



Australian Government

Attorney-General's Department

# Guidelines on the *Marriage Act 1961* for authorised celebrants

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## RECORD OF UPDATES

Version	Date Released	Pages Affected	Comment
1.0	February 2012	All	Initial release.
2.0	July 2014	All	Updated to take into account amendments made by the <i>Marriage Amendment (Celebrant Administration and Fees) Act 2014</i> , the <i>Marriage (Celebrant Registration Charge) Act 2014</i> and the <i>Marriage Amendment (Fees and Charges) Regulation 2014</i> , and other amendments.
3.0	April 2018	All	Updated to take into account: <ul style="list-style-type: none"> <li>• amendments to the <i>Marriage Act 1961</i> to implement marriage equality, which commenced on 9 December 2017 (amendments made by the <i>Marriage Amendment (Definition and Religious Freedoms) Act 2017</i>)</li> <li>• changes arising from the commencement of the Marriage Regulations 2017 on 1 April 2018.</li> </ul>
4.0	July 2018	All	Updated to reflect feedback received from celebrants, their representatives and other stakeholders during the May-June 2018 public consultation.

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## About these guidelines

These guidelines apply to all authorised celebrants who solemnise marriages in Australia, unless otherwise stated. These guidelines also contain an outline of the process for recognition of overseas marriages (see [Part 9.1](#) of the guidelines).

The purpose of the guidelines is to assist authorised celebrants understand the requirements for solemnising marriage under the Marriage Act.

Only people who are legally authorised may solemnise marriages. The three categories of ‘authorised celebrant’ under the Act are:

1. Ministers of religion who are registered by the States and Territories to solemnise marriages for a [recognised denomination](#). These are referred to as ‘category A’ authorised celebrants. This category of authorised celebrants have a registration number beginning with a letter that relates to the state or territory in which they were registered (such as ‘W’, ‘S’, ‘V’, ‘N’)
  2. State and Territory Officers—staff of Registries of Births, Deaths and Marriages (BDM) or court officers—who are authorised to solemnise marriages as part of their employment. These are referred to as ‘category B’ authorised celebrants.
  3. Marriage celebrants registered by the Commonwealth under the Marriage Celebrants Programme. These are referred to as ‘category C’ authorised celebrants. This includes marriage celebrants who perform religious ceremonies (whether or not they are also designated as ‘religious marriage celebrants’) and marriage celebrants who perform civil marriage ceremonies (whether or not they are designated as ‘religious marriage celebrants’). Marriage celebrants in this category have a registration number beginning with the letter ‘A’.
- Religious marriage celebrants are a subcategory of Commonwealth-registered marriage celebrants under Subdivision D of Division 1 of Part IV of the Marriage Act (category D celebrants). In order to become a religious marriage celebrant, a person must first be a marriage celebrant registered by the Commonwealth.

Chaplains of the Australian Defence Forces (ADF), and ADF marriage officers, who solemnise marriages overseas under Part V of the Marriage Act are also authorised celebrants under the Act. These guidelines do not apply to marriages solemnised by chaplains of the ADF or ADF marriage officers.

## Using these guidelines

Electronic versions of the [Marriage Act](#) and [Marriage Regulations 2017](#) are available on the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.gov.au)).

Important: The Marriage Regulations 2017 commenced on 1 April 2018. The new regulations repeal and replace the Marriage Regulations 1963.

## Contact the department

If you cannot find the information you need in these guidelines you may wish to contact the department for guidance.

You may contact the department by:

- Emailing the Registrar of Marriage Celebrants at [marriagecelebrantssection@ag.gov.au](mailto:marriagecelebrantssection@ag.gov.au)
- Calling 1800 550 343  
between 10.00am-1.00pm and 2.00pm-5.00pm Monday-Friday (local Canberra time).

If you seek information relating to the registration of a marriage or the lodgment of paperwork relating to a marriage, contact the relevant state or territory registry of Births, Deaths and Marriages (BDM) in the state or territory where the marriage took place.

Contact details for the BDMs are available from the [australia.gov.au](http://australia.gov.au) website.

## Part 1

### INTRODUCTION

These guidelines provide essential information for celebrants on the solemnisation of marriages in Australia under the Marriage Act and the Marriage Regulations.

The material provides best practice guidance on the solemnisation of marriage in Australia and celebrants are expected to familiarise themselves with the information in this document. The following material is provided on the understanding that the department is not providing professional legal advice on any particular matter. The department can only provide guidance on the requirements of the legislation.

#### 1.1 THE ROLE OF CELEBRANT

Authorised celebrants have an important role not only because of the legal consequence of marriage, but also because of its central significance to the parties, both individually and as a couple.

As an authorised celebrant, it is critical to your role to make sure that everything is done according to the Marriage Act and the Marriage Regulations, and that all necessary steps are taken to ensure the marriage will be valid.

You need to be committed to keeping up-to-date and ensure that you follow any changes to the law or recommended best practice. The best way to remain informed about changes to the law or practices is to:

- have access to and refer to the latest copy of the Marriage Act and Marriage Regulations
- have access to and refer to the latest copy of the guidelines
- read the advice provided by the Marriage Celebrants Programme (via email, newsletters and fact sheets); and visit the 'Marriage' pages on the department's [website](#) on a regular basis.

#### 1.2 LIMITS OF YOUR ROLE

It is important that you understand the boundaries of your role as a celebrant. It is not your role to:

- assist couples with migration matters (not only may you mislead people in this complex area, but it may be an offence for a person who is not a registered migration agent to do this)
- obtain documents, or
- be involved in any legal matter concerning any party's relationships or past marriages, or obtain court orders.

## **PART 2 MARRIAGE IN AUSTRALIA**

### **2.1 THE SOLEMNISATION OF MARRIAGES IN AUSTRALIA**

Marriage in Australia is regulated by the Marriage Act and the Marriage Regulations. The department administers this legislation. All marriages in Australia must be conducted in accordance with this legislation. The legislation specifies the requirements for the marriage ceremony, as well as matters that arise before and after the ceremony.

The Marriage Act applies to Australian external territories – Christmas Island, Norfolk Island and the Cocos (Keeling) Islands (section 8 of the Marriage Act). The Marriage Act does not apply to the Australian territory in the Antarctica.

### **2.2 THE DEFINITION OF MARRIAGE UNDER THE MARRIAGE ACT**

On 9 December 2017, the Marriage Act was amended to provide for marriage equality in Australia. The Marriage Act defines marriage as ‘the union of 2 people to the exclusion of all others, voluntarily entered into for life’.<sup>1</sup> In a marriage ceremony, all celebrants (other than [ministers of religion of recognised denominations](#) (category A celebrants) and [ADF chaplains and marriage officers](#)) are required to inform the parties to the marriage of the nature of marriage according to Australian law, in the terms set out in subsection 46(1) of the Marriage Act.

For further information on this requirement, see [Part 5.6](#) of these guidelines.

### **2.3 WHO CAN MARRY IN AUSTRALIA**

Parties to a marriage do not have to be an Australian citizen or permanent resident of Australia to legally marry in Australia.

All celebrants should recommend that foreign nationals check with authorities in their own countries prior to entering into a marriage in Australia. Some overseas countries do not recognise a marriage entered into in Australia as valid, unless other requirements, such as the prior granting of permission from that country’s embassy, are fulfilled. This can have implications for foreign nationals who intend to return to their country following a marriage.

In cases where a marriage involves an Australian citizen and a foreign citizen, celebrants should recommend that parties obtain advice about immigration issues from the Department of Home Affairs or a registered migration agent. Details of registered migration agents can be found on the [Migration Agents Registration Authority](#) website. For further information on the recognition of foreign marriages in Australia, see [Part 9](#) of these guidelines.

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<sup>1</sup> Subsection 5(1) of the *Marriage Act 1961* (the Marriage Act).



### *2.3.1 What is required to legally marry in Australia?*

To be legally married in Australia, a person must:

- not be married to someone else
- not be marrying a parent, grandparent, child, grandchild or sibling
- be at least eighteen years old, unless a court has approved a marriage where one party is aged between sixteen and eighteen years old
- understand what marriage means and freely consent to marrying
- use specific words during the ceremony
- give written notice of their intention to marry to their celebrant, within the required time frame.

Parties to the marriage should contact a celebrant directly to make arrangements for their proposed marriage. The names and contact details of authorised celebrants (except for ADF chaplains and officers) are available from the department's website – see '[Find a marriage celebrant](#)'.

## PART 3 AUTHORISED CELEBRANTS

### 3.1 WHO CAN SOLEMNISE MARRIAGES UNDER THE MARRIAGE ACT?

The [Marriage Act](#) provides for three categories of authorised celebrants who may solemnise marriages within Australia:

1. Ministers of religion of recognised denomination who are registered under Subdivision A of Division 1 of Part IV of the Act (category A celebrants) – see [Parts 3.2](#) and [13.1](#) of these guidelines.
2. State and Territory Officers authorised by virtue of Subdivision B of Division 1 of Part IV of the Act (category B celebrants) – see [Part 3.3](#) of these guidelines.
3. Marriage celebrants registered by the Commonwealth under the Marriage Celebrants Programme who are registered under Subdivision C of Division 1 of Part IV of the Act (category C celebrants). This includes marriage celebrants who perform religious ceremonies (whether or not they are also designated as ‘religious marriage celebrants’) and marriage celebrants who perform civil marriage ceremonies (whether or not they are also designated as ‘religious marriage celebrants’). Marriage celebrants in this category have a registration number beginning with the letter ‘A’;

Religious marriage celebrants are a subcategory of Commonwealth-registered marriage celebrants under Subdivision D of Division 1 of Part IV of the Marriage Act (category D celebrants). Designation as a ‘religious marriage celebrant’ enables the celebrant to lawfully refuse to solemnise a marriage if the celebrant’s religious beliefs do not allow the celebrant to solemnise the marriage (it does not mean they do, or only, perform religious marriage ceremonies). Between 9 December 2017 and 9 March 2018, all Commonwealth-registered marriage celebrants, excluding ministers of religion<sup>2</sup>, were able to nominate for recognition as a religious marriage celebrant based on their religious beliefs. All Commonwealth-registered marriage celebrants who were ministers of religion and perform ceremonies on behalf of an independent religious organisation (that is not a recognised denomination), whose registration was current immediately before 9 December 2017, were automatically listed on the register of marriage celebrants as ‘religious marriage celebrants’. From 9 March 2018 onwards, only ministers of religion, registered under the Marriage Celebrants Programme, can nominate for recognition as a religious marriage celebrant.

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<sup>2</sup> A minister of religion means a person recognised by a religious body or a religious organisation as having authority to solemnise marriages in accordance with the rites or customs of the body or organisation (section 5 of the Marriage Act).

Where the term ‘Commonwealth-registered marriage celebrants’ is used in these guidelines, the information only applies to both marriage celebrants (category C) and religious marriage celebrants (category D).

Ministers of religion authorised under subdivision C of the Marriage Act must meet the registration requirements for a marriage celebrant registered by the Commonwealth. In addition, they must also provide evidence to the Registrar establishing that they are authorised by an independent religious organisation to solemnise marriages in accordance with the rites or customs of that religious organisation. Ministers of religion include, for example, Pastors, Reverends, Sheiks and Imams from independent religious organisations that are not a recognised religious denomination (for a list of recognised denominations proclaimed for the purposes of the Act see the [Marriage \(Recognised Denominations\) Proclamation 2007](#) (as amended)) Further information is also provided at [Part 3.2](#) of these guidelines.

The Marriage Act also provides for authorised celebrants who may solemnise marriages outside of Australia in accordance with Part V of the Marriage Act:

1. A chaplain of the Australian Defence Force (ADF), or
2. An officer of the ADF authorised by the Chief of the Defence Force to solemnise marriages.

Further information on the categories of authorised celebrants is provided below.

## **3.2 MINISTERS OF RELIGION OF RECOGNISED DENOMINATIONS**

### *3.2.1 What is a recognised denomination?*

For a person to be eligible for registration as an celebrant under Subdivision A of Division 1 of Part IV of the Marriage Act, the religious body or organisation of which the person is a minister of religion must be a ‘recognised denomination’ – see the [fact sheet](#) for further information.

