



Marriage Celebrants Programme

December 2019

Religious protections for ministers of religion and marriage celebrants with religious beliefs about marriage

On 9 December 2017, amendments to the *Marriage Act 1961* commence to redefine marriage as the 'union of 2 people to the exclusion of all others, voluntarily entered into for life'. The right to marry in Australia is no longer determined by sex or gender.

The Marriage Act provides protections for ministers of religion and religious marriage celebrants to act in accordance with their religious beliefs when solemnising a marriage, or determining whether to solemnise a marriage (sections 47 and 47A). Religious protections are also provided under section 40 of the *Sex Discrimination Act 1984*.

No specific religious protections are provided for state and territory officers who are authorised celebrants.

Ministers of religion

A minister of religion is authorised to solemnise marriages under Australian law if they:

- belong to a recognised denomination and are registered with a state or territory registry of births, deaths and marriages, or
- are registered as a marriage celebrant with the Attorney-General's Department (these are generally ministers of religion, whose religious body or organisation is not a recognised denomination).

All ministers of religion have access to protections under the Marriage Act and the Sex Discrimination Act, which allow them to act in accordance with their religious beliefs when solemnising a marriage.

Protections under the Marriage Act for ministers of religion

Under subsections 47(1) and (2) of the Marriage Act:

- no minister is required, by anything in the Marriage Act, to solemnise any particular marriage, and
- all ministers of religion can impose additional requirements for a couple to satisfy for the minister to agree to solemnise the marriage (for example, completion of pre-marital counselling, or being baptised in the church).

Subsection 47(3) of the Marriage Act puts beyond doubt that, under the Marriage Act, a minister of religion may refuse to solemnise a marriage if:

- refusing to solemnise the marriage is consistent with the doctrines, tenets or beliefs of the minister's religious body or organisation, or
- refusing to solemnise the marriage is necessary to avoid causing injury to the religious susceptibilities of adherents of the minister's religion, or

- the minister's religious beliefs mean the minister must refuse to solemnise the marriage.

This means that a minister of religion may act in accordance with their religion's doctrines, or their personal religious beliefs, in deciding whether to solemnise a marriage. This includes decisions about whether to solemnise a same-sex marriage.

If a minister's religious body or organisation does not recognise or provide a form or ceremony for a type of marriage (for example, same-sex marriage), the minister should consider whether they can solemnise the marriage. Failure to solemnise a marriage in compliance with section 45 of the Act may result in a void marriage. It is an offence under section 100 of the Marriage Act for a person to solemnise a marriage if they have reason to believe the marriage would be void.

Under the Marriage Act, a minister of religion may also refuse to solemnise a marriage for other reasons; for example, if they are not available on the day the couple requested due to work or other commitments, or are unwell.

A minister of religion may be bound by other laws—including anti-discrimination laws—when deciding whether or not to solemnise a marriage, or impose additional conditions on a couple.

Protections under the Sex Discrimination Act for ministers of religion

Under subsection 40(2A) of the Sex Discrimination Act, a minister of religion may refuse to solemnise a marriage because of a party's sexual orientation, gender identity, intersex status, or marital or relationship status if that refusal is:

- consistent with the doctrines, tenets or beliefs of the minister's religious body or organisation, or
- necessary to avoid causing injury to the religious susceptibilities of adherents of the minister's religion, or
- consistent with the minister's personal religious beliefs.

Religious marriage celebrants

Religious marriage celebrants are a subcategory of marriage celebrants. Further Information about this subcategory is provided in the fact sheet 'New subcategory of religious marriage celebrant' available on the [Marriage equality in Australia webpage](https://www.ag.gov.au/marriage) of our website www.ag.gov.au/marriage.

Protections under the Marriage Act for religious marriage celebrants

Under section 47A of the Marriage Act, a religious marriage celebrant may refuse to solemnise a marriage if the celebrant's religious beliefs do not allow the celebrant to solemnise the marriage.

This means that a religious marriage celebrant may act in accordance with their personal religious beliefs, in deciding whether to solemnise a marriage. This includes decisions about whether to solemnise a same-sex marriage.

Under the Marriage Act, a religious marriage celebrant may also refuse to solemnise a marriage for other reasons, for example, if the celebrant was not available on the day the couple requested due to work or other commitments, or was unwell.

A religious marriage celebrant may be bound by other laws—including anti-discrimination laws—when deciding whether or not to solemnise a marriage, or impose additional conditions on a couple.

Protections under the Sex Discrimination Act for religious marriage celebrants

Under subsection 40(2AA) of the Sex Discrimination Act, a religious marriage celebrant may refuse to solemnise a marriage because of a party's sexual orientation, gender identity, intersex status, or marital or relationship status if that refusal is consistent with the religious marriage celebrant's personal religious beliefs.