameworks. Additionally, these requirements are regulatory in nature, and there is an expectation that authorised celebrants and chaplains will be familiar with the obligations and requirements of being a person legally permitted to solemnise marriages. As the requirements will be the same as existing requirements of the current regulations, all persons are already on notice of these requirements.

To the extent that strict liability for these offences will limit the right to be presumed innocent, this limitation is reasonable, necessary and proportionate to achieve the legitimate objective of ensuring the integrity and protection frameworks for certificates of marriage are upheld and maintained.

Conclusion

The Regulations are compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Details of the *Marriage Regulations 2017*

The *Acts Interpretation Act 1901* and *Electronic Transactions Act 1999* contain definitions and other provisions that will affect the interpretation and application of the *Marriage Regulations 2017*. For example, section 28A of the *Acts Interpretation Act 1901* will be relied upon with regards to how a document or other thing may be ‘given’ by one person to another. Similarly, section 9 of the *Electronic Transactions Act 1999* will be relied upon to enable documents required to be given in writing to be given electronically, such as by email, and section 12 will be relied upon to enable information to be retained in an electronic form.

Part 1 – Preliminary

Section 1 – Name

This section will provide that the title of the Regulations is the *Marriage Regulations 2017*.

Section 2 – Commencement

This section will provide for the Regulations to commence on 1 April 2018. The Regulations are intended to replace the *Marriage Regulations 1963* (the old regulations—see the definition in section 5 of the Regulations), which will sunset on 1 April 2018.

Section 3 – Authority

This section will provide that the Regulations are made under the *Marriage Act 1961* (the Act).

Section 4 – Schedules

This section will provide that each instrument set out in a Schedule to the Regulations is amended or repealed as set out in the Schedule, and that any other clause or item in a Schedule to the Regulations has effect according to its terms.

Section 5 – Definitions

This section will define the key terms used throughout the Regulations.

Paragraph 13(1)(b) of the *Legislation Act 2003* indicates that expressions used in an instrument have the same meaning as in the enabling legislation as in force from time to time.

The Note to section 5 is intended to direct the reader to subsection 5(1) of the Act, where a number of terms used in the Regulations are defined. These terms are: ***authorised celebrant***, ***celebrant registration charge***, ***chaplain***, ***Judge***, ***magistrate***, ***marriage*** and ***prescribed authority***. The note is not intended to have substantive effect.

Section 5 will define a number of terms by referring to their definition under the Act, namely: ***official certificate*** (paragraphs 50(1)(b) and 80(1)(b) of the Act), ***Registrar of Marriage***

Celebrants (subsection 39A(2) of the Act), **Registrar of Ministers of Religion** (subsection 27(1) of the Act) and **registration application fee** (subsection 39D(1B) of the Act).

Section 5 will also define a number of terms in a manner that is self-explanatory (*Act* and *old regulations*) or by reference to other sections in the Regulations (*appropriate registering authority, approved form, celebrancy qualification, celebrancy skills, Certificate IV in Celebrancy, charge exemption application fee, professional development exemption application fee* and *registration exemption application fee*).

Definition of ‘accreditation authority’

Section 5 will provide that the term **accreditation authority** means the National Accreditation Authority for Translators and Interpreters Ltd (ACN 008 596 996) (NAATI). This definition supports the new requirement in section 11, that the translation of a non-English consent to a marriage of a minor must be done by a person accredited or recognised by the accreditation authority.

Definition of ‘birth certificate’

Section 5 will provide that **birth certificate**, in relation to a person, means an official certificate, or an official extract of an entry in an official register, showing the date and place of birth of the person. This definition is consistent with one of the forms of evidence a marrying person may provide to an authorised celebrant under paragraph 42(1)(b) of the Act to prove the person’s date and place of birth.

Definition of ‘engage in conduct’

Section 5 will provide that **engage in conduct** means doing an act or omitting to perform an act. This definition has been included to support the physical element of the offences in sections 27 and 29 of the Regulations. It is the same definition of **engage in conduct** as contained in subclause 4.1(2) of the *Criminal Code Act 1995*.

Definition of ‘listed professional development activities’

Section 5 provides that **listed professional development activities** means the professional development activities for a calendar year that are set out in a statement published under subsection 53(3) of the Regulations.

Definition of ‘remote area’

Section 5 will provide that **remote area** means an area classed as Remote Australia or Very Remote Australia in the Australian Statistician’s Australian Statistical Geography Standard Remoteness Structure (ASGS Remoteness Structure) as in force on 1 April 2018. The ASGS Remoteness Structure is available on the website of the Australian Bureau of Statistics (ABS), and is generally amended every five years, following each census.

Under the Regulations, marriage celebrants or aspiring marriage celebrants who live in remote or very remote areas may be eligible for an exemption from the registration

application fee and the celebrant registration charge. Utilising the ASGS Remoteness Structure ensures consistency in determining whether exemptions should be granted, by providing an external reference when considering what constitutes a remote area for the purposes of an exemption, and gives greater certainty to persons considering applying for an exemption.

Section 6 – Appropriate registering authority for a marriage

This section will provide that the ***appropriate registering authority*** for a marriage is ascertained in accordance with the table provided for by this section.

The term ‘appropriate registering authority’ is used throughout the Regulations. The definition supports subparagraph 50(4)(a)(i) of the Act, which requires the Regulations to establish a process for ascertaining the appropriate registering authority for a marriage. Under subparagraph 50(4)(a)(i) of the Act, an authorised celebrant who is required to prepare two official certificates of marriage must forward one of those certificates to the appropriate registering authority, as well as the notice given under section 42 of the Act, any order issued under section 12 of the Act and any statutory declarations, consents and dispensations relating to the marriage.

Table items 1–11 will indicate that the appropriate registering authority (column 3) will be determined by reference to the state or territory in which the marriage took place (column 2). Under subsection 5(1) of the Act, ‘territory’ is defined to include Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

Generally, the appropriate registering authority will be the registrar of births, deaths and marriages of the state or territory in which the marriage took place. The exception to this will be that the Registrar of Births, Deaths and Marriages of Western Australia will be the appropriate registering authority for Christmas Island and Cocos (Keeling) Islands. This is intended to reflect that, by the application of the *Interpretation Act 1984 (W.A.) (C.I.) (Amendment) Ordinance 1992* and *Interpretation Act 1984 (W.A.) (C.K.I.) (Amendment) Ordinance 1992*, under Part 6 of the *Births, Deaths and Marriages Registration Act 1998* (WA) the WA Registrar is responsible for registering marriages that take place on Christmas Island and Cocos (Keeling) Islands.

Part 2 – Marriage of minors

Division 1 – Authorisation for marriage of a minor

Section 7 – Application for authorisation of marriage of minor

This section will provide for the form of an application made under section 12 of the Act, what information must be included in the application and what documents or evidence must accompany the application.

Under subsection 12(1) of the Act, a person aged at least 16 years, but less than 18 years, may apply to a Judge or magistrate for an order authorising them to marry a particular person

of marriageable age. To grant the order, subsection 12(2) of the Act requires the Judge or magistrate to be satisfied that the person is at least 16 years of age, and the circumstances are so exceptional and unusual as to justify the order being made.

Paragraph 7(a) will establish the form of the application—in writing—and require the application to be lodged with the Judge or magistrate. The requirement to ‘lodge’ is intended to give applicants, Judges and magistrates maximum flexibility in how applications are received. Judges and magistrates exercising the powers conferred by section 12 of the Act are acting in their personal capacity and as such the usual procedural rules governing court matters do not apply.

Paragraphs 7(b) to (e) will identify documents which, if available, must accompany an application made under section 12 of the Act.

Paragraph 7(b) will require the applicant’s birth certificate to be provided, unless it will be impracticable to obtain this certificate. Providing the birth certificate will enable a Judge or magistrate to verify the age of the applicant and establish that the first condition (the applicant is aged between 16 and 18 years) for issuing such an order is met. Where a birth certificate cannot be practicably obtained, there will be nothing to prevent a Judge or magistrate requesting the applicant provide other information or evidence to satisfy the Judge or magistrate of the applicant’s age.

Paragraph 7(c) will require any consent given by, or in place of, a person required to consent to the intended marriage under section 14 of the Act to be provided. Paragraph 7(d) will require a translation of any consent that is not in English. This translation will need to meet the requirements in section 11 of the Regulations.

Paragraph 7(e) will require any dispensation granted under subsection 15(1) of the Act to be provided. Such a dispensation removes the need for the applicant to obtain the consent of one or more persons to the intended marriage that is required under section 13(1)(a)(i) of the Act. Being aware of whether the applicant has obtained, or successfully dispensed with, the consents required to the intended marriage under subsection 13(1) of the Act may assist a Judge or magistrate in determining whether the second condition (the presence of exceptional and unusual circumstances) for issuing such an order is met.

Paragraph 7(f) will apply if the applicant has previously made an application under section 12 of the Act. Paragraph 7(f) will require the application to state the decision made in relation to the previous application, the name of the Judge or magistrate who made the decision and the date of the decision. This requirement will enable the Judge or magistrate to ascertain whether the subsequent application is being made in the allowed timeframe; under paragraph 19(1)(c) of the Act a person cannot make a further application under section 12 within six months of the date of the refusal.

This section will rely on the necessary or convenient power in section 120 of the Act. This section will be ancillary to section 12 of the Act. Judges and magistrates exercise the powers conferred by section 12 of the Act in their personal capacity. This means Judges and

magistrates are unable to rely on powers and procedural rules established by legislation for, or the inherent powers of, the court to which they are appointed. This section will replicate the requirements, normally covered by court rules or other legislation, of the form in which an application may be made, what information must be included in the application and what documents or evidence must accompany the application.

Section 8 – Order authorising marriage

This section will establish what must be done in relation to a marriage where one of the parties to the marriage is a minor.

Subsection 8(1) will make clear that section 8 will only apply in relation to a marriage where one of the parties to the marriage is a minor (less than 18 years of age).

Subsection 8(2) will require the minor to give to the person solemnising the marriage (an authorised celebrant or chaplain) an order made under section 12 of the Act. An order under section 12 of the Act authorises a minor to marry a particular person of marriageable age. Section 28A of the *Acts Interpretation Act 1901* will be relied on with regards to how the order may be given to the authorised celebrant or chaplain. Section 9 of the *Electronic Transactions Act 1999* will be relied on, to enable the order to be given electronically.

Subsection 8(3) will prohibit a person from solemnising a marriage where one of the parties to the marriage is a minor unless they have been given an order in accordance with subsection 8(2).

Requiring the minor to provide the order, and prohibiting a person from solemnising a marriage where one of the parties is a minor without having been given an order, minimises the risks of: a marriage being solemnised where there is a legal impediment; a marriage being considered void; and a person solemnising the marriage committing an offence under the Act.

Under paragraph 23B(1)(e) of the Act, a marriage is void if either of the parties to the marriage is not of marriageable age. Section 11 of the Act specifies that a person is of marriageable age if they are 18 years of age or older. The rule in section 11 is subject to section 12, which provides that a person, who is at least 16 years of age but less than 18 years of age, may apply to a Judge or magistrate for an order authorising them to marry a particular person of marriageable age. Under section 100 of the Act, a person commits an offence if they solemnise, or purport to solemnise, a marriage and they had reason to believe there was a legal impediment to the marriage or the marriage would be void.

Subsection 8(4) will apply if a chaplain solemnised the marriage. Under subsection 8(4), the chaplain will be required to forward the order to the Registrar-General under the *Registrar-General Act 1993* (ACT) (the ACT Registrar-General) after the marriage is solemnised. The ACT Registrar-General currently registers marriages solemnised overseas by chaplains in accordance with Part V of the Act. This requirement mirrors that imposed on authorised celebrants by the Act.

The note to subsection 8(4) is intended to direct the reader to the relevant requirement in subparagraph 50(4)(a)(i) of the Act, that authorised celebrants forward any order made under section 12 of the Act to the appropriate registering authority. The note is not intended to have substantive effect.

In 2002, the provisions in the Act establishing the ‘Registrar of Overseas Marriages’ were erroneously repealed. One role performed by the Registrar of Overseas Marriages was registering marriages solemnised overseas by chaplains in accordance with Part V of the Act. Short-hand references to this Registrar still appear in Part V of the Act. Previous Commonwealth Attorneys-General have appointed the ACT Registrar-General to perform the function of the Registrar of Overseas Marriages. Despite the repeal of the office of the Registrar of Overseas Marriages, the ACT Registrar-General has continued to register marriages solemnised by chaplains overseas.

This section will rely on the necessary or convenient power in section 120 of the Act. This section will be incidental to the requirement in subparagraph 50(4)(a)(i) of the Act for authorised celebrants to forward a copy of the order issued by a Judge or magistrate in relation to a marriage to the appropriate registering authority for the marriage. Additionally, this section will minimise the risk of authorised celebrants and chaplains engaging in offending conduct by solemnising a marriage where they have reason to believe—due to not having been given an order—there is a legal impediment to the marriage (paragraph 23B(1)(e) and section 100 of the Act).

Division 2 – Consent to marriage of minor

Section 9 – Consent of parent etc. to marriage of minor

This section will establish requirements in relation to the consents necessary for an intended marriage of a minor, for the purposes of subparagraph 13(1)(a)(i) of the Act.

Under subparagraph 13(1)(a)(i) of the Act, a marriage involving a minor must not be solemnised unless the person solemnising the marriage, or in whose presence the marriage will be solemnised, has been given the written consent of each person required by section 14 of the Act to consent to the marriage. However, subparagraph 13(1)(a)(ii) of the Act provides for a person to accept a written consent of a Judge or magistrate in place of the consent of a person required by section 14 of the Act to consent to the marriage.

Subsection 9(1) will specify that a consent made for the purposes of subparagraph 13(1)(a)(i) of the Act must: identify who is the person giving the consent; identify who are the parties to the intended marriage; and indicate how or why the person is required to consent to the intended marriage.

Requiring this information to be included in the consent will assist those to whom the consent may be given—Judges, magistrates, prescribed authorities, authorised celebrants, chaplains and appropriate registering authorities—to be assured that the consent relates to a particular marriage, and that the person giving consent was a person required to do so under section 14 of the Act.

Subsection 9(2) will require a person solemnising a marriage (an authorised celebrant or a chaplain) to write on any consent provided to them how they satisfied themselves that the person giving the consent is required to do so by section 14 of the Act. The requirement in subsection 9(2) will ensure that the authorised celebrant or chaplain solemnising the marriage of a minor has turned their mind to whose consent is required under section 14 of the Act, and taken steps to satisfy themselves that the consent has been given by a person required to consent.

Subsection 9(3) will operate as an exception to subsection 9(2); subsection 9(2) will not apply if the consent of both parents of the minor is provided to the person solemnising the marriage. Under section 14 and the Schedule of the Act, the default position is that both parents of a minor must consent to the minor's marriage. As such, it is necessary in the situation where only one person has given consent to the minor's marriage for the authorised celebrant or chaplain to confirm that all necessary persons have consented to the marriage.

The use of the term 'celebrant' in subsections 9(2) and (3) is for narrative purposes only, and is not intended to exclude chaplains from the application of these provisions.

Subsection 9(4) will clarify that section 9 does not apply in relation to a consent given by a Judge or magistrate under Part II of the Act. The matters which will be required to be included in a consent by subsection 9(1) will be irrelevant where the consent is given by a Judge or magistrate in place of the consent of a person required by section 14 of the Act to consent to the marriage. Additionally, in such circumstances it will not be necessary for an authorised celebrant or chaplain to turn their mind to whose consent is required under section 14 of the Act (subsection 9(2)).

The Note to section 9 is intended to direct the reader to the relevant requirements under subparagraph 50(4)(a)(i) and paragraph 80(4)(b) of the Act, for an authorised celebrant or chaplain to forward any consent to the appropriate registering authority or, in the case of chaplains, the ACT Registrar-General (see section 8 above). The note is not intended to have substantive effect.

This section will rely on the necessary or convenient power in section 120 of the Act. This section will be ancillary to subparagraph 13(1)(a)(i) of the Act, by specifying minimum requirements for what information a consent must contain. Additionally, this section will minimise the risk of authorised celebrants and chaplains engaging in offending conduct, by solemnising a marriage where they have reason to believe—due to not having confirmed that the correct persons have consented to the marriage—there is a legal impediment to the marriage (paragraph 23B(1)(e) and section 100 of the Act).

Section 10 – Consent not in English

This section will provide that where a person solemnising an intended marriage of a minor (an authorised celebrant or chaplain) is given a consent for the purposes of paragraph 13(1)(a) of the Act, and the consent is not in English, the authorised celebrant or chaplain must attach a translation of the consent into English before solemnising the marriage.

There will be no requirements specifying who is responsible for obtaining a translation of a consent that is not in English, or for providing such a translation to the person solemnising the marriage. These are matters for the authorised celebrant or chaplain to determine with the parties to the marriage and any other relevant persons.

The Note to section 10 is intended to direct the reader to the relevant requirements under subparagraph 50(4)(a)(i) and paragraph 80(4)(b) of the Act, for an authorised celebrant or chaplain to forward any consent to the appropriate registering authority or, in the case of chaplains, the ACT Registrar-General (see section 8 above). As the translation is attached to the consent, it will be forwarded along with the consent. The note is not intended to have substantive effect.

This section will rely on the necessary or convenient power in section 120 of the Act. This section will be necessary to ensure that where a registering authority for a marriage is provided with a consent that is not written in English, the registering authority will also be provided with a translation to provide certainty that the marriage was solemnised in accordance with the legal requirements of the Act.

Section 11 – Translation of consent

This section will prescribe requirements that a translation of a non-English consent given under section 13 of the Act must meet for the purposes of paragraph 7(d), section 10 and paragraphs 12(c), 14(1)(e) and 15(3)(d) of the Regulations.

Paragraph 11(a) will require a translation of a consent to be prepared by a person who is accredited or recognised by the accreditation authority (defined in section 5 of the Regulations) in relation to translating into English documents that are written in the language in which the consent is written. Paragraph 11(b) will require the person who performs the translation to be competent to do the translation.

Using accredited or recognised translators will improve the quality of translations and enable judges, magistrates, prescribed authorities, authorised celebrants, chaplains and appropriate registering authorities to have confidence that consents have been accurately translated. There will be no limitation on the level of accreditation or recognition that a translator must hold. If an authorised celebrant or chaplain translates a consent, they will also need to meet the requirements of this section.

This section will rely on the necessary or convenient power in section 120 of the Act. This section will be necessary to provide certainty that a consent, that is not in English, complies with the requirements of sections 13 and 14 of the Act.

Division 3 – Dispensing with consent to marriage of minor

Section 12 – Application to dispense with consent

This section will specify what information must be included in an application made under section 15 of the Act and what documents or evidence must accompany the application.