A recognised denomination is a religious body or organisation that has been proclaimed by the Governor-General under section 26 of the Marriage Act. Proclamation of a religious body or organisation as a recognised denomination is for the purposes of solemnising marriages in accordance with the Marriage Act only and does not confer any other status.

Ministers of religion of recognised denominations who are authorised to solemnise marriages may solemnise marriages according to the form and ceremony recognised as sufficient for the purpose by the religious body or organisation of which they are a minister.<sup>3</sup>

The [Marriage \(Recognised Denominations\) Proclamation 2007](#) lists all religious organisations recognised for the purpose of the Marriage Act.

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<sup>3</sup> Subsection 45(1) of the Marriage Act.

A current list of ministers of religion of recognised denominations who are authorised to solemnise marriages is kept in accordance with section 115 of the Marriage Act and published on the department's [website](#).

### *3.2.2 Solemnisation of marriages by ministers of religion of recognised denominations*

A minister of religion of a recognised denomination may solemnise marriages anywhere in Australia, including outside the state or territory in which they are registered.<sup>4</sup> Where a marriage is solemnised by a minister of religion of a recognised denomination, the minister may use the form and ceremony recognised as sufficient by the denomination.<sup>5</sup> Such celebrants are not authorised to solemnise ceremonies other than for the recognised denomination and in accordance with the rites or form and ceremony recognised by that denomination. A registration under this category confers no authority to solemnise ceremonies of a minister's own devising. Therefore any deviation from a form of ceremony recognised by the religious organisation needs to be approved by the religious organisation concerned.

A minister of religion of a recognised denomination is not under any obligation to solemnise any marriage, and may impose additional requirements (such as attendance at services or church counselling) as a condition of solemnising the marriage.<sup>6</sup>

## **3.3 STATE AND TERRITORY OFFICERS**

State and Territory Officers who may solemnise marriages are:

- officers who, under the law of a state or territory, have the function of registering marriages solemnised in that state or territory,<sup>7</sup> and other officers of the state or territory who have been authorised by the Attorney-General.<sup>8</sup>

State and Territory Officers are generally staff of BDM Registries and Registrars of local courts.

State and Territory Officers may solemnise marriages in their work premises or another location agreed by the parties.

## **3.4 COMMONWEALTH-REGISTERED MARRIAGE CELEBRANTS**

Commonwealth-registered marriage celebrants are registered by the Registrar of Marriage Celebrants. The Registrar is an officer of the Attorney-General's Department. Information about how to become a Commonwealth-registered marriage celebrant, including the application fee and annual registration charge, the qualification/skills required, and the factors the Registrar of Marriage

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<sup>4</sup> Section 32 of the Marriage Act.

<sup>5</sup> Subsection 45(1) of the Marriage Act.

<sup>6</sup> Section 47 of the Marriage Act.

<sup>7</sup> Subsection 39(1) of the Marriage Act.

<sup>8</sup> Subsection 39(2) of the Marriage Act.

Celebrants must consider in determining whether a person is a fit and proper person to be a celebrant can be found at [Part 13.2](#) of these guidelines, and on the department's [website](#).

#### *3.4.1 Solemnisation of marriages by Commonwealth-registered marriage celebrants*

A Commonwealth-registered marriage celebrant may solemnise marriages anywhere in Australia, including outside the state or territory in which they reside. Most Commonwealth-registered marriage celebrants perform civil ceremonies to solemnise marriage.

Commonwealth-registered marriage celebrants may also solemnise marriage performing religious ceremonies for an independent religious body or organisation that has not been proclaimed as a recognised denomination, subject to the agreement of that religious body. See [Part 3.2](#) of these guidelines for information on recognised denominations.

The Registrar of Marriage Celebrants requires that a person seeking to be a Commonwealth-registered marriage celebrant who wishes to solemnise religious ceremonies must meet certain requirements, including providing a letter of authorisation from their religious organisation.

#### *3.4.2 Religious marriage celebrants*

'Religious marriage celebrants' are registered under Subdivision D of Division 1 of Part IV of the Marriage Act. The amendments to the Marriage Act, which commenced on 9 December 2017, created this new subcategory of marriage celebrant.

Marriage celebrants who were registered as a minister of religion, and whose registration was current on 8 December 2017, were automatically identified as a religious marriage celebrant on the register of marriage celebrants. New marriage celebrants who are ministers of religion, and who are registered after 8 December 2017 can choose to be identified as a 'religious marriage celebrant' on the register of marriage celebrants.

Marriage celebrants who solemnise civil marriage ceremonies (and who are not a minister of religion), and whose registration was current on 8 December 2017, were able to elect whether to be identified as a religious marriage celebrant on the basis of their religious beliefs. On and from 9 March 2018, persons who are registered as a marriage celebrant to perform civil ceremonies (and who are not a minister of religion) will not have access to the religious marriage celebrant subcategory. More information is available on the 'New subcategory of religious marriage celebrants' [fact sheet](#).

## PART 4 SOLEMNISING MARRIAGES AND COMPLETING OFFICIAL MARRIAGE FORMS

### 4.1 REQUIREMENTS BEFORE SOLEMNISING A MARRIAGE

Marriages solemnised in Australia can only be solemnised where:

1. a Notice of Intended Marriage has been given to the celebrant within the required notice period (discussed in [Part 4.2.2](#) of these guidelines)
2. each party has produced the following documents to the celebrant, evidence of:
  - date and place of birth (discussed further in [Part 4.10](#) of these Guidelines)
  - identity (discussed further in [Part 4.12](#) of these guidelines)
  - the termination of any previous marriage, where relevant (discussed further in [Part 4.11](#) of these guidelines)
3. each party has made a declaration as to their belief that there is no legal impediment to the marriage (discussed further in [Part 4.14](#) of these guidelines), and
4. the celebrant is satisfied that the marriage will be valid, including that each party has given real consent (discussed further in [Part 8.5](#) of these guidelines).

The celebrant must ensure that information about marriage education and counselling is made available to the parties to the marriage (discussed further in [Part 4.15](#) of these guidelines).

The marriage celebrant obligations checklist (see – [Celebrant obligations when solemnising marriages](#)) outlines celebrants' obligations when solemnising a marriage and is a useful tool for celebrants to ensure that they have completed all required documents and steps when solemnising a marriage under the Marriage Act.

### 4.2 NOTICE OF INTENDED MARRIAGE

Section 42 of the Marriage Act requires the parties to an intended marriage to give the celebrant at least one month's written notice prior to the solemnisation of the marriage. This notice is known as the Notice of Intended Marriage (NOIM).

#### *4.2.1 How can a celebrant obtain a Notice of Intended Marriage?*

The form of the NOIM has been approved by the Attorney-General.<sup>9</sup> Copies of the NOIM are available on the [Attorney-General's Department's](#) website and can also be purchased from [CanPrint Communications](#).

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<sup>9</sup> See paragraph 119(3)(c) of the Marriage Act.

The NOIM must be completed according to the instructions on the form.

Authorised celebrants must not agree to marry a couple with less than one month's notice (unless a shortening of time has been approved by an prescribed authority) or falsify the dates on the NOIM to make it appear as if one month's notice was given. Subsection 99(1) of the Act provides that authorising a marriage in contravention of the requirements in section 42 of the Act is an offence. For further information on offences, refer to [Part 12](#) of these guidelines.

#### *4.2.2 When the NOIM must be received*

The NOIM must be given to the celebrant no earlier than 18 months and no later than one month before the date of the marriage.<sup>10</sup> A notice expires after 18 months, and a marriage must not be solemnised if the NOIM was received more than 18 months before the date of the proposed marriage. Parties are encouraged to produce their evidence of date and place of birth as well as evidence of identity and the end of any previous marriage (if relevant) at the time of giving the NOIM. However, these documents may be produced at any time before the marriage is solemnised.

For the purposes of complying with the timeframes required for giving the NOIM, it is sufficient for a celebrant to sight scanned (emailed) or faxed copies of the documents at the time of giving the NOIM, provided the originals are sighted by the celebrant before the marriage is solemnised.

### **4.3 AUTHORISING MARRIAGE WHERE NOIM IS GIVEN WITH LESS THAN THE REQUIRED NOTICE TIME – 'SHORTENING OF TIME'**

A prescribed authority may authorise a marriage to be solemnised despite the celebrant receiving the NOIM within one month of the date of the marriage.<sup>11</sup> A list of prescribed authorities is published on the [Attorney-General's Department's](#) website.

#### *4.3.1 When can a prescribed authority consider a shortening of time request?*

The five circumstances in which an application for shortening of time may be considered by a prescribed authority are set out in Schedule 3 to the Marriage Regulations.

These are limited to:

1. employment-related or other travel commitments
2. wedding or celebration arrangements, or religious considerations
3. medical reasons
4. legal proceedings, or
5. an error in giving notice.

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<sup>10</sup> Paragraph 42(1)(a) of the Marriage Act.

<sup>11</sup> Subsection 42(5) of the Marriage Act and Schedule 3 to the Marriage Regulations.

#### *4.3.2 If a couple wants their marriage solemnised less than one month after the celebrant receives the NOIM*

If the parties to an intended marriage have not provided the NOIM to the celebrant with the minimum one month's notice, they will need to apply to a prescribed authority for authorisation before the celebrant can make or confirm any arrangements to marry them.

When a celebrant is asked to reduce the minimum notice period for the NOIM, the celebrant must ensure that the NOIM is in order and then refer the party or parties with the notice to a prescribed authority. The celebrant should explain the following key points to the couple:

- the reason for seeking a shortening of time must fall within one of the prescribed categories (described above, at [4.3.1](#)) before the application can be considered
- a prescribed authority has no discretion to grant a shortening of time outside the circumstances covered by these categories
- the granting of a shortening of time is not automatic
- a prescribed authority may charge an application fee – celebrants should suggest that the couple check if a fee is charged when making an appointment with a prescribed authority.

The celebrant should also advise the parties to the marriage to make an appointment with the prescribed authority and to take the completed NOIM and any other documentary evidence to prove why they require a shortening of time (for example, medical certificates or a travel itinerary).

This is the only circumstance in which a celebrant can release the completed NOIM to the parties to the intended marriage. Parties must return the NOIM to the celebrant after a shortening of time is obtained.

#### *4.3.3 Cases which fall within the circumstances when a shortening of time may be granted*

Schedule 3 to the Marriage Regulations provides examples of each of the sets of circumstances. Whether a particular situation falls within one of these is a matter for the prescribed authority, not the celebrant, and the department is not able to provide advice on particular situations.

#### *4.3.4 The sort of material that the prescribed authority will require to consider the application*

The Marriage Regulations list a number of matters the prescribed authority may take into account, and material they may request, when making the decision. Celebrants should advise couples to compile this material before approaching the prescribed authority.

The material should include a letter from a medical practitioner if the couple is seeking a shortening of time on medical grounds, or receipts for payments or wedding invitations if the circumstance is



wedding or celebration arrangements. The prescribed authority will consider the dates payments were made or invitations sent, to gauge the genuineness of the need to shorten time.

If the circumstance relates to relocation for employment the prescribed authority will seek 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 (unless the posting or employment relocation has been brought forward).

Error in giving notice relates only to error on the part of the celebrant, not the couple. For example, the celebrant may not have fulfilled their obligation to explain the notice requirements properly. Error in giving notice also includes invalid, stale or lost NOIMs. An example of an invalid notice would include a NOIM given to a person who was not a celebrant. A reference to a lost NOIM refers to a notice that has been lost by the celebrant, not the couple.

#### *4.3.5 Prescribed authority granting a shortening of time*

If the prescribed authority is satisfied that the relevant circumstance for shortening the notice period to less than one month has been met, they will make a note in the box provided at the foot of the NOIM on page four, sign it, add their designation and the words 'Prescribed Authority' and write the date. The original NOIM should then be given by the parties to the celebrant before the marriage is solemnised.

### **4.4 THE ONE MONTH NOTICE PERIOD**

#### *4.4.4 When does the one month period commence?*

The one month notice period begins when the couple gives the celebrant the completed and signed NOIM. It does not commence when the couple book the marriage with the celebrant or pay a deposit.

