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No. 112 2001–02

Marriage Amendment Bill 2002

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 112 2001-02

Marriage Amendment Bill 2002

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Marriage Amendment Bill 2002

Date Introduced: 14 February 2002

House: House of Representatives

Portfolio: Attorney-General

Commencement: Schedule 1, relating to the Marriage Celebrant Program, commences on proclamation or 12 months after the Bill receives Royal Assent, whichever is the sooner. Schedule 2, consisting of miscellaneous technical amendments and amendments relating to certain overseas marriages, mainly commences 28 days after Royal Assent.

Purpose

The purpose of the Bill is to amend the *Marriage Act 1961* to give effect to the reform of the Marriage Celebrant Program and to make other technical amendments to the Marriage Act.

Background

This Bill was previously introduced into the House of Representatives on 27 September 2001. Parliament was prorogued before debate resumed and the Bill then lapsed. This Bill is written in exactly the same terms as the previous Bill.

Marriage Act 1961

Under the Marriage Act there are three major classes of marriage celebrants. These are:

1. Celebrants from recognised religious denominations¹
2. State Registrars of Births Deaths and Marriages authorised to solemnise marriages under subsection 39(1), and
3. persons authorised by the Minister to solemnise marriages according to the fit and proper person criteria in subsection 39(2). Within this group there are currently three categories: (i) civil marriage celebrants, (ii) religious celebrants who do not belong to

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one of the recognised denominations², and (iii) celebrants appointed to deal with special community needs.³ These latter three categories comprise the Marriage Celebrant Program and are the subject of the Bill.

Marriage Celebrant Program

The Civil Marriage Celebrant Program was established in 1973 by the then Attorney-General, the Hon. Senator Lionel Murphy, to provide a secular alternative and freedom of choice for marrying couples who did not want to have a religious ceremony and yet did not want a registry wedding.

There were 13 civil celebrants when the program commenced. There are now almost 1,700 civil and a similar number of non-recognised denomination religious marriage celebrants appointed under the program.⁴ In 2000 civil marriage celebrants performed 45% of all marriages in Australia.⁵

In 1997, the Government commenced a review of the Marriage Celebrant Program and a Proposals Paper for reform was released in November 2000. The review process and particularly the Proposals Paper identified a number of problems with the existing system. Amongst other things the Paper suggested:

- previous arrangements for marriage celebrant appointments have resulted in an unequal distribution of celebrants across Australia⁶
- the current system of authorisation on the basis of regional or community need, prevents able and potentially talented celebrants being authorised and hence impacts the quality of the program
- there is an absence of clear definition of the civil marriage celebrant's role
- the Marriage Act does not set down express selection criteria or standards for celebrants other than a celebrant must be 'fit and proper' to solemnise marriage
- there is no formal training scheme available for marriage celebrants, and
- there is no formal procedure for the review of any celebrant's practice.⁷

The Proposals Paper and the Bill

The Bill is based largely on the recommendations of the Proposals Paper, although some of the Paper's more contentious aspects relating to professional development and authorisation for celebrants have been modified.

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Appointment

Under current arrangements marriage celebrants are appointed for life. The Proposals Paper recommended that lifetime appointments should be replaced with fixed periods of authorisation. In response to concerns from existing celebrants this proposal has been amended in the Bill so that celebrants would be appointed on a life time basis but subject to 5 yearly reviews.

The current arrangement for appointment of marriage celebrants is based largely regional and special need. The Proposals Paper recommended that these restrictions on the number of appointments be lifted and that appointment be based solely on satisfying a set of criteria. In response to concerns from marriage celebrant groups, that the new method of appointment could see a flood of celebrants onto the market⁸, the reforms are to be phased in over a period of 5 years. According to the *Explanatory Memorandum*, during this period, the number of celebrants authorised would be limited to a 10 per cent increase each year based on the number of authorised celebrants in the previous year. This would be calculated on a State by State basis, with a metropolitan and a rural region in each State except Tasmania, the ACT and the Northern Territory, all of which would form one region apiece.⁹ After the five-year transition period, the ceiling for authorisations would be removed.¹⁰

Subsection 39(2) of the Marriage Act gives the Attorney-General the power to authorise 'fit and proper persons' to solemnise marriage as marriage celebrants. The Proposals Paper recommended that the term 'fit and proper person' be replaced with a form of words which would clearly identify the characteristics that competent marriage celebrants should possess. That list of characteristics proposed was:

- a commitment to marriage preparation
- sufficient knowledge of the law relating to solemnisation of marriages
- satisfaction of the necessary training competencies
- good standing and respect within the community
- the absence of any criminal conviction, and
- adherence to the Code of Practice for Marriage Celebrants.¹¹