Under subsection 15(1) of the Act, a minor may apply in writing to a prescribed authority to dispense with the requirement for a person to consent to a proposed marriage of the minor. Subsection 15(1) of the Act sets out the matters which a prescribed authority must consider in deciding whether to grant a dispensation. To grant the dispensation, under paragraphs 15(1)(a) to (c) of the Act the prescribed authority must: be satisfied that it is impracticable, or impracticable without unreasonable delay, to ascertain the views of the person to the proposed marriage; have no reason to believe the person would refuse their consent; and have no reason to believe that facts exist which mean it would be improper to dispense with the consent.

Paragraphs 12(a) to (c) will identify documents which, if available, must accompany an application made under section 15 of the Act. Paragraph 12(a) will require the applicant's birth certificate to be provided, unless it will be impracticable to obtain this certificate. Providing the birth certificate will enable a prescribed authority to verify the age of the applicant and establish that the applicant is a minor. Where a birth certificate cannot be practicably obtained, there will be nothing to prevent a prescribed authority requesting the applicant provide other information or evidence to satisfy the prescribed authority of the applicant's age.

Paragraph 12(b) will require any consent given by, or in place of, a person required to give consent to the intended marriage under section 13 of the Act to be provided. Paragraph 12(c) will require a translation of any consent that is not in English. This translation will need to meet the requirements in section 11 of the Regulations.

This section will rely on the necessary or convenient power in section 120 of the Act. This section will be necessary in order to ensure prescribed authorities have the minimum information necessary to enable them to make a decision under section 15 of the Act.

Section 13 – Notice of dispensation or refusal to dispense with consent

This section will set out requirements a prescribed authority must meet when granting a dispensation of, or refusing to dispense with, the requirement for a person to consent to a proposed marriage of a minor under section 15 of the Act.

Paragraph 13(1)(a) will require, if a prescribed authority dispenses with the consent of a person under section 15 of the Act, the prescribed authority to give the minor the dispensation in writing.

Paragraph 13(2)(a) will require, if a prescribed authority refuses to dispense with the consent of a person under section 15 of the Act, the prescribed authority to give the minor written notice of refusal and reasons for the refusal within 14 days of making the decision to refuse the application made under subsection 15(1) of the Act. Imposing a timeframe of 14 days to notify a minor that dispensation has been refused will enable the minor to expeditiously make a new application under subsection 15(1) of the Act, or make an application under section 16 of the Act for a Judge or magistrate to give consent in place of the person required to consent under section 14 of the Act. Requiring written notice of the reasons for the refusal is intended

to assist a Judge or magistrate considering an application under section 16 of the Act; under paragraph 14(c) of the Regulations, a minor applying to a Judge or magistrate under section 16 of the Act for consent in place of a person must provide any notice given under paragraph 13(2)(a) of the Regulations.

Section 28A of the *Acts Interpretation Act 1901* will be relied on with regards to how the prescribed authority may give a notice under paragraph 13(1)(a) or 13(2)(a) to the minor. Section 9 of the *Electronic Transactions Act 1999* will be relied on, to enable the notice to be given electronically.

Paragraphs 13(1)(b) and 13(2)(b) will require the prescribed authority to return any documents that accompanied the application made under section 15 of the Act. The requirement to return the documents is intended to assist the minor in providing their birth certificate when making an application under section 12 of the Act (see section 7 of the Regulations).

This section will rely on the necessary or convenient power in section 120 of the Act. This section will be ancillary to section 15 of the Act, as it will ensure that a prescribed authority communicates a decision under section 15 of the Act to the applicant, and that an applicant is given sufficient information to undertake further action if their application is refused.

Division 4 – Consent by Judge or magistrate in place of parent etc.

Section 14 – Consent by Judge or magistrate to marriage of minor

This section will provide for the form of an application made under subsection 16(1) or 16(5) of the Act, and what information must be included in, and what documents or evidence must accompany, an application under subsection 16(1) of the Act. This section will also enable the joining of subsection 16(1) and (5) applications, and establish the form of any consent given by a Judge or magistrate in relation to such applications.

Under subsection 16(1) of the Act, a minor may apply to a Judge or magistrate to give consent in place of a person required to provide consent under section 14 of the Act (a subsection 16(1) application). A subsection 16(1) application can be made if the person required to consent has refused to give their consent or a prescribed authority has refused an application by the minor for the consent to be dispensed with under section 15 of the Act.

Paragraph 14(1)(a) will establish the form of a subsection 16(1) application—in writing—and require the application to be lodged with the Judge or magistrate. Paragraphs 14(1)(b) to (e) will identify documents which, if available, must accompany a subsection 16(1) application. Paragraph 14(1)(b) will require the applicant's birth certificate to be provided, unless it will be impracticable to obtain this certificate.

Paragraph 14(1)(c) will require any notice refusing dispensation with the consent of a person to the proposed marriage given under paragraph 13(2)(a) of the Regulations to be provided.

Paragraph 14(1)(d) will require any consent given by, or in place of, a person required to consent to the intended marriage under section 14 of the Act to be provided.

Paragraph 14(1)(e) will require a translation of any consent that is not in English. This translation will need to meet the requirements in section 11 of the Regulations.

Paragraph 14(1)(f) will apply if a minor has previously made a subsection 16(1) application, or a request under section 17 of the Act (for a Judge to re-hear the decision of a magistrate on an application under section 16 of the Act). Paragraph 14(1)(f) will require the application to state the name of the Judge or magistrate who made the decision on the previous application or request, and the date and details of the decision.

Subsection 14(2) will apply to an application made under subsection 16(5) of the Act, requiring the application to be in writing and lodged with the Judge or magistrate. Under subsection 16(5) of the Act, when a Judge or magistrate is considering a subsection 16(1) application the minor may also apply to the Judge or magistrate to give consent in the place of any other person (a different person to the one whose consent is being considered in relation to the application made under subsection 16(1) of the Act).

Subsection 14(3) will allow a Judge or magistrate to join a subsection 16(1) application with any application the minor makes under subsection 16(5) of the Act.

Under subsection 16(2) of the Act, a Judge or magistrate must conduct an inquiry into the relevant facts and circumstances in relation to a subsection 16(1) application. Enabling these applications to be joined together will allow a Judge or magistrate to make use of any information received through such an inquiry when making a decision in relation to an application under subsection 16(5) of the Act. It will also streamline the process for a minor to apply for multiple consents from a Judge or magistrate.

Subsection 14(4) will require a Judge or magistrate to give the consent in writing, if the Judge or magistrate gives consent in place of another person following an application under subsection 16(1) or (5) of the Act.

This section will rely on the necessary or convenient power in section 120 of the Act.

Section 15 – Re-hearing of application for consent to marriage of a minor

This section will establish the timeframe in which a request under subsection 17(1) of the Act must be made, the form the request must take, and what information must be included in, and what documents or evidence must accompany, the request. This section will also enable a request under subsection 17(1) of the Act to be joined with an application under subsection 16(5) of the Act.

Under subsection 17(1) of the Act, a Judge may re-hear an application that a magistrate has granted or refused under subsection 16(1) or (5) of the Act (for the magistrate to give consent in place of a person required to give consent to the marriage of a minor under section 14 of

the Act). A request under subsection 17(1) of the Act may be made by the minor or the person in relation to whose consent the application under subsection 16(1) or (5) was made.

Subsection 15(1) will specify that a request under subsection 17(1) of the Act must be made within 14 days after the day on which the application the request relates to was granted or refused. For example, if an application were granted or refused on the 1st of a month, the request must be made on or before the 15th of that month.

Subsection 15(2) will allow a Judge to join a request under subsection 17(1) of the Act with any application made under subsection 16(5) of the Act.

Subsection 17(2) of the Act enlivens subsection 16(2) of the Act for the purposes of a Judge conducting a re-hearing under subsection 17(1) of the Act. Under subsection 16(2) of the Act, a Judge or magistrate must conduct an inquiry into the relevant facts and circumstances in relation to an application under subsection 16(1) of the Act. Enabling a request under subsection 17(1) of the Act and an application under subsection 16(5) of the Act to be joined together will allow a Judge to make use of any information received through such an inquiry when making a decision in relation to an application under subsection 16(5) of the Act. It will also streamline the process for a minor to apply for multiple consents from a Judge.

Paragraph 15(3)(a) will establish the form of the application made under subsection 16(1) of the Act—in writing—and require the application to be lodged with the Judge.

Paragraphs 15(3)(b) to (e) will identify documents which, if available, must accompany a request made under section 17 of the Act. Paragraph 15(3)(b) will require the applicant's birth certificate to be provided, unless it will be impracticable to obtain this certificate. Where a birth certificate cannot be practicably obtained, there will be nothing to prevent a Judge requesting the applicant provide other information or evidence to satisfy the Judge of the applicant's age.

Paragraph 15(3)(c) will require the request to be accompanied by any consent given by, or in place of, a person required to consent to the intended marriage under section 14 of the Act, and paragraph 15(3)(d) will require a translation of any consent that is not in English. This translation will need to meet the requirements in section 11 of the Regulations. These requirements will ensure that the Judge is provided with any consents obtained in the period between an application being made under subsection 16(1) or (5) of the Act and the making of a request under subsection 17(1) of the Act.

Paragraph 15(3)(e) will require a copy of the application that was made under subsection 16(1) or (5) of the Act to be provided, including any documents that accompanied that application. This will ensure the Judge has all the information before them that was provided to the magistrate who made the original decision in relation to the application under subsection 16(1) or (5) of the Act.

Subsections 15(2) and (3) will rely on the necessary or convenient power in section 120 of the Act. These subsections will be ancillary to section 17 of the Act.

Section 16 – Notice of request to be served on magistrate

This section will require a magistrate to be informed of, and provide documents in relation to, any request made under subsection 17(1) of the Act for a Judge to re-hear a decision of the magistrate under subsection 16(1) or (5) of the Act.

Subsection 16(1) will require a person requesting a re-hearing under subsection 17(1) of the Act to give a copy of the request to the magistrate whose decision under subsection 16(1) or (5) of the Act is the subject of the request. The person will be required to provide the request to the magistrate within 7 days after the request is lodged with a Judge under subsection 15(3) of the Regulations. Section 28A of the *Acts Interpretation Act 1901* will be relied on with regards to how the person may give the notice to the magistrate. Section 9 of the *Electronic Transactions Act 1999* will be relied on, to enable the notice to be given electronically.

Subsection 16(2) will require a magistrate, who has received a copy of a request in accordance with subsection 16(1) of the Regulations, to forward any documents to the Judge that relate to the inquiry which is the subject of the request.

This section will rely on the necessary or convenient power in section 120 of the Act. This section will be ancillary to section 17 of the Act.

Division 5 – Practice and procedure in relation to inquiries

Section 17 – Application of this Division

This section will establish that Division 5 of Part 2 of the Regulations applies in relation to: applications and inquiries under section 12 of the Act; applications and inquiries under section 16 of the Act; and requests and inquiries under section 17 of the Act.

Paragraph 120(b) of the Act provides for Regulations to prescribe matters relating to the practice and procedure for inquiries under Part II of the Act, in recognition that, when exercising the powers conferred by sections 12, 16 and 17 of the Act, Judges and magistrates are acting in their personal capacity and do not have access to the court rules or other legislation pertaining to such matters available to them in respect of their general functions as Judges and magistrates.

Section 18 – Affidavits in support of application or request

This section will set out requirements in relation to utilising affidavits to support an application or request under Part II of the Act.

Subsection 18(1) will require a person making an application under sections 12 or 16 of the Act, or a request under section 17 of the Act, to state the facts in support of their application or request in an affidavit as far as practicable. Subsection 18(2) will specify that an affidavit can only be used or considered in an inquiry if it has been given to the Judge or magistrate conducting the inquiry. Requiring affidavits to be used for written evidence will provide assurance that the information contained within the affidavit is true, and establish consistency in the provision of oral and written evidence to an inquiry. Under section 23 of the

Regulations, a Judge or magistrate may require a person who has been summoned to give evidence to an inquiry to take an oath or make an affirmation.

The Regulations will not specify the form an affidavit must take, or who may witness a person swear or affirm an affidavit, as the intention is to rely on the ordinary meaning: an affidavit is a written statement where a person has sworn or affirmed before a witness that the contents are true.

Section 28A of the *Acts Interpretation Act 1901* will be relied on with regards to how the person may give the affidavit to the Judge or magistrate. Section 9 of the *Electronic Transactions Act 1999* will be relied on, to enable affidavits to be given electronically.

Section 19 – Time and place of inquiry

This section will establish procedures relating to setting a time, date and place for an inquiry under Part II of the Act to be held, and notifying relevant persons of the details of the inquiry.

Subsection 19(1) will require a Judge or magistrate, as soon as practicable after an application is made under sections 12 or 16 of the Act, or a request is made under section 17 of the Act, to fix a time, date and place to hold an inquiry into the relevant facts and circumstances. Alternatively, the Judge or magistrate will be required to direct another person to fix a time, date and place for the inquiry. This requirement will limit the potential for delay in a Judge or magistrate dealing with an application or request.

Subsection 19(2) will require a person who fixes the time, date and place for an inquiry under subsection 19(1) to notify the person who made the application or request of the time, date and place fixed for the inquiry. Subsection 19(3) will require the person who made the application or request to personally serve notice of the time, date and place fixed for the inquiry, and a copy of the application or request, on each person who is required to be given an opportunity to be heard at the inquiry under subsection 18(1) of the Act.

Paragraph 19(4)(a) will provide for a Judge or magistrate, at the request of the person who made the application under sections 12 or 16 of the Act, or the request under section 17 of the Act, to dispense with the requirement for the person to serve notice of the details of the inquiry and a copy of the application or request on another person under subsection 19(3) of the Regulations. Paragraph 19(4)(b) will provide for a Judge or magistrate, at the request of the person who made the application or request, to specify an alternative manner (other than personal service) by which the person may serve notice of the details of the inquiry and a copy of the application or request on another person under subsection 19(3) of the Regulations. Alternatively, the Judge or magistrate will be able to direct another person to dispense with service or specify an alternative manner of service. Enabling service to be dispensed with, or an alternative manner of service to be used, reflects that the requirement in subsection 18(1) of the Act for a Judge or magistrate to give an opportunity to any person to be heard at the inquiry whose consent is required to the marriage under section 14 of the Act is limited to providing a reasonably practicable opportunity.

Section 20 – Inquiries

This section will establish matters relating to the procedure or operation of an inquiry under Part II of the Act.

Subsection 20(1) will enable a Judge or magistrate to adjourn an inquiry to a different place or time and subsection 20(2) will enable a Judge or magistrate to conduct an inquiry without regard to legal formalities and technicalities. These provisions will ensure that persons who are self-represented or unfamiliar with court processes and procedure can participate effectively in the inquiry. The Judge or magistrate will also have the flexibility to exercise their discretion to determine the most appropriate way to proceed with the inquiry.

Subsection 20(3) will provide for the examination and cross-examination of witnesses at an inquiry by a person given the opportunity to be heard at an inquiry or that person's legal representative. This subsection will also provide for such a person, or their legal representative, to address the Judge or magistrate. This will ensure that where a person objects to the application or request before a Judge or magistrate, they will have the opportunity to express that view, or adduce evidence from witnesses in support of their view.

Section 21 – Forwarding documents to Judge or magistrate conducting inquiry

This section will provide for a Judge or magistrate to transfer an application made under section 12 or 16 of the Act to a second Judge or magistrate.

Subsection 21(1) will specify that section 21 applies if a Judge or magistrate under subsection 12(4) of the Act, or a magistrate under subsection 16(3) of the Act, refuses to deal with an application because they are satisfied that the matter could be more properly dealt with by a Judge or magistrate sitting at a place nearer to the location where the applicant ordinarily resides. Subsection 21(2) will specify that a Judge or magistrate transfers an application by forwarding to the second Judge or magistrate the application, any documents accompanying the application and any affidavit relating to the application. This will ensure that the applicant does not need to reapply to the second Judge or magistrate, minimising any inconvenience or delay the transfer may cause.

Section 22 – Power to send for witnesses and documents

This section will empower a Judge or magistrate to summon a person to attend an inquiry being conducted under Part II of the Act.

Summoning a person to answer questions or produce information or documents is a coercive power. Generally, coercive powers should be contained in a parent Act, rather than in subordinate legislation (see 7.3.4 of *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide to Framing Commonwealth Offences)). However, this section will be made under paragraph 120(b) of the Act, which envisages the Regulations prescribing practices and procedures in relation to the summoning of witnesses for inquiries under Part II of the Act.

Additionally, this power will not be new; under regulation 23 of the old regulations, Judges and magistrates may issue a summons requiring a person to appear as a witness for an inquiry under Part II of the Act. However, the power in section 22 has been revised to be more consistent with the limitations and safeguards outlined in Chapter 9 of the Guide to Framing Commonwealth Offences.

Subsection 22(1) will specify that section 22 applies if a Judge or magistrate conducting an inquiry under Part II of the Act reasonably believes that a person has information, documents or other things that are relevant to the inquiry. This is consistent with the principles at 9.1.1, 9.3.1, 9.3.2, 9.3.3 of the Guide to Framing Commonwealth Offences that: the threshold for issuing a notice should be ‘reasonable grounds to believe’; a notice should be in writing; a notice should be issued to a person; and a notice should contain all relevant details.

Subsection 22(2) will provide for the Judge or magistrate to summons a person to attend the inquiry on a specified day to give evidence or produce documents or other things identified in the summons. Section 28A of the *Acts Interpretation Act 1901* will be relied upon with regards to how a summons may be served on a person.

Subsection 22(3) will require the specified day in the summons issued under subsection 22(2) to be at least 14 days after the summons is given to the person. This is consistent with the principle at 9.3.4 of the Guide to Framing Commonwealth Offences that a person should be given a minimum of 14 days to comply with a notice.

This section is not intended to displace or override the common law privilege against self-incrimination: the right not to answer questions or produce material that may tend to implicate the person in a criminal offence or expose them to a civil penalty (see 9.5.1 of the Guide to Framing Commonwealth Offences).

Section 23 – Power to examine on oath or affirmation

This section will enable a Judge or magistrate to examine a person under oath or affirmation in an inquiry conducted under Part II of the Act.

Paragraph 23(1)(a) will enable a Judge or magistrate to require a person to take an oath or make an affirmation, and paragraph 23(1)(b) will provide for the Judge or magistrate to administer the oath or affirmation. Subsection 23(2) will specify that the oath or affirmation must be one that the evidence the person will give will be true.

Sections 24 to 31 – Offences

The following sections will provide for offences to uphold the integrity of an inquiry conducted under Part II of the Act.

In conducting inquiries under Part II of the Act, Judges and magistrates are acting in their personal capacity and do not have access to legislation outlining court practice and procedure that is available to them in their general functions as Judges and magistrates. For example,

legislation providing for contempt of court proceedings will not be available to Judges and magistrates in respect of inquiries conducted under Part II of the Act.

