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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**MARRIAGE AMENDMENT (CELEBRANT ADMINISTRATION AND FEES)
BILL 2013**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Hon Mark Dreyfus QC, MP)

MARRIAGE AMENDMENT (CELEBRANT ADMINISTRATION AND FEES) BILL 2013

GENERAL OUTLINE

This Bill amends the *Marriage Act 1961* to implement a 2011-12 Budget measure to introduce cost recovery for Commonwealth-registered marriage celebrants from 1 July 2013. It also makes minor amendments related to the administration of the Marriage Celebrants Program.

In summary, these include:

- amendments to set up the celebrant registration charge and to deregister celebrants who do not pay the celebrant registration charge or obtain an exemption from paying the charge
- amendments to allow the imposition of a registration application fee for prospective celebrants who apply for registration as a marriage celebrant
- amendments to provide for exemptions (including internal review of exemption decisions) and to allow the imposition of processing fees for applications for exemptions
- amendments to change the requirements relating to performance reviews of marriage celebrants, and
- amendments to increase the efficiency and operation of the Marriage Celebrants Program.

The Commonwealth has constitutional responsibility for marriage matters including the Marriage Celebrants Program. The Program, established in 1973 under the Marriage Act includes both civil celebrants and ministers from independent religious organisations — known collectively as Commonwealth-registered marriage celebrants. The Program is administered by the Attorney-General's Department.

All persons who solemnise marriages in Australia must be authorised under the Marriage Act. The Marriage Act establishes three categories of celebrants who are authorised to solemnise marriages under Australian law as follows:

- Ministers of religion of a recognised denomination, proclaimed under section 26 of the Act, 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 who are authorised under the Marriage Celebrants Program to perform marriages. This group includes civil celebrants and celebrants who are ministers of religion whose denomination is not proclaimed under section 26 of the Act.

Cost recovery and the fees and charges outlined in the Bill will only apply to the third group. The purpose of the Bill is to cost-recover the regulation of Commonwealth-registered celebrants.

When the Program was launched in 1973 less than 2% of couples chose a civil ceremony. Most recent ABS statistics show that 71% of marriage ceremonies within Australia are civil ceremonies, conducted by marriage celebrants registered under the Program or State Officers. There are currently over 10,500 Commonwealth-registered marriage celebrants administered by the Program.

The administration of the Program includes assessing and authorising new marriage celebrants for registration, reviewing celebrant performance, resolving complaints about celebrants, handling a large volume of enquiries from celebrants, producing information and guidance materials, managing ongoing professional development arrangements for celebrants and engaging with celebrants and their peak group. Many of these functions are carried out by the Registrar of Marriage Celebrants, a departmental officer with specific authority under the Marriage Act to carry out various functions in Subdivision C of Division 1 of Part IV of the Act.

The implementation of cost recovery will enable the Program to improve services delivered to Commonwealth-registered marriage celebrants, while also effectively regulating those celebrants. It will also provide the Program with resources to better scrutinise aspiring celebrants prior to registration. These measures will in turn ensure professional, knowledgeable and legally correct services are delivered to marrying couples in Australia.

From 1 July 2013 the Attorney-General's Department intends to recover the following types of fees and charges in relation to registered and prospective marriage celebrants:

- an annual celebrant registration charge imposed on all Commonwealth-registered celebrants
- a registration application fee for prospective celebrants seeking registration, and
- an application processing fee for seeking an exemption from:
 - the annual celebrant registration charge
 - the registration application fee, or
 - annual ongoing professional development obligations.

The annual celebrant registration charge is a cost recovery levy and requires imposition legislation. For that reason, the Government is also introducing a separate Bill – the Marriage (Celebrant Registration Charge) Bill 2013 – to allow for the charging of an annual celebrant registration charge. The Charge Bill imposes the charge that is payable in respect of a financial year and sets a statutory limit of \$600 on the charge, to be indexed according to the Consumer Price Index. The actual amount of the annual registration charge is to be determined by the Minister by legislative instrument. The machinery for implementing the celebrant registration charge and also for setting up the celebrant registration application fee is in this Bill, the Marriage Amendment (Celebrant Administration and Fees) Bill 2013.

