

Marriage Amendment (Celebrant Administration and Fees) Bill 2013

Marriage (Celebrant Registration Charge) Bill 2013

Introduced into the House of Representatives on 20 March 2013

Portfolio: Attorney-General

Overview

1.67 The Marriage Amendment (Celebrant Administration and Fees) Bill amends the *Marriage Act 1961* to introduce cost recovery for Commonwealth-registered marriage celebrants from 1 July 2013, and makes minor amendments to the administration of the Marriage Celebrants Program. There are three categories of persons authorised under the *Marriage Act 1961* to solemnise marriages in Australia:

- Ministers of religion of a recognised denomination who are nominated by their denomination and registered and regulated by state and territory Registries of Births, Deaths and Marriages;
- State and territory officers who are authorised to perform marriages as part of their duties and are registered and regulated by state and territory Registries of Births, Deaths and Marriages; and
- Commonwealth-registered marriage celebrants (including civil celebrants and celebrants who are ministers of religion whose denomination is not proclaimed).

1.68 The bill proposes to introduce the following fees in relation to the third category of celebrants only: an annual celebrant registration charge, a fee for applying to become a marriage celebrant, and a fee for applying for an exemption from professional development requirements.

1.69 The Marriage (Celebrant Registration) Charge Bill provides for the imposition of the celebrant registration charge (which is a cost recovery levy which requires imposition legislation). There is a statutory limit of \$600 on the charge, but the actual amount of the annual registration charge will be set out in a legislative instrument.

Compatibility with human rights

Freedom of religion and equality and non-discrimination

1.70 The bills are each accompanied by self-contained statements of compatibility, which note that the proposed annual celebrant registration fee may engage the right to freedom of religion and the right to equality and non-

discrimination.¹ Imposing a fee for applying to become a marriage celebrant would also appear to engage these rights. This is because celebrants who are ministers of religion whose denomination is not proclaimed under the *Marriage Act 1961* may not solemnise a marriage unless they are registered celebrants under the Act (and pay the fee), whereas ministers of religion whose denomination is proclaimed are not required to pay a registration fee in order to be able to solemnise a marriage.

1.71 The statement of compatibility notes that the reason for the imposition of the registration charge only on ministers of non-proclaimed religions is that ministers of proclaimed religions are already registered and regulated by state and territory authorities.² It also notes that, where a minister of a non-proclaimed religion does not wish to pay the registration fee, section 113 of the *Marriage Act 1961* provides for a marriage by a registered celebrant to be followed by a religious ceremony of marriage. This might also be viewed as engaging the right of men and women to marry as contained in article 23(2) of the International Covenant on Civil and Political Rights (ICCPR).

Right to work and right to an effective remedy

1.72 The statement of compatibility also notes that the bill engages the right to work of celebrants, including those already registered for life as a celebrant, by requiring the payment of an annual fee. The imposition of an application fee to become a marriage celebrant would also engage this right. The right to work is protected under article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Limitations on the enjoyment of that right are permissible under article 4 of the ICESCR, provided that such limitations are ‘determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.’ The statement of compatibility notes the availability of an independent review before the Administrative Appeals Tribunal of a decision to deregister a celebrant.

1.73 The committee:

- **considers that to the extent that the measures involve a limitation on the exercise of the freedom of religion, they are a permissible limitation on the enjoyment of that right, and notes in particular the possibility for a religious marriage to follow a civil ceremony;**

1 The right to freedom of religion is contained in article 18 of the International Covenant on Civil and Political Rights (ICCPR) and the right to equality and non-discrimination (including non-discrimination in the enjoyment of the right to freedom of religion) is contained in article 2(1) and 26 of the ICCPR.

2 Statement of compatibility, p 6.

- considers that to the extent that the differential treatment of ministers of religion engages the right to equality and non-discrimination, the fact that ministers of proclaimed religions are regulated by state and territory authorities is an objective and reasonable basis on which to treat the two categories of minister differently; and
- considers that any limitation on the right to work is a reasonable and proportionate measure provided by law in pursuit of a legitimate objective and is permissible.