The defences of general application under the *Criminal Code Act 1995* will be available in relation to the following offences, including: mistake of ignorance of fact (clause 9.1 of the Code); duress (clause 10.2 of the Code); and lawful authority (clause 10.5 of the Code).

Section 24 – Offence in relation to failure to comply with summons

Section 24 will provide that a person commits an offence if the person:

- is summoned to attend an inquiry under section 22 of the Regulations, and
- fails to comply with the summons.

Clause 5.6 of the *Criminal Code Act 1995* will apply to determine the fault elements for this offence.

This offence will be consistent with the principle at 9.4.1 of the Guide to Framing Commonwealth Offences that a non-compliance offence can be used to encourage a person to comply with a notice to produce or attend.

The Guide to Framing Commonwealth Offences recommends that the penalty for such an offence should be six months' imprisonment and/or a 30 penalty unit fine. The penalty for this offence will be 2 penalty units, significantly lower than the Guide's recommendation. Under paragraph 120(j) of the Act, the Regulations may prescribe penalties not exceeding a fine of 2 penalty units for offences against the regulations.

Section 25 – Offence in relation to refusal to be sworn

Section 25 will provide that a person commits an offence if the person:

- is summoned to attend an inquiry under section 22 of the Regulations
- attends the inquiry
- is required by the Judge or magistrate holding the inquiry to take an oath or make an affirmation, and
- refuses or fails to take the oath or make the affirmation as required.

Clause 5.6 of the *Criminal Code Act 1995* will apply to determine the fault elements for this offence.

The penalty for this offence will be 2 penalty units.

Section 26 – Offence in relation to refusal to answer

Section 26 will provide that a person commits an offence if the person:

- is summoned to attend an inquiry under section 22 of the Regulations
- attends the inquiry
- is required by the Judge or magistrate holding the inquiry to answer a question, and
- refuses or fails to answer the question.

Clause 5.6 of the *Criminal Code Act 1995* will apply to determine the fault elements for this offence.

The penalty for this offence will be 2 penalty units.

Section 27 – Offence in relation to insulting or disturbing a Judge or magistrate

Section 27 will provide that a person commits an offence if the person:

- engages in conduct, and
- the conduct insults or disturbs a Judge or magistrate in the conduct of an inquiry.

The term ‘engage in conduct’ will be defined in section 5 of the Regulations to include doing an act or omitting to perform an act.

Clause 5.6 of the *Criminal Code Act 1995* will apply to determine the fault elements for this offence.

The penalty for this offence will be 2 penalty units.

Section 28 – Offence in relation to using insulting language

Section 28 will provide that a person commits an offence if the person:

- uses insulting language towards another person
- is reckless as to whether the language is insulting, and
- the other person is a Judge or magistrate who is holding an inquiry.

The fault element for this offence will be recklessness, as specified in paragraph 28(b).

The penalty for this offence will be 2 penalty units.

Section 29 – Offence in relation to interrupting an inquiry

Section 29 will provide that a person commits an offence if the person:

- engages in conduct, and

- the conduct interrupts an inquiry being held by a Judge or magistrate.

The term ‘engage in conduct’ will be defined in section 5 of the Regulations to include doing an act or omitting to perform an act.

Clause 5.6 of the *Criminal Code Act 1995* will apply to determine the fault elements for this offence.

The penalty for this offence will be 2 penalty units.

Section 30 – Offence in relation to improper influence

Section 30 will provide that a person commits an offence if the person:

- uses words (written or oral) with the intention of improperly influencing another person, and
- the other person is a Judge or magistrate conducting an inquiry or a witness attending an inquiry.

Clause 5.6 of the *Criminal Code Act 1995* will apply to determine the fault elements for this offence.

The penalty for this offence will be 2 penalty units.

Section 31 – Offence in relation to bringing Judge or magistrate into disrepute

Section 31 will provide that a person commits an offence if the person:

- uses words (written or oral) with the intention of bringing another person into disrepute in connection with an inquiry being held by a Judge or magistrate, and
- the other person is the Judge or magistrate.

Clause 5.6 of the *Criminal Code Act 1995* will apply to determine the fault elements for this offence.

The penalty for this offence will be 2 penalty units.

Section 32 – Protection of Judges and magistrates etc.

This section will provide protections and immunities for Judges and magistrates performing functions, barristers and solicitors representing persons, and persons attending at or appearing before inquiries conducted under Part II of the Act.

As Judges and magistrates conduct inquiries under Part II of the Act in their personal capacity, Judges, magistrates, barristers, solicitors and persons attending or appearing at inquiries do not have access to the general protections and immunities available in respect of court matters.

Subsection 32(1) will provide that a Judge or magistrate performing or exercising a function or power under Part 2 of the Regulations or Part II of the Act will have the same protection and immunity as a Judge of the Supreme Court of the state or territory in which the function is performed or the power is exercised. For example, if a magistrate in Queensland summons a person to attend an inquiry under section 22 of the Regulations, the magistrate will have the same protection and immunity as a Judge of the Supreme Court of Queensland.

Subsection 32(2) will provide that a barrister or solicitor representing a person at an inquiry will have the same protection and immunity as a barrister appearing for a party before the Supreme Court of the state or territory in which the inquiry is being held. For example, if a solicitor is representing a person at an inquiry being held in Victoria, the solicitor will have the same protection and immunity as a barrister appearing before the Supreme Court of Victoria.

Subsection 32(3) will provide that a person appearing unrepresented before a Judge or magistrate holding an inquiry will have the same protection and immunity as an unrepresented party to proceedings in the Supreme Court of the state or territory in which the inquiry is being held. For example, if an unrepresented person appears before an inquiry being held in South Australia, the solicitor will have the same protection and immunity as an unrepresented person appearing before the Supreme Court of South Australia.

Subsection 32(4) will provide that a person summoned to attend or appear at an inquiry held by a Judge or magistrate, to give evidence or produce documents or things, will have the same protection and immunity as a witness in proceedings in the Supreme Court of the state or territory in which the inquiry is being held. For example, if a witness appears before an inquiry being held in Tasmania, the witness will have the same protection and immunity as a witness appearing before the Supreme Court of Tasmania.

Section 33 – Return of documents to applicant

This section will require the return of any document that accompanied an application under section 12 or 16 of the Act, or request under section 17 of the Act, to the person who made the application or request. The return of any document will be required once a Judge or magistrate has heard and dealt with an application or request, unless the Judge or magistrate directs otherwise.

Part 3 – Solemnisation of marriages in Australia

Division 1 – Ministers of religion

Section 34 – Notice of intention to remove person’s name from register

This section will specify the means by which a Registrar of Ministers of Religion may notify a person of an intention to remove the person’s name from the register of ministers of religion.

Subsection 33(1) of the Act outlines the circumstances in which a Registrar of Ministers of Religion shall remove a person's name from the register of ministers of religion.

Paragraph 33(2)(a) of the Act requires the Registrar, before removing the person's name, to serve on the person a written notice stating the intention to remove the person's name and informing the person that the Registrar will consider any representations the person makes before a specified date.

Paragraph 34(a) will apply if the Registrar of Ministers of Religion holds or performs the duties of an office under state or territory law. Generally, a Registrar of Ministers of Religion is the same person who performs state and territory functions as a Registrar of Births, Deaths and Marriages. Paragraph 34(a) will enable such a Registrar to give a notice under paragraph 33(2)(a) of the Act in the same manner as they would give a notice in the course of their state or territory duties—by giving it to the person in any way that they are authorised to give notices under a state or territory law.

Paragraphs 34(b) and 34(c) will respectively provide for a Registrar to send a notice to the person's email address, or to the person's principal residential address (or postal address, if different from the principal residential address).

Section 35 – Notice of removal of name from Register

This section will require a Registrar of Ministers of Religion to notify a person's recognised denomination in writing if the person's name is removed from the register. The notification will be required to take place after the person's name is removed.

This requirement will ensure that the recognised denomination is aware that the person is no longer authorised to solemnise marriages under Part IV of the Act, and can take steps to nominate a replacement person if necessary.

Section 28A of the *Acts Interpretation Act 1901* will be relied on with regards to how the Registrar may give the notice to the recognised denomination. Section 9 of the *Electronic Transactions Act 1999* will be relied on, to enable the notice to be given electronically.

This section will rely on the necessary or convenient power in section 120 of the Act. This section will be complementary to section 33 of the Act, and will provide a recognised denomination with the opportunity to nominate a minister to replace the person who has been removed from the register.

Section 36 – Notice of change of address etc.

This section will specify how a person may notify a Registrar of Ministers of Religion of changes in the person's details or the person's entitlement to exercise functions of a minister of religion for a recognised denomination.

Under subsection 35(1) of the Act, a person must advise the Registrar of Ministers of Religion (who maintains the register on which the person is registered) within 30 days if the

person changes their name, address or designation, or ceases to be a minister for the recognised denomination which nominated them for registration.

Subsection 36(1) will require a person to notify the Registrar of Ministers of Religion of the matters specified in subsection 35(1) of the Act in writing. Subsection 36(2) will further require the person, if their name, address or designation has changed, to specify their name, address and designation both before the change and after the change.

Section 37 – Notice seeking information about ministers of religion

This section will provide for a Registrar of Ministers of Religion to seek information from a recognised denomination about a person listed on the register maintained by the Registrar.

Requiring a recognised denomination to provide information is a coercive power. Generally, coercive powers should be contained in a parent Act, rather than in subordinate legislation (see 7.3.4 of the Guide to Framing Commonwealth Offences). However, this section will be made under paragraph 37(a) of the Act, which envisages regulations establishing a process for a Registrar of Ministers of Religion to receive information from a recognised denomination. Such information is intended to assist the Registrar to determine whether a person should remain registered under Subdivision A of Division 1 of Part IV of the Act.

Additionally, this power will not be new; under regulation 37 of the old regulations, a Registrar of Ministers of Religion may require a recognised denomination to provide a statement containing information. However, the power in section 37 of the Regulations has been revised and is intended to reflect the limitations and safeguards outlined in Chapter 9 of the Guide to Framing Commonwealth Offences.

Subsection 37(1) will provide for a Registrar of Ministers of Religion to, by written notice, require a recognised denomination to give the Registrar specified information about one or more persons whose names are in the register maintained by the Registrar under subsection 27(4) of the Act and who are registered as ministers of religion of the denomination. The written notice must specify a day by which the denomination must provide the information to the Registrar; subsection 37(2) will require this day to be at least 14 days after the notice is given.

Section 28A of the *Acts Interpretation Act 1901* will be relied on with regards to how a recognised denomination must give the information to the Registrar in response to a notice issued under subsection 37(1). Section 9 of the *Electronic Transactions Act 1999* will be relied on, to enable the information to be given electronically.

Subsection 37(3) will limit what the Registrar may require the recognised denomination to provide information about. The Registrar will only be able to require the denomination to provide information about matters affecting the right of the persons named in the notice to be registered.

This provision will depart from the general threshold for issuing a notice: ‘reasonable grounds to believe’ (see 9.1.1 of the Guide to Framing Commonwealth Offences). This is

considered appropriate given the narrowness of who can be required to provide the information—only the person’s recognised denomination could be issued with a notice under section 37. Additionally, the information that could be required is limited—only information relevant to the person’s registration can be required.

Subsection 37(4) will specify how a recognised denomination complies with a notice issued under subsection 37(1). A member of the denomination will be required to sign the document containing the information in response to the notice and certify that the information is correct.

Section 38 – Annual list of ministers of religion

This section will require a recognised denomination to provide a list to each state and territory Registrar of Ministers of Religion of all persons belonging to the denomination who are listed on the register maintained by the Registrar.

Subsection 38(1) will provide that section 38 applies to a recognised denomination if there are one or more persons who are exercising the functions of a minister of religion of the denomination, and registered as a minister of the denomination under section 30 of the Act, on 1 January of a year. Subsection 38(2) will require the denomination to give to the Registrar of Ministers of Religion for each state and territory a list of each a person residing in that state or territory who meet the requirements of subsection 38(1). The list will be required to specify the full name, address and designation of each person, and explain, if a person’s name was on the previous year’s list but is not on this year’s list, why that person is not on the new list. The denomination will be required to provide this information by 1 February of that year.

Section 28A of the *Acts Interpretation Act 1901* will be relied on with regards to how a recognised denomination must give the list to the Registrar. Section 9 of the *Electronic Transactions Act 1999* will be relied on, to enable the list to be given electronically.

Receiving this annual list is intended to assist each Registrar of Ministers of Religion to maintain their state or territory’s register of ministers of religion established under subsection 27(4) of the Act.

Division 2 – Marriage celebrants

Subdivision A – General provisions

Section 39 – Qualifications and skills required of a marriage celebrant

This section will specify requirements the Registrar of Marriage Celebrants must meet when, under paragraph 39C(1)(b) of the Act, determining in writing the qualifications and skills a person must have to be entitled to be registered as a marriage celebrant.

A determination made under paragraph 39C(1)(b) of the Act will be treated as a legislative instrument for the purposes of the *Legislation Act 2003* and will be registered on the Federal Register of Legislation.

Subsection 39(1) will specify matters that must be included in the determination the Registrar makes under paragraph 39C(1)(b) of the Act.

Paragraph 39(1)(a) will require the determination to provide that it is necessary for a person to have at least one of the following:

- a *Certificate IV in Celebrancy*.

Subsection 39(2) will define a Certificate IV in Celebrancy as a qualification with that name that is awarded by a registered training organisation or NVR registered training organisation, and includes each unit, and uses all the materials, specified in the determination. The Regulations will use the terms ‘registered training organisation’ and ‘NVR registered training organisation’ as defined in the *National Vocational Education and Training Regulator Act 2011*. These different terms will capture all organisations registered on the National Register of Vocational Education and Training regardless of whether the organisation was registered by a state or territory regulator or the National VET Regulator (NVR). Defining Certificate IV in Celebrancy in this manner will ensure that aspiring marriage celebrants must obtain a qualification from an organisation required to meet the *Standards for Registered Training Organisations (RTOs) 2015*, which relevantly include requirements for organisations to ensure trainers are appropriately qualified, with current industry skills. The limb of the definition requiring the Certificate IV in Celebrancy to include the units, and use all materials, specified in the determination is intended to support the requirement in paragraph 39(1)(b).

- a *celebrancy qualification*.

Subsection 39(3) will define a celebrancy qualification as a qualification that is awarded by a university specified in the determination, and includes each unit, and uses all the materials, specified in the determination. The limbs of the definition requiring the university to be specified in the determination, and to include the units, and use all materials, specified in the determination, are intended to support the requirements in paragraph 39(1)(d) and (c) respectively.

Currently, no Australian university offers a celebrancy qualification. Previously, Monash University offered a Graduate Certificate, Graduate Diploma and Masters in Civil Ceremonies. Maintaining the flexibility for the Registrar to specify a celebrancy qualification will ensure that should a university in the future offer a celebrancy qualification, that celebrancy qualification could be added to the determination.

- the *celebrancy skills*.

Subsection 39(4) will define celebrancy skills as:

- fluency in an Indigenous language

- the ability to liaise with clients, and other members of the indigenous community if appropriate, in planning a marriage ceremony
- the ability to conduct a marriage ceremony and to complete and deal with the required documentation in accordance with the Act and this instrument, and
- the ability to communicate effectively.

A person will be required to hold all of the above skills in order to demonstrate that they have the ‘celebrancy skills’ required by the determination made by the Registrar under paragraph 39C(1)(b) of the Act. This is intended to support the registration of marriage celebrants to service Indigenous communities, without the need for aspiring marriage celebrants to undertake a formal qualification.

Paragraph 39(1)(b) will require the determination to specify any units and materials the Registrar considers necessary to have been included in the Certificate IV in Celebrancy. Paragraph 39(1)(c) will impose the same requirement with respect to a celebrancy qualification. This discretion to specify units and materials will enable the Registrar to ensure that a person is only entitled to be registered as a marriage celebrant on the basis that the qualification the person undertook contained content about conducting a legal marriage ceremony, or referred to materials a marriage celebrant should be familiar with (such as marriage forms or marriage legislation). For example, the current Certificate IV in Celebrancy (CHC41015) contains three units that are focussed on the legal requirements for marriage ceremonies; a Certificate IV in Celebrancy obtained without those units being studied may not be suitable to entitle a person to registration.

Paragraph 39(1)(d) will require the Registrar to include in the determination that a celebrancy qualification must be awarded by a university specified in the determination. Subsection 39(5) will require the Registrar to publish the determination made under paragraph 39C(1)(b) of the Act on the internet and in any other way the Registrar considers appropriate. This will ensure that the qualification requirements for entitlement to be registered as a marriage celebrant can be easily identified by any person.

Section 40 – Minister may determine fees

This section will provide for the Minister to set fees for the registration application fee (as defined in section 5 of the Regulations) and for an application for exemption from paying the registration application fee.

Subsection 40(1) will provide for the Minister to determine the registration application fee by legislative instrument.

Subsection 40(2) will provide for the Minister to determine the **registration exemption application fee**—a fee to be paid with respect to an application for exemption from liability to pay the registration application fee -by legislative instrument.

The note to subsection 40(1) is intended to refer the reader to the term ‘registration application fee’, as defined in the definitions in section 5 of the Regulations. Both the notes to subsections 40(1) and (2) are intended to direct the reader to subsection 39D(1D) of the Act, which provides for regulations to specify these fees, or to provide for the Minister to determine these fees by legislative instrument. The notes are not intended to have substantive effect.

These fees are intended to recognise the costs incurred for the work undertaken by the Attorney-General’s Department in assessing applications for registration as a marriage celebrant made under subsection 39D(1) of the Act and applications for exemptions from liability made under subsection 41(1) of the Regulations.

Section 41 – Application for exemption from registration application fee

This section will provide for the making of an application for exemption from liability to pay the registration application fee.

Subsection 41(1) will require the application to be made in writing to the Registrar of Marriage Celebrants, if the person believes that the grounds specified in paragraphs 42(2)(a) and (b) might apply to the person. Subsection 41(2) will require the application to be made before the person applies for registration as a marriage celebrant under subsection 39D(1) of the Act. The application for exemption will be required to be accompanied by the registration exemption application fee (defined in subsection 40(2) of the Regulations) and any information or documents that may assist the Registrar in making a decision on the application.

Subsection 41(3) will enable the Registrar to ask an applicant to give the Registrar additional information within a specified period to assist the Registrar in making a decision on the application. The Registrar will be required to make this request by written notice. Section 28A of the *Acts Interpretation Act 1901* will be relied on with regards to how the Registrar gives this notice to the applicant. Section 9 of the *Electronic Transactions Act 1999* will be relied on, to enable the notice to be given electronically.

Following the Registrar requesting additional information under subsection 41(3), the Registrar will not be required to consider the application while waiting for additional information to be provided (subsection 41(4)) and the application will be taken to be withdrawn if the applicant does not provide the additional information within the time specified in the Registrar’s written notice or any longer time the Registrar has allowed by a subsequent written notice (subsection 41(5)).