In addition to cost recovery provisions, the amendments in this Bill seek to make several administrative improvements to the Marriage Act to increase the efficiency and operation of the Program.

FINANCIAL IMPACT STATEMENT

The implementation of fees and charges for celebrants will recover the costs of the Attorney-General's Department's administration of the Program. It is not intended to generate revenue.

A Cost Recovery Impact Statement will be available on the Attorney-General's Department website by 30 June 2013.

REGULATION IMPACT STATEMENT

A Regulation Impact Statement accompanied the 2011 Budget measure and a Cost Recovery Impact Statement will be available on the Attorney-General's Department website to further outline the details of cost recovery by 30 June 2013.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Marriage Amendment (Celebrant Administration and Fees) Bill 2013

This Bill 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*. An overview of measures in the Bill and human rights implications is below. The human rights implications should be read in conjunction with the Marriage (Celebrant Registration Charge) Bill 2013 which is related to this Bill.

Schedule 1, Part 1 - Annual Celebrant Registration Charge

Overview

The object of Schedule 1, Part 1 is to implement a 2011-12 Budget measure to introduce cost recovery for Commonwealth-registered marriage celebrants from 1 July 2013. This includes setting up the system for the imposition of an annual celebrant registration charge. The imposition of that charge is in the Marriage (Celebrant Registration Charge) Bill 2013. The charge will be imposed on celebrants registered on 1 July in a financial year and also on celebrants first registered after 1 July in a financial year.

All persons who solemnise marriages in Australia must be authorised under the Marriage Act. The Marriage Act establishes three categories of celebrants who are authorised to solemnise marriages under Australian law as follows:

- Ministers of religion of a recognised denomination, proclaimed under section 26 of the Act, 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 who are authorised under the Marriage Celebrants Program to perform marriages. This group includes civil celebrants and celebrants who are ministers of religion whose denomination is not proclaimed under section 26 of the Act.

The introduction of legislative measures to introduce cost recovery only relates to the third group. The regulation of the first two groups is carried out by states and territories. The purpose of the Bill is to cost-recover the regulation of Commonwealth-registered celebrants.

Under proposed amendments in this Bill, a Commonwealth-registered marriage celebrant who does not pay the registration charge (unless an exemption has been granted) will be deregistered. This Bill also enables regulations to be made to provide exemptions from imposition of the charge.

Human rights implications

Rights to freedom of thought, conscience and religion or belief

Rights to equality and non-discrimination

Unless an exemption has been granted, all Commonwealth-registered marriage celebrants must pay the charge, including celebrants performing marriages for religious organisations that are not ‘recognised denominations’ proclaimed under section 26 of the Marriage Act. It will be open to a Commonwealth-registered marriage celebrant, including those who perform marriages for independent religious organisations, to apply for exemptions from the celebrant registration charge. The exemption processes and grounds are to be provided in regulations.

This Bill does not impose a celebrant registration charge on the first two categories of authorised celebrants listed above. The regulation of these groups is carried out by states and territories. The purpose of the Bill is to cost recover the regulation of Commonwealth-registered celebrants registered under the Program and administered by the Commonwealth Attorney-General’s Department.

The result of having different regulatory schemes is that some, but not all, authorised celebrants who perform marriages using religious marriage ceremonies will pay a celebrant registration charge. This difference arises because of the nature of the regulatory scheme.

Ministers from independent religious organisations have alternatives if they do not wish to pay the celebrant registration fee and remain registered under the Program. Section 113 of the Marriage Act allows for couples to have a legal marriage followed by a religious ceremony or marriage. Religious celebrants may still be able to provide religious ceremonies for couples in their congregation after the couple have taken the steps to complete the legal marriage. This practice is one followed in a number of countries and section 113 provisions have been part of the Marriage Act since it was enacted in 1961.