In response to concerns about deregulation of the marriage celebrant market a conflict of interest criteria not included in the Proposals Paper was added to the Bill. This was to allay concerns from celebrants that wedding organiser businesses would capture the marriage celebrant market in a new deregulated environment.¹²

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Training

According to the Proposals Paper the scheme of training for celebrants would consist of either a nationally accredited training course for celebrants or nationally endorsed competency standards. The Government has opted for the latter option.¹³ All new appointments under the Marriage Celebrant Program, both civil and religious¹⁴ would be based upon satisfying core competency standards. This would be achieved through the system of accreditation operating in the vocational education and training sector administered by the Australian National Training Authority.¹⁵

Under the Bill all celebrants in the Program, existing and new, would be required to undertake ongoing professional development but existing celebrants would not be required to demonstrate that they satisfy the new core competencies.

Once an aspiring celebrant completes the training course, there would be an additional requirement to demonstrate to the Registrar of Marriage Celebrants that he or she passed the 'fit and proper person' criteria.¹⁶

Such requirements would also apply to religious marriage celebrants from non recognised denominations appointed under the program.

Expanding Role of Celebrants - Referral to marriage education services

A major impetus for the proposed reforms to the Marriage Celebrant Program is the Government's commitment to pre-marriage education and family relationship support services.¹⁷ The Government believes that celebrants are well placed to provide information and raise awareness about the benefits and range of pre-marriage education and family relationship support services.¹⁸

According to the Attorney-General:

The role of the modern celebrant extends far beyond simply officiating at ceremonies. Celebrants are in a unique position to foster quality family relationships. They can provide information about services that will help couples to develop stronger relationships. If necessary, celebrants can refer people to these services.

These simple actions can deliver great benefits. They can reduce the risk of relationship breakdown - and in the process they can help to reduce the divorce rate. In 2000, there were 49,900 divorces granted in Australia.

The Andrews Committee report, *To Have and to Hold*, clearly illustrated the emotional and financial costs of marriage and relationship breakdown. It also highlighted the value of preventative action and the role it plays in promoting strong and healthy marital relationships.

The reforms seek to harness and to use the power and position that celebrants have. If we can succeed in doing this we will help make relationships stronger. And we will

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reduce the financial cost and the human trauma associated with relationship breakdown.¹⁹

Hence the Bill's criteria for selection includes a requirement that celebrants have a commitment to advising couples of the availability of marriage preparation services. In response to concerns about the appropriateness of using celebrants for pre-marriage counselling, the Government has emphasised that the celebrant's role would be purely a referral role and not a counselling role.

Registrar of Marriage Celebrants

The reforms proposed in the Proposals Paper and the Bill include the appointment of a Registrar of Marriage Celebrants employed within the Attorney-General's Department. The Registrar's primary function would be to establish and maintain the register of marriage celebrants. This register would be the mechanism for the appointment and revocation or suspension of all marriage celebrants.

Financial impact

The Proposals Paper recommended the introduction of fees for initial and ongoing authorisation of celebrants. However in response to pressure from existing celebrants this recommendation has been dropped from the Bill.

According to the Explanatory Memorandum the additional regulatory functions to be carried out by the Attorney-General's Department will involve a cost of approximately \$320,000 per annum and additional funding will be provided to the Department to meet these costs.

Main Provisions

Schedule 1—Marriage Celebrants

Items 1-16 and 20-25 are largely technical and consequential amendments to the Marriage Act reflecting the insertion of new provisions dealing with appointments under the Marriage Celebrant Program.

Item 18 inserts **new Subdivision C** into Division 1 of Part IV of the Marriage Act. **Subdivision C** sets out the new arrangements for the appointment of marriage celebrants.

New section 39A provides for the appointment of a Registrar of Marriage Celebrants. This is a position to be occupied by an APS employee in the Attorney-General's Department who will have the functions and powers as set out in the Bill.

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Amongst other things the Registrar is to maintain a register of marriage celebrants and this register is to be available on the Internet (**proposed section 39B**).

New section 39C sets out the requirements for registration as a marriage celebrant. The Registrar of Marriage Celebrants is to register a person as a marriage celebrant only if satisfied that the person:

- is aged 18 years or over
- has appropriate qualifications, and/or skills, as required by regulation, and
- is a fit and proper person to be a marriage celebrant.