Section 42 – Decision on application for exemption from registration application fee

This section will provide for the circumstances in which the Registrar of Marriage Celebrants may decide to exempt a person from liability to pay the registration application fee.

Subsection 42(1) will clarify that if the Registrar receives an application for an exemption from paying the registration application fee, the Registrar must make a decision on the application.

Subsection 42(2) will provide that the Registrar may grant an exemption from paying the registration application fee if satisfied that the applicant's principal residential address is in a remote area and there is only one other marriage celebrant whose principal residential address is in that same remote area and has the same postcode. The term 'remote area' will be defined in section 5 of the Regulations. This exemption is intended to support remote or very remote communities in Australia that have limited or no existing marriage celebrant services.

The note to subsection 42(2) is intended to direct the reader to section 45 of the Regulations. The note is not intended to have substantive effect.

Subsection 42(3) will require the Registrar to advise the applicant of the decision within 21 days after receiving the application or additional information (where the Registrar requested additional information under subsection 41(3) of the Regulations). The notice advising of the decision will be required to be in writing.

The note to subsection 42(3) is intended to direct the reader to section 50 of the Regulations. The note is not intended to have substantive effect.

Section 43 – Details in register of marriage celebrants

This section will specify what details of a marriage celebrant must be included when registering a person on the register of marriage celebrants established under section 39B of the Act, and when the Registrar of Marriage Celebrants must amend the register.

Subsection 43(1) will specify that, when registering a person under subsection 39D(5) of the Act, the Registrar must enter into the register:

- the person's full name and title
- the person's suburb, town or locality, postcode and state or territory
- any contact details the person wishes to be entered into the register (contact details could include, but are not limited to, an email address or telephone number)
- if the person will conduct religious marriage ceremonies, the religious body or organisation under whose authority the person will conduct such ceremonies, and
- the date the person is registered.

Under subsection 39B of the Act, the Registrar is required to maintain a register of marriage celebrants, and all information contained in the register must be made available on the internet. To meet these requirements, the Registrar must store and disclose personal information about marriage celebrants. Section 43 will require the disclosure of some of this personal information. Requiring details that include personal information to be entered in the

register is intended to ensure members of the public can verify whether a person is registered as a marriage celebrant, and locate the services of, and contact, a marriage celebrant in their local area. The requirement to identify on the register if a marriage celebrant will be performing religious marriage ceremonies, including the religion, is intended to assist members of the public to identify the type of marriage services a marriage celebrant will provide.

This requirement to disclose personal information will not be new; under regulation 37I of the old regulations, the Registrar is required to enter the same personal information about a marriage celebrant in the register, with one difference. This difference will be that the contact details to be entered in the register under paragraph 43(1)(c) will be limited to those contact details a marriage celebrant wishes to be entered in the register, as opposed to all contact details the Registrar holds for the celebrant.

Paragraphs 43(2)(a) to (f) will specify the circumstances in which the Registrar must amend the register. Paragraph 43(2)(a) will require the register to be amended where a marriage celebrant has used the self-service portal to advise the Registrar of a change to the celebrant's details. The self-service portal is an access platform made available by the Registrar via the Attorney-General's Department website. All Commonwealth-registered marriage celebrants with a valid email address are provided with a user ID and password to securely access the portal and its associated services, which include a celebrant managing the details they provide to the Registrar and have published on the register.

Paragraphs 43(2)(b) and (d) will require the register to be amended to reflect any information the marriage celebrant gives to the Registrar about changes to their details or times they will be unavailable. Section 28A of the *Acts Interpretation Act 1901* will be relied on with regards to how the marriage celebrant may give information to the Registrar. Section 9 of the *Electronic Transactions Act 1999* will be relied on, to enable the information to be given electronically.

Paragraph 43(2)(c) will require the correction of any clerical errors in the register of which the Registrar becomes aware.

Paragraph 43(2)(e) and (f) will require the Registrar to remove a marriage celebrant's details from the register if the marriage celebrant notifies the Registrar they no longer wish to be registered or they have become a minister of religion of a recognised denomination, or where the Registrar is satisfied the marriage celebrant has died.

The Act provides for other circumstances in which the register may be amended, such as where a celebrant is suspended or deregistered under paragraphs 39I(2)(c) and (d) of the Act.

Subsection 43(3) will clarify that any amendment to the register under subsection 43(2) takes effect on the day it appears on the register.

Section 44 – Notice of liability for celebrant registration charge

This section will provide additional requirements for a notice about the celebrant registration charge payable for a financial year sent under subsection 39FA(2) of the Act.

Under subsection 39FA(1) of the Act, all persons registered as marriage celebrants on 1 July of a financial year, or who become a marriage celebrant at a later date in the financial year, are liable to pay a celebrant registration charge for that financial year. Subsection 39FA(2) of the Act requires the Registrar of Marriage Celebrants to send a notice to each person liable to pay a celebrant registration charge. Section 39FB of the Act sets out the consequences for failing to pay a celebrant registration charge by the charge payment day—deregistration of the person.

Subsection 44(1) will clarify that a notice sent under subsection 39FA(2) of the Act must comply with subsections 44(2), (3) and (4).

Paragraphs 44(2)(a) to (e) will specify matters which must be stated in the notice (in addition to any matters required by the Act to be included in the notice):

- the person is liable to pay the celebrant registration charge unless they are granted an exemption before the end of the charge payment day (paragraph 44(2)(a))
- the charge amount is a debt the person owes to the Commonwealth and can be recovered by court action (paragraph 44(2)(b))
- the person can seek an exemption under section 48, by making an application and paying any fee imposed for such an application no later than 21 days after the day on which the notice is sent (paragraphs 44(2)(c) and (d)), and
- the person will be deregistered under section 39FB of the Act if the person fails to pay the celebrant registration charge by the charge payment day (paragraph 44(2)(e)).

Requiring these matters to be stated in the notice is intended to ensure that a marriage celebrant understands their liability to pay the celebrant registration charge, the nature of the charge and their ability to apply for an exemption from paying the charge.

Subsection 44(3) will provide that a notice does not need to state the matters specified in paragraphs 44(2) and may instead state that the person is exempt from paying the celebrant registration charge. Subsection 44(3) will only apply where a marriage celebrant is exempt from liability to pay the celebrant registration charge under sections 45 or 46 of the Regulations at the time at which the notice is sent to the celebrant.

Paragraph 39FA(3)(a) of the Act enables regulations to provide for exemptions to be granted from paying the celebrant registration charge. The Regulations will provide two exemptions (sections 45 and 46) that the Registrar will be required to grant automatically if a marriage celebrant meets the relevant criteria. A marriage celebrant may be granted one of these automatic exemptions before being sent a notice about the charge under subsection 39FA(2)

of the Act. Despite the marriage celebrant being exempt from the charge, the Act will still require the Registrar to send the celebrant a notice about the charge. Subsection 44(3) will allow the Registrar to send such a marriage celebrant a notice that reflects the fact that the marriage celebrant has already been granted an exemption.

Subsection 44(4) will specify how the Registrar must send a notice under subsection 39FA(2) of the Act to a marriage celebrant—to the marriage celebrant’s email address or, if the Registrar has no email address for the celebrant, the principal residential address or postal address (if different from the residential address). Under this subsection, email will be the default method for sending these notices. This is the most efficient method for the Registrar to send such notices. It will be inferred that a celebrant, by providing an email address to the Registrar, has consented to receiving communications by email. Inferring consent in this manner is consistent with the *Electronic Transactions Act 1999*, which will continue to apply where the Registrar sends a notice under subsection 39FA(2) of the Act to a marriage celebrant’s email address.

Section 45 – Automatic exemption from first year of celebrant registration charge—person exempt from registration application fee

This section will provide for a marriage celebrant to be exempt from paying the celebrant registration charge if the celebrant was granted an exemption from the registration application fee under section 42 of the Regulations.

Section 45 will require the Registrar to exempt a person from paying the celebrant registration charge for a financial year where:

- the person became registered as a marriage celebrant in that financial year
- the person was granted an exemption from paying the registration application fee under section 42 of the Regulations, and
- the application in relation to which the person was granted the exemption under section 42 is the same application which led to the person being registered as a marriage celebrant.

This automatic exemption is intended to streamline the exemption process for a person who was granted an exemption under section 42 from paying the registration application fee, and who would likely be eligible for an exemption under section 48 of the Regulations from paying the celebrant registration charge. The application under section 48 would likely be on the same grounds on which the exemption under section 42 of the Regulations was granted (remote area). As such, providing an automatic exemption will prevent the person and the Registrar duplicating effort and work, by collating, submitting and reviewing the same or similar evidence.

The requirement that the section 42 exemption be tied to the person’s successful application will avoid a person who made multiple applications to become a marriage celebrant being granted an exemption under section 45 where the application leading to their being registered

was not the application for which they were granted a section 42 exemption. For each subsequent financial year, the marriage celebrant will be required to apply for an exemption and pay the application fee in order to obtain an exemption from paying the celebrant registration charge (unless the exemption in section 46 applies to the celebrant).

A person who is exempt under section 45 will be sent a notice under subsection 39FA(2) of the Act that complies with subsection 44(3) of the Regulations.

No formal merits review mechanism will be available for decisions made under section 45, as such decisions are automatic—the Registrar is required to grant the exemption if the circumstances giving rise to the exemption exist. There will be no exercise of discretion by the Registrar.

The first note to section 45 is intended to direct the reader to paragraph 39FA(3)(a) of the Act, which enables regulations to provide for exemptions to be granted from paying the celebrant registration charge. The second note is intended to acknowledge that section 45 does not require a person to make an application in order to be granted the exemption. The Registrar will already hold all the information necessary to grant the exemption, without an application being made: the date of the person’s registration; the information that the person was granted an exemption under section 42; and the information that the application in respect of which the section 42 exemption was granted is the same application that led to the person’s registration. Neither note is intended to have substantive effect.

Section 46 – Automatic exemption from celebrant registration charge—person resigns as a marriage celebrant etc.

This section will provide that a marriage celebrant is exempt from paying the celebrant registration charge if the celebrant resigns or becomes a minister of religion of a recognised denomination, provided certain conditions are met.

Section 46 will require the Registrar to exempt a person from paying the celebrant registration charge for a financial year where, before the end of the charge payment day, the person:

- has not paid the charge, and
- notifies the Registrar after the start of the financial year that the person no longer wishes to be registered as a marriage celebrant or has become a minister of religion of a recognised denomination.

This automatic exemption will mean that the Registrar will not be required, under section 39FB of the Act, to deregister a marriage celebrant who resigns or becomes a minister of religion of a recognised denomination prior to the end of the charge payment day for failing to pay the celebrant deregistration charge. Additionally, the person will not owe the amount of the charge as a debt due to the Commonwealth that could be recovered by court action.

Where a person notifies the Registrar in accordance with paragraph 46(b) prior to the person being sent a notice under subsection 39FA(2) of the Act, the person will be sent a notice that complies with subsection 44(3) of the Regulations.

No formal merits review mechanism will be available for decisions made under section 46, as such decisions are automatic—the Registrar is required to grant the exemption if the circumstances giving rise to the exemption exist. There will be no exercise of discretion by the Registrar.

The first note to section 46 is intended to direct the reader to paragraph 39FA(3)(a) of the Act, which enables regulations to provide for exemptions to be granted from paying the celebrant registration charge. The second note is intended to acknowledge that section 46 does not require a person to make an application in order to be granted the exemption. The Registrar will already hold all the information necessary to grant the exemption, without an application being made. Neither note is intended to have substantive effect.

Section 47 – Minister may determine charge exemption application fee

This section will provide for the Minister to determine the *charge exemption application fee*—a fee to be paid with respect to an application for exemption from liability to pay the celebrant registration charge—by legislative instrument.

The note to section 47 is intended to refer the reader to subsection 39FA(4) of the Act, which provides for regulations to specify this fee, or to provide for the Minister to determine this fee by legislative instrument. The note is not intended to have substantive effect.

This fee is intended to recognise the costs incurred for the work undertaken by the Attorney-General’s Department in assessing applications for exemptions from liability made under subsection 48(1) of the Regulations.

Section 48 – Application for exemption from celebrant registration charge

This section will provide for the making of an application for exemption from liability to pay the celebrant registration charge.

Subsection 48(1) will require the application to be made in writing to the Registrar of Marriage Celebrants, if the person believes that one or more of the grounds specified in paragraphs 49(2)(a), (b) or (c) might apply to the person.

Paragraph 48(2)(a) will require the application to be made within 21 days after the day the person is sent a notice under subsection 39FA(2) of the Act. For example, if the person is sent a notice on 1 March, the first day on which the person may make an application is 2 March and the last day on which the person may make an application is 22 March.

Paragraph 48(2)(b) will require the application for exemption to be accompanied by the registration exemption application fee (defined in subsection 47 of the Regulations) and any information or documents that may assist the Registrar in making a decision on the application.

Subsection 48(3) will enable the Registrar to ask an applicant to give the Registrar additional information within a specified period to assist the Registrar in making a decision on the application. The Registrar will be required to make this request by written notice.

Section 28A of the *Acts Interpretation Act 1901* will be relied on with regards to how the Registrar gives this notice to the applicant. Section 9 of the *Electronic Transactions Act 1999* will be relied on, to enable the notice to be given electronically.

Following the Registrar requesting additional information under subsection 48(3), the Registrar will not be required to consider the application while waiting for additional information to be provided (subsection 48(4)) and the application will be taken to be withdrawn if the applicant does not provide the additional information within the time specified in the Registrar's written notice or any longer time the Registrar has allowed by a subsequent written notice (subsection 48(5)).

Section 49 – Decision on application for exemption from celebrant registration charge

This section will provide for the ground upon which the Registrar of Marriage Celebrants may decide to exempt a person from liability to pay the celebrant registration charge.

Subsection 49(1) will clarify that if the Registrar receives an application for an exemption from paying the registration application fee, the Registrar must make a decision on the application.

The note to subsection 49(1) is intended to direct the reader to paragraph 39FA(3)(a) of the Act, which enables regulations to provide for exemptions to be granted from paying the celebrant registration charge. The note is not intended to have substantive effect.

Paragraph 49(2)(a) to (c) will specify grounds on which, if the Registrar is satisfied the ground exists, the Registrar may grant an exemption from paying the celebrant registration charge.

Paragraph 49(2)(a) will provide that a ground for an exemption is that the applicant's principal residential address is in a remote area and there is only one other marriage celebrant whose principal residential address is in that same remote area and has the same postcode. The term 'remote area' will be defined in section 5 of the Regulations. This ground is intended to support remote or very remote communities in Australia that have limited or no existing marriage celebrant services.

Paragraph 49(2)(b) will provide that a ground for an exemption is that the applicant will not reside in Australia during the financial year. This ground will allow a marriage celebrant to obtain an exemption if work, travel or other circumstances require them to reside outside Australia for a financial year. The ground will not be available if the celebrant spends any part of the financial year in Australia.

Paragraph 49(2)(c) will provide that a ground for an exemption is that the applicant will be unable to perform as a marriage celebrant for at least 6 months of the financial year due to serious illness or caring responsibilities. This ground will allow a celebrant to obtain an

exemption where their personal circumstances are such that they are will be substantially unlikely to solemnise, or would have difficulty solemnising, marriages in the financial year.

The grounds in paragraphs 49(2)(b) and (c) are not intended to allay financial hardship experienced by marriage celebrants, but to enable a celebrant who is unlikely to solemnise, or would have difficulty solemnising, marriages during a financial year to remain registered. Without the exemption, a celebrant who will be overseas, or unable to solemnise marriages due to serious illness or caring responsibilities, would be required to choose between maintaining their registration by paying the celebrant registration charge or not paying the charge and consequently being deregistered under section 39FB of the Act. A marriage celebrant applying on these grounds will be seeking relief from paying the charge for the remainder of the financial year to which the charge relates, and as such would be expected to, at the time of making the application, be able to demonstrate that the circumstances or facts supporting one of these grounds already exist.

Subsection 49(3) will require the Registrar to advise the applicant of the decision within 21 days after receiving the application or additional information (where the Registrar requested additional information under subsection 48(3) of the Regulations). The notice advising of the decision will be required to be in writing.

The note to subsection 49(3) is intended to direct the reader to section 50 of the Regulations, which provides for internal review of a decision made under section 49. The note is not intended to have substantive effect.

Section 50 – Internal review of decision to refuse to grant certain exemptions

This section will provide for internal review of decisions refusing to grant exemptions under sections 42 and 49 of the Regulations.

Decisions to grant exemptions under section 42 and 49 of the Regulations will affect the interests of the persons who applied for those exemptions. Refusal to grant the exemption means that the person will either be required to pay a registration application fee in order to make an application to become a marriage celebrant under section 39D of the Act, or will remain liable to pay a celebrant registration charge with the potential consequence of deregistration under section 39FB of the Act if the person fails to pay the charge. The formal internal merits review mechanism is intended to safeguard the decision-making process, by ensuring that the correct or preferable decision is made. External merits review of these decisions will not be available as the costs associated with external review would outweigh the benefits of providing it, particularly as the costs may be higher than the registration application fee and celebrant registration charge which the person is seeking an exemption from paying.

Subsection 50(1) will provide that an application for internal review must be made to the Registrar of Marriage Celebrants and must be made in writing. An application will be for a review of the original decision: the decision to refuse to grant an exemption from liability to

pay a registration application fee under section 42; or the decision to refuse to grant an exemption from liability to pay the celebrant registration charge under section 49.

Subsection 50(2) will require the application to set out the reasons for making the application and to be made within 14 days after the day the person received notice of the original decision. For example, if the person receives notice of the original decision on 1 March, the first day on which the person may apply is 2 March and the last day is 15 March.

Subsection 50(3) will require the Registrar to ensure that the Australian Public Service employee conducting the internal review has a classification that is equivalent to or higher than the classification of the original decision-maker.

Subsection 50(4) will enable the internal reviewer to ask an applicant to provide additional information within a specified period to assist the internal reviewer in making a decision on the application. The internal reviewer will be required to make this request by written notice.

Following the internal reviewer requesting additional information under subsection 50(4), the internal reviewer will not be required to consider the application while waiting for additional information to be provided (subsection 50(5)) and the application will be taken to be withdrawn if the applicant does not provide the additional information within the time specified in the internal reviewer's written notice or any longer time the internal reviewer has allowed by a subsequent written notice (subsection 50(6)).

Where the internal review is of a decision made under section 42 of the Regulations, subsection 50(7) will provide that the internal reviewer must either confirm the original decision or grant an exemption under section 42 with effect from the time the internal review decision is made. Where the internal review is of a decision made under section 49 of the Regulations, subsection 50(8) will provide that the internal reviewer must either confirm the original decision or grant an exemption under section 49 with effect from the time the original decision was made. The differing points in time for when internal review decisions takes effect will reflect the different requirements of paragraphs 39D(1E)(b) and 39FA(5)(b) of the Act.