Rights to an effective remedy

A celebrant will be deregistered for not paying the celebrant registration charge by the due date unless he or she has been granted an exemption from the charge. A celebrant who is deregistered for non-payment of the charge may seek review of his or her deregistration at the Administrative Appeals Tribunal.

A celebrant who is refused an exemption from payment of the annual registration charge may seek internal review of a charge exemption refusal decision.

Rights to work and rights in work

Prior to the introduction of the celebrant registration charge, a celebrant was authorised for life, subject to compliance with obligations under section 39G of the Marriage Act. Although the Bill places additional limits on registration for life by requiring payment of an annual registration charge to recover regulatory costs from those who receive the benefit of authorisation, it does not engage Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This provision concerns the right to enjoyment of just and favourable conditions of work, including remuneration.

Conclusion

The measures in Schedule 1, Part 1 of the Bill are compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Schedule 1, Part 2 - Fee for applying to become a marriage celebrant

Overview

Aspiring celebrants will be required to pay an application fee, unless an exemption from the application fee has been granted. Regulations will provide for the granting of exemptions from the application fee, grounds for exemptions and a process of internal review of decisions to refuse to grant an exemption.

The Marriage Act currently provides that applications must be dealt with in order in which they are received. The Bill provides that applications must be dealt with in order in which they are made, but for an application to have been made, the application fee must have been paid, or an exemption been granted.

This means that once a person has paid the fee, completed and submitted their application, the current practice of dealing with applications in order is retained. This will maintain fairness in processing applications for registration.

Human rights implications

Rights to an effective remedy

Under existing provisions in the Marriage Act an applicant who is unsuccessful in becoming registered as a marriage celebrant must be advised of the decision to refuse to register the applicant (subsection 39D(7) of the Act). A decision to refuse to register an applicant remains reviewable at the Administrative Appeals Tribunal (paragraph 39J(1)(a) of the Act).

The Bill provides for internal review of decisions to refuse to grant a fee exemption for applicants. Internal review is an effective and efficient review mechanism for applicants to resolve preliminary issues related to their application for registration fee exemption.

Conclusion

The measures in Schedule 1, Part 2 of the Bill are compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Schedule 1, Part 3 –fee for applying for exemption from professional development requirements

Overview

Schedule 1, Part 3 provides that regulations may require a person who is applying for an exemption from annual ongoing professional development to pay a fee.

Schedule 1, Part 4 states the amendments will apply from 1 July 2013 or later in a financial year, or on or after 1 July 2013.

These Parts do not give rise to human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

The measures in Schedule 1, Part 3 and Part 4 of the Bill are compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Schedule 2 – Other amendments

Overview

Schedule 2 makes technical and transitional amendments to the Marriage Act. They do not give rise to human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

The measures in Schedule 2 are compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

NOTES ON CLAUSES

Clause 1: Short title

This clause provides that, when enacted, the Act may be cited as the *Marriage Amendment (Celebrant Administration and Fees) Act 2013*.

Clause 2: Commencement

This clause sets out when the various parts of the Act are to commence.

Sections 1 to 3 will commence on the day on which this Act receives the Royal Assent.

Schedule 1, containing the amendments relating to the fees and charges, commences on the day the Act receives the Royal Assent. This commencement date is to allow regulations to be made as soon as possible after the Royal Assent to the Bill.

Schedule 2 contains miscellaneous amendments and transitional provisions and commences on the 28th day after the Royal Assent.

Clause 3: Schedule(s)

This is a formal clause that enables the Schedules to amend Acts by including amendments under the title of the relevant Act.