The one month notice period can also begin when the celebrant is given a completed NOIM signed by one party to the intended marriage (which must include all the relevant information of both parties giving notice). This situation only arises when the signature of the other party cannot conveniently be obtained at least one month prior to the proposed ceremony, for example, where one party is overseas. The NOIM can be given when signed by only one of the parties to the proposed marriage provided the other party signs the NOIM in the presence of the celebrant before the marriage is solemnised. The celebrant must be satisfied that the party who has not signed the NOIM has a genuine reason for not being able to do so at the time, is fully aware of the marriage and that their documents are in order. Celebrants should exercise caution in these situations as a party to a marriage may attempt to use this exception for a 'surprise wedding'. For further information on surprise weddings, see [Part 11.1](#) of these guidelines.

When a celebrant receives a NOIM, they must write the date on which the NOIM was received in the space provided.

For further information on how to calculate the one month period, see [Part 4.4.1](#) of these guidelines.

#### 4.4.1 *What does giving the notice ‘not later than one month before the date of the marriage’ mean?*

Subsection 2G(1) of the [Acts Interpretation Act 1901](#) provides that (subject to a contrary intention) in any Act, *month* means a period starting at the start of any day of one of the calendar months; and ending immediately before the start of the corresponding day of the next calendar month, or if there is no such day – at the end of the next calendar month.

The relevant parts of section 2G are set out below, including examples.

The term ‘month’ is defined in subsection 2G(1) of the [Acts Interpretation Act 1901](#) as follows:

(1) In any Act, month means a period:

- (a) starting at the start of any day of one of the calendar months; and
- (b) ending:
  - (i) immediately before the start of the corresponding day of the next calendar month; or
  - (ii) if there is no such day—at the end of the next calendar month.

Example 1: A month starting on 15 December in a year ends immediately before 15 January in the next year.

Example 2: A month starting on 31 August in a year ends at the end of September in that year (because September is the calendar month coming after August and does not have 31 days).

Subsection 36(1) of the Acts Interpretation Act deals with how time periods are calculated and includes a table to show how different scenarios are to be interpreted in Commonwealth Acts and provides examples.

The relevant parts of section 36 are set out below, including examples.

(1) A period of time referred to in an Act that is of a kind mentioned in column 1 of an item in the following table is to be calculated according to the rule mentioned in column 2 of that item:

Calculating periods of time

	Column 1	Column 2
Item	If the period of time:	then the period of time:
...	...	...
7	is expressed to end before a specified day	does not include that day.

Example: If a person must give a notice to another person at any time during the period of 7 days before the day a proceeding starts and the proceeding starts on 8 May, the notice may be given at any time during the 7 day period starting on 1 May and ending on 7 May.

#### *4.4.2 How do the parties give the notice if they are overseas or interstate?*

Where the parties will be overseas or interstate until a time that is less than one month before the marriage, they may send a copy of the NOIM and supporting documents to the celebrant by post, (scanned) email, or fax. It is not acceptable for a celebrant to accept a NOIM and/or supporting documents via videoconferencing services such as Skype. Actual documentation must be received by the celebrant. The celebrant should recommend that if the NOIM is to be posted it should be sent by some form of registered post.

It is recommended that couples send photocopies of their supporting documents with the NOIM when they post them from overseas or interstate. If there are any potential problems with, for example, divorce papers or death certificates, the celebrant will be able to advise the couple of this before they arrive for the marriage.

The celebrant will need to obtain the original NOIM from the parties and sight the original supporting documents relating to evidence of date and place of birth, identity and evidence of the end of a previous marriage (if relevant) **prior** to solemnising the marriage. This means the parties will need to bring these original documents with them when they meet the celebrant.

#### *4.4.3 Original NOIM unavailable*

Where the original NOIM cannot be obtained, for example because it has been lost by the couple, consideration should be given to whether there is enough time to complete a new NOIM or a shortening of time could be sought.

Solemnising a marriage without the original NOIM should only be a last resort in the most extreme of circumstances. In such circumstances it may be acceptable for the celebrant to rely solely on the copy of the NOIM and solemnise the marriage without receiving the original NOIM before the wedding. In such a situation, the celebrant should ensure the words on the copy of the NOIM are clearly legible. The copy of the NOIM should be treated as the original document.

Celebrants should contact the BDM directly to explain the circumstances in such situations. BDMs are responsible for registering marriages and as such celebrants can enquire whether the BDM would accept a copy of the NOIM (provided that all other obligations had been complied with).

### **4.5 COMPLETING THE NOIM**

Celebrants should advise parties to complete the NOIM with care. The parties must fill in the NOIM except for the section under the heading “Particulars to be completed by authorised celebrant” on page 4 of the NOIM and the box titled “For celebrant’s use” at the top of page 3. They must read the notes on the front of the printed form before completing the NOIM. It is recommended that parties type, or use block letters, to complete the form. If the NOIM is downloaded from the

[Attorney-General's Department's](#) website, care should be taken to download and print all pages so that couples can read all the Notes, including the Privacy Note. The celebrant or another person may write the particulars on behalf of the parties giving the notice, as long as the parties check them for accuracy.

#### *4.5.1 What if a party does not know the information required in the NOIM?*

Where a party is unable to ascertain all of the particulars required in the NOIM after reasonable inquiry, they must write 'unknown' in the appropriate space/s.

In order to make the NOIM effective, the parties must also provide the celebrant with a statutory declaration as to their inability to ascertain the particulars not included in the NOIM, and the reasons for that inability, before the marriage is solemnised. Celebrants must not solemnise a marriage until a satisfactory statutory declaration is received. The requirements for completing a statutory declaration are explained further in [Part 4.10.4](#) of these guidelines.

However, a statutory declaration is not necessary for the information required to be provided under the following items of the NOIM:

- item 11 (father's full name)
- item 12 (mother's maiden name)
- item 13 (father's country of birth)
- item 14 (mother's country of birth), or
- the year of a previous marriage ceremony under item 16.

#### *4.5.2 Parents' names*

The NOIM requires that the parties to the marriage list their parents. In most cases people will list their parents as per their birth certificates or adoption papers. Not all parents are listed on birth certificates; it is up to the parties to list their parents using the names as they know them by. There is no requirement to sight evidence of the parents' names irrespective of whether a birth certificate is produced. A statutory declaration is not required for this item.

#### *4.5.3 Completing item 17 on the NOIM – children of previous marriage*

When completing item 17 on the NOIM, parties should include children of each of the parties from a previous marriage, whether or not those children were born or adopted before or after the previous marriage took place, or whether or not the children are genetically a child of the party. The [Family](#)

[Law Act 1975](#) provides that children of a marriage include a child of both parties to the marriage whether born before or after the marriage.<sup>12</sup>

The key criterion for completion of item 17 of the NOIM is that the child must be of a 'previous marriage', and not a child of the 'couple' proposing to marry.

#### *4.5.4 Recording the marriage rites on the NOIM*

When recording the rites to be used to solemnise a marriage on the NOIM, Commonwealth-registered marriage celebrants who solemnise civil marriages, and State and Territory Officers, must write 'according to the *Marriage Act 1961*'.

Celebrants who are a minister of religion (this includes ministers of religion registered as a Commonwealth-registered marriage celebrant, and ministers of religion nominated by a recognised denomination) must record that the marriage is to be solemnised according to the rites of their religious organisation. These celebrants must also write the full name of their organisation exactly as it appears on the list published in accordance with section 115 of the Marriage Act.

Celebrants must record the same information about the marriage rites for a particular marriage on the NOIM, the Form 15 marriage certificate and the official certificate of marriage (See [Part 6.7](#)).

#### *4.5.5 NOIMs containing false statements*

Celebrants should advise parties that it is a criminal offence for a person to give a NOIM to a celebrant if the person giving the notice knows that the NOIM contains a false statement or is defective.<sup>13</sup> If a celebrant is in any doubt whether a NOIM is defective, they should contact the relevant BDM as soon as practicable after receipt of the NOIM, and before the solemnisation of the marriage. If a celebrant believes a NOIM contains false statements, they should not accept the NOIM.

#### *4.5.6 What happens to the NOIM after a marriage?*

The items on the NOIM (1-3, 5-9 and 11-12) correspond with the items on the BDM issued Official Certificate of Marriage, which celebrants prepare and forward to the relevant BDM after the marriage.

The NOIM is forwarded by the relevant BDM to the Australian Bureau of Statistics (ABS). The ABS records non-identifying information from the NOIM, and uses the information to generate national statistics on marriage in Australia.

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<sup>12</sup> Section 60F of the Family Law Act.

<sup>13</sup> Section 104 of the Marriage Act.

#### *4.5.7 Recording the names of the parties on the NOIM*

Marriage documents will form part of a chain of documents that a person will use over the course of their life to establish their identity and obtain identity documents. As a result, the accuracy of marriage documents will have a significant effect on the ease with which a person will be able to obtain identity documents. Likewise, the rules established by agencies that are responsible for issuing identity documents have a practical impact on the completion of marriage documents. The following guidance has been developed with the aid of input from those agencies.

The rules in Australia for obtaining documents of identity such as an Australian passport have been significantly strengthened over recent years. Celebrants need to be careful to ensure that they copy names accurately (including spelling) from key documents onto the NOIM and the marriage certificates. Otherwise great inconvenience may be caused to the couple in having documents corrected at a later date.

Section 53 of the [Australian Passports Act 2005](#) requires that the name that an Australian passport is issued in must be either: the name on a person's birth certificate; the name on the Certificate of Australian Citizenship; the name on a marriage certificate issued by the Registrar of Births, Deaths and Marriages; or a change of name certificate issued by the Registrar of Births, Deaths and Marriages of the state or territory concerned. The names appearing on the passport must be exactly the same as the names appearing on the relevant document. No variations are permitted.

Change of name requirements vary across BDMs. It is recommended that celebrants check with the relevant BDM for information on change of name as it may have implications for a married person seeking identity documents following a marriage.

Celebrants should not try to answer (or obtain answers on behalf of couples), questions about documents, other than marriage documents. They should refer marrying couples to the relevant agency (such as the Australian Passport Office or BDM) to obtain their own advice.

There is a Frequently Asked Questions section at [Part 4.7.1](#) of these guidelines to further assist celebrants to determine how to record names on the NOIM and marriage certificates.

#### *4.5.8 Generally the name on a person's birth certificate should be recorded on the NOIM*

Most people use the name that is recorded on their birth certificate. This is because most people are either marrying for the first time, or have never changed their name. This means in most cases the parties will need to write their name exactly as it appears on their birth certificate when completing the NOIM. The spelling must be identical and all given names which appear on the birth certificate must be included in the NOIM.

#### *4.5.9 When can a person use a different name in the NOIM to the name on their birth certificate?*

##### *BDM-issued change of name certificate*

If a person has changed their name from the name on their birth certificate by way of a BDM-issued change of name certificate they must write this name in the NOIM. The person's name should be recorded on the NOIM **exactly** as it appears on the change of name certificate. Once a person has changed their name in this way they cannot choose to revert to their birth name for the purposes of the marriage documents. Some BDMs will amend a person's name on their birth record in certain circumstances instead of issuing a change of name certificate. In this situation the person should record the name on their amended birth certificate.

##### *Change of name by deed poll*

Prior to BDMs granting change of name certificates (commencing in about the late 1990s), a person could change their name by deed poll. A person who changed their name by deed poll must write this name on the NOIM. The person's name should be recorded in the NOIM exactly as it appears on their deed poll documentation. A celebrant with concerns about the validity of deed poll documentation provided to them by a person should contact the relevant BDM for guidance.

##### *Spelling error of name on birth or change of name certificate*

A person who believes there is an error in the spelling of their name on their birth certificate, or on their change of name certificate, should contact the BDM in the state or territory where they live, or were born, to enquire about having the certificate corrected. If the birth certificate or change of name certificate has been amended, the celebrant should record that name on the NOIM.

A person who has changed their name through social usage, without any formal process, should be directed to the relevant BDM to apply for a change of name certificate if they wish for that name to be used on their marriage documents.