Subsection 50(9) will require the internal reviewer to advise the person of the internal review decision within 21 days after receiving the application or additional information (where the internal reviewer requested additional information under subsection 50(4) of the Regulations). The notice advising of the decision will be required to be in writing.

Section 51 – Notice about non-payment of celebrant registration charge

This section will provide additional requirements for a notice about non-payment of the celebrant registration charge payable for a financial year sent under subsection 39FB(1) of the Act.

Under subsection 39FB(1) of the Act, the Registrar of Marriage Celebrants must send a notice to all persons who were liable to pay the celebrant registration charge and have not paid the charge at the end of the charge payment day (unless the Registrar considers the

person's liability may be affected by an internal review or other circumstances of which the Registrar is aware). Subsection 39FB(3) of the Act requires the Registrar to deregister a person who fails to pay the celebrant registration charge by the charge payment day.

Subsection 51(1) will specify that a notice sent under subsection 39FB(1) of the Act must comply with subsections 51(2) and (3).

Subsection 51(2) will require the notice to state (in addition to any matters required by the Act to be included in the notice) that the person may apply to the Administrative Appeals Tribunal (AAT) for review of the Registrar's decision under subsection 39FB(3) of the Act to deregister the person. Paragraph 39J(1)(c) of the Act provides a person with a right to apply to the AAT to review a decision to deregister a person. This requirement is intended to ensure that a marriage celebrant is aware of their right to seek review.

Subsection 51(3) will specify how the Registrar must send a notice under subsection 39FB(1) of the Act to a marriage celebrant—to the marriage celebrant's email address or, if the Registrar has no email address for the celebrant, the principal residential address or postal address (if different from the residential address). Under this subsection, email will be the default method for sending these notices. This is the most efficient method for the Registrar to send such notices. It will be inferred that a celebrant, by providing an email address to the Registrar, has consented to receiving communications by email. Inferring consent in this manner is consistent with the *Electronic Transactions Act 1999*, which will continue to apply where the Registrar sends a notice under subsection 39FA(2) of the Act to a marriage celebrant's email address.

Section 52 – Code of Practice for marriage celebrants

This section will indicate that the Code of Practice for marriage celebrants, envisaged by paragraph 39G(1)(a) of the Act, is set out in Schedule 2 of the Regulations.

Paragraph 39G(1)(a) of the Act requires a marriage celebrant to conduct themselves in accordance with the Code of Practice prescribed by regulations.

Section 53 – Professional development for marriage celebrants

This section will establish the requirements the Registrar of Marriage Celebrants must meet when specifying professional development activities marriage celebrants will be required to undertake in accordance with paragraph 39G(1)(b) of the Act.

Subsection 53(1) will provide that a marriage celebrant must, each calendar year, undertake professional development activities that take at least five hours to complete and include any activity identified as compulsory for the year. The professional development activities will be required to be on the list published by the Registrar under subsection 53(3). Subsection 53(2) will clarify that a marriage celebrant is not required to comply with the requirements of subsection 53(1) for a year if the celebrant is granted an exemption under section 54, 55 or 58 of the Regulations.

Subsection 53(3) will require the Registrar to publish a written statement setting out a list of professional development activities which marriage celebrants may undertake during the year and specifying which, if any, of those activities are compulsory. Paragraph 53(3)(b) will make clear that there is a limit of two compulsory activities for a year. The statement will be required to be published as soon as practicable after the start of each calendar year. For the first calendar year in which these Regulations operate, this requirement will be as soon as practicable after the commencement date of the Regulations (1 April 2018). Subsection 53(6) will allow the Registrar to add activities to this list throughout the year, but the Registrar will not be able to add a compulsory activity later in the year.

Subsection 53(5) will require the Registrar to publish the statement on the internet (for example, on the Attorney-General's Department website) and in any other way the Registrar considers appropriate (for example, via a newsletter or circular to all marriage celebrants).

In publishing the list of professional development activities, under subsection 53(4) the Registrar will be able to, at their discretion, include information about: the ways in which the activities may be undertaken (for example, if the activity is delivered online or through visual media (such as a DVD) or requires physical attendance); who may provide the activity (for example, if marriage celebrants may only undertake an activity if it is taught by a specific organisation); and any other information the Registrar considers appropriate.

Subsection 53(7) will provide that the statement published under subsection 53(3) is not a legislative instrument. Subsection 53(7) has no legal effect due to the operation of the *Legislation Act 2003*. This statement will be rectified at the first practicable opportunity, to ensure that the text of section 53 reflects the legal effect of section 8 of the *Legislation Act 2003*. A statement under subsection 53(3) will be treated as a legislative instrument for the purposes of the *Legislation Act 2003* and will be registered on the Federal Register of Legislation.

Section 54 – Automatic exemption from undertaking professional development activities for certain marriage celebrants

This section will provide for a marriage celebrant to be exempt from the requirement in subsection 53(1) of the Regulations to undertake professional development activities for a calendar year if the celebrant was registered in that year, provided certain conditions are met.

Subsection 54(1) will require the Registrar of Marriage Celebrants to exempt a person from the requirement to undertake professional development activities for a calendar year where the person:

- became registered as a marriage celebrant in the calendar year, and
- was awarded a Certificate IV in Celebrancy in the 12 month period ending on the day the person was registered.

The first note to subsection 54(1) is intended to direct the reader to paragraph 39G of the Act, which places an obligation on marriage celebrants to undertake professional development

activities as required by the Registrar in accordance with regulations. The second note is intended to acknowledge that section 54 does not require a person to make an application in order to be granted the exemption. The Registrar will already hold all the information necessary to grant the exemption, without an application being made. Neither note is intended to have substantive effect.

No formal merits review mechanism will be available for decisions made under subsection 54(1), as such decisions are automatic—the Registrar is required to grant the exemption if the circumstances giving rise to the exemption exist. There will be no exercise of discretion by the Registrar.

Subsection 54(2) will require the Registrar to advise the person in writing of the decision to grant them this exemption. In practical terms, this notification will take place at the same time the person is advised that they have been registered as a marriage celebrant under subsection 39D(5) of the Act.

Section 55 – Exemption from undertaking professional development activities for late year registration

This section will provide for the Registrar of Marriage Celebrants to grant a marriage celebrant an exemption from the requirement in subsection 53(1) of the Regulations to undertake professional development activities for a year if the Registrar is satisfied of certain matters.

Subsection 55(1) will enable the Registrar to exempt a person from the requirement to undertake professional development activities for a calendar year where the Registrar is satisfied that, due to the date the person became registered as a marriage celebrant, it would be onerous for that person to be required to undertake the professional development activities. It is not intended that this exemption be available for calendar years other than the year in which the person was registered. In recent years, under the equivalent exemption in regulation 37MB of the old regulations, the Registrar would generally exempt any person who became registered on or after a particular date late in a calendar year.

The first note to subsection 55(1) is intended to direct the reader to paragraph 39G of the Act, which places an obligation on marriage celebrants to undertake professional development activities as required by the Registrar in accordance with regulations. The second note is intended to acknowledge that section 55 does not require a person to make an application in order to be granted the exemption. The Registrar will already hold all the information necessary to grant the exemption, without an application being made, from the application process. Neither note is intended to have substantive effect.

No formal merits review mechanism will be available for decisions made under subsection 55(1). As the basis for the exemption will be on the basis that undertaking professional development activities will be onerous due to the date of registration, to provide a formal review mechanism for persons registered the day before the date selected by the Registrar, or on an earlier day in the calendar year, may reduce the timeframe within which

those persons must complete activities if the review is unsuccessful. However, the Regulations will not preclude the Registrar or the Attorney-General's Department establishing an administrative internal review process.

Subsection 55(2) will require the Registrar to advise the person in writing of the decision to grant them this exemption. In practice, this notification will take place at the same time the person is advised that they have been registered as a marriage celebrant under subsection 39D(5) of the Act.

Section 56 – Minister may determine professional development exemption application fee

This section will provide for the Minister to determine the professional development exemption application fee—a fee to be paid with respect to an application for exemption from the requirement in subsection 53(1) to undertake professional development activities—by legislative instrument.

The purpose of this fee is to partially recover the costs incurred by the Commonwealth in assessing applications for exemptions made under subsection 57(1) of the Regulations.

Section 57 – Application for exemption from undertaking professional development activities

This section will provide for the making of an application for exemption from the requirement to undertake professional development activities.

Subsection 57(1) will require the application to be made in writing to the Registrar of Marriage Celebrants, if the person believes that they will not be able to comply with the requirement to undertake professional development activities under subsection 53(1) for the year owing to exceptional circumstances. Paragraph 57(2)(a) will require the application to be made during the calendar year for which the exemption is being sought.

The note to subsection 57(1) is intended to direct the reader to paragraph 39G of the Act, which places an obligation on marriage celebrants to undertake professional development activities as required by the Registrar in accordance with regulations.

Paragraph 57(2)(b) will require the application to explain the exceptional circumstances the person is relying on, and paragraph 57(2)(c) will require the application to be accompanied by the professional development exemption application fee (defined in subsection 56 of the Regulations) and any information or documents that may assist the Registrar in making a decision on the application.

Subsection 57(3) will enable the Registrar to ask an applicant to give the Registrar additional information within a specified period to assist the Registrar in making a decision on the application. The Registrar will be required to make this request by written notice.

Following the Registrar requesting additional information under subsection 57(3), the Registrar will not be required to consider the application while waiting for additional information to be provided (subsection 57(4)). The application will be taken to be withdrawn if the applicant does not provide the additional information within the time specified in the

Registrar's written notice or any longer time the Registrar has allowed by a subsequent written notice (subsection 57(5)).

Section 58 – Decision on application for exemption from undertaking professional development activities

This section will provide for the Registrar of Marriage Celebrants to decide whether to exempt a person from the requirement under subsection 53(1) to undertake professional development activities.

Subsection 58(1) will clarify that if the Registrar receives an application for an exemption from paying the registration application fee, the Registrar must make a decision on the application.

The note to subsection 58(1) is intended to direct the reader to paragraph 39G of the Act, which places an obligation on marriage celebrants to undertake professional development activities as required by the Registrar in accordance with regulations.

Subsection 58(2) will provide that the Registrar may grant the exemption if satisfied that due to exceptional circumstances the person has not been or will not be able to meet the requirements of subsection 53(1) (to undertake five hours of professional development activities in a calendar year, including any compulsory activities). Exceptional circumstances may include serious illness, ongoing health problems or carer responsibilities which prevented the person from meeting the professional development requirements for a significant proportion of the year. Generally, it is not intended that circumstances such as remoteness, financial hardship, short term or temporary illness, being inactive as a marriage celebrant or long term absence from Australia will be considered exceptional circumstances warranting an exemption from professional development requirements. Similarly, an unforeseen short-term issue that arises late in the calendar year is not intended to be considered an exceptional circumstance.

Subsection 58(3) will require the Registrar to advise the applicant of the decision. The notice advising of the decision will be required to be in writing.

No formal merits review mechanism will be available for decisions made under section 58. An application under section 57 will be able to be made at any point in a calendar year. As such, the later an application is made in the calendar year, the greater the chance the person may be in a position where they are unable to comply with the professional development requirements if the application for exemption is refused. Providing formal merits review mechanisms may further reduce the timeframe within which a person must comply with the requirements if the review is unsuccessful. However, the Regulations will not preclude the Registrar or the Attorney-General's Department establishing an administrative internal review process. In relation to the current equivalent exemption available under regulation 37MA of the old regulations, the department has put in place processes (such as factsheets and newsletters) to encourage marriage celebrants to apply for an exemption

sufficiently early that if the exemption is refused, a celebrant may still be able to comply with the professional development requirements.

Section 59 – Performance reviews

This section will specify the matters the Registrar of Marriage Celebrants must consider when conducting a performance review of a marriage celebrant under section 39H of the Act and requirements the Registrar must comply with at the conclusion of a performance review.

Paragraphs 59(1)(a) to (h) will specify the matters the Registrar must consider when reviewing the performance of a marriage celebrant for a period under subsection 39H(1) of the Act:

- any complaint about the marriage celebrant the Registrar has dealt with during the period (paragraph 59(1)(a))
- any disciplinary measure taken against the marriage celebrant during the period and whether the celebrant complied with any such disciplinary measure (paragraphs 59(1)(b) and (c))
- whether the marriage celebrant complied with any requirements imposed by the Registrar or any undertakings given by the celebrant during the period (paragraph 59(1)(d))
- any information about the marriage celebrant’s performance of their duties received by the Registrar during the period (paragraph 59(1)(e))
- whether the marriage celebrant complied with a Code of Practice that applied at any time during the period—for example, if a period contains any time before the commencement of these Regulations, compliance with the Code of Practice that applied at that time will be considered (paragraph 59(1)(f))
- whether the marriage celebrant has undertaken the professional development activities required for the calendar year ending before the end of the period (paragraph 59(1)(g)), and
- whether the marriage celebrant has developed any physical, intellectual or mental disability that prevents the celebrant from being able to continue to carry out the duties of a celebrant (paragraph 59(1)(h)).

Subsection 59(2) will require the Registrar to advise the marriage celebrant in writing of the outcome of the performance review as soon as practicable after completing the review. Subsection 39H(4) of the Act establishes processes where the Registrar is considering finding a celebrant’s performance not satisfactory, including seeking and considering any representations from the celebrant prior to making a final decision.

Section 60 – Disciplinary measures

This section will specify that the Registrar can impose any one or more of the following as a professional development activity a marriage celebrant must undertake as a disciplinary measure for the purposes of paragraph 39I(2)(b) of the Act:

- one or more professional development activities included in the statement published by the Registrar under subsection 53(3) of the Regulations
- a Certificate IV in Celebrancy (as defined in subsection 39(2) of the Regulations)
- a celebrancy qualification (as defined in subsection 39(3) of the Regulations), and
- a unit in a Certificate IV in Celebrancy or celebrancy qualification.

Section 61 – Records to be kept by Registrar of Marriage Celebrants

This section will require the Registrar of Marriage Celebrants to keep a copy of the following documents for the purposes of paragraph 39K(b) of the Act:

- any application for, and notice, of registration—the use of ‘any’ is intended to accommodate marriage celebrants appointed prior to 1 September 2003, who were authorised under subsection 39(2) of the Act and as such did not make an application or receive a notice of registration (paragraphs 61(a) and (b))
- any notice of intention to find a marriage celebrant’s performance unsatisfactory given under paragraph 39H(4)(a) of the Act and any representation made by a marriage celebrant, in response to such a notice, considered by the Registrar under paragraph 39H(4)(b) of the Act ((paragraphs 61(c) and (d))
- any written determination under paragraph 39H(4)(c) that a marriage celebrant’s performance was not satisfactory (paragraph 61(e))
- any notice of the outcome of a performance review given under subsection 59(2) of the Regulations or subregulation 37N(3) of the old regulations (paragraph 61(f))
- any notice of disciplinary measures given under subsection 39I(4) of the Act (paragraph 61(g)), and
- any notice of determination in relation to a complaint given under subsections 68(5) or 69(2) of the Regulations or subregulations 37(1) or (2) of the old regulations (paragraphs 61(h) and (i)).

The requirement to collect and store these documents—which may contain personal information—is intended to assist the Registrar in carrying out their functions as the regulator of marriage celebrants. This requirement will not be new; under regulation 37P of the old regulations, the Registrar is required to keep the same documents. Generally, any personal information contained in these documents will have been provided by the marriage celebrant. If the personal information was not provided by the celebrant, the celebrant will be aware that the Registrar holds the information. For example, if under subsection 39H(3) of the Act the

Registrar considers a physical disability of a celebrant when reviewing the celebrant's performance, as required by paragraph 59(1)(h) of these Regulations, the celebrant will be made aware of this upon receiving the notice issued under subsection 59(2) of the Regulations.

As is current practice, it is intended that the documents will be kept on a secure database maintained by the Registrar and the Attorney-General's Department, and only departmental officers directly involved with the regulation of marriage celebrants will be given access to the database.

Subdivision B – Complaints resolution procedures

Section 62 – Complaints resolution procedures for complaints relating to marriage celebrants

This section will require the Registrar of Marriage Celebrants to establish complaints resolution procedures that are consistent with Subdivision B of Division 2 of Part 3 of these Regulations. Under paragraph 39K(c) of the Act, the Registrar must establish complaints resolution procedures to resolve complaints about the solemnisation of marriages by marriage celebrants. The requirements to solemnise a marriage which a marriage celebrant must meet are set out in Division 2 of Part IV of the Act.

Subdivision B of Division 2 of Part 3 of these Regulations will establish the minimum requirements that the complaints resolution procedures must meet. It is intended that, if desired, the Registrar can establish a procedure with additional requirements, provided the additional requirements are not inconsistent with those set out below. It is envisaged that any additional requirements added to the procedure by the Registrar will reflect key administrative law principles, such as natural justice and procedural fairness.

Section 63 – Approved form for complaint

This section will require a complaint about the solemnisation of a marriage by a marriage celebrant to be made using an approved form, if one exists. Subsection 63(2) will empower the Registrar to approve a form for the purposes of subsection 63(1), at their discretion.

Approving such a form would mean that the Registrar can make clear to, and obtain from, complainants the information required to consider a complaint.

Section 64 – Registrar may request more information

This section will enable the Registrar, at their discretion, to request further information in relation to a complaint from the complainant. For example, the Registrar may request copies of email correspondence between the complainant and the marriage celebrant.

Section 65 – Decision on whether to deal with complaint

This section will require the Registrar of Marriage Celebrants to decide whether to deal with a complaint, and specify the reasons why the Registrar may decide not to deal with a complaint.

Subsection 65(1) will require the Registrar to make a decision on whether to deal with a complaint and to make this decision as soon as practicable after receiving the complaint.