Schedule 1 –Amendments relating to fees and charges

Part 1 – Amendments relating to annual celebrant registration charge

Item 1 - subsection 5(1) of the Marriage Act

This item inserts the term *celebrant registration charge* into subsection 5(1) of the Marriage Act. The celebrant registration charge is defined in subsection 39FA(1).

Item 2 – subsection 5(1) of the Marriage Act

This item inserts the term *charge payment day* into subsection 5(1). The charge payment day is defined in subsection 39FA(3).

Item 3 – Celebrant registration charge

Insert new section 39FA - Celebrant registration charge: liability to charge

Section 39FA implements the 2011-12 Budget measure requiring marriage celebrants to pay a cost recovery charge.

Subsection 39FA(1) provides that a person is liable to pay the celebrant registration charge to the Commonwealth in respect of a financial year if the person is registered on 1 July of that financial year or becomes a marriage celebrant later in that financial year. The liability will arise if the person has not, by the end of the charge payment day, been granted an exemption. The charge must be paid by the end of the charge payment day.

The charge will be established by the *Marriage (Celebrant Registration Charge) Act 2013* with the amount of the charge outlined in a determination of the Minister by legislative instrument. The celebrant registration charge is a cost recovery levy and therefore requires separate imposition legislation, the *Marriage (Celebrant Registration Charge) Act*.

The expression *marriage celebrant* is defined in subsection 5(1) as ‘a person registered under Subdivision C of Division 1 of Part IV’ of the Act. This means that a celebrant who has been suspended because of the imposition of a disciplinary measure under section 39I of the Act, remains liable to pay the celebrant registration charge on 1 July of a financial year. It also means that a person who has requested to be recorded as ‘unavailable’ on the register of marriage celebrants pursuant to regulation 37I(2)(a) of the *Marriage Regulations 1963*, will also be liable to pay the celebrant registration charge on 1 July of a financial year. This is because ‘unavailability’ is about a celebrant’s recorded availability to conduct marriages, rather than the status of their registration.

Subsection 39FA(2) requires the Registrar of Marriage Celebrants, in respect of a financial year, to send a notice to those who are liable to pay the charge under subsection 39FA(1). The notice must specify the amount of the registration charge that is payable (unless the person is granted an exemption). It must also specify the charge payment day, which is at least 30 days after the day on which the notice is sent. It must comply with any other requirements prescribed by the regulations. This may relate to the content of the notice or how it is to be sent. The regulations will outline practical requirements such as that it must be sent to the person’s address as recorded on the register of marriage celebrants, how the person should pay or seek an exemption and the consequences of non-payment.

Subsection 39FA(3) provides that regulations may provide for the granting of exemptions, on grounds specified in the regulations, from liability to pay the celebrant registration charge. Regulations may also provide for a fee to be paid in respect of an application for exemption. They may also provide for internal review of a decision to refuse to grant an exemption.

The process and grounds for exemptions will be set out in the Marriage Regulations. The grounds are likely to include circumstances such as serious illness, incapacity or absence from Australia that will affect the ability of a celebrant to solemnise marriages for a significant period of the registration year. It is intended that eligibility for exemptions be available for celebrants in remote areas to assist remote communities to maintain access to a civil celebrant service. Eligibility for exemptions will be prescriptive. Those seeking exemption from the celebrant registration charge will need to expressly apply for such an exemption and pay a fee in connection with processing the exemption application.

Regulations may specify a fee or provide for a fee to be determined by legislative instrument (subsection 39FA(4)). This will allow the Minister to determine a fee to recover the Attorney-General's Department's costs of processing an application for an exemption.

Regulations can be made regarding internal review of an exemption decision. Subsection 39FA(5) provides that the outcome of such a review will either be that the original decision is confirmed or that a different decision is substituted for the original decision, with effect from the time when the original decision was made. This means that if a different decision is substituted, the person will be taken to have been granted an exemption on the date it was originally refused. In practice, this means an exemption is likely to have been granted prior to the expiry of the charge payment day. The person will therefore not be liable to deregistration under 39FB of the Act.