Proposed subsection 39C(2) details the criteria for a 'fit and proper person'. In particular the Registrar must consider whether the applicant

- has sufficient knowledge of the law relating to solemnisation of marriages
- is committed to advising couples of the availability of relationship support services
- is of good standing in the community
- has a criminal conviction
- has an actual or potential conflict of interest with any of their business interests, hobbies²⁰ or other interests
- would be likely to gain a benefit in respect of another business that they own or carry out if registered as a marriage celebrant
- will fulfil their obligations under section 39G to abide by a Code of Practice, and undertake professional development activities,
- will notify the Registrar of any change in their details that would affect their ability to be registered as a celebrant, and
- any other matter that the Registrar may consider relevant.

Proposed section 39D sets out the technical requirements for registering a marriage celebrant. In order to register a person as a marriage celebrant the Registrar must be satisfied that the person is entitled to be registered and the person has completed the prescribed application form (**proposed subsection 39D(4)**). Applications must be dealt with in the order they are received (**proposed subsection 39D(2)**). The Registrar must have regard to the information provided in the application, and is also entitled to consider any further information that he or she is aware of.

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If the Registrar decides not to register a person as a celebrant, the Registrar must inform the applicant in writing and give reasons for that decision. The Registrar must also advise that this decision is reviewable in the Administrative Appeals Tribunal (AAT) (**proposed subsection 39D(7)**).

Registered marriage celebrants may solemnise marriages anywhere in Australia (**proposed section 39F**).

In the first five years of the new scheme there is to be a limit on the number of marriage celebrants that may be appointed. That limit will be set out in the regulations (**proposed section 39E**).

Proposed section 39G sets out the obligations of each marriage celebrant. A marriage celebrant must:

- comply with the prescribed Code of Practice for celebrants
- undertake professional development as required by the regulations, and
- notify the Registrar in writing of any necessary changes to the register.

Failure to comply with these obligations may result in disciplinary action (**explanatory note to proposed section 39G and proposed section 39I**).

Appointment as a marriage celebrant is to be ongoing subject to satisfactory five yearly performance reviews (**proposed section 39H**). The performance review is to take account of matters specified in the regulations²¹ and, in addition, the Registrar has the discretion to consider any other information (**proposed subsection 39H(3)**).

Proposed subsection 39H(4) sets out the procedure for giving notice of an unsatisfactory performance review. Celebrants are to have the opportunity to respond to a determination of unsatisfactory performance review.

The Registrar may take disciplinary measures against a marriage celebrant if satisfied:

- the celebrant is no longer entitled to be registered
- the celebrant has not complied with a statutory obligation
- the celebrant has received an unsatisfactory performance review
- there has been a complaint against the celebrant in accordance with the complaints resolution procedures, or
- the celebrant knowingly included false or misleading information in their application for registration (**proposed subsection 39I(1)**).

The disciplinary measures the Registrar may take are to:

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- caution the marriage celebrant in writing
- require the celebrant to undertake professional development activities
- suspend the marriage celebrants registration for up to 6 months, or
- deregister the marriage celebrant (**proposed subsection 39I(2)**).

Decisions not to register, or to suspend or deregister a celebrant are reviewable in the AAT under **proposed section 39J**.

Proposed section 39K sets out additional functions of the Registrar. These include the establishment of complaints resolution procedures to deal with complaints about marriage celebrants.

Item 27 is a transitional provision. On commencement of the new provisions, the Registrar must register all existing marriage celebrants. Existing celebrants will therefore gain automatic registration and will not be required to satisfy the core competencies required of new celebrants. However existing celebrants will be subject to five yearly performance reviews and at that time would be required to satisfy the prescribed professional development requirements.

Schedule 2 —Other Matters

Part V of the Marriage Act deals with the solemnisation of marriages overseas. In particular Divisions 1 and 2 of Part V provide that Australian consular officials may perform marriages overseas for Australian citizens. **Item 19 of Schedule 2** deletes these Divisions and **items 2, 3, 6, 16-47, 49-53, 55** make the necessary consequential amendments. According to the Explanatory Memorandum Divisions 1 and 2 of Part V of the Marriage Act have not been used since 1993 when the Department of Foreign Affairs and Trade requested that all appointments of Australian consular officials as marriage officers be revoked.²²

Items 1, 7 and 48 make technical amendments to subsections 5(1), 9A(1), 92(1) respectively so that the Federal Magistrates Court will have the same jurisdiction as the Family Court of Australia in relation to the Marriage Act.

Schedule 2 also contains amendments to the procedures relating to the giving of the Notice of Intended Marriage. Giving a Notice of Intended Marriage within the specified time period is one of the preconditions that must be satisfied before a marriage can be solemnised.

Current paragraph 42(1)(a) imposes time limits on the giving of the Notice of Intended Marriage to a celebrant. The current limits are no earlier than 6 months and no later than 1 month before the intended marriage. **Item 9** amends the paragraph so that celebrants may receive the Notice of Intended Marriage up to 18 months prior to the marriage.