Paragraphs 65(2)(a) to (h) will identify various reasons why the Registrar may choose not to deal with a complaint. It is not intended that the Registrar must refuse to deal with the complaint if one or more of these is present; it is a matter for the Registrar's discretion whether the complaint should be dealt with. The Registrar will be able to decide not to deal with a complaint if they are satisfied that:

- the approved form for complaints has not been used, if one has been approved under subsection 63(2) (paragraph 65(2)(a)). It is intended that an approved form would require a complainant to provide the minimum information needed by the Registrar to deal with a complaint. As such, where there is an approved form, a complaint not made using that form may lack the information needed by the Registrar to deal with the complaint.
- the complaint is not about the solemnisation of a marriage by a marriage celebrant (paragraph 65(2)(b)). The complaint resolution procedures to be established under paragraph 39K(c) of the Act are limited to complaints about the solemnisation of marriages by marriage celebrants. Division 2 of Part IV of the Act sets out the requirements to solemnise a marriage. This reason would also enable the Registrar to refuse to deal with a complaint where a marriage was solemnised by a person who was not a marriage celebrant, in recognition that the Registrar does not regulate other categories of authorised celebrants.
- the complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith (paragraph 65(2)(c)).
- the complainant does not have a sufficient interest in the subject matter of the complaint (paragraph 65(2)(d)). For example, if the complainant is dissatisfied with the quality of service provided by the marriage celebrant and has only made the complaint in order to obtain a refund (the Registrar will not have the power to order a celebrant to provide a refund or compensation).
- the complainant became aware of the subject matter of the complaint more than three months before making the complaint (paragraph 65(2)(e)). For example, a marriage celebrant who solemnises a large number of marriages may have difficulty recalling details of a marriage that took place a significant time in the past.
- the substance of the complaint was the subject of a previous complaint (paragraph 65(2)(f)). For example, this reason is intended to capture situations where the Registrar receives multiple complaints on the same matter from different persons, or a person dissatisfied with the outcome of a previous complaint seeks to have the matter reconsidered as a new complaint.

- the complaint is the subject of a legal proceeding or another complaints resolution procedure (paragraph 65(2)(g)). For example, dealing with a complaint in such a situation may jeopardise the other proceeding. Additionally, the Registrar may prefer to make use of the outcome of such a proceeding under section 39I of the Act, without the need to undertake the full complaint resolution process.
- the subject matter of the complaint would be more appropriately dealt with by another person or body (paragraph 65(2)(h)). For example, a complaint raising issues of visa fraud (such as contrived marriage) may be more appropriately dealt with by the Department of Immigration and Border Protection.

Subsection 65(3) will require the Registrar to give the complainant a written notice advising whether or not the Registrar will deal with the complaint, and the reasons for the Registrar's decision.

No formal merits review mechanism will be available for decisions made under subsection 65(1). Decisions under subsection 65(1) will be of a law enforcement nature, as they are decisions about undertaking an investigation into whether a marriage celebrant has failed to meet the requirements for solemnising a marriage under Division 2 of Part IV of the Act. The discontinued Administrative Review Council has indicated that decisions of a law enforcement nature should not be made subject to merits review (Administrative Review Council, *What decisions should be subject to merit review?* 1999).

Section 66 – Ceasing to deal with complaints in certain circumstances

This section will enable the Registrar of Marriage Celebrants to decide not to continue to deal with a complaint or to temporarily cease dealing with a complaint.

Paragraph 66(1)(a) will enable the Registrar to decide not to continue to deal with a complaint for any of the reasons set out in subsection 65(2). For example, this will enable the Registrar to stop the complaints process where, partway through the process, information comes to the Registrar's attention that would have caused the Registrar to decide not to deal with the complaint under subsection 65(1), had the Registrar had that information at the time of making the decision under subsection 65(1). The Registrar will only be able to stop dealing with a complaint under paragraph 66(1)(a) if the complaint process has not reached the point where the Registrar has made a determination under paragraph 68(2)(c).

Paragraph 66(1)(b) will enable the Registrar to temporarily cease to deal with a complaint while the subject matter of the complaint is being dealt with by another person or body. For example, if a complaint raises issues relating to consumer law, and the complainant is pursuing a separate complaint process with a consumer affairs or fair trading body, the Registrar may wish to delay dealing with the complaint until the outcome of the consumer affairs or fair trading body's process is known. The Registrar will only be able to temporarily cease dealing with a complaint under paragraph 66(1)(b) if the complaint process has not reached the point where the Registrar has made a determination under paragraph 68(2)(c).

Subsection 66(2) will apply if the Registrar stops dealing with a complaint under paragraph 66(1)(a). The Registrar will be required to give a written notice to the complainant and the marriage celebrant (who the complaint is about) advising that the Registrar has decided not to continue to deal with the complaint. As a matter of good administrative practice, the Registrar should indicate the reason (one of those listed in subsection 65(2)) for this decision.

Subsection 66(3) will apply if the Registrar temporarily ceases dealing with a complaint under paragraph 66(1)(b). The Registrar will, at their discretion, be able to give a written notice to both, or one of, the complainant and the marriage celebrant (who the complaint is about) advising that the Registrar has decided to not deal with the complaint while the subject matter of the complaint is being considered by another person or body. The Registrar will need to consider it appropriate in all the circumstances to give this written notice; for example, it may not be appropriate where the other body is a law enforcement body, and notifying the celebrant of this fact may jeopardise an investigation by that body.

No formal merits review mechanism will be available for decisions made under subsection 66(1). Decisions under paragraph 66(1)(a) will be of a law enforcement nature, as they are decisions about undertaking an investigation into whether a marriage celebrant has failed to meet the requirements for solemnising a marriage under Division 2 of Part IV of the Act. Decisions under paragraph 66(1)(b) will be preliminary or procedural decisions, as they will simply delay the complaints process and the making of a substantive decision. The discontinued Administrative Review Council has indicated that decisions of a law enforcement nature and preliminary or procedural decisions are unsuitable for merits review (Administrative Review Council, *What decisions should be subject to merit review?* 1999).

Section 67 – Notice to marriage celebrant if Registrar decides to deal with complaint

This section will require the Registrar of Marriage Celebrants to give a written notice to a marriage celebrant if the Registrar decides to deal with a complaint about the celebrant.

Subsection 67(1) will require the Registrar to give a written notice about a complaint to the marriage celebrant concerned, stating that the Registrar has decided to deal with the complaint under subsection 65(1). Under paragraphs 67(1)(a) and (c) to (e), the notice must inform the marriage celebrant that:

- the Registrar is dealing with the complaint and invite the celebrant to give the Registrar a written response to the complaint (paragraphs 67(1)(a) and (c))
- the complainant may be given a copy of any written response the celebrant makes and materials accompanying that response (paragraph 67(1)(d)), and
- the Registrar may continue to deal with the complaint without further notice to the celebrant if a written response is not received by the date specified in the notice (this will ensure that the process for dealing with a complaint is not unnecessarily delayed by a celebrant's failure to acknowledge or respond to a notice) (paragraph 67(1)(e)).

Paragraph 67(1)(b) will require the notice to be accompanied by a copy of the complaint and any material that accompanied the complaint.

In providing the complaint and any material accompanying it to the marriage celebrant, or the celebrant's written response and any material accompanying it to the complainant, it is intended that any contact details be redacted (paragraphs 67(1)(b) and (d)).

Subsection 67(2) will clarify that, despite the requirement in paragraph 67(1)(b) to provide a copy of the complaint and accompanying materials to the marriage celebrant, the Registrar can provide an extract of the complaint or materials. This will provide the Registrar with flexibility to ensure that the celebrant is provided with sufficient information to respond to the complaint, whilst protecting the complainant's privacy (for example, if the complaint contains personal or sensitive information) or avoiding unnecessarily providing inflammatory material to the celebrant (for example, where a complainant has expressed strong derogatory opinions about a celebrant that are not relevant to the subject matter of the complaint). The Registrar will have the same flexibility in relation to providing the celebrant's response to the complainant, as paragraph 67(1)(d) will give the Registrar discretion to decide whether to provide these documents.

Subsection 67(3) will specify additional requirements for the notice given under subsection 67(1), in relation to the invitation in the notice for the marriage celebrant to respond to the complaint. Paragraph 67(3)(a) will require the notice to specify the day by which the Registrar must receive the celebrant's response; this day will be required to be at least 21 days after the date of the notice. Paragraph 67(3)(b) will allow the celebrant to request, before the day specified in the notice, additional time to respond to the complaint. Paragraph 67(3)(c) will clarify that the response may be accompanied by supporting material, such as signed witness statements.

Section 68 – Procedure after notice given to marriage celebrant

This section will establish the minimum procedural steps the Registrar of Marriage Celebrants must take after giving a notice to a marriage celebrant under subsection 67(1) of the Regulations.

Subsection 68(1) will clarify that section 68 will only apply if a marriage celebrant has been invited, via a notice sent under subsection 67(1), to provide a written response to a complaint. This will ensure that the Registrar will only be able to make a determination about a complaint where a celebrant has been given an opportunity to review and respond to the complaint.

Paragraphs 68(2)(a) to (d) will require the Registrar to perform the following actions as soon as practicable after receiving a written response to the complaint from the marriage celebrant:

- consider the complaint and material given to the Registrar by the complainant and marriage celebrant and any other written information held by the Registrar that is relevant to the complaint (paragraphs 68(2)(a) and (b)). The term 'material' is intended to be read broadly, to capture any written response provided by the celebrant.

- determine whether the Registrar is satisfied that the marriage celebrant has contravened, or committed an offence against, a provision of the Act, these Regulations, or the old regulations, on the basis of the complaint, material and information considered above (paragraph 68(2)(c)). Where the subject matter of the complaint occurred prior to the commencement of these Regulations, it is intended that the Registrar consider whether the celebrant contravened the old regulations; where the conduct occurred following the commencement of these Regulations, it is intended the Registrar consider whether the celebrant contravened these Regulations.
- decide whether it is appropriate to take disciplinary measures against the marriage celebrant and/or take any other action in relation to the complaint, if the Registrar is satisfied that the celebrant has contravened, or committed an offence against, a provision of the Act, these Regulations, or the old regulations (paragraph 68(2)(d)). The disciplinary actions the Registrar will be able to take are established by subsection 39I(2) of the Act. Other action the Registrar will be able to take will include a request or recommendation that the celebrant modify their marriage celebrancy practice; for example, a recommendation that a celebrant ensure couples sign particular forms (such as the Declaration of No Legal Impediment to Marriage form) closer to the marriage ceremony.

Clause 11.6 of the *Criminal Code Act 1995* will apply to the reference to ‘offence’ in paragraphs 68(2)(c) and (d), with the effect that these references will capture ancillary offences (such as attempt, incitement and conspiracy) against the Criminal Code.

The Regulations will not require the Registrar to consult with a marriage celebrant before making a decision under subparagraph 68(2)(d)(i) whether to impose a disciplinary measure. This will reflect that the Regulations will specify the minimum requirements that the complaint resolution procedure established by the Registrar under paragraph 39K(c) of the Act must meet. This will be consistent with the legislative requirements for other situations where disciplinary measures may be imposed, such as failure to comply with the obligation to undertake professional development activities (see paragraphs 39G(1)(b) and 39I(1)(b) of the Act) or in relation to performance reviews (see section 39H and paragraph 39I(1)(c) of the Act). In both of these situations, there is no legislative requirement to consult prior to imposing a disciplinary measure. However, as a matter of good administrative practice, the Registrar generally consults marriage celebrants prior to imposing disciplinary measures, particularly where more harsh measures (such as suspension or deregistration) are being considered.

Subsection 68(3) will restrict the Registrar to only considering the parts of the complaint and/or accompanying material provided by the complainant that were given to the marriage celebrant. The Registrar will not be able to consider any part of the complaint and/or accompanying material that was not provided to the celebrant. This will ensure that when the Registrar determines whether the celebrant has contravened, or committed an offence against, a provision of the Act, these Regulations or the old regulations, they can only consider

documents or information in relation to which the celebrant was given an opportunity to review and respond.

The note to subsection 68(3) is intended to direct the reader to subsection 67(2) of the Regulations, which will enable the Registrar to give the marriage celebrant an extract of a complaint and/or accompanying material, rather than the full document. The note is not intended to have substantive effect.

Subsection 68(4) will allow the Registrar to take into account any other written information they hold about the marriage celebrant when deciding, under paragraph 68(2)(d), whether it is appropriate to take disciplinary measures or other action. This is intended to allow the Registrar to consider decisions made on any other complaints about the celebrant, and the celebrant's general compliance with their obligations (such as their obligation under paragraph 39G(1)(b) to undertake professional development activities).

Subsection 68(5) will require the Registrar to give the complainant and marriage celebrant a written notice of the Registrar's determination, under paragraph 68(2)(c), that the celebrant has not contravened, or committed an offence against, a provision of the Act, these Regulations, or the old regulations. The Registrar will be required to give this written notice as soon as practicable, and to sign and date the notice. The notice will also be required to include reasons for the determination. Section 69 will establish procedural steps the Registrar must follow if they determine the celebrant has contravened a provision or committed an offence.

No formal merits review mechanism will be available for decisions made under paragraph 68(2)(c) and subparagraph 68(2)(d)(ii). External merits review will be available in relation to some decisions made under subparagraph 68(2)(d)(i).

It is unlikely that a complainant will have interests that are affected by any decisions under paragraph 68(2)(c) or subparagraphs 68(2)(d)(i) and (ii), as this complaints process is intended to be focussed on addressing a celebrant's non-compliant behaviour and not on expiatory outcomes for complainants (such as compensation or actions aimed at alleviating or remedying hardship or suffering).

A decision under paragraph 68(2)(c) in and of itself will not affect a marriage celebrant's interests, as this decision will not have consequences for the celebrant (such as impacting the celebrant's ability to perform marriage ceremonies) or impose any obligation on the celebrant. However, decisions under subparagraphs 68(2)(d)(i) and (ii) to impose a disciplinary measure or take other action (such as making a recommendation) may affect the celebrant's interests. If the Registrar decides, under subparagraph 68(2)(d)(i), to impose a disciplinary measure, and imposes a disciplinary measure of a period of suspension or deregistration, the celebrant will be able to apply for review of that decision by the Administrative Appeals Tribunal under paragraphs 39J(1)(b) and (c) of the Act. The absence of formal merits review mechanisms in other instances (less harsh disciplinary measures and other action, such as recommendations) will not preclude the Registrar or the Attorney-General's Department establishing an administrative internal review process.

Section 69 – Procedure if marriage celebrant has contravened, or committed an offence against, a provision of the Act etc.

This section will establish the minimum procedural steps the Registrar of Marriage Celebrants must take if the Registrar has determined under paragraph 68(2)(c) that the marriage celebrant a complaint concerns has contravened, or committed an offence against, a provision of the Act, these Regulations, or the old regulations.

Subsection 69(2) will require the Registrar to give the complainant and marriage celebrant a written notice of the Registrar's determination, under paragraph 68(2)(c), that the celebrant has contravened, or committed an offence against, a provision of the Act, these Regulations, or the old regulations. The Registrar will be required to give this written notice as soon as practicable, and to sign and date the notice. The notice will also be required to include reasons for the determination.

Paragraphs 69(2)(b) and (c) will require the notice to indicate whether the Registrar has decided it is appropriate to take disciplinary measures and/or any other action in relation to the complaint, what those disciplinary measures and/or any other action are and the reasons for these decisions.

The note to subsection 69(2) is intended to direct the reader to subsection 39I(4) of the Act, which requires the Registrar to give written notice to a marriage celebrant if the Registrar decides it is appropriate to take disciplinary action against the celebrant, and enables the Registrar to inform the community of this decision. The note is also intended to direct the reader to section 39J of the Act, which provides a celebrant with a right to apply for review by the Administrative Appeals Tribunal of a decision to suspend or deregister the celebrant. The note is not intended to have substantive effect.

Division 3 – Marriages by authorised celebrants

Section 70 – Notice of intended marriage and related documents

This section will specify requirements for the notice of an intended marriage given to an authorised celebrant under paragraph 42(1)(a) of the Act.

Subsection 70(1) will require an authorised celebrant who receives a notice of intended marriage to write on that notice the date it was received by the celebrant. This requirement will ensure it is clear on the face of the notice whether it was received by the celebrant within the timeframe required under subsection 42(1)(a) of the Act.

Paragraphs 70(2)(a) to (d) will identify information that an authorised celebrant must record on the notice before the celebrant solemnises the marriage to which the notice relates. The celebrant will be required to record:

- what kind of document/s each party to the marriage provided to the celebrant as required by paragraph 42(1)(b) of the Act (paragraph 70(2)(a)). This requirement will

ensure it is clear on the face of the notice that the parties provided correct evidence of their date and place of birth.

- where a party to the marriage is a minor, that the celebrant was given an order made under section 12 of the Act authorising the marriage, and consents and any dispensations for the marriage as required by paragraphs 13(1)(a) and (b) of the Act (paragraph 70(2)(b)). This requirement will ensure it is clear on the face of the notice that the minor's marriage was consented to and authorised under section 12 of the Act.
- where one or both parties to the marriage were previously married, that the celebrant was given evidence of that party's divorce or the death of the party's spouse as required by subsection 42(10) of the Act, or evidence of an annulment. This requirement will ensure it is clear on the face of the notice that the person is free to marry again.
- where the notice was received by the celebrant less than one month before the marriage is to take place, that a prescribed authority has authorised the marriage taking place under subsection 42(5) of the Act. This requirement will ensure it is clear on the face of the notice that the marriage was authorised to occur despite not being received within the timeframe required under subsection 42(1)(a) of the Act.

Subsection 70(3) will require an authorised celebrant to record the date and place a marriage was solemnised on the notice relating to the marriage after the celebrant solemnises the marriage. This will ensure that it is clear on the face of the notice that it is spent, and the marriage it refers to has taken place.

This section will rely on the necessary or convenient power in section 120 of the Act. This section will be complementary to section 42 of the Act, and will ensure that where a registering authority is provided with a notice of intended marriage under subparagraph 50(4)(a)(i) of the Act, the notice will, on its face, provide certainty for the registering authority that the marriage was solemnised in accordance with the legal requirements of the Act.

Section 71 – Declaration before authorised celebrant

This section will specify that the declaration each party to a proposed marriage must make under paragraph 42(1)(c) of the Act must include a declaration as to whichever of the following matters is pertinent for the party:

- that the party is 18 years or older, or
- the party's date of birth and that an order has been made under section 12 of the Act in relation to the party.

Section 11 of the Act specifies that a person is of marriageable age if they are 18 years of age or older. Section 11 is subject to section 12 of the Act; under subsection 12(1) of the Act, a

person aged at least 16 years, but less than 18 years, may apply to a Judge or magistrate for an order authorising them to marry a particular person of marriageable age. The granting of an order under subsection 12(2) in effect makes a person of marriageable age.

This requirement will ensure that the declaration made by each party under paragraph 42(1)(c) of the Act covers all pertinent matters going towards whether the proposed marriage raises a legal impediment.

Section 72 – Notice of intended marriage received less than one month before solemnisation

This section will indicate that the circumstances set out in Schedule 3 are prescribed for the purposes of subsection 42(5) of the Act. Subsection 42(5) of the Act provides that a prescribed authority may authorise a marriage to take place despite notice of the intended marriage not being received by an authorised celebrant within the timeframe required under subsection 42(1)(a) of the Act, where one or more prescribed circumstances have been met.

Section 73 – Certificate of marriage

This section will prescribe a form as the certificate of marriage, and specify requirements relating to the preparation, supply, security and record-keeping of certificates of marriage.