Although other decisions in the Marriage Act provide for review by the Administrative Appeals Tribunal, an internal review mechanism is most appropriate in the situation of refusals to grant charge or fee exemptions. This reflects an appropriate balance of costs between paying the celebrant registration charge and paying for an application for review by the AAT.

Liability to the celebrant registration charge is a debt due to the Commonwealth and may be recovered by legal action (subsection 39FA(6)).

Insert new section 39FB - Celebrant registration charge: consequence of non-payment

Under subsection 39FB(1), if a person has not obtained an exemption or paid the registration charge by the due day, the person must be deregistered by the Registrar. The Registrar must send a notice as soon as practicable after the due day to the celebrant. Sending the notice 'as soon as practicable' after the due date will mean the Registrar can wait until all payments are processed, before sending a notice.

The Registrar may decide not to send the notice at that time if he or she considers it necessary to take into account matters that might affect a person's liability to the charge. For example, the pending outcome of an internal review decision to grant an exemption may mean the Registrar delays the sending of the notice. Paragraph 39FB(1)(b) also provides the Registrar may delay the sending of the notice if the person's liability may be affected by any other circumstance of which the Registrar is aware. Such other circumstance must affect the person's liability to pay, rather than the timing of payment.

Under subsection 39FB(2), the notice referred to in subsection 39FB (1) must comply with certain requirements. It must advise the person that because of their failure to pay the celebrant registration charge, the person will be deregistered after a specified day that is at least seven (7) days after the day on which the notice is sent. It must also comply with any other requirements prescribed by the regulations relating to the content of the notice, or how it is to be sent. Like the notice in 39FA, this might include practical matters such as the address to which it must be sent and outlining a person's right to review of the deregistration decision (see Item 4 — amendment to 39J — below).

Under subsection 39FB(3), the Registrar of Marriage Celebrants must deregister the person by removing his or her details from the register of marriage celebrants as soon as practicable after the day specified in the notice in paragraph (2)(a). This will be done by updating the register of marriage celebrants, which is updated automatically each business day.

A celebrant who solemnises a marriage following the date of effect of deregistration may be guilty of an offence under section 101 of the Marriage Act which makes it an offence to solemnise a marriage without being authorised under the Act. The notice will give the celebrant at least seven days to transfer any Notices of Intended Marriage in their possession to a registered celebrant.

Item 4 – Addition at the end of paragraph 39J(1)(c)

Existing paragraphs 39J(1)(b) and 39J(1)(c) of the Marriage Act provide that an application may be made to the Administrative Appeals Tribunal for a review of a decision of the Registrar of Marriage Celebrants to suspend or deregister a celebrant. This amendment provides that a decision to deregister a celebrant for non-payment of the celebrant registration charge in accordance with subsection 39FB(3) may also be reviewed by the Administrative Appeals Tribunal. This ensures consistency for rights of review of deregistration decisions in the Marriage Act.

Part 2 – Amendments relating to fee for applying to become a marriage celebrant

Item 5 – Before subsection 39D(1)

Inserts words *Applying for registration* before subsection 39D(1). This uses a heading to highlight the application to become a marriage celebrant, to differentiate from registration as a marriage celebrant.

Item 6 – After subsection 39D(1A)

New subsections will be inserted after 39D(1) to provide for a registration application fee for aspiring celebrants.

Subsection 39D(1A) provides that an application is taken to be made if, and only if, the application complies with subsection (1) and the applicant has either paid the registration application fee or has been granted an exemption from liability to pay the registration application fee. This clarifies that an application will not be considered complete until the registration application fee has been paid or an exemption has been granted.

Subsection 39D(1B) provides that the regulations may require a fee to be paid – the registration application fee.

Subsection 39D(1C) enables regulations to be made to provide for the following: exemptions from the registration application fee on grounds specified in the regulations, for fees to make an exemption application and for internal review of exemption refusal decisions.

