



Australian Government
Attorney-General's Department

Civil Justice Division

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Note: This information applies only to marriage celebrants registered by the Commonwealth.

Dear Marriage Celebrant

Please find below the summary of material provided at Departmental presentations on Compulsory Activity No 2 during the registration year 2006-2007.

The activity covered knowledge of the requirements of the *Marriage Act 1961* (the Act) and the *Marriage Regulations 1963* in the following areas:

- Participation of unauthorised persons in marriage ceremonies
- Circumstances in which a shortening of time for notice must be considered
- Requirements for performance reviews of marriage celebrants.

Please keep this material with the Explanatory Material and re-read it regularly.

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Registrar of Marriage Celebrants

1. Participation of unauthorised persons in marriage ceremonies

There has been an increasing number of instances of people who are not registered marriage celebrants participating in the conduct of marriages and also in the necessary activities preliminary to conducting the ceremony.

Past instances

Past instances of the involvement of unauthorised persons in marriage ceremonies were mainly to enable:

- a person of particular significance to the couple to participate in the marriage ceremony
- the marrying couple to have a role in deciding who they want to perform their marriage ceremony.

Present instances

Present instances include in addition to the above:

- students currently undertaking training, requested by friends or family, or
- people on the waiting list for registration requested by friends or family

to participate in the marriage ceremony.

Important Note

- These newer instances do not alter the fact that a person who is not **currently** registered as a marriage celebrant **cannot** hold themselves out as able to solemnise marriages.

Types of involvement

Participation in the conduct of a marriage ceremony by someone other than a registered marriage celebrant could cover many types of involvement:

- special reading, musical interlude
- visiting or specially requested Minister of Religion
- person not registered wishing to perform as many of the duties of a registered marriage celebrant as possible, **at the personal request of the couple.**

The kind of participation that is the focus of this activity is the ceremony in which a person who is not registered wishes to perform as many of the duties of a registered marriage celebrant as possible at the request of the couple. In the past this was often referred to as the registered marriage celebrant conducting ‘only the legal aspects’. This activity focuses on what those ‘legal aspects’ are. The legal obligations extend further than many marriage celebrants or marrying couples may think.

Almost all of what follows applies equally to marriage celebrants conducting religious marriage ceremonies and marriage celebrants conducting non-religious (or civil) marriage ceremonies.

Do you have to agree to such arrangements?

- The first point to emphasise is that there is absolutely no obligation on the part of any marriage celebrant to participate in any arrangement with an unregistered person in conducting a marriage.
- The matters of most importance are the quality of the service given to the marrying couple and that all legal obligations are complied with.

Past material

- The Marriage Celebrants Section has provided material on the minimum legal role of a marriage celebrant in a marriage ceremony in the past (see the e-bulletins of June 2002, November 2003, January 2004 and September 2004 on this web site).
- This part of the activity builds on that information – it does not replace it.
- The material issued in the past focused on the ceremony itself.
- The obligations of marriage celebrants in fact cover both the period before and after the ceremony, as well as the ceremony itself.

Relevant provisions of the *Marriage Act 1961*

- Parts of section 41 and section 5 of the *Marriage Act 1961* apply in this situation. As the marriage celebrant you must remember that the lawfulness of the ceremony is your responsibility.
- You consent to be present in the capacity of the registered marriage celebrant.

This is critical. There is good reason for the law requiring that people who solemnise marriage must be registered. The reason is that the person who is registered takes on the legal responsibility for ensuring that a marriage fulfils all the legal requirements. Section 5 of the Act states, if you consent to be present in this capacity you are deemed to have performed the marriage.

That is also the reason why the first sentence of Section 46, that you all have to deliver, is so important – ‘I am duly authorized by law to solemnize marriages according to law’. This is the statement of your legal authority to perform the marriage. This lies with you – not any other person participating in the ceremony, however large their role.

You are the person legally responsible for all aspects of it.

The legal role of the registered marriage celebrant during the wedding ceremony

The minimum requirements for a Commonwealth-registered marriage celebrant are:

- to consent to be present as the responsible registered marriage celebrant
- to take a public role in the ceremony
- to identify themselves to the assembled parties, witnesses and guests as the celebrant authorised to solemnize the marriage
- to be responsible for ensuring the validity of the marriage according to law
- to say the words required by section 46 in the presence of the parties, the formal witnesses and the guests
- in a non-religious (or civil) ceremony – to be in close proximity (that is, nearby) when the vows required by section 45(2) are exchanged, because the vows are central to the marriage and the registered marriage celebrant must ensure that they see and hear the vows exchanged
- to be available to intervene (and exercise the responsibility to intervene) if events demonstrate the need for it elsewhere in the ceremony
- to be part of the ceremonial group or in close proximity to it, and
- to sign the papers required by the Act.