##### *Change of name by marriage*

A party who has changed their name by marriage, and retained their previous spouse's surname, must record that surname on the NOIM. The surname recorded should be exactly as it appears on the BDM-issued official marriage certificate, or court-issued divorce certificate, for the party's previous marriage. See [Part 4.18](#) for two case studies on the correct use of documents, and [Part 4.7](#) of these guidelines (Frequently asked questions – names on notices of intended marriage and on marriage certificates) for further assistance in such situations.

##### *Use of name on Certificate of Australian Citizenship*

A person's name as recorded on a Certificate of Australian Citizenship should not be recorded on the NOIM unless the person also has official photo identification in that name, such as a driver licence, proof of age card or an Australian or overseas passport.

*If a person wants to use a name on their NOIM but does not have the appropriate evidence*

In cases other than those described earlier, where a party wants to use a different name on the NOIM to the name on their birth certificate, they should apply to the BDM in the state or territory where they were born or where they live for a change of name certificate to be issued to them, or for their name to be amended on their birth certificate.

The party should first enquire with the relevant BDM in order to find out the requirements and timeframes for obtaining a change of name in that state or territory. While waiting for the formal change of name, the party may provide the NOIM to the celebrant using the name on their current birth certificate. The NOIM can then be amended once the formal change of name is obtained. Please note that the NOIM can only be corrected prior to the solemnisation of the marriage. Please refer to [Part 4.9.5](#) of these guidelines for further information on correcting the NOIM.

#### *4.5.10 Refusal by a person to use the name on their birth certificate*

If a person refuses to use the name stated on their birth certificate, and does not fall within one of the scenarios described above for when another name must be recorded in the NOIM, the celebrant should outline the possible difficulties the person may face in the future when attempting to obtain an Australian passport, or other official identity documents, in the name they wish to use. If the person insists this will never be an issue for them, they may list their preferred name on the NOIM.

As with any advice or recommendations provided by a celebrant, the celebrant should make a written record of their advice, and give a copy of that advice to the person. It may be prudent for the celebrant to include a copy of the advice with the documents sent to the BDM to register the marriage, as well as keeping the advice as part of their personal records. Some BDMs will scan the letter of advice and retain it as part of the marriage register.

## **4.6 A PARTY HAS DIFFERENT NAMES IN THE DOCUMENTS THEY PROVIDE TO ESTABLISH THEIR DATE AND PLACE OF BIRTH AND THEIR IDENTITY**

Each party to a marriage must give their celebrant documents that establish their date/place of birth and identity. In most cases people use the name recorded on their birth certificate, and that name will be recorded on all documents they give their celebrant, including the NOIM. If a party gives their celebrant documents recording different names, the celebrant should check the party has provided a sufficient chain of documents to establish their identity and link the names. The case studies below at [4.18](#) about Jane and John demonstrate such a chain of documents and how to use them.



## 4.7 FREQUENTLY ASKED QUESTIONS – NAMES ON NOTICES OF INTENDED MARRIAGE AND ON MARRIAGE CERTIFICATES

Subsection 42(8) of the Marriage Act requires celebrants to establish the identities of the parties to a marriage. Accuracy in recording names helps ensure that everyone is satisfied about the identity of persons intending to marry, and that they can prove that they are who they claim to be.

The Australian Government has put in place systems to deal with identity fraud. As an example of this, and as a result of amendments to the *Passports Act 2005*, the Australian Passport Office has developed rules about names on Australian passports. These rules are relevant to marrying couples as anyone wishing to apply for a passport in their married name will need to adhere to these rules.

In the past, marriage celebrants have been advised to use acronyms and terms such as ‘k.a.’, ‘a.k.a.’ and ‘nee’ in circumstances when a party has a name which is different from their birth name. These terms must not be used under any circumstances.

NOIM forms and marriage certificates must have **one** full name for each party to the marriage.

This will assist couples, will help alleviate errors that can potentially arise from the confusion of having more than one name for one person on the documents, and will help streamline electronic processing of the documents.

### 4.7.1 *Frequently asked questions*

The following list of frequently asked questions should provide celebrants with the information they need to advise couples about the completion of the names section in the NOIM.

It will also assist celebrants to explain to couples how they will be writing their names on the three certificates of marriage. This advice is intended to assist couples and is in accordance with the Marriage Act.

### *Names on the Notice of Intended Marriage*

**Q1** What names must parties write on the NOIM?

**A1** Most people use the name that is recorded on their birth certificate, so in most cases when completing the NOIM parties will write their name as it appears on their birth certificate. Celebrants must ensure that the parties write their names exactly as they appear on their birth certificates. The spelling must be identical and all given names which appear on the birth certificate must be included on the NOIM.

If a person has changed their name from the name on their birth certificate by way of a BDM-issued change of name certificate, or by deed poll (prior to BDMs starting to issue change of name certificates from the late 1990s), they must write this name exactly as it appears on the change of name certificate or deed poll documentation.

If a person has changed their name by marriage and retained a previous spouse's surname, they must record that surname on the NOIM. Celebrants should ensure the party has written their surname exactly as it appears on the previous marriage certificate or court-issued divorce certificate.

A person may record the name on their Australian Citizenship Certificate on the NOIM if the person also has official photo identification in that name, such as a driver licence, proof of age card or an Australian or overseas passport.

Remember, authorised celebrants should check that the party has provided a sufficient chain of documents to establish their identity and link to the names.

### *Names on birth certificates*

**Q2** What if a person believes the spelling on their birth certificate is incorrect? For example, the name on their birth certificate is spelt 'Vicky' and they have always used 'Vicki'.

**A2** Celebrants should tell the person that their name as it appears on their birth certificate and their name as it appears on the NOIM must be the same.

If the person believes there is an error in the spelling of their name on their birth certificate they may apply to have the birth certificate corrected at the relevant BDM. If their birth certificate is corrected they may then use the name on the corrected certificate on the NOIM.

Celebrants should also tell the person that any discrepancy between their name as it appears on their birth certificate and their name as it appears on the marriage documents may lead to them encountering problems if they wish to obtain an Australian passport in their married name.

**Q3** What if a person does not want all their given names on the NOIM? For example, they have four given names on the birth certificate and they have always only used two of those names or if they only have one name.

**A3** They should use all four names, or just the one name, on the NOIM. Celebrants should tell the person that their name as it appears on their birth certificate and their name as it appears on the NOIM should be the same.

Celebrants should also tell the person that any discrepancy between their name as it appears on their birth certificate and their name as it appears on the marriage documents may lead them to encountering problems if they wish to obtain an Australian passport in their married name.

**Q4** Is there anything a party can do to overcome the problems raised in Questions 2 and 3 of using a different name from that on their birth certificate?

**A4** Yes. Parties can apply to the BDM in the state or territory where they were born or where they live for a change of name certificate to be issued to them to reflect the spelling of the name that they commonly use, or to reflect the given names they actually use.

Note: Change of name certificate procedures vary between the states and territories. Most states will only register a change of name for a person whose birth has been registered in that state or who has been resident there for a certain period of time.

Parties can then use the name on the change of name certificate on the NOIM, rather than the birth certificate name.

**Q5** A party to a marriage has lived for many years with a step-father and, though not formally adopted, has always used the step-father's surname. Which name should they use on the NOIM?

**A5** In this case the party should use the name on their birth certificate. If they do not wish to do this, they can apply to the BDM in the state or territory where they live or were born for a Change of Name certificate, to reflect the name as it has been changed by usage. They can then use this name on the NOIM.

### *Change of name*

**Q6** If a party would like to use a name other than the name on their birth certificate, can they give the NOIM before obtaining a change of name certificate in order to meet the one month minimum timeframe for giving notice?

**A6** Yes. They can give the NOIM but must, at this time, use their birth certificate name. The NOIM can then be amended after the change of name certificate is obtained, but prior to the marriage. Parties should ask the relevant BDM how long this process will take. It will vary but should be less than the one month's minimum notice period.

The celebrant may permit the change to be made in the celebrant's presence by either of the parties at any time before the marriage has been solemnised. The alteration should be initialled by the party correcting the error and by the celebrant. The corrected notice may then be treated as having been given in its corrected form.

If the change of name is not obtained prior to the date of the marriage, the original birth certificate name must be used on the marriage certificates.

- Q7** A party to a marriage tells a celebrant that they changed their name by usage and have a driver licence and a Medicare card in that new name. Which name should be used?
- A7** In this case the person must use the name on their birth certificate. If they do not wish to do this they can apply to the BDM in the state or territory where they live or were born for a change of name certificate to be issued to reflect the name changed by usage.
- Q8** Does this mean a person cannot change their name by usage?
- A8** No, a person can change their name by usage. However, a name gained by common usage may be difficult to substantiate and many government agencies require a change of name certificate issued by a BDM as evidence of a person's name.
- Q9** A party to a marriage changed their name by deed poll many years ago. Can they use this name on the NOIM?
- A9** Yes, they may use this name.

Generally, a change of name by deed poll that was registered before the commencement of BDMs' change of name processes is still a valid change of name. If a celebrant has any doubt as to the validity of a person's deed poll documentation they should contact the relevant BDM for further guidance.

However, the celebrant should advise this party they may encounter difficulties obtaining an Australian passport in their deed poll or married names.

- Q10** What is the difference between a change of name by deed poll and a change of name certificate?
- A10** In the past a person wishing to formally change their name would lodge an instrument with the State Registrar of Deeds or Titles. This was called changing your name by deed poll. That process has now largely been replaced throughout the states and territories by change of name procedures under which a person applies to have a change of name registered with the state or territory BDM.

Change of name certificate procedures differ from deed poll procedures, and both procedures vary between the states and territories. Most states will only register a change of name for a person whose birth has been registered in that state or who has been resident there for a certain period of time.

Celebrants should advise parties to check where and how to apply for the change of name certificate. In some states, deed poll name changes have been transferred to the Register of Change of Names. People who have changed their name by deed poll should check with the BDM in the state or territory where the change was executed whether they need to obtain a change of name certificate.

- Q11** A celebrant has a party who does not wish to obtain a change of name certificate before their marriage and wishes to use the name they have changed by usage alone. What should the celebrant tell this person?
- A11** Authorised celebrants should check that the party has provided a sufficient chain of documents to establish their identity and link to the names. The celebrant would still need to be satisfied as to the identity of the party, the celebrant should advise this person to think carefully about whether they may ever need identity documents, including a passport, in the future. It may be possible to formally change their name after the marriage but the process may be more complicated for them. The celebrant should advise the party to check with the relevant state or territory BDM.
- Q12** A celebrant has a party who does not wish to apply for a change of name certificate under any circumstances. What should the celebrant do in this case?
- A12** If a person refuses to use the name stated on their birth certificate, and does not fall within one of the scenarios described in Q1 above for when another name may be recorded in the NOIM, the celebrant should outline the possible difficulties the person may face in the future when attempting to obtain an Australian passport, or possibly other identity documents, in the name they wish to use.

While this would not be best practice, if the person insists, they may list their preferred name on the NOIM.

Remember, authorised celebrants should check that the party has provided a sufficient chain of documents to establish their identity and link to the names.

The celebrant should make a written record of their advice, and give a copy of it to the person. It may be prudent for the celebrant to include a copy of the advice with the documents sent to the BDM to register the marriage, as well as keeping the advice as part of their personal records. Some BDMs will scan the letter of advice and retain it as part of the marriage register.

### *Party born overseas*

- Q13** A party to a marriage was born overseas and does not have an overseas birth certificate. What name should they put on the NOIM?
- A13** If the person does not have a birth certificate a celebrant will need to see a passport issued by the Australian government or a government of an overseas country as evidence of the person's date and place of birth. If that is impracticable (practically impossible), the celebrant must require a statutory declaration executed under the *Statutory Declarations Act 1959* from the person to meet the requirements of section 42 of the Act relating to evidence of date and place of birth. The Commonwealth statutory declaration form is available on the [Attorney-General's Department's](#) website.

If the party is not an Australian citizen the party may use the name on their overseas passport on the NOIM.

If their name or date and place of birth are written in another language the celebrant should advise the party to provide the celebrant with a formal translation of the document so that the celebrant knows how the name should be written in English.