The amount of the registration application fee and the amount of the exemption processing fee may be determined by the regulations or by the Minister by legislative instrument (subsection 39D(1D)).

If a person seeks an internal review of a decision to refuse to grant an exemption from paying the registration application fee, then the outcome of that review must be either to confirm the refusal or to allow an exemption with effect from the date of the internal review decision (subsection 39D(1E)). This means that a person's application is deemed to have been made from the date of the internal review decision, not the date on which the application for internal review was made. The approach arises from the requirement in subsection 39D(2) of the Marriage Act for the Registrar to deal with applications in the order in which they are made (see Item 7 below). To have the internal review decision take effect from an earlier date would be to disadvantage the progress of applications of other aspiring celebrants whose place in the queue could later be changed by the outcome of an internal review decision.

Item 7 – Repeal subsection 39D(2) and substitute

This item repeals subsection 39D(2) and substitutes it for revised directions about how the Registrar is to deal with applications. The current wording is that the Registrar must deal with applications in order in which they are received. The amendments direct the Registrar to deal with applications in the order in which they are made. To clarify what an application being 'made' means, subsection 39D(1) states that an application is not made until either the registration application fee is paid or an exemption granted.

Item 8 – Repeal paragraph 39D(4)(a) and substitute

To give effect to the replaced subsection 39D(2), this paragraph has been amended to state that a person has made an application (see subsection (1A)). This item is a consequence of item 7 - that a person must have ‘made’ an application. This item also reflects that an application is not made until either the registration application fee is paid or an exemption granted.

Item 9 – Amends 39J(2)(a)

This item omits “under section 39D” and substitutes “(see subsection 39D(1A))” as a consequence of the amendments made by Item 6. This reflects that an application is not made until either the registration application fee is paid or an exemption granted. This means that a person may only apply to the Administrative Appeals Tribunal for a review of a decision not to register the person as a marriage celebrant, after they have made an application and either paid the registration application fee or been granted an exemption from it. This clarifies the commencement date of the three month timeframe during which the Registrar must decide the outcome of an application for registration.

The Marriage Act currently provides that at the expiry of three months after making an application, a person must either be registered or notified that their application has been rejected. Once this three month period has expired, a person who has not yet received a decision may deem his or her application to have been refused for the purposes of making an application for review to the Administrative Appeals Tribunal. This amendment clarifies the three month period commences with the payment of the application fee or being granted an exemption.

Part 3 – Amendments relating to exemptions from ongoing professional development

Items 10 and 11 - Amendments to section 39G relating to a fee for applying for exemptions from ongoing professional development (OPD)

A mandatory obligation imposed on marriage celebrants is to complete all ongoing professional development (OPD) activities required under regulations (subsection 39G(b)). Regulations provide that in exceptional circumstances the Registrar of Marriage Celebrants may grant an exemption from completing OPD (subregulation 37M(7)).

The amending provision inserts a new mechanism that allows regulations to require a fee to be paid for making an application for exemption from OPD. This exemption application fee will recover the Attorney-General's Department's costs considering and processing an exemption application. Guidance will be provided to celebrants about the circumstances in which they may apply for this exemption.

Part 4 – Application of amendments

Item 12 – application of amendments made by Part 1

This item provides that the amendments in Part 1 apply in relation to the financial year commencing 1 July 2013 or a later financial year.

Item 13 – application of amendments made by Part 2

This item provides that the amendments in Part 2 about applications for registration as a celebrant apply on or after 1 July 2013.

Item 14– application of amendments made by Part 3

This item provides that the amendments in Part 3 about applications for exemptions apply on or after 1 July 2013.

Schedule 2 –Other Amendments

Part 1 – Other Miscellaneous amendments

Item 1 – Repeal section 39E - cap on marriage celebrants

This item repeals section 39E which provided for a cap on the numbers of marriage celebrants who could be registered for five years after the passage of the *Marriage Amendment Act 2002* (No 77 of 2002). The five year transitional arrangement concerning celebrant numbers ceased on 31 August 2008 when the cap ended. The section is therefore redundant and should be removed.