More detail on some of these requirements follow.

Section 46

- As was emphasised in the 2005-2006 compulsory ongoing professional development activity, saying the words in section 46 is a requirement for all marriage celebrants registered by the Commonwealth – whether they do religious or civil ceremonies.
- As was also emphasised in 2005-2006, the words must be said **by the registered marriage celebrant only**.

Section 45 – the Vows

- The crucial importance of the vows to the validity of the resulting marriage was emphasised in the compulsory OPD activity of 2005-2006.
- If you are the registered marriage celebrant and you are working with an unregistered person in a religious marriage ceremony, you need to ensure that the ceremony has the formal approval of the religious body or organisation concerned.

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- If you are the registered marriage celebrant and you are working with an unregistered person in a civil ceremony, you need to ensure that the vows meet the requirements of section 45(2) of the Act.
- This means that you need to have reviewed the intended vows before the ceremony to satisfy yourself that they will meet the minimum requirements, and then ensure that the vows in the ceremony are delivered in accordance with those that you reviewed.

The legal role of the registered marriage celebrant before the marriage ceremony

The Notice of Intended Marriage

- The registered marriage celebrant is not only the one who has to receive the Notice but is also legally responsible for the validity of the marriage. Therefore you must see the documents required to be produced **yourself**. This includes:
 - the evidence of date and place of birth
 - the evidence of the divorce from, or death of, the previous spouse of a party to the proposed marriage, and
 - establishing the identity of the parties.

Completion of the marriage certificates

- Clearly, only the registered marriage celebrant can sign the three marriage certificates required to be completed under the Marriage Act.
- It must be the registered marriage celebrant who keeps the records of the use of the Form 15 (couples) certificate and also the Marriage Register or second marriage certificate for the required six (6) years.

Other legal obligations that remain with you

- Complaints

Any complaint arising from the marriage will be the responsibility of the registered marriage celebrant.

- Offences

Any offences that are committed in relation to the marriage will be the responsibility of the registered marriage celebrant. This particularly applies to the offence of conducting a wedding if you know or have reason to believe the resulting marriage would be invalid. This is why you must ensure you have sighted all the documentation. It is also why you need to ensure you have looked carefully at the vows.

- Code of Practice

You are responsible for ensuring that all aspects of the Code of Practice have been complied with. This includes:

- ensuring the couple's privacy is protected
- ensuring facilities for the secure storage of the couple's records
- the conduct of a rehearsal if required
- ensuring that you and the other person comply with the requirements stated in the Code for arrival at ceremonies
- that you provide information about how to make complaints.

Remember that a breach of the Code of Practice may lead to disciplinary measures and these would apply to you as the registered marriage celebrant. You are also responsible for ensuring that information about relationship services is made available to the couple.

Other matters that arise in these situations

- Insurance
- Fees

There is nothing in the Marriage Act or the Marriage Regulations (including the Code of Practice) that would prevent a marriage celebrant seeking a fee from either the person who approaches you and wishes to participate in a ceremony, and/or a training provider, for the use of your time and experience and for your acceptance of the legal responsibility for the ceremony.

It is most important, however, that any charging or fee arrangements need to be made absolutely clear to the couple.

What should you do if you have concerns about the other person who has sought to participate in the ceremony?

- The material in this part of the activity does not change anything the Department has advised previously.
- A person who is not registered as a marriage celebrant is not entitled to hold themselves out as being able to solemnise or conduct marriages by using registered marriage celebrants as supports. It is equally inappropriate – and indeed it is misleading – for registered marriage celebrants to facilitate this.
- It should be clear from all the above that it is contrary to the Marriage Act for a registered marriage celebrant to do no more than sign the papers. A registered marriage celebrant is not a 'signing' celebrant.
- Take control of the situation and either withdraw your consent or clarify the situation with the person and the couple.

- As a result, registered marriage celebrants should be very careful before agreeing to be the registered marriage celebrant at a wedding ceremony involving someone who is not registered – whether that person is a friend of the couple or a visiting minister.

2. Shortening of the required period of notice for a marriage

As all marriage celebrants are aware, the Marriage Act requires that a couple must give at least one month's notice of an intended marriage. A notice time shorter than one month requires an application for a shortening of time to a prescribed authority.

Prescribed Authority

The list of prescribed authorities is available on this web site.

There is a section in the Explanatory Material that covers shortening of time, and marriage celebrants should read that material and ensure that they are familiar with it. Marriage celebrants who no longer have a copy of the Explanatory Material may purchase a copy of it from the stationery supplier CanPrint Communications, phone 1300 656 863.

The circumstances in which a prescribed authority must consider an application for shortening of time are set out in the *Marriage Regulations 1963* in Schedule 1B. These circumstances came into effect on 9 April 2003. The Marriage Regulations can be accessed by clicking [here](#).

- There are five circumstances set out in the Regulations. These are:
 - employment related or other travel commitments
 - wedding or celebration arrangements, or religious considerations
 - medical reasons
 - legal proceedings, and
 - error in giving notice.

It should be noted that error in giving notice relates only to error on the part of the marriage celebrant, not the couple. For example, the marriage celebrant did not fulfil their responsibility to explain the notice requirements properly. Error in giving notice also includes invalid, stale or lost Notices of Intended Marriage. The Notice may have been invalid because the person to whom the Notice was given was not a registered marriage celebrant. A reference to a lost Notice of Intended Marriage refers to a Notice that has been lost by the marriage celebrant, not by the couple. In these circumstances the marriage celebrant who has committed the error or lost the Notice will need to provide letters or statutory declarations in support of the couple's application for a shortening of time.

Critical matters to explain to couples

- The reason for seeking a shortening of time for notice **MUST** fall within one of these categories before the application can be considered.
- There is no capacity to grant a shortening of time outside these circumstances.

- There is no discretion for the prescribed authority to consider applications based on other grounds.
- Shortening of time is NOT automatic.

What sort of material will the prescribed authority require to consider the application?

- Such material should include a letter from a medical practitioner if they are seeking a shortening of time on medical grounds, or receipts for payments or wedding invitations if the circumstance is wedding or celebration arrangements.
- If the circumstance relates to relocation for employment, the prescribed authority will be looking at evidence of the date on which the applicant was informed of the posting or employment relocation as opposed to the date on which the posting is to commence.
- Other matters the prescribed authority may take into account:
 - why the couple failed to give notice in time
 - why they cannot postpone the wedding, and
 - what hardship they will suffer if they are required to postpone.

3. Requirements for performance reviews

The Registrar of Marriage Celebrants is required to review your performance at least once every five years. A review may be conducted more frequently than that if circumstances warrant it.

All marriage celebrants have received a package of information about the Marriage Celebrants Program and their obligations under it. If you were appointed before 1 September 2003, you received this package of information in August 2003. If you were appointed since then, you received this package with your notice of registration.

This package remains current until further notice, so you should ensure that you refer to it regularly. If you need a new copy of the package you can purchase one from the stationery supplier CanPrint Communications, phone 1300 656 863.

That package contains information about performance reviews.

The matters the Registrar must take into account in conducting your performance review are listed in the Marriage Regulations. They are:

- any complaint against the marriage celebrant and whether the marriage celebrant has complied with any action required as a result of the complaint
- any information received by the Registrar concerning the marriage celebrant's performance of his or her duties as a marriage celebrant
- whether the marriage celebrant has complied with the Code of Practice

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- whether the marriage celebrant has undertaken the required ongoing professional development
- whether the marriage celebrant has sent in the annual returns as required, and
- whether the marriage celebrant has developed any physical or mental incapacity that prevents him or her from continuing to carry out his or her duties as a marriage celebrant.

The procedure to be followed conducting performance reviews has been outlined in the e-bulletin of December 2005 on this web site.

- Any marriage celebrant subject to a performance review will be sent a letter informing him or her of that review; the letter may request comment on particular matters.
- Make sure you provide any response requested by the due date. The performance review will proceed after the date set out in the letter, whether or not you have returned any material or responses required.
- You will be sent a letter telling you the result of your performance review. If your performance is found to be unsatisfactory you will be given the opportunity to respond before any disciplinary measures are taken.