If the person is an Australian citizen, then the name as shown on their citizenship certificate may be used on the NOIM only if the person also has official photo identification in the same name as the name on their citizenship certificate: such as a driver licence, proof of age/photo card, or an Australian or overseas passport.

Please note that in this case the celebrant would only be using the certificate of Australian citizenship to confirm the person's name/identity, and not for the purpose of checking the person's date and place of birth. See [Part 4.10](#) of these guidelines for the evidence of date and place of birth that the parties to the marriage must provide to their authorised celebrant to satisfy section 42 of the Act.

### *Error on Certificate of Australian Citizenship*

**Q14** What if a person tells a celebrant there is an error in the name on their Certificate of Australian Citizenship?

**A14** The celebrant should advise the person to approach the [Department of Home Affairs](#) about having the error corrected. If this is not possible they will need to apply to the BDM in the state or territory where they live for a change of name certificate to be issued to reflect the correct spelling of their name.

### *Party previously married*

**Q15** A party has been married before (either in Australia or overseas) and they are divorced or their spouse has died. What surname should they put on the NOIM?

**A15** A person in this situation has a choice depending on the circumstances of the name they used.

If they continued using their birth name during the previous marriage they must record this name on the NOIM.

If they reverted to the name on their birth certificate after divorce or death of their spouse they must record that name on the NOIM.

If they changed their name as a result of the previous marriage and have kept using that name, then they must use this name on the NOIM. The celebrant must see evidence of the death of, or divorce from, the first spouse.

### *Names on the marriage certificates*

**Q16** What names should be written (or printed) on the marriage certificates?

**A16** The names on the marriage certificates should be exactly the same as the names on the NOIM.

A celebrant should always cross-check the NOIM with the original documents from which those names were derived, that is the birth certificates, marriage certificates or change of name certificates and not just rely on copying from the NOIM. If the celebrant copies from the NOIM they may repeat an error from the NOIM.

If the celebrant finds there is a mistake on the NOIM they should correct it. The celebrant may permit the change to be made in their presence by either of the parties at any time before the marriage has been solemnised. The alteration should be initialed by the party correcting the error and by the celebrant. The corrected notice may then be treated as having been given in its corrected form.

**Q17** Do the names on all three marriage certificates need to be the same?

**A17** Yes. All three marriage certificates which the couple signs are evidence that the marriage took place and must be accurate.

The celebrant must use the same name on all three marriage certificates, that is Form 15 certificate of marriage; the retained certificate; and the official certificate of marriage (the certificate forwarded to BDM for registration of the marriage).

### *Signatures on marriage documents*

**Q18** How should the NOIM be signed?

**A18** The NOIM should be signed using the person's usual signature. See the section entitled 'Signing and witnessing the NOIM' at [Part 4.9](#) of these guidelines for more information on signing NOIMs.

**Q19** How should the marriage certificates be signed?

**A19** The marriage certificates should all be signed using the parties' usual signatures.

The signatures should be the same as the signatures on the NOIM and on the declarations of no legal impediment. The certificates should be signed in the pre-marriage names.

See the section entitled 'Signing the marriage certificates' at [Part 6.8](#) of these guidelines for more information on signing marriage certificates.

## **4.8 TOTAL PERIOD OF RESIDENCE IN AUSTRALIA**

Item 10 of the NOIM requires the parties to state the total period that they have resided (lived or stayed) in Australia, if they were born outside of Australia.

The NOIM makes provision for giving both 'years' and 'months' of residence. Months as well as years need only be given where the party has been resident in Australia for less than two years. Where the party has been resident in Australia for two years or more, the number of completed years only need be given. For example, a period of five years, nine months residence need be stated only as five years. If a party has only been in Australia for a period of days it is unnecessary to record this information. Celebrants should be aware that there is no minimum residency requirement prior to a marriage being solemnised in Australia.

The information about the parties' period of residence is collected for statistical purposes only and is collected by the Australian Bureau of Statistics.

## **4.9 SIGNING AND WITNESSING THE NOIM**

The NOIM should generally be signed by both parties together when it is given to their celebrant. Signing the NOIM in the presence of the celebrant means that the celebrant will be able to witness each party's signature.

Where the signature of one party to the intended marriage cannot conveniently be obtained at least one month prior to the proposed ceremony, the NOIM may be signed by one of the parties to the proposed marriage, as long as the other party signs it in the presence of a celebrant before the marriage is solemnised.<sup>14</sup> This enables parties to give notice of their intended marriage when one party is overseas or interstate. The celebrant must be satisfied that the party who has not signed has a genuine reason for not being able to do so at the time, is fully aware of the marriage and that the parties' documents are all in order. If the parties request advice on obtaining a visa for a party who resides outside Australia, the celebrant should direct them to the [Department of Home Affairs](#).

An authorised celebrant or other person ([see 4.9.1](#)) is not able to 'witness' the signing of a NOIM over Skype or other electronic means as the NOIM is to be signed in the 'presence' of the authorised celebrant or other person.

In contrast to the situation where one party is overseas or interstate when a NOIM is given, the signature of the other party to a so-called 'surprise' wedding can usually be obtained. The party organising the surprise just does not wish to tell the other party about the wedding. A surprise wedding situation is not one where it would be appropriate for a celebrant to accept a NOIM signed by only one party.

Celebrants should treat the receipt of all NOIMs with only one signature with caution and make appropriate inquiries of the party who has not signed. Celebrants must always ask why it is not

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<sup>14</sup> Subsection 42(3) of the Marriage Act.



convenient for the second party to sign the NOIM (see [Part 11.1](#) of these guidelines regarding surprise weddings, and [Part 8.6](#) of these guidelines on consent).

#### 4.9.1 Who may witness a NOIM signed in Australia?

A NOIM signed in Australia must be signed in the presence of one of the following:<sup>15</sup>

- an authorised celebrant
- a Commissioner for Declarations under the *Statutory Declarations Act 1959*
- a justice of the peace
- a barrister or solicitor
- a legally qualified medical practitioner<sup>16</sup>, or
- a member of the Australian Federal Police or the police force of a State or Territory.

If one party to an intended marriage is unable to sign the NOIM for the purpose of complying with the timeframe for giving notice to the celebrant, then the NOIM may be signed by the other party in the presence of a celebrant and notice will be deemed sufficient.<sup>17</sup>

Celebrants should note the following points in relation to signing the NOIM in Australia:

- The signing of a NOIM in Australia must be in the presence of one of the categories of people listed above.
- The list is not the same as the list of persons before whom a Commonwealth statutory declaration may be made.
- A Commissioner for Declarations is not the same as a person before whom a Commonwealth Statutory Declaration may be made – they are specifically appointed people who will have written evidence of their appointment.
- Commissioners for Declarations are appointed under state and territory laws. Only some states and territories appoint Commissioners for Declarations. If the parties to the marriage wish to use a Commissioner for Declarations, the parties should check whether

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<sup>15</sup> See Subsection 42(2) of the Marriage Act.

<sup>16</sup> A legally qualified medical practitioner means a person who is registered as a licensed practitioner with the Medical Board of Australia. The category is limited to GPs and specialist doctors but does not include pharmacists or physiotherapists.

<sup>17</sup> Section 42(3) of the Marriage Act.

Commissioners exist in the jurisdiction in which they reside. The best way to do this is by contacting the relevant state or territory government where the NOIM is to be witnessed.

#### *4.9.2 Who may witness a NOIM signed outside Australia?*

A NOIM signed outside Australia must be signed in the presence of one of the following:<sup>18</sup>

- an Australian Diplomatic Officer
- an Australian Consular Officer
- a notary public
- an employee of the Commonwealth authorised under paragraph 3(c) of the [Consular Fees Act 1955](#), or
- an employee of the Australian Trade Commission authorised under paragraph 3(d) of the Consular Fees Act.

A NOIM signed outside Australia cannot be witnessed by an authorised celebrant.

Celebrants should advise parties to the intended marriage that the witness to their signature is required to complete both witnessing panels provided, as well as adding their credentials.

The categories of people who a NOIM can be signed in the presence of overseas are limited; celebrants should direct the couple to the nearest Australian embassy, or to a notary public (if one is available). An authorised celebrant or other person is not able to 'witness' a NOIM over Skype or other electronic means. Nor is a NOIM to be signed in the presence of an authorised celebrant able personally, whilst overseas.

#### *4.9.3 What is a Notary Public?*

A notary public is a legal officer with specific authority to witness legal documents, usually with an official seal. Notaries public can be found in every country and as such it is not possible for the department to provide a list of all notaries. They will usually be listed in telephone directories, or may be found through local legal channels.

#### *4.9.4 A person overseas is finding it difficult to locate a person from the required category to witness their signature on the NOIM*

It is the responsibility of a party to a marriage, not the celebrant, to locate an appropriate witness overseas.

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<sup>18</sup> See Subsection 42(2) of the Marriage Act.

Most couples overseas will be able to visit an Australian Embassy, High Commission or Consulate to have the NOIM witnessed. If they are not able to do so, it is their responsibility to locate a notary public or other authorised witness.

#### *4.9.5 Corrections of errors on the NOIM*

Subsection 42(9) of the Marriage Act provides that a celebrant may permit an error on the NOIM to be corrected in their presence by either of the parties to the marriage at any time before the marriage has been solemnised. The alteration should be initialed by the party correcting the error and by the celebrant. The corrected NOIM may then be treated as having been given in its corrected form. The NOIM may not be corrected after the marriage has been solemnised. If an error is discovered after a marriage has been solemnised, the celebrant may wish to send a covering note explaining the error to the BDM when registering the marriage.

An error on the NOIM includes an error in spelling. A change to the address or occupation of one of the parties to the marriage after the date that the NOIM was given to the celebrant does not constitute an error in this context and the address and occupation should remain the same. The address and occupation recorded on the NOIM and those recorded on the marriage certificate are not required to be the same if those details have changed after the date that the NOIM was given.

### **4.10 EVIDENCE OF DATE AND PLACE OF BIRTH**

Each party to a marriage must give their celebrant evidence of their date and place of birth before a marriage is solemnised.<sup>19</sup>

The following documents are the only acceptable evidence of a party's date and place of birth:

- an official (original) certificate of birth, or an official extract of an entry in an official register showing the date and place of birth of the party,<sup>20</sup> or
- a statutory declaration from the party or the party's parent stating:<sup>21</sup>
  - it is impracticable (this does not mean not practical or convenient; it means practically impossible<sup>22</sup>) to obtain an official birth certificate or extract, and the reasons why, and
  - to the best of the declarant's knowledge and belief and as accurately as the declarant has been able to ascertain, when and where the party was born, or
- a passport issued by the Australian government or a government of an overseas country showing the date and place of birth of the party.<sup>23</sup>

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<sup>19</sup> Paragraph 42(1)(b) of the Marriage Act.

<sup>20</sup> Subparagraph 42(1)(b)(i) of the Marriage Act.

<sup>21</sup> Subparagraph 42(1)(b)(ii) of the Marriage Act.

<sup>22</sup> Oxford English Dictionary.

<sup>23</sup> Subparagraphs 42(1)(b)(iii)&(iv) of the Marriage Act.

A party's date and place of birth should be recorded exactly as it appears on the document produced as evidence.

If the document a party provides as evidence of their date and place of birth is written in another language or alphabet, the couple should seek a translation of the document by an accredited translator. The [National Accreditation Authority for Translators and Interpreters](#) website – has a list of translators.

Parties should be encouraged to produce their evidence of date and place of birth with the NOIM, but it may be produced at any time before the marriage is solemnised. For the purposes of complying with the timeframes required for giving the NOIM it is sufficient for a celebrant to see copies of documents, such as those scanned and sent via email or facsimile, as long as the originals are provided and sighted by the celebrant before the marriage is solemnised. It is an offence for a celebrant to solemnise a marriage before this evidence of date and place of birth has been produced by each of the parties to the proposed marriage.<sup>24</sup>

When a celebrant has seen a party's evidence of date and place of birth and found it satisfactory, the celebrant should strike out the appropriate words on the NOIM depending on what evidence has been produced.

The birth certificate or extract or passport should be returned to the party producing it, but any statutory declaration should be retained and forwarded to the appropriate registering authority with the official marriage certificate (see [Part 7](#) of these guidelines).