Item 2 – Subsections 39H(1) and (2) – performance reviews

This item repeals subsections 39H(1) and (2) and substitutes a new 39H(1) which provides that the Registrar of Marriage Celebrants may, from time to time, review the performance of a marriage celebrants in respect of a period to determine whether the Registrar considers that the celebrant's performance in the period is satisfactory.

The purpose of this amendment is to remove the requirement for the Registrar to conduct performance reviews on all marriage celebrants every five years.

Removing the five year obligation from the Marriage Act will mean that performance reviews can be conducted on a more selective and targeted basis. This will enable allocation of the necessary resources to those cases where there are grounds for concern about the conduct or professional standards of marriage celebrants.

Items 3 and 4 – Paragraph 39J(1)(a) and 39J(3)

These items arise from the repeal of section 39E as outlined above at Item 1. As the cap in the Marriage Act expired on 31 August 2008, the references to the cap in paragraph 39J(1)(a) and in 39J(3) are redundant.

Items 5 and 6 - Subparagraph 42(1)(b) – Australian passport as evidence of place and date of birth

Item 5 is a consequential amendment arising from item 6 and inserts the word 'and' rather than 'or' in subparagraph 42(1)(b)(iii).

Item 6 allows additional documentation to be produced by a party to a marriage to the authorised celebrant in respect that party's evidence of his or her date and place of birth as required by paragraph 42(1)(b) of the Marriage Act. Paragraph 42(1)(b) lists three items that are accepted as evidence of date and place of birth. These are an official birth certificate, a statutory declaration that states the party's date and place of birth and explains why it is impracticable to obtain an official birth certificate, or a passport issued by a government of an overseas country that shows the date and place of birth of the party.

A new subparagraph 42(1)(b)(iv) is inserted to allow an Australian passport to be used as evidence of the date and place of birth of a party in addition to the existing provisions. This amendment increases the documentation that an authorised marriage celebrant may use to determine the date and place of birth of the marrying parties.

Item 7 - Subsection 115(1) - date for publication lists of celebrants

Subsection 115(1) provides for the annual obligation on the Minister to publish the list of authorised celebrants. The list of authorised celebrants is currently published on the Attorney-General's Department website as updated by that department and state and territory Registries of Births, Deaths and Marriages. The list is automatically updated overnight on each working day to reflect any updates.

The current wording of the subsection 115(1) is 'the Minister shall cause to be published in such a manner as the Minister considers appropriate, *as soon as practicable after each 14 March* a list of the persons who are authorised celebrants'. The italicised words will be deleted because the list is updated daily.

Schedule 2, Part 2- transitional provisions

This Part sets out the transitional provisions relating to the removal of the five year performance review requirements introduced by Item 2.

Item 8 – transitional definitions

This Item defines the following terms:

amended Act means the *Marriage Act 1961* as in force after commencement.

commencement means the commencement of this Schedule which means the 28th day after the Act receives Royal Assent.

old Act means the *Marriage Act 1961* as in force immediately before commencement.

Item 9 – transitional provisions relating to amendments to performance reviews

If the Registrar of Marriage Celebrants was obliged to conduct a review of a marriage celebrant's performance under section 39H of the old Act, but the review had not been not completed by commencement of the amended Act, the obligation to conduct the review ceases on commencement.

The Registrar may (at the Registrar's discretion) complete any such review under section 39H of the amended Act. This means that any previous obligation upon the Registrar to conduct performance reviews within a five year period ceases to exist.

To avoid doubt, in accordance with section 39I of the amended Act, disciplinary measures may be taken after commencement in relation to a review that was completed under section 39H of the old Act before commencement or that is completed after commencement. This is to ensure that any disciplinary measures made under the old Act remain in force despite this amendment.