Subsection 73(1) will prescribe that the form of a certificate of marriage for the purposes of paragraph 50(1)(a) of the Act is Form 15 in Schedule 1 of the Regulations. This will be the certificate provided to a marrying couple immediately following the solemnisation of their marriage, in accordance with paragraph 50(1)(a) of the Act.

Subsection 73(2) will specify requirements that a certificate of marriage must meet in order to be in the prescribed form:

- the wording of the certificate will be required to strictly comply with the wording of Form 15 in Schedule 1 (paragraph 73(2)(a)). This requirement will override section 25C of the *Acts Interpretation Act 1901*, that substantial compliance is sufficient where an Act prescribes a form. This will ensure that all marriage certificates issued to couples in Australia will have identical wording.
- the certificate will be required to be a document prepared and supplied as an incomplete certificate by a person authorised to do so under subsection 73(3) and to be identifiable as a unique document by measures acceptable to the Minister (paragraph 73(2)(b)). These requirements will ensure the integrity of individual certificates, and protect certificates against misuse and fraud.

Subsection 73(3) will enable the Minister to authorise a person to prepare and supply certificates of marriage under subparagraph 73(2)(b)(i) by notifiable instrument. This will ensure public accessibility of the arrangement for the preparation and supply of certificates of marriage. Subsection 73(4) will require the Minister to ensure only one person is authorised at a time to prepare and supply certificates of marriage under subparagraph 73(2)(b)(i).

Subsections 73(5), (6) and (7) will specify record keeping requirements in relation to certificates of marriage. These requirements will apply to both a person currently authorised as a celebrant and a person whose authorisation has been revoked or ceased (for example, a marriage celebrant who has resigned or been deregistered).

Paragraphs 73(5)(a) to (e) will identify information that a person (who is or was an authorised celebrant) must keep in relation to each certificate of marriage. For all certificates, the person will be required to record any serial number printed on the form by the supplier authorised under subparagraph 73(2)(b)(i) (paragraph 73(5)(a)). For each certificate, the person will be required to record the details of the event by which the certificate became unusable by the celebrant:

- if the person used the certificate for a marriage, the date and full names of the parties to the marriage must be recorded (paragraph 73(5)(b))
- if the person transferred the certificate to another authorised celebrant, the date of the transfer and the name and authorisation number (if any) of that celebrant (paragraph 73(5)(c)), or
- if the certificate was destroyed, the date of and reason for the destruction (paragraph 73(5)(d)).

Additionally, if any other event occurs in relation to a certificate (for example, loss or theft) the celebrant must record the details of that event (paragraph 73(5)(e)).

Paragraph 73(6)(a) will require a person (who is or was an authorised celebrant) to keep the records outlined in subsection 73(5) in a form acceptable to the Minister. This will ensure that all persons keep the records in a consistent manner.

Paragraph 73(6)(b) will require a person (who is or was an authorised celebrant) to keep the records outlined in subsection 73(5) for a period of six years. The six year period for the record of each certificate will commence on the day after the date of the relevant event identified in paragraphs 73(5)(b) to (e). For example, where a person destroys a certificate on 1 March 2018, the six year period for which the person will be required to keep the record relating to that certificate (the serial number, and date of and reasons for destroying it) will end on 2 March 2024. Subparagraphs 73(6)(b)(i) and (ii) will outline situations in which the person may cease to keep the records despite the six year period not having concluded: where the person dies or becomes permanently incapacitated; or, where a person's authorisation under section 39 of the Act ceases. A person authorised under section 39 of the Act is an officer of a state or territory; as the person performs marriages as a consequence of their holding a particular office, rather than as an individual, it will be appropriate for such a person to cease to be responsible upon ceasing to hold that office. Such records may then fall within the scope of any applicable state or territory laws governing retention of state or territory records.

Subsection 73(7) will provide that the Minister may request a copy of the records kept by a person under subsection 73(5). The Minister will be required to make such a request by a written notice, and to identify the person the records must be given to and a period within which the records must be given.

The requirement to store these records—which may contain personal information, if a certificate was used for a marriage—is intended to protect certificates against misuse and ensure certificates are traceable for a minimum period of time. This requirement will not be new; under regulation 40 of the old regulations, authorised celebrants are required to keep the same records with no specified date on which the obligation to keep the records ceases. Under these regulations, the requirement will be limited to six years.

Subsections 73(5), (6) and (7) will rely on the necessary or convenient power in section 120 of the Act. These subsections will be complementary to paragraph 50(1)(a) of the Act, which requires a prescribed form to be used as the certificate of marriage to be issued to the married couple. Requiring records about these certificates to be kept will support the requirement to use a prescribed form, and that those prescribed forms should only be used by authorised celebrants.

Section 74 – Offences in relation to record keeping

This section will create two offences, relating to a person's obligations to keep records about certificates of marriage under section 73.

Subsection 74(1) will provide that a person commits an offence of strict liability if the person contravenes subsection 73(5).

Clause 6.1 of the *Criminal Code Act 1995* will apply to the offence in subsection 74(1). This will ensure that there is no fault element for the single physical element of this offence (whether the person failed to keep the records). The defence of honest and reasonable mistake of fact will be available in relation to this offence (clause 9.2 of the *Criminal Code Act 1995*).

The Guide to Framing Commonwealth Offences (at 2.2.6) sets out matters which an offence generally must meet in order for strict liability to be considered appropriate, consistent with the principles identified by the Scrutiny of Bills Committee in its Report 6/2002. The offence in subsection 74(1) is intended to reinforce the framework established by section 73, which is designed to ensure the integrity of individual certificates of marriage, protect certificates against misuse and fraud, and ensure certificates are traceable for a minimum period of time. The absence of a fault element for the offence in subsection 74(1) will significantly enhance the effectiveness of this framework; failure by a person to keep the records as required by subsection 73(5) would frustrate the objectives of the framework.

There are also legitimate grounds for penalising persons lacking fault; the offence in subsection 74(1) will only apply to a limited group of persons (those who are or were authorised celebrants) and these persons will be on notice to guard against the possibility of contravention. This strict liability offence will not be new; under subregulation 40(5) of the old regulations, it is an offence of strict liability to fail to keep records relating to certificates

of marriage in accordance with subregulation 40(4) of those Regulations. In practice, when a person places an order with the authorised supplier of certificates of marriage, a document is provided with the certificates to enable the person to keep the records required by old subregulation 40(4). This practice is intended to continue under these Regulations.

The offence will not be punishable by imprisonment. The penalty for the offence in subsection 74(1) will be a fine of up to 2 penalty units.

Subsection 74(2) will provide that a person commits an offence if the person:

- is given a notice under subsection 73(7) of the Regulations, and
- fails to comply with that notice.

Clause 5.6 of the *Criminal Code Act 1995* will apply to determine the fault elements for the offence in subsection 74(2).

The defences of general application under the *Criminal Code Act 1995* will be available in relation to the offence in subsection 74(2), including: mistake of ignorance of fact (clause 9.1 of the Code); duress (clause 10.2 of the Code); and lawful authority (clause 10.5 of the Code).

The penalty for the offence in subsection 74(2) will be 2 penalty units.

Section 75 – Only one official certificate to be prepared by certain authorised celebrants

This section will indicate that if an authorised celebrant holds or is acting in an office of a state or territory, and that office is listed in Schedule 4 of the Regulations, the authorised celebrant is required to prepare only one official certificate of marriage.

Subsection 50(1A) of the Act envisages that regulations may provide for a person holding or acting in a state or territory office to be required to prepare only one official certificate for the purposes of paragraph 50(1)(b) of the Act.

Section 76 – Forwarding of official certificate etc.to appropriate registering authority for a marriage

This section will specify that the documents referred to in subparagraph 50(4)(a)(i) of the Act must be forwarded to the appropriate registering authority for the marriage. The term ‘appropriate registering authority’ will be defined in section 6 of the Regulations.

Section 77 – Dealing with retained official certificates

This section will specify the record keeping obligations in relation to official certificates of marriage prepared under paragraph 50(1)(b) of the Act. These requirements will apply to both a person currently authorised and a person whose authorisation has been revoked or ceased (for example, a marriage celebrant who has resigned or been deregistered). Section 77 is intended to apply both to a person who solemnised a marriage or in whose presence a marriage was solemnised in accordance with section 45 of the Act.

Under subparagraph 50(4)(a)(ii) and paragraph 50(4)(b) of the Act, all authorised celebrants retain one official certificate of marriage and are required to deal with that certificate in accordance with regulations.

Subsection 77(2) will specify how a person deals with the official certificate of marriage if that person solemnised a marriage as a minister of religion. Under the Act, a person who is a minister of religion may be authorised to solemnise marriages due to their being registered following nomination by a recognised denomination (section 30 of the Act) or following an application to become a marriage celebrant (section 39D of the Act). It is intended that:

- where a marriage took place in a church located in a parish or district that is in charge of a minister of religion of the relevant religious body or religious organisation, the certificate for the marriage must be added to the religious body or religious organisation's records for that parish or district (paragraph 77(2)(a))
- where a marriage took place in a church that is located in another type of parish or district, the certificate for the marriage must be added to the relevant religious body or religious organisation's records for that church (paragraph 77(2)(b)), or
- for any other marriage, the certificate for the marriage must be added to records of the relevant religious body or religious organisation (paragraph 77(2)(c)).

Subsection 77(3) will specify how a person permitted by section 75 to only prepare one official certificate of marriage deals with that certificate. It is intended that the person:

- deal with the certificate in accordance with any state or territory law that requires the person to deal with the certificate in a particular way (such as binding the certificate into a register) (paragraph 77(3)(a)), or
- send the certificate to, or deal with it as authorised by, the appropriate registering authority for the marriage (see section 6 of the Regulations) if there are no state or territory laws setting out how the person must deal with the certificate (paragraph 77(3)(b)).

The note to subsection 77(3) is intended to direct the reader to Schedule 4 of the Regulations, which lists those offices the holder of whom is required to prepare only one official certificate of marriage. The note is not intended to have substantive effect.

Subsections 77(4), (5) and (6) will specify record keeping requirements for official certificates for marriages not captured by subsections 77(2) or (3). Subsection 77(4) will require the certificate for the marriage to be kept by the person who solemnised the marriage for six years starting on the day after the day the marriage took place.

Subsections 77(5) and (6) will outline situations in which the person may cease to keep the records despite the six year period not having concluded. Under subsection 77(5), a person who was authorised to solemnise the marriage under section 39 of the Act will cease to be required to keep the certificate if their authorisation ceases before the end of the six year

period. A person authorised under section 39 of the Act is an officer of a state or territory and is authorised to perform marriages as a consequence of their holding a particular office. The person will be required to deal with the certificate by sending the certificate to, or dealing with it as authorised by, the appropriate registering authority for the marriage. Under subsection 77(6), a person will cease to be required to keep the certificate if the person dies or becomes permanently incapacitated before the end of the six year period.

The requirement to store these certificates—which will contain personal information about the parties to a marriage—is intended to enable the parties to a marriage, or the appropriate registering authority for a marriage, to obtain the information necessary to demonstrate that a marriage took place or register a marriage in accordance with state or territory laws. Under subsection 45(3) of the Act, an official certificate of marriage, prepared and signed in accordance with section 50 of the Act, is conclusive evidence that the marriage was solemnised in accordance with section 45.

Section 78 – Lost official certificates

This section will establish a process to enable an appropriate registering authority to be sent the details of a marriage if the official certificate of marriage sent to the authority in accordance with subparagraph 50(4)(a)(i) of the Act is not received, or is received but is lost or destroyed by the authority.

Subsection 78(1) will specify that section 78 applies where the official certificate of marriage sent to the appropriate registering authority is not received, or is received but is lost or destroyed by the authority. The note to subsection 78(1) is intended to direct the reader to subsection 50(7) of the Act. Subsection 50(7) of the Act enables regulations to provide for furnishing substitute certificates where certificates are lost or destroyed. The note is not intended to have substantive effect.

Subsection 78(2) will enable the appropriate registering authority for a marriage to request the person who solemnised the marriage, or another person who the authority reasonably believes may be able to comply with the request, to do one of the following within 14 days after the notice is given:

- make a copy of the certificate (that has been retained in accordance with subparagraph 50(4)(a)(ii) of the Act), certify that the copy is a true copy and send that copy to the authority, if the person has custody or control of the official certificate for the marriage (paragraph 78(2)(a)), or
- make reasonable inquiries to find out the name and address of any other person who does have custody or control of the official certificate, and notify the authority of the outcome of those inquiries, if the person does not have custody or control of the certificate (paragraph 78(2)(b)).

Requiring a person to provide information is a coercive power. Generally, coercive powers should be contained in a parent Act, rather than in subordinate legislation (see 7.3.4 of the

Guide to Framing Commonwealth Offences). However, this section will be made under subsection 50(7) of the Act, which envisages regulations establishing a process for a substitute official certificate of marriage to be provided to the appropriate registering authority. Official certificates are intended to assist the appropriate registering authority to register marriages. Additionally, this power will not be new; under regulation 43 of the old regulations, an appropriate registering authority may require a person to provide a copy of an official certificate they hold or provide information about who may hold an official certificate for a marriage.

The power in subsection 78(2) of the Regulations has been revised and is intended to reflect the limitations and safeguards outlined in Chapter 9 of the Guide to Framing Commonwealth Offences. The authority will be required to make this request by written notice and a person will have 14 days to respond. Additionally, an authority can only issue a notice to the person who solemnised the marriage (who is generally required under section 77 to retain the official certificate for the marriage) or another person the authority reasonably believes could comply with the request. These limitations on issuing a notice are consistent with the principles in the Guide to Framing Commonwealth Offences (at 9.1.1, 9.3.1, 9.3.2, 9.3.3 and 9.3.4) that: the threshold for issuing a notice should be ‘reasonable grounds to believe’; a notice should be in writing; a notice should be issued to a person; a notice should contain all relevant details; and a person should be given a minimum of 14 days to comply with a notice.

Subsection 78(3) will clarify that the copy of a certificate certified under subsection 78(2) has the same force and effect as an original certificate for the marriage. This is intended to enable the certificate to be used as conclusive evidence of the matters referred to in subsection 45(3) of the Act.

Part 4 – Marriages of members of the Defence Force overseas

Section 79 – Declaration before chaplain

This section will specify that the declaration each party to a proposed marriage must make under paragraph 74(1)(c) of the Act must include a declaration as to whichever of the following matters is pertinent for the party:

- that the party is 18 years or older, or
- the party’s date of birth and that an order has been made under section 12 of the Act in relation to the party.

Section 11 of the Act specifies that a person is of marriageable age if they are 18 years of age or older. Section 11 is subject to section 12 of the Act. Under subsection 12(1) of the Act, a person aged at least 16 years, but less than 18 years, may apply to a Judge or magistrate for an order authorising them to marry a particular person of marriageable age. The granting of an order under subsection 12(2) in effect makes a person of marriageable age.

This requirement will ensure that the declaration made by each party under paragraph 74(1)(c) of the Act covers all pertinent matters going towards whether the proposed marriage raises a legal impediment.

Section 80 – Marriage certificates for marriages solemnised overseas

This section will prescribe a form as the certificate of marriage, and specify requirements relating to the preparation, supply, security and record-keeping of certificates of marriage.

Subsection 80(1) will prescribe that the form of a certificate of marriage for the purposes of paragraph 80(1)(a) of the Act is Form 15 in Schedule 1 of the Regulations. This will be the certificate provided to a marrying couple immediately following the solemnisation of their marriage, in accordance with paragraph 80(1)(a) of the Act.

Subsection 80(2) will specify requirements that a certificate of marriage must meet in order to be in the prescribed form:

- the wording of the certificate will be required to strictly comply with the wording of Form 15 in Schedule 1 (paragraph 80(2)(a)). This requirement will override section 25C of the *Acts Interpretation Act 1901*, that substantial compliance is sufficient where an Act prescribes a form. This will ensure that all marriage certificates issued to couples in Australia will have identical wording.
- the certificate will be required to be a document prepared and supplied as an incomplete certificate by a person authorised to do so under subsection 80(3) and to be identifiable as a unique document by measures acceptable to the Minister (paragraph 80(2)(b)). These requirements will ensure the integrity of individual certificates, and protect certificates against misuse and fraud.

Subsection 80(3) will enable the Minister to authorise a person to prepare and supply certificates of marriage under subparagraph 80(2)(b)(i) by notifiable instrument. This will ensure public accessibility of the arrangement for the preparation and supply of certificates of marriage. Subsection 80(4) will require the Minister to ensure only one person is authorised at a time to prepare and supply certificates of marriage under subparagraph 80(2)(b)(i).

Subsections 80(5), (6) and (7) will specify record keeping requirements in relation to certificates of marriage.

Paragraphs 80(5)(a) to (e) will identify information that a chaplain must keep in relation to each certificate of marriage. For all certificates, the chaplain will be required to record any serial number printed on the form by the supplier authorised under subparagraph 80(2)(b)(i) (paragraph 80(5)(a)). For each certificate, the person will be required to record the details of the appropriate event by which the certificate became unusable by the chaplain:

- if the chaplain used the certificate for a marriage, the date and full names of the parties to the marriage must be recorded (paragraph 80(5)(b))

- if the chaplain transferred the certificate to another chaplain or an authorised celebrant, the date of the transfer and the name and authorisation number (if any) of that celebrant (paragraph 80(5)(c)), or
- if the certificate was destroyed, the date of and reason for the destruction (paragraph 80(5)(d)).

Additionally, if any other event occurs in relation to a certificate (for example, loss or theft) the chaplain must record the details of that event (paragraph 80(5)(e)).

Paragraph 80(6)(a) will require the chaplain to keep the records outlined in subsection 80(5) in a form acceptable to the Minister. This will ensure that all persons keep the records in a consistent manner.

Paragraph 80(6)(b) will require the chaplain to keep the records outlined in subsection 80(5) for a period of six years, unless the chaplain dies or becomes permanently incapacitated before the end of the six year period. The six year period for the record of each certificate will commence on the day after the date of the relevant event identified in paragraphs 80(5)(b) to (e). For example, where a chaplain destroys a certificate on 1 March 2018, the six year period for which the chaplain will be required to keep the record relating to that certificate (the serial number, and date of and reasons for destroying it) will end on 2 March 2024.

Subsection 80(7) will provide that the Minister may request a copy of the records kept by a person under subsection 80(5). The Minister will be required to make such a request by a written notice, and to identify the person the records must be given to and a period within which the records must be given.

The requirement to store these records—which may contain personal information, if a certificate was used for a marriage—is intended to protect certificates against misuse and ensure certificates are traceable for a minimum period of time. This requirement will not be new; under regulation 47 of the old regulations, chaplains are required to keep the same records with no specified date on which the obligation to keep the records ceases. Under these regulations, the requirement will be limited to six years.

Subsections 80(5), (6) and (7) will rely on the necessary or convenient power in section 120 of the Act. These subsections will be complementary to paragraph 80(1)(a) of the Act, which requires a prescribed form to be used as the certificate of marriage to be issued to the married couple. Requiring records about these certificates to be kept will support the requirement to use a prescribed form, and that those prescribed forms should only be used by authorised celebrants.