#### *4.10.1 An official certificate of birth or an official extract*

A party may provide an official birth certificate or extract as evidence of their date and place of birth.

While a party may provide their birth certificate extract as evidence of their date and place of birth, it is preferable that they provide their official birth certificate as these contain much more information than the extract. Some BDMs discourage the use of extracts as their accuracy can be unreliable, particularly if the extract is old.

A party may also provide an official extract of an entry in an official register showing the date and place of birth of the party, for example an adoption certificate. Celebrants should ensure that the document is an extract from an official government register and shows the party's date and place of birth.

If an Australian born party does not have their birth certificate or extract, or an official extract of an entry in an official register, a celebrant should advise them to obtain a birth certificate from the BDM in the state or territory where they were born.

A party who does not have a passport and is able to obtain their original birth certificate or extract is expected to do so. The fact that it will cost a party money to obtain their original birth certificate or

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<sup>24</sup> Subsection 99(1) of the Marriage Act.

extract, or they have left it until just before the marriage ceremony to obtain it, does not make it 'impracticable' (practically impossible) to obtain and is not an acceptable basis to rely on a statutory declaration.

To satisfy the requirement for evidence of date and place of birth, the document must be an original document. This would include whether or not the document is laminated.

#### *4.10.2 If a birth certificate does not have a registration number*

Where a birth certificate does not have a registration number (as is the case with some overseas birth certificates), the celebrant may record other identifying numbers on the NOIM, such as an identity number or document number. In this situation, the celebrant should amend the NOIM and send a covering note to the BDM explaining that the birth certificate does not have a registration number, and a document or identity number has been recorded instead.

#### *4.10.3 A passport issued by the Australian Government or the government of an overseas country*

A celebrant may also use a passport issued by the Australian government or the government of an overseas country as evidence of a person's date and place of birth.

The Marriage Act allows a party to use an Australian passport as evidence of their date and place of birth. It does not matter whether a party is born in Australia or overseas, this option is open to anyone who has an Australian passport. In order to obtain an Australian passport a party will have already proved their date and place of birth to a satisfactory standard to the Australian Passports Office.

An expired passport is acceptable as evidence of date and place of birth. However, a cancelled passport is not acceptable. This is because a cancelled passport is a passport that has been reported as lost or stolen and is permanently cancelled by border control authorities in Australia or abroad.

If an overseas passport does not show the place of birth of the party, then it cannot be used as evidence of the party's place of birth and celebrants should request the party to produce either a birth certificate or statutory declaration as appropriate.

#### *4.10.4 A statutory declaration*

If a party does not have a birth certificate (for example, if a party was born in a refugee camp and did not receive a birth certificate) or passport, the party, or a parent of the party, may make and give to the celebrant a statutory declaration setting out the reasons why it is 'impracticable' (practically impossible) to obtain such a certificate or extract. The declaration must also state, to the best of the declarant's knowledge and belief, and as accurately as the declarant has been able to ascertain, when and where the party was born (see [Part 11.5](#) of these guidelines for further information on statutory declarations).

Other than in exceptional circumstances, a celebrant should not accept a statutory declaration from a person born in Australia, as it is almost always possible to obtain a birth certificate or extract from the state or territory of birth. However, in the rare situation that a party born in Australia does not have a birth certificate or extract (or a passport) and it is impracticable (practically impossible) to obtain one, they may provide a statutory declaration instead. For example, a party who was born in a remote community whose birth was never registered with authorities may not be able to obtain an official birth certificate. It is appropriate to allow such a person to make a statutory declaration as proof of their date and place of birth.

People should be advised that the penalty for making a false declaration is four years imprisonment. Additionally, a celebrant who has reason to believe that a statutory declaration contains a false statement, and solemnises the marriage anyway, may be committing an offence.<sup>25</sup>

#### **4.11 ESTABLISHING THE CONJUGAL STATUS OF THE PARTIES TO THE MARRIAGE – ITEMS 7 AND 19 OF THE NOIM**

It is the responsibility of each party to a marriage to satisfy the celebrant that they are free to marry. If a celebrant is not satisfied that this is the case, they should advise the party to seek legal advice as to the validity of the end of any previous marriage, and refuse to solemnise the marriage.

Item 7 of the NOIM requires each party to state their conjugal status. The options that may be listed in item 7 of the NOIM to describe the conjugal status of the parties are:

- widowed
- divorced, or
- never validly married.

Parties to a marriage should record the conjugal status that reflects their status on the day they give the NOIM to an authorised celebrant.

In circumstances in which a party has never been married, or has had their marriage declared invalid or void by a court (by a decree of nullity, or an annulment), their conjugal status is 'never validly married'. Some countries (such as the Philippines) do not recognise divorce and the order ending the marriage is an annulment. In such a case the person's conjugal status is 'never validly married'. The terms 'bachelor' and 'spinster' are not to be used. For further information regarding annulments see the [Part 4.11.6](#).

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<sup>25</sup> *Statutory Declarations Act 1959*.

If a party has previously been married, Item 19 of the NOIM requires the party to state how their last marriage was terminated. The options that may be listed in item 19 of the NOIM are:

- death
- divorce, or
- nullity.

If a party has indicated on the NOIM that they were previously married (item 7), and this marriage was terminated through death, divorce or nullity (item 19), they must produce evidence of the termination of their previous marriage to the celebrant. This evidence must be produced to the celebrant prior to the marriage being solemnised.

The department's fact sheet, [Changes to marriage forms and certificates](#), also provides information about Items 7 and 19 of the NOIM – see the [Celebrant resources page](#).

#### *4.11.1 Evidence of death of former spouse*

In the case of a party whose last marriage ended with the death of their spouse, couples must be advised the marriage cannot take place until evidence of the death has been provided. It is up to each celebrant to determine whether they are satisfied with the evidence provided to them, and that they are satisfied that the party's former spouse is deceased and the party is eligible to marry.

We recommend that the celebrant explain to the party that they, as a celebrant, need to be satisfied that the client's former spouse is, or can legally be presumed, deceased before they can solemnise the marriage, as they may otherwise be committing an offence. The celebrant should encourage the party to take all practical steps to provide the death certificate.

If their spouse died in Australia, the party should be able to obtain the death certificate from the BDM in the state or territory where their spouse died. The celebrant should encourage the party to take all practical steps to provide the death certificate.

Where the death certificate cannot be provided, the celebrant could ask the party to look into whether a court could issue an order or declaration, on whether the party's former spouse can be legally presumed dead. This would be the preferred option. Alternatively, the celebrant could request that the party obtain legal advice that the evidence available would support a conclusion that the spouse had died.

In some cases, a detailed statutory declaration from the person in relation to their marital status may satisfy the celebrant that the former spouse is deceased. While it is open to a celebrant to accept a statutory declaration, this type of evidence may not provide the same level of certainty as the options outlined above.

If a statutory declaration is provided, it should explain why the person believes that their former spouse is deceased. This would include information concerning:

- why there is no documentary evidence, or why the party cannot obtain that evidence
- all of the enquiries the party has made to ascertain confirmation about their former spouse's death, and
- the length of time since they last had contact and why they would expect if the spouse were alive they would have heard from them.

It should also attach any publicly available information about the presumed circumstances of death, for example if it is believed the person died as a consequence of conflict, information about that conflict. Independent, corroborative evidence from third parties, such as a person who may have knowledge of the death or who, like the spouse, would have expected to hear from them if they were alive, may also be useful.

#### *4.11.2 Evidence of divorce*

A party whose previous marriage ended in divorce must produce evidence of this divorce to the celebrant. This evidence should take the form of the actual certificate of divorce, decree absolute or overseas issued equivalent. These options are explained below.

Couples must be clearly advised that the marriage cannot take place until the evidence of this divorce has been sighted.

If a party has been married several times before, only the divorce order for the most recent marriage needs to be sighted by the celebrant.

A divorce granted by a church is not the same as a divorce order made by a court, and does not demonstrate that a person is free to marry. A party claiming that a previous marriage has been annulled must provide the celebrant with a court document to that effect.

#### *4.11.3 Receiving the NOIM if a divorce is pending*

A NOIM can be received by a celebrant even though a party is, or both parties are, still married to another person at the date of receipt of the NOIM. In such cases it is sufficient that the married party or parties note when filling in the NOIM that they are still married, that a divorce order is being sought/or pending and the date upon which the divorce is expected to be finalised. However, the marriage cannot be solemnised unless evidence of the divorce is given to the celebrant prior to the solemnisation of the marriage.

#### *4.11.4 Evidence of divorces granted in Australia*

For divorces granted in Australia the required evidence of divorce will depend on when the divorce was granted. As explained in the table below, it will be either a 'decree absolute', 'certificate of divorce' or 'divorce order'.



When divorce granted	Required evidence of divorce
5 January 1975 to 1 July 2002	<b>‘decree absolute’</b> A ‘decree nisi’ is not sufficient.
1 July 2002 to 3 August 2005	<b>‘certificate of divorce’</b> The certificate will include wording of decree nisi/absolute but the document is called a certificate of divorce.
3 August 2005 to 13 February 2010	<b>‘certificate of divorce’</b> Wording on the certificate will refer to a ‘divorce order’.
13 February 2010 to 17 December 2011	<b>‘divorce order’</b> Issued electronically with no colour seals or signatures.
From 17 December 2011	<b>current ‘divorce order’</b> Issued electronically with colour seal and signature. A celebrant may accept a divorce order where seal and signature are not in colour. Wording includes the Court’s jurisdictional finding that one or both parties domiciled in or a citizen of or ordinarily resident in Australia.

[Appendix A](#) shows samples of divorce orders issued when:

- there is a child or children of the marriage, or
- there is a child or children of the marriage and the Registrar, while not being satisfied as to the arrangements for the care of the children, nevertheless has granted the divorce, or
- there is no child of the marriage.

Since February 2010, the family law courts have produced divorce orders in an electronic format including an electronic seal and signature. These orders include a certification pursuant to section 56 of the Family Law Act of the fact that the divorce order took effect on the date indicated. A celebrant is entitled to rely on these orders as evidence of a person’s Australian divorce.

If a person has lost their certificate of divorce or divorce order granted in Australia they should request a new one from the court that issued it.

#### *4.11.5 Evidence of divorces granted overseas*

If a person was divorced overseas they should provide the celebrant with divorce documentation from the country in which the divorce was granted.

The department is unable to verify the validity of foreign divorce documents or divorce procedures.

A celebrant with concerns about overseas divorce documents should advise the party/parties to contact the relevant embassy or high commission to seek written confirmation that the documents provided are appropriate evidence of divorce in that country (noting that in some cases a person - most notably a refugee - may not be comfortable approaching the embassy or high commission of their country of origin to seek this confirmation). This confirmation should be provided to the celebrant. The [Department of Foreign Affairs and Trade's](#) website has contact details for foreign embassies and high commissions in Australia.

If the celebrant is still uncertain as to whether the evidence of divorce is sufficient, or the person is unable to get confirmation from their country of origin's embassy or high commission, the celebrant should recommend to the party that they seek legal advice in relation to the power of an Australian court, under section 104 of the Family Law Act, to make a declaration as to the validity of an overseas annulment or a divorce. In some circumstances such a declaration that an overseas divorce is valid may be the only satisfactory evidence that a prior marriage has been dissolved.

Difficulties can arise if a person was divorced overseas and the records kept by the country in which the divorce was granted have since been destroyed, or a party in Australia finds it impracticable (practically impossible) to obtain records from overseas.

It is important for celebrants to be aware that it is the responsibility of the party to the proposed marriage to satisfy the celebrant that they are free to marry. A celebrant should ask the couple to provide legal advice supporting the validity of any overseas divorce if the celebrant is uncertain that the marriage has been dissolved. Celebrants should not solemnise a marriage if they are uncertain whether a prior marriage has been dissolved.

For example, person who came to Australia as a refugee may be unable to obtain evidence of the end of a previous marriage from the country in which they were previously married. The appropriate documentation needed in such instances will vary according to the particular situation.

In some cases, a detailed statutory declaration from the person in relation to their marital status may satisfy the celebrant that they are divorced. While it is open to a celebrant to accept a statutory declaration, this type of evidence may not provide the same level of certainty as the options outlined above in [4.11.1](#).

