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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**MARRIAGE (CELEBRANT REGISTRATION CHARGE) BILL 2013**

EXPLANATORY MEMORANDUM

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

# **MARRIAGE (CELEBRANT REGISTRATION CHARGE) BILL 2013**

## **GENERAL OUTLINE**

The Marriage (Celebrant Registration Charge) Bill 2013 implements a 2011-12 Budget measure to introduce cost recovery for Commonwealth-registered marriage celebrants from 1 July 2013. The Bill provides legislative authority for the Government to charge Commonwealth-registered marriage celebrants an annual cost recovery levy, the celebrant registration charge.

The Commonwealth has constitutional responsibility for marriage matters including the Marriage Celebrants Program. The Program, established in 1973 under the *Marriage Act 1961* 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.

The Marriage (Celebrant Registration Charge) Bill 2013 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.

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. 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.

This Bill only provides for the imposition of the celebrant registration charge. This is because the celebrant registration charge is a cost recovery levy and requires imposition legislation. This 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 registration application fee is being introduced separately by the Marriage Amendment (Celebrant Administration and Fees) Bill 2013. In summary, to remain registered, a marriage celebrant must pay an annual registration charge by the due date set out in a notice to the celebrant. Provisions will allow an exemption from the annual registration charge. A celebrant who does not pay the charge (or have an exemption) will be deregistered.

## **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

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 Amendment (Celebrant Administration and Fees) Bill 2013 which is related to this Bill.

### Overview

The object of the Marriage (Celebrant Registration Charge) Bill 2013 is to implement a 2011-12 Budget measure to introduce cost recovery for Commonwealth-registered marriage celebrants from 1 July 2013. The Bill provides legislative authority for the Government to charge Commonwealth-registered marriage celebrants an annual cost recovery levy, the celebrant registration charge. 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 the Marriage Amendment (Celebrant Administration and Fees) Bill 2013, a Commonwealth-registered marriage celebrant who does not pay the registration charge (unless an exemption has been granted) will be deregistered. That 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 for exemptions and extensions 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*

Under the Marriage Amendment (Celebrant Administration and Fees) Bill 2013, 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.

Under that Bill, 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 Bill is 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 (Celebrant Registration Charge) Act 2013*.

### Clause 2 - Commencement

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

Sections 1 and 2 will commence on the day on which this Act receives the Royal Assent.

Sections 3 to 8 will commence at the same time as Part 1 of Schedule 1 to the *Marriage Amendment (Celebrant Administration and Fees) Act 2013*.

### Clause 3 – Object of Act

This clause outlines the object of the Act to impose a charge for the purpose of funding the administration by the Commonwealth of Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*, and the provision by the Commonwealth of services to people registered (or seeking to become registered) as marriage celebrants under that Subdivision.

The purpose of this clause is to clarify the purpose of the Act. It reflects the introduction of cost recovery for the administration of the Marriage Celebrants Program, including services delivered to Commonwealth-registered marriage celebrants.

Cost recovery only applies to Commonwealth-registered marriage celebrants, registered under Subdivision C of Division 1 of Part IV of the Marriage Act. It will not apply to other celebrants registered under the Marriage Act, as these are registered and regulated by state and territory registries of births, deaths and marriages.

### Clause 4 – External Territories

This clause provides that the Act extends to each of the Territories of Norfolk Island, the Territory of Christmas Island, and the Territory of Cocos (Keeling) Islands. This mirrors the application of Part IV of the Marriage Act pursuant to subsection 8(1) of that Act.

### Clause 5 – Definitions

This clause defines the terms ‘index number’ and ‘statutory limit’.

***Index number*** is defined by the Act as, in relation to a quarter, the All Groups Consumer Price Index number, being the weighted average of the eight capital cities, published by the Australian Statistician in respect of that quarter.

The All Groups Consumer Price Index number is published by the Australian Bureau of Statistics on a quarterly basis.

***Statutory limit*** is defined in clause 8.

## **Clause 6 - Imposition of celebrant registration charge**

This clause provides legislative authority to impose the celebrant registration charge. A person is liable to pay the celebrant registration charge in respect of a financial year in accordance with section 39FA of the Marriage Act proposed to be amended by the Marriage Amendment (Celebrant Administration and Fees) Bill 2013.

The liability applies in relation to a financial year to implement a 2011-12 Budget measure that cost recovery be introduced from 1 July 2013. The liability will arise each financial year.

## **Clause 7 – Amount of charge**

Subclause 7(1) provides that the amount of the celebrant registration charge payable by a person in respect of a financial year is the amount determined by the Minister by legislative instrument. The amount determined must not exceed the statutory limit for that financial year. This is further dealt with in Clause 8.

Subclause 7(2) states that for people who become marriage celebrants later than 1 July in a financial year, a determination under subclause (1) may provide that different amounts of celebrant registration charge are payable in respect of that year. This amount may depend on when in the year they become a marriage celebrant. This is to reflect that costs are incurred by the Program in administering newly appointed celebrants from first registration until the next annual charge becomes due and payable on 1 July. It is likely that the determination will set a different amount, depending on the time of year a new celebrant is registered.

## **Clause 8 – The statutory limit**

Clause 8 defines the statutory limit and describes the indexation factor. The statutory limit is the maximum amount that a Minister may determine to be the celebrant registration charge.

Clause 8(1)(a) sets \$600 as the statutory limit for the first financial year, commencing on 1 July 2013. The amount will be indexed, using the Consumer Price Index (CPI).

The CPI is a measure of the average change over time in the prices paid by households for a fixed basket of goods and services. In Australia, the CPI measures the changes in the price of a fixed basket of goods and services, acquired by household consumers who are resident in the eight State/Territory capital cities. The Australian Bureau of Statistics is responsible for calculating the CPI on a quarterly basis.

Subclause 8(1)(a) provides that for the financial year commencing on 1 July 2013, the amount is \$600. The Government has indicated that the amount to be set will be lower than \$600. The determination may be amended by the Minister in future years, to reflect the costs of administering the Program.

Subclause 8(1)(b) sets the statutory limit for later financial years, commencing 1 July 2014 financial year and all financial years beyond. Subparagraph 8(1)(b)(i) provides that unless subparagraph (ii) applies, the amount is calculated by multiplying the statutory limit for the previous financial year by the indexation factor. Subparagraph 8(1)(b)(ii) provides that if the indexation factor for the later financial year is one or less, the statutory limit will be the same amount as for the previous financial year.

Allowing the capped amount to be multiplied by the indexation factor ensures the statutory limit is appropriately increased over following years to reflect inflation. This will reduce the need to amend the primary legislation in the future.

Subclauses 8(2), 8(3) and 8(4) provide the technical details of how the indexation factor is to be calculated.

Subclause 8(2) provides that the indexation factor for a financial year is the number calculated by dividing the index number for the March quarter immediately preceding that financial year by the index number for the March quarter immediately preceding that first-mentioned March quarter. This clause is intended to provide clarity to how the indexation factor for a financial year will be reached.

Subclause 8(3) provides that the indexation factor for a financial year is to be worked out to three (3) decimal places, (rounding up if the fourth decimal place is five (5) or more).

Subclause 8(4) provides that in working out the indexation factor for a financial year use only the index numbers published in terms of the most recent published reference base for the Consumer Price Index. It also provides to disregard index numbers published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the reference base).