Section 81 – Offences in relation to record keeping

This section will create two offences, relating to a chaplain’s obligations to keep records about certificates of marriage under section 80.

Subsection 81(1) will provide that a person commits an offence of strict liability if the person contravenes subsection 80(5).

Clause 6.1 of the *Criminal Code Act 1995* will apply to the offence in subsection 81(1). This will ensure that there is no fault element for the single physical element of this offence (whether the person failed to keep the records). The defence of honest and reasonable mistake of fact will be available in relation to this offence (clause 9.2 of the *Criminal Code Act 1995*).

The penalty for the offence in subsection 81(1) will be a fine of up to 2 penalty units.

Subsection 81(2) will provide that a person commits an offence if the person:

- is given a notice under subsection 80(7) of the Regulations, and
- fails to comply with that notice.

Clause 5.6 of the *Criminal Code Act 1995* will apply to determine the fault elements for the offence in subsection 81(2).

The defences of general application under the *Criminal Code Act 1995* will be available in relation to the offence in subsection 81(2), including: mistake of ignorance of fact (clause 9.1 of the Code); duress (clause 10.2 of the Code); and lawful authority (clause 10.5 of the Code).

The penalty for the offence in subsection 81(2) will be 2 penalty units.

Section 82 – Dealing with retained official certificates

This section will specify the record keeping obligations in relation to official certificates of marriage prepared under paragraph 80(1)(b) of the Act.

Under paragraph 80(4)(c) of the Act, a chaplain is required to retain one official certificate for a marriage for a prescribed period and deal with that certificate in accordance with regulations.

Subsection 82(1) will specify that three months is the prescribed period for the purposes of paragraph 80(4)(c) of the Act.

Subsection 82(2) will require a chaplain to send the retained official certificate for a marriage to the Australian headquarters for the Navy, Army or Air Force, depending on the Service in which the chaplain is or was a member.

Section 83 – Prescribed overseas countries

This section will indicate that countries for the purposes of paragraph 85(1)(a) of the Act are prescribed in Schedule 5 of the Regulations.

Section 85 of the Act provides a process for a chaplain to facilitate a copy of a marriage certificate for a marriage that took place in a country prescribed by regulations to be stored in Australia, provided certain conditions are met.

Part 5 – Miscellaneous

Section 84 – Endorsement in case of second marriage ceremony

This section will specify the endorsement that must be included on all certificates and official certificates of marriage issued for a marriage under section 50 or 80 of the Act as required by subsection 113(4) of the Act, to make clear that the marriage is a second marriage ceremony.

Section 84 will require the endorsement to be signed by the person who solemnised the marriage, or in whose presence the marriage took place, under subsection 113(2) of the Act.

Part 6 – Transitional provisions

This part will establish arrangements to manage the transition from the old regulations to the Regulations.

Section 85 – Pre-commencement applications for exemption from registration application fee

Subsections 85(1) and (2) will specify that an application for exemption from the registration application fee, made under the old regulations prior to the commencement of the Regulations and where a decision on the application has not yet been made, should be dealt with in accordance with the old regulations.

Subsection 85(3) will preserve any notice issued by the Registrar of Marriage Celebrants under the old regulations requesting additional information in relation to the application, where the information has not been provided by the commencement date of the Regulations and the period for providing the information has not ended.

Section 86 – Pre-commencement applications for exemption from celebrant registration charge

Subsections 86(1) and (2) will specify that an application for exemption from the celebrant registration charge, made under the old regulations prior to the commencement of the Regulations and where a decision on the application has not yet been made, should be dealt with in accordance with the old regulations.

Subsection 86(3) will preserve any notice issued by the Registrar of Marriage Celebrants under the old regulations requesting additional information in relation to the application, where the information has not been provided by the commencement date of the Regulations and the period for providing the information has not ended.

Section 87 – Pre-commencement applications for internal review of refusal to grant certain exemptions

Subsections 87(1) and (2) will specify that an application for internal review of a refusal to grant an exemption, made under the old regulations prior to the commencement of the Regulations and where an internal review decision has not yet been made, should be dealt with in accordance with the old regulations.

Subsection 87(3) will preserve any notice issued by the Registrar of Marriage Celebrants under the old regulations requesting additional information in relation to the internal review application, where the information has not been provided by the commencement date of the Regulations and the period for providing the information has not ended.

Section 88 – Internal review of pre-commencement decisions to refuse to grant certain exemptions

This section will ensure that internal review will be available under the Regulations for decisions made under the old regulations refusing to grant exemptions where the time period in which a person may apply for internal review of the refusal has not ended.

Section 89 – Pre-commencement complaints about the solemnisation of marriages by marriage celebrants

Subsections 89(1) and (2) will specify that a complaint received under the old regulations will continue to be dealt with in accordance with the old regulations if no final decision has been made on the complaint and the Registrar of Marriage Celebrants has issued a notice to the complainant (under subregulation 37T(3) of the old regulations) advising of the outcome of the Registrar's preliminary assessment of the complaint.

A complaint not captured by subsection 89(1) will be dealt with in accordance with section 93.

Subsection 89(3) will ensure that the Registrar can continue to do anything in relation to a complaint in accordance with the old regulations that the Registrar has commenced, but not finished, doing under the old regulations prior to the commencement of the Regulations. Subsection 89(3) will only apply in relation to a complaint captured by subsection 89(1).

Subsection 89(4) will preserve any notice issued by the Registrar of Marriage Celebrants under the old regulations in relation to a complaint, where the period for complying with the notice has not ended.

Section 90 – Application—re-hearing of application for consent to marriage of a minor

This section will apply the time period, specified in subsection 15(1) of the Regulations, for requesting a re-hearing of an application to an application that was granted or refused before, on or after the commencement of the Regulations. This will ensure that the time period in which a re-hearing can be requested will continue to run, despite the repeal of the old regulations and the commencement of the Regulations.

Section 91 – Application—application for exemption from celebrant registration charge

This section will apply the time period, specified in paragraph 48(2)(a) of the Regulations, for making an application for exemption from the celebrant registration charge to an application made in relation to a notice about the charge that was sent before, on or after the commencement of the Regulations. This will ensure that the time period in which an exemption application can be made will continue to run, despite the repeal of the old regulations and the commencement of the Regulations.

Section 92 – Application—professional development activities for marriage celebrants

Subsection 92(1) will specify that section 53 of the Regulations will apply in relation to the calendar year starting on 1 January 2018 and each calendar year after that. For the 2018 calendar year, the requirement in subsection 53(3) that the Registrar of Marriage Celebrants publish a written statement as soon as practicable after the start of the calendar year will be imposed when the Regulations commence on 1 April 2018. In order not to disadvantage marriage celebrants who undertake professional development activities on or after 1 January 2018 and on or before 31 March 2018, it is intended that the written statement that will be published under subsection 53(3) will, to the extent practicable, be identical to the written statement published under subregulation 37M(1) of the old regulations.

Subsection 92(2) will specify that section 54 of the Regulations will apply in relation to the calendar year starting on 1 January 2019 and each calendar year after that. Section 54 will exempt certain marriage celebrants from the requirement to undertake professional development activities for the calendar year in which they are registered. As the Regulations will commence on 1 April 2018, the application of section 54 (and hence the availability of the exemption) will be delayed until 1 January 2019, in order to not disadvantage those marriage celebrants who become registered on or after 1 January 2018 and on or before 31 March 2018.

Section 93 – Application—complaints resolution procedures

This section will specify that Subdivision B of Division 2 of Part 3 of the Regulations will apply in relation to a complaint made:

- on or after 1 April 2018, or
- before 1 April 2018, if the Registrar of Marriage Celebrants has not issued a notice to the complainant (under subregulation 37T(3) of the old regulations) advising of the outcome of the Registrar’s preliminary assessment of the complaint.

This section will not apply to a complaint which is captured by section 89.

Section 94 – Savings—notice given to recognised denomination

This section will apply to any notice to a recognised denomination by a Registrar of Ministers of Religion under the old regulations given prior to the commencement of the Regulations on 1 April 2018 and for which the time period for responding to the notice has not expired. The

notice will continue to have effect, and the old regulations will continue to apply in relation to the notice, despite the repeal of the old regulations.

Section 95 – Savings—determination of qualifications and skills required of marriage celebrants

This section will apply to a determination made under the Act prior to the commencement of the Regulations, which was in force immediately before the commencement of the Regulations on 1 April 2018. Despite the repeal of the old regulations, the determination will continue to have effect and will apply in relation to undecided applications for registration as a marriage celebrant under section 39D of the Act made before the commencement of the Regulations.

Section 96 – Savings—determination of fees

This section will apply to a determination setting fees made under the old regulations that is in force immediately before the Regulations commence. Despite the repeal of the old regulations, the determination will continue to be in force and may be dealt with and treated as if it were a determination made under the Regulations. This will ensure that any fees specified in a determination in force immediately prior to the commencement of the Regulations will continue to be the fees when the Regulations commence.

Section 97 – Savings—authorisation of suppliers of marriage certificates

This section will apply to an authorisation of a supplier of marriage certificates made under the old regulations, which is in force immediately before the commencement of the Regulations on 1 April 2018. Despite the repeal of the old regulations, the authorisation will continue in force and may be dealt with and treated as if it were an authorisation made under the Regulations. This will ensure that any supplier authorised immediately prior to the commencement of the Regulations will continue to be the supplier when the Regulations commence. The preservation of an authorisation of a supplier will preserve any unused marriage certificates produced by that supplier.

Schedule 1 – Form of certificate of marriage

This schedule will prescribe the Form 15—Certificate of Marriage. This will be the form and words required for a certificate of marriage for the purposes of paragraph 50(1)(a) of the Act.

It will be possible to omit the text identified by an asterisk (and according to the rites of) from the version of the Form 15 used. This text is intended to be used in certificates of marriages where the form or ceremony for the marriage contained religious rights in accordance with subsection 45(1) of the Act.

The note to the Schedule is intended to refer the reader to sections 73 and 80 of the Regulations, which will establish requirements regarding the use of the Form 15. This note is not intended to have substantive effect.

Schedule 2 – Code of Practice for marriage celebrants

This schedule will establish the Code of Practice for marriage celebrants, which marriage celebrants are required to conduct themselves in accordance with under paragraph 39G(1)(a) of the Act.

Marriage celebrant associations were consulted extensively prior to the introduction of the Code of Practice by the *Marriage Amendment Regulations 2003 (No. 2)*. Views of marriage celebrant associations were sought in 2015 on the Code of Practice in the old regulations and associations were consulted on an Exposure Draft of this Code of Practice in July 2017.

The note to the Schedule is intended to refer the reader to section 52 of the Regulations. This note is not intended to have substantive effect.

Clause 1 – Application of this Code of Practice

This clause will clarify that this Code of Practice applies to marriage celebrants (a term defined in the Act). It will not apply to authorised celebrants who are not marriage celebrants, such as a minister of religion of a recognised denomination or a state or territory officer.

The first note to this clause is intended to direct the reader to the definition of ‘marriage celebrant’ contained in subsection 5(1) of the Act. The second note is intended to direct the reader to paragraph 39I(1)(b) of the Act, under which the Registrar of Marriage Celebrants may impose a disciplinary measure if a marriage celebrant fails to comply with the Code of Practice as required by paragraph 39G(1)(a) of the Act. Neither note is intended to have substantive effect.

Clause 2 – High standard of service

This clause will require a marriage celebrant to maintain a high standard of service in their professional conduct and practice. It will specify that a high standard of service includes, without limitation, ensuring: appropriate personal presentation for marriage ceremonies; punctuality for marriage ceremonies; and accuracy in preparation of documents and in the conduct of marriage ceremonies. This list is not intended to limit what conduct and practice is captured by this item. For example, other conduct or practice captured by this clause may include confirming details about a marriage with the parties to the marriage, and ensuring that an appropriately high standard of service is provided where the marriage celebrant is solemnising multiple marriages on the same day.

Clause 3 – Recognition of significance of marriage

This clause will require a marriage celebrant to recognise the social, cultural and legal significance of marriage and the marriage ceremony in the Australian community. It will also require a marriage celebrant to recognise the importance of strong and respectful family relationships.

Clause 4 – Compliance with the Act and other laws

This clause will require a marriage celebrant to

- comply with the requirements of the Act and the Regulations which apply to the marriage celebrant (paragraph 4(a)). This paragraph is intended to ensure that where a marriage celebrant fails to comply with their legal obligations, particularly in relation to the solemnisation of marriage, the Registrar of Marriage Celebrants will be able to take disciplinary action.
- observe the laws of the Commonwealth and of any state or territory in which the marriage celebrant solemnises marriages. This paragraph is intended to ensure that marriage celebrants comply with any relevant legal obligations imposed outside of the Act or the Regulations, for example the Australian Consumer Law. While the Registrar of Marriage Celebrants may be able to form a view on whether a marriage celebrant has observed a law other than a marriage law, it is not intended that the Registrar will be able to make findings in relation to compliance with other laws.
- avoid unlawful discrimination in the provision of marriage celebrancy services. Under Commonwealth, state and territory anti-discrimination laws, persons are generally required to avoid acting in a manner that unlawfully discriminates against another person or group of persons. This paragraph is intended to make clear the importance of marriage celebrants complying with anti-discrimination laws in providing marriage celebrancy services. Compliance with these laws assists to ensure marriage celebrancy services are accessible to all eligible couples.

Clause 5 – General requirements for marriage ceremonies

This clause will require a marriage celebrant to respect the importance of the marriage ceremony to the parties to the marriage and other persons (for example, family members) organising the marriage ceremony. It will specify that respecting the importance of the marriage ceremony includes, without limitation:

- giving the parties to the marriage information and guidance to enable them to choose or compose a marriage ceremony, including information to assist the parties to decide whether they need a marriage ceremony rehearsal, or whether having a rehearsal would be appropriate for them (paragraph 5(a)).
- respecting the privacy and confidentiality of the parties to the marriage (paragraph 5(b)). This will include: arranging for appropriate facilities for interviews (for example, some parties may require more privacy than others); maintaining appropriate facilities for the secure storage of records (under section 77 of the Regulations, marriage celebrants will be required to keep records relating to a marriage for six years); and ensuring all of the parties' personal documents are returned as soon as practicable.

- giving the parties to the marriage information about how they may make a complaint to the Attorney-General's Department regarding the marriage services provided by the marriage celebrant (paragraph 5(c)).

Clause 6 – Knowledge and understanding of family relationships services

This clause will require a marriage celebrant to maintain an up-to-date knowledge about appropriate family relationships services in the community. A marriage celebrant will also be required to inform marrying parties about the range of information and services available to the parties to enhance, and sustain them throughout, their relationship.

Schedule 3 – Circumstances for authorising marriage despite late notice

This schedule will specify the circumstances in which a prescribed authority may authorise a marriage to take place under subsection 42(5) of the Act, despite notice of the intended marriage not being received by an authorised celebrant within the timeframe required under subsection 42(1)(a) of the Act.

Various prescribed authorities were consulted on an Exposure Draft of this Schedule.

The note to the Schedule is intended to refer the reader to section 72 of the Regulations. This note is not intended to have substantive effect.

Subclauses 1(1), 2(1), 3(1), 4(1) and 5(1) will specify circumstances in which a prescribed authority may be satisfied under subsection 42(5) of the Act that a marriage should take place despite notice of the marriage having been received by an authorised celebrant less than one month before the date of the marriage. These circumstances will be where:

- a party to the marriage, or someone involved with the proposed wedding (for example, a bridesmaid or close family member), has employment commitments that require the party's or person's absence from the location of the proposed wedding for a considerable period of time (paragraph 1(1)(a))
- a party to the marriage, or someone involved with the proposed wedding (for example, a bridesmaid or close family member), has other travel commitments (paragraph 1(1)(b))
- binding wedding arrangements or celebration arrangements have been made in connection with the marriage (paragraph 2(1)(a))
- there is a religious consideration (paragraph 2(1)(b))
- a party to the marriage, or someone involved with the proposed wedding (for example, a bridesmaid or close family member), is suffering from a medical condition of a serious nature (subclause 3(1))
- a party to the marriage is involved in a legal proceeding (subclause 4(1))

- due solely to an error by the authorised celebrant (or a person the parties to the marriage believed was an authorised celebrant), the notice was not given and arrangements have been made for the proposed wedding to take place within less than one month (subparagraph 5(1)(a)(i) and paragraph 5(1)(b))
- due solely to an error by the authorised celebrant (or a person the parties to the marriage believed was an authorised celebrant), the notice as given was invalid, and arrangements have been made for the proposed wedding to take place within less than one month (subparagraph 5(1)(a)(ii) and paragraph 5(1)(b)), or
- due solely to an error by the authorised celebrant (or a person the parties to the marriage believed was an authorised celebrant), the notice was given in time, but was lost and arrangements have been made for the proposed wedding to take place within less than one month (subparagraph 5(1)(a)(iii) and paragraph 5(1)(b)).

These circumstances are not intended to provide a means to circumvent or avoid the notice of intended marriage requirements specified in subsection 42(1) of the Act.

The examples to subclauses 1(1), 2(1), 3(1), 4(1) and 5(1) are intended to provide guidance only, and are not intended to be exhaustive or to have substantive effect.

Subclauses 1(2), 2(2), 3(2), 4(2) and 5(2) will indicate matters that a prescribed authority may take into account in deciding whether it is satisfied that the relevant circumstance has, or circumstances have, been met. These lists of matters are not intended to be exhaustive. A prescribed authority will be able to exercise its discretion to take any or all of these matters into account, or to take other matters into account.

Schedule 4 – Specified offices of States and Territories

This schedule will specify offices for a state and territory for which the office holder, or a person acting in the office, is required by subsection 50(1A) of the Act to prepare only one official certificate of marriage for the purposes of paragraph 50(1)(b) of the Act.

The note to the Schedule is intended to refer the reader to section 75 of the Regulations. This note is not intended to have substantive effect.

The appropriate registering authorities for states and territories were consulted to identify the offices to be included in this schedule.

Schedule 5 – Prescribed overseas countries

This schedule will prescribe overseas countries for the purposes of paragraph 85(1)(a) of the Act. Section 85 of the Act provides a process for a chaplain to facilitate a copy of a marriage certificate for a marriage that took place in a country prescribed by regulations to be stored in Australia, provided certain conditions are met.

The note to the Schedule is intended to refer the reader to section 83 of the Regulations. This note is not intended to have substantive effect.

The Department of Defence was consulted on the countries to be included in this schedule.

Schedule 6 – Repeals

This schedule will repeal the whole of the *Marriage Regulations 1963*. The Regulations are intended to replace the *Marriage Regulations 1963*, which will sunset on 1 April 2018, the same date these Regulations will commence.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.