If a statutory declaration is provided, it should explain why the person believes they are divorced. This would include information concerning:

- why there is no documentary evidence, or why the party cannot obtain that evidence, and
- all of the enquiries the party has made to obtain evidence of their divorce.

They should also attach any independent corroborative evidence from third parties, such as a person who may have knowledge of the divorce.

Under the Family Law Act, a party to an overseas marriage can apply to the court for a divorce in certain circumstances (for example after a period of residency). It is recommended that the party seek legal advice about this potential option.

#### **4.11.6            Annulment**

The term ‘never validly married’ may be used on item 7 of the NOIM in which a court issued decree of nullity, or an annulment, exists in relation to a party’s previous marriage. A decree of nullity is an order from the court stating that there is no legal marriage between the parties, even though a marriage ceremony may have taken place.

An annulment granted by a church is not the same as a court issued annulment, and does not demonstrate that a person is free to marry.

*When should a celebrant ask more questions of a party who has been previously married?*

A celebrant should ask more questions of a party or parties in the following circumstances:

- if there is no documentary evidence to support a claim that the person is divorced from their former spouse or that their former spouse is dead, or
- if documents purporting to prove that a party is divorced or the former spouse is dead, are illegible or are not written in English.

### **4.12            ESTABLISHING IDENTITIES OF THE PARTIES TO THE MARRIAGE**

A celebrant shall not solemnise a marriage unless satisfied that the parties are the parties referred to in the NOIM.<sup>26</sup> This requirement is separate from, and additional to, the requirement that each party to a marriage must give their celebrant evidence of their date and place of birth before a marriage is solemnised.

The Marriage Act does not prescribe the documents required to be sighted as evidence of identity. There may be some overlap between the documents that can be provided as evidence of date and place of birth and those that may be provided as proof of identity. Ultimately it is up to each celebrant to determine whether they are satisfied as to the identity of the people seeking to get married.

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<sup>26</sup> Section 75 of the Marriage Act.

Best practice is for a celebrant to require each party to a marriage to provide at least one of the following documents with photo identification as evidence of their identity:

- a driver licence
- a proof of age/photo card
- an Australian or overseas passport, or
- a Certificate of Australian Citizenship along with another form of photographic evidence (such as a student card or other photo identification not listed above).

Each decision on accepting evidence to determine identity should be made on a case by case basis. If a celebrant is not satisfied of a person's identity because of the age or validity of documents presented to them, they should request that the couple provide alternate evidence.

An expired Australian passport (issued on or after 1 July 2000 with more than two years validity; that has not been expired for over ten years, or reported lost/stolen) can be used to determine the identity of a person.

An expired passport that belonged to a child may not be useful to determine the identity of an adult (even if it has been expired for less than ten years).

If a person is not able to obtain any official photo identification as evidence of their identity, celebrants may consider whether other evidence, such as a document which provides sufficient information to identify the person, such as their name, address and possibly date of birth. Government issued documents are recommended, for example, a letter from the Australian Tax Office, Centrelink or Medicare card and a rates notice.

For the purposes of completing the NOIM, if a driver licence is sighted as evidence of identity, in addition to recording the driver licence number, celebrants may choose to also record the state or territory in which the driver licence was issued. Similarly, if a passport is sighted, in addition to recording the passport number on the NOIM, the country of issue could also be recorded.

#### **4.13 MARRIAGE EQUALITY**

On 9 December 2017, the Marriage Act was amended to redefine marriage as the 'union of 2 people to the exclusion of all others, voluntarily entered into for life'.<sup>27</sup>

From that date, the Marriage Act recognises existing and future marriages solemnised overseas under the law of a foreign country. Marriages solemnised in Australia by a diplomatic or consular officer under the law of a foreign country before 9 December 2017 are also recognised.

The amendments to the Marriage Act also created a new sub-category of Commonwealth-registered marriage celebrant, religious marriage celebrants.<sup>28</sup> A religious marriage celebrant may refuse to

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<sup>27</sup> Subsection 5(1) of the Marriage Act.

solemnise a marriage on the basis 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.

The purpose of the new subcategory of religious marriage celebrants is to:

- assist couples to identify those celebrants who solemnise marriages in accordance with their religious beliefs—religious marriage celebrants are identified on the register of marriage celebrants, and must clearly identify themselves as a 'religious marriage celebrant' in any advertising for their services, and
- provide clarity for the application of anti-discrimination law—religious marriage celebrants are not required to solemnise marriages that do not accord with their religious beliefs (section 47A of the Marriage Act).

Marriage celebrants (unless they are a minister of religion) who are registered on or after 9 December 2017 are not able to identify as a religious marriage celebrant.

The requirements for a legally valid marriage otherwise remain the same under the Marriage Act.

#### *4.13.1 Sex and gender*

When completing forms and saying vows, parties may choose to use the term that best describes their gender. Any person may choose the gender-neutral descriptors 'partner' or 'spouse'.

Marriage celebrants should accept a party's statement about their sex and gender.

The Australian Government recognises that a person's sex and gender may not be the same. Individuals may identify and be recognised as a gender other than the sex they were assigned at birth or during infancy, or as a gender which is not exclusively male or female.

#### *Gender and the Notice of Intended Marriage*

Item 1 of the Notice of Intended Marriage requires a party to indicate how they want to be described. This question has been included to allow state and territory registries of births, deaths and marriages to register marriages and issue certificates that reflect how couples want to describe themselves.

There are three options for a party's description: 'groom', 'bride' or 'partner'. It is up to each party to decide which option they want to use to describe themselves in the marriage forms.

Item 4 asks a person to identify their sex as either Male, Female or X (X refers to indeterminate/intersex/unspecified). This question has been included for the Australian Bureau of Statistics to continue to prepare and publish national marriage statistics based on sex. A party's recorded sex does not need to align with their gender identity.

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<sup>28</sup> Subdivision D in Division 1 in Part IV of the Marriage Act.

#### 4.13.2 Advertising

Both religious marriage celebrants and marriage celebrants must accurately describe their designation in any document relating to the services they provide, including online and paper advertisements and information. This includes (but is not limited to) advertisements, web sites and business cards.<sup>29</sup> A failure to comply with a section 39G obligation is one of the grounds for the Registrar to impose a disciplinary measure.

This will ensure that couples seeking the services of a celebrant are able to make informed decisions about whether to engage the services of a celebrant in the knowledge that a religious marriage celebrant may refuse to solemnise their marriage for religious reasons. See 'Guidelines on advertising for Commonwealth-registered marriage celebrants' on the department's [website](#). The advertising guidelines provide guidance to marriage celebrants on how to market celebrancy services in a manner that is consistent with celebrants' obligations under the Marriage Act and the [Code of Practice](#).

#### *Keeping 'A' numbers secure*

Commonwealth-registered marriage celebrants' 'A numbers' are unique to each celebrant and are important for the completion of marriage documents. This number should be kept secure and should not be disclosed to others or used in advertising.

*Example:* A party to a marriage who is not an Australian citizen or permanent resident asks an authorised celebrant to write a letter or to give a copy of the Notice of Intended Marriage in support of their visa application. The party also asks the celebrant for their A number so they may provide it to their migration agent. The authorised celebrant could write a letter, to whom it may concern, that sets out they are an authorised celebrant, but not disclose their A number, and confirm they have received a NOIM on a certain date for the proposed marriage or that they solemnised the marriage at a certain place and date.

### **4.14 DECLARATION OF NO LEGAL IMPEDIMENT**

Each party to an intended marriage must make a declaration before the celebrant as to their conjugal status and belief that there is no legal impediment to the marriage.<sup>30</sup>

The declaration must be in accordance with the approved form, which is available on the department's website, or in hardcopy from [CanPrint Communications](#). Both parties to the marriage must sign the declaration which must be on the reverse side of the official certificate of marriage (ie printed on the back of the registration certificate of marriage).

The declarations must be made before the marriage is solemnised. This should occur as close as possible to the ceremony, even if this requires the parties to make a special attendance on the celebrant. This is because the circumstances of a party may change in between providing their NOIM

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<sup>29</sup> Section 39G(1)(d) of the Marriage Act.

<sup>30</sup> Paragraph 42(1)(c) of the Marriage Act.

and the marriage taking place. For example, celebrants can be approached by couples where one party is still in the process of obtaining a divorce. While such a party can provide a NOIM to a celebrant, they cannot sign the Declaration until they are free to marry—that is, until their divorce has been finalised. Meeting with the couple a few days before the ceremony to go through final arrangements may be a good time to have them sign the declaration. The Marriage Act does not permit the declarations to be made immediately after the ceremony but they can be made on the same day as the wedding provided it is before the ceremony.

It is an offence for a celebrant to solemnise a marriage unless both parties have made their declarations of no legal impediment.<sup>31</sup> It is also an offence for a party to knowingly give a false declaration.<sup>32</sup>

The conjugal status a party gives in the declaration should be the same as that given in item five of the NOIM unless the party was waiting for their dissolution of marriage to be finalised at the time of signing the NOIM. In that case the conjugal status on the NOIM will be ‘married’ with some reference to the steps that have been or are being taken to dissolve that marriage, and the conjugal status given in the declaration will be ‘divorced’.

Paragraph 3 of the declaration deals with establishing that the party is of marriageable age and the party should be careful to cross out whichever statement is inapplicable. The celebrant should initial the deletion in the margin.

Where a party is a minor, their date of birth must be given. The celebrant should at this stage, if this has not already been done, check that a section 12 order has been obtained from a court and, if given, check that the consent or consents required under sections 13 or 14 of the Marriage Act are adequate and in order (see [Part 8.8](#) of these guidelines for further information on marriage involving a minor).

If a celebrant has reason to believe that there is a legal impediment to a marriage, or that a marriage would be void, the celebrant should not solemnise or purport to solemnise the marriage. To do so may be an offence.<sup>33</sup> This is the case even if the marrying couple has signed their declaration but the celebrant has reason to believe that declaration may be false.

#### **4.15 MARRIAGE EDUCATION AND COUNSELLING**

As soon as practicable after receiving the NOIM, a celebrant must give the parties a document outlining the obligations and consequences of marriage.<sup>34</sup> This document has been approved by the Attorney-General in the form of a brochure entitled *Happily Ever Before and After*, and indicates the availability of marriage education and counselling and other important legal matters concerning

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<sup>31</sup> Section 100 of the Marriage Act. The penalty for this offence is five penalty units or imprisonment for 6 months.

<sup>32</sup> Section 104 of the Marriage Act and section 137.1 of the *Criminal Code Act 1995* (Cth).

<sup>33</sup> Section 100 of the Marriage Act.

<sup>34</sup> Subsection 42(5A) of the Marriage Act.

marriage. One copy of the brochure must be given to each party. The brochure is also available on the department's website in translated versions.

A notation of the giving of the document should be made by the celebrant in the appropriate space on the reverse side of the NOIM. If the space is left blank it will indicate that the celebrant has not fulfilled their obligations. The document may be provided to the parties electronically or hard copy. Authorised celebrants may wish to first check with the couple what would suit them.

The [Code of Practice](#) requires Commonwealth-registered marriage celebrants to maintain up-to-date knowledge about appropriate family relationship services, and information and services available to enhance and sustain couples throughout their relationship. Marriage celebrants need to provide this information to the marrying couple at this point, and if necessary, provide referrals to relevant services to couples who seek them (see [Part 13.2.2](#) of these guidelines).

#### **4.16 OBTAINING A TRANSLATOR OR INTERPRETER**

The need to obtain a translator or interpreter will arise in a number of contexts in preparing to solemnise a marriage. The National Accreditation Authority for Translators and Interpreters Ltd (NAATI) is the national standards and accreditation body for translators and interpreters in Australia. The NAATI website provides a searchable online directory of translators and interpreters. If the services of a translator or interpreter are required, the department recommends that they are found through the [NAATI website](#) and that the translator or interpreter is accredited at Level 3 or higher.

The Marriage Regulations do not require translations to be provided by an accredited translator, except where a person consenting to a minor's marriage gives a consent that is not in English.<sup>35</sup> However, it is important to understand that not all bilingual or multilingual celebrants will be able to authoritatively translate documents.

Marriage documents form part of a chain of documents a person will use over the course of their life to establish their identity and obtain identity documents. Obtaining an accredited translation will provide an audit trail of amendments to a person's record, preserving a party's name in full (especially where documents contain non-alphabetic characters). Additionally, subsection 50(4) of the Marriage Act requires the celebrant to forward the official certificate of marriage and the NOIM (together with supporting documents) to the BDM in the state or territory in which the marriage was solemnised. These supporting documents may include official translations of documents, depending on the BDM in the state or territory in which the marriage was solemnised.

When a party to a marriage produces a document in a language other than English, the celebrant (even if they can read and write in that language) should ask the couple to seek an official NAATI certified translation of the document.

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<sup>35</sup> Section 11 of the Marriage Regulations.



#### **4.17 ELECTRONIC SIGNATURES ON MARRIAGE DOCUMENTS**

Available technology enables documentation to be completed electronically, including using electronic signatures. The *Electronic Transactions Act 1999* applies to the Marriage Act. As such, it is acceptable for couples, celebrants and witnesses to complete marriage documentation electronically, for example, using an iPad, provided that the recipient of the electronic document/s, such as the registry of births, deaths and marriages, consents to receiving the documents electronically.

This does not include the Form 15 certificate of marriage, which must be in hardcopy because the Marriage Act requires that it is handed to the couple by the celebrant.

#### **4.18 ACCURACY OF FORMS BEFORE THE MARRIAGE IS SOLEMNISED**

Celebrants should check all of the marriage documents for accuracy, including accuracy of spelling and transcription. It is also advisable to have the couple check the draft documents for accuracy prior to the marriage. Celebrants will need to take a great deal of care in performing this task, and it is recommended that the documents are checked and re-checked carefully at this point. Marrying couples will be required to pay a fee to BDMs if errors need to be corrected later. Although there is no legislative requirement to do so, celebrants may wish to complete the marriage documents in block letters to ensure legibility.

#### **4.19 CASE STUDIES IN THE CORRECT USE OF DOCUMENTS**

##### **CASE STUDY ONE – JANE**

A celebrant is approached by a prospective bride who uses the name Jane Brown. She was born Jane Smith and was previously married to Tim Brown. She changed her name by usage to Jane Brown following that marriage. She was divorced from Tim Brown and has the following documents:

- a birth certificate (issued by NSW BDM) which records her name as Jane Smith
- a BDM issued marriage certificate which also records her name as Jane Smith
- a Federal Magistrates Court issued Certificate of Divorce for her marriage to, and subsequent divorce from, Tim Brown which records her name as Jane Brown
- a driver licence which records her name as Jane Brown.

For the purposes of section 42 of the Marriage Act, a celebrant needs to see all of these documents to establish Jane's correct name for use on the marriage documents and to fulfill all the other responsibilities under section 42 as follows:

- Proof of date and place of birth (subparagraph 42(1)(b)) – the celebrant must use the BDM issued birth certificate. Proof of identity (subsection 42(8)) – the celebrant needs to use the full chain of documents listed above.

- The BDM issued birth certificate, the BDM issued marriage certificate and the Court issued divorce certificate taken together establish the clear link in the name change from Jane Smith to Jane Brown.
- This chain of documents allows the celebrant to record the name Jane Brown instead of Jane Smith (as recorded on the birth certificate) on the NOIM. The driver licence, which has a photograph of Jane, establishes that Jane Brown is the same person as the person referred to in the documents.

Together all these documents establish her identity. Evidence of the end of the previous marriage (subsection 42(10)) – the Court issued divorce certificate establishes conclusively the end of the previous marriage and so fulfils the requirement under subsection 42(10).

Jane has provided a sufficient chain of documents to establish her identity and link to her name.

Remember – the celebrant must see all the documents prior to the marriage ceremony.

## CASE STUDY TWO – JOHN

A celebrant is approached by a prospective groom who informs the celebrant that his name is 'John Antony'. He provides to the celebrant the following documents:

- a driver licence in the name 'John Antony' containing a signature in that name. The photograph shows the same man as the one who provided the licence to the celebrant
- a Medicare card in the name 'John Antony'
- a credit card in the name 'John Antony' containing a signature in that name
- a document that the prospective groom tells the celebrant is a birth certificate but which is not in English. When the celebrant asks about the document the prospective groom explains that he was born in Russia and his parents migrated to Australia when he was a young boy. The birth certificate was issued in Russia and is in Cyrillic script. He never had a passport issued by Russia as he travelled on his parents' passports and he has never left Australia so has had no need to obtain an Australian passport
- a Certificate of Australian Citizenship in the name 'Dimitry Alexandrovich Antonov'.

The celebrant advises 'John Antony' that he will need to bring back a translation of his Russian birth certificate by a translator accredited by the NAATI.

When the prospective groom returns with the translation, the certificate gives the name as 'Dimitry Alexandrovich Antonov'. The prospective groom explains that while he used that name at school, he anglicised his name when he left school as it was easier. He has never officially changed his name.

The celebrant advises the prospective groom that the translated birth certificate satisfies the requirement under paragraph 42(1)(b) concerning evidence of date and place of birth. The celebrant can copy the date and place of birth from the translated certificate on to the NOIM.

The celebrant also advises that the name that will have to be used on the NOIM would be 'Dimitry Alexandrovich Antonov'. The prospective groom is not happy about that and wants the name 'John Antony' to be used as that is how everyone now knows him.

The celebrant needs to advise the prospective groom that the name 'John Antony' cannot be used as there is an inconsistency between the name on the birth certificate and the name attached to the photo of the same man on the drivers licence. The Medicare card, credit card and the Certificate of Australian Citizenship are not relevant to the matter as they do not have a photo.

The celebrant should advise the prospective groom that he has the following options:

- continue to use the name 'Dimitry Alexandrovich Antonov' on all the marriage documents, or
- apply to the BDM for a change of name to 'John Antony'. If he were to do that and bring the BDM issued change of name certificate to the celebrant, the NOIM could be corrected and the name on the change of name certificate - 'John Antony' – could be used on all the marriage documents.

## **PART 5 MARRIAGE CEREMONY**

### **5.1 TIME AND PLACE**

A marriage occurring in Australia may be solemnised on any day, at any time, and at any place.<sup>36</sup> The marriage must be registered in the state or territory where the marriage was solemnised. To meet this requirement, and possible requirements of other countries for recognition of the marriage, marriages in aircraft and ships at sea should be avoided.

### **5.2 MARRIAGES TO BE SOLEMNISED BY AN AUTHORISED CELEBRANT**

Section 41 of the Marriage Act provides that a marriage shall be solemnised ‘by or in the presence of an authorised celebrant who is authorised to solemnise marriages at the place where the marriage takes place’. Authorised celebrants, other than chaplains of the ADF and ADF marriage officers, may solemnise marriages anywhere in Australia.

Sometimes the parties to a marriage may request the involvement of people other than the celebrant in the marriage ceremony. This is a decision for couples and their families, in consultation with the celebrant.

Participation in the conduct of a marriage ceremony by someone other than a celebrant could include doing a special reading, reciting a prayer or a musical interlude or the participation of a visiting minister of religion. This sort of involvement is unlikely to raise any legal issues.

In many instances the person who is not a celebrant wishes to perform the central role in the ceremony or nearly all of the duties of the celebrant at the request of the marrying couple. There are key points to remember if approached to be involved in these kinds of arrangements:

- There is absolutely no obligation on the part of any authorised celebrant to participate in any arrangement for the conduct of a particular marriage with a person who is not authorised to solemnise marriages.
- An authorised celebrant who consents to any such arrangement and to be present in the capacity of the authorised celebrant is legally deemed to have solemnised the marriage and will be the person legally responsible for all aspects of it. The legal responsibilities of the authorised celebrant in such ceremonies are the same as they would be for any other marriage ceremony.
- The authorised celebrant’s obligations remain the same when others take part in the ceremony. The authorised celebrant is legally responsible for the validity of the marriage.
- The authorised celebrant must keep the record of the use of the Form 15 certificate and also the Marriage Register or second marriage certificate for six years (see [Part 6.5](#) of these guidelines).

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<sup>36</sup> Section 43 of the Marriage Act.

- Authorised celebrants who are Commonwealth-registered marriage celebrants must comply with the [Code of Practice](#) (see [Part 13.2.2](#) of these guidelines). Commonwealth-registered marriage celebrants may be subject to a complaint for failing to comply with the Code of Practice.

### *5.2.1 Availability of celebrant*

Although in most cases a marriage will be solemnised by the celebrant to whom the NOIM was originally given, the marriage may be solemnised by any marriage celebrant who has possession of the NOIM in circumstances in which the original proposed celebrant has died, is absent from the place of the intended marriage, is ill, or it is impracticable (practically impossible) for that person to solemnise the marriage.<sup>37</sup>

It is the responsibility of the first celebrant to ensure that the notice is transferred, safely, by hand or registered post, to the second celebrant. The requirement for the transfer to be 'safe' reflects the desirability of ensuring that the NOIM is given to the correct celebrant, and that the marrying couple's personal information is not compromised. It is the responsibility of the couple to pay any fees charged by the first celebrant for services up to and including the cost of transferring the notice to the second celebrant.

A celebrant who performs a marriage in place of another celebrant to whom the NOIM was given originally, must comply personally with all the requirements of section 42 of the Marriage Act, save that a new NOIM need not be given by the parties. That is, the celebrant who solemnises the marriage is required under the Marriage Act to check the parties' evidence of date and place of birth and evidence of identity and evidence of dissolution of previous marriage (if applicable). The Declaration of No Legal Impediment must be remade before the replacement celebrant and this celebrant is also responsible for ensuring all other legal requirements are met. If there is not enough time to prepare and sign all the necessary legal paperwork, a commitment ceremony should be offered.

Where a celebrant who has solemnised a marriage dies without having signed the certificates of the marriage, the matter should be reported to the appropriate state or territory registering authority.

### *5.2.2 Transferring the NOIM in exceptional situations*

From time-to-time, celebrants may find themselves in situations where they are unable to solemnise a marriage and are required to transfer a NOIM in exceptional circumstances, such as a natural disaster event. Ensuring the safe transfer of the original NOIM may be challenging.

Consistent with the guidance provided at [Part 4.4.2](#) of these guidelines for providing the NOIM to an authorised celebrant when the parties to the marriage are overseas or interstate, it may be acceptable for the first celebrant to transfer a NOIM by electronic means (for example by email or a

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<sup>37</sup> Subsection 42(6) of the Marriage Act.

photograph attached to a text message) to the second celebrant, and provide the original hardcopy NOIM to the second celebrant before the wedding takes place.

It is up to celebrants to exercise their judgement and common-sense about whether, and how, the original NOIM can be obtained prior to the wedding. Every effort should be made to obtain the original document before the marriage is solemnised. Where the original NOIM cannot be obtained, the second celebrant could consider whether there is enough time to complete a new NOIM or a shortening of time could be sought.

Solemnising a marriage without the original NOIM should only be a last resort in the most extreme of circumstances. In these very exceptional circumstances, such as a natural disaster, it may be acceptable for the second celebrant to rely solely on an electronic NOIM and solemnise the marriage without receiving the original NOIM before the wedding. In such a situation, the second celebrant should:

- ensure the words of the electronic document are clearly legible
- print the electronic document and annotate/sign it
- ensure the relevant state and territory registry of births, deaths and marriages (BDM) has consented to the NOIM being transferred in this manner, and
- obtain the original document as soon as practicable after the exceptional circumstances cease, and provide it to the BDM, with a covering letter explaining the circumstances in which the NOIM was transferred (in this way the original can be compared to the annotated version). Depending on the circumstances, the original NOIM could be provided to the BDM at the same time as the other marriage documents, or later.

Celebrants should contact the BDM directly to explain the circumstances in such situations. BDMs are responsible for processing marriage documents including the NOIM and as such celebrants can enquire whether the BDM would accept a copy of the NOIM that has been electronically transferred to them (provided that all other obligations had been complied with).

### **5.3 INVOLVEMENT OF