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Under current subsection 42(5) the statutory requirement of one months Notice of Intended Marriage may be waived. **Item 15** amends subsection 42(5) so that the expediting of a marriage in this way may only occur if it meets at least one of the requirements to be prescribed by regulation.

Subparagraph 42(1)(b)(ii) requires that couples intending marriage must produce either a birth certificate (or extract) or a statutory declaration stating reasons for not having a birth certificate. **Items 11 and 12** amend subparagraph 42(1)(b)(ii) so that overseas passports will also be an acceptable form of identification.

A Notice of Intended Marriage must be witnessed. Paragraph 42(2)(b) sets out who can witness a Notice. **Item 13** rewords and amends this paragraph so that a Notice of Intended Marriage completed overseas can also be witnessed by notaries public and certain overseas recruited Commonwealth and Austrade employees.

Concluding Comments

The Government has indicated a major impetus of the reform of the Marriage Celebrant Program is to broaden and enhance the role of marriage celebrants to include the promotion of pre-marriage and other relationship services. According to the Attorney-General this will result in stronger and healthier family relations and assist in lowering divorce rates.²³ Such a view has been subject to criticism for being simplistic and intrusive.²⁴

Undoubtedly it is ambitious to place responsibility on marriage celebrants to play some part in reducing divorce rates. However, if the Government is serious about this ideal, then logically it might be argued that the reforms proposed in this Bill should be applied to all marriage celebrants including religious celebrants appointed from the recognised denominations²⁵ and State and Territory registry office celebrants. The Bill does not affect these celebrants.²⁶ Further, if the Bill achieves its goal and civil celebrants are successful in steering marrying couples towards relationship education then presumably there will be a growth in that industry. It would then seem that a burgeoning marriage education industry could also need further scrutiny and regulation.

Endnotes

- 1 That is, denominations that have been proclaimed as 'recognised denominations' by the Governor-General.
- 2 For example, Sikhs, Buddhists and World Harvest Ministries.

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- 3 For example, celebrants that serve the Epilepsy Association of New South Wales, and the Spanish Australian Club of Canberra.
- 4 Marriage Amendment Bill 2002, *Explanatory Memorandum*, p. 1.
- 5 Attorney General, *Press Release: Reforms to the Marriage Celebrants Program*, 4 September 2001, p. 1.
- 6 At the beginning of October 2000 there were 1671 civil marriage celebrants in Australia. Of these 284 were based in Sydney and 259 in Melbourne.
- 7 *Proposals Paper: Reform of the Marriage Celebrants Program*, para. 1.2.
- 8 See for example the response of the Marriage Celebrant (Civil) Association of WA quoted in 'Move to cut divorce rate', *West Australian*, 7 September 2002.
- 9 *Explanatory Memorandum*, p. 10.
- 10 Attorney-General, *Press release: Marriage Celebrants Program Reform Launch*, 4 September 2001.
- 11 *Proposals Paper: Reform of the Marriage Celebrants Program*, para 3.3.
- 12 *Explanatory Memorandum*, p. 10.
- 13 *Explanatory Memorandum*, p. 15.
- 14 That is, non recognised religious denominations see above at pages 1–2 for an explanation of recognised denominations.
- 15 *Explanatory Memorandum*, p. 16.
- 16 Mentioned above at p. 3.
- 17 See for example the *Press Release* of Attorney-General, the Hon Daryl Williams, 'Coalition affirms commitment to marriage and relationship education and counselling ', 14 September 1998.
- 18 Attorney-General, *Press Release* 'Marriage celebrants are important to long, healthy marriages' 1 November 2000.
- 19 Attorney-General, *Press release: Marriage Celebrants Program Reform Launch*, 4 September 2001.
- 20 See *Explanatory Memorandum*, p. 21.
- 21 According to the *Explanatory Memorandum* these matters will include:
- 22 *Explanatory Memorandum*, p. 25.
- 23 See above at pp. 4–5.
- 24 See for example: 'Who can judge a couple's chances of wedded bliss', *Australian*, 9 November 2000. 'Government meddling is a marriage turn-off', *Australian*, 3 November 2000. 'No bouquet for marriage initiative', *Courier Mail*, 31 Oct 2000. 'Making of the marriage minders', *Advertiser*, 10 May 2000.
- 25 See above at pp. 1–2 for an explanation of the different types of religious celebrants.

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- 26 It could also be argued that this exemption for some religious celebrants is discriminatory. Celebrants from small religious groups (such as Sikhs and Buddhists) are affected by the Bill whereas celebrants from Christian denominations (such as Catholics, Uniting Church and Anglicans) are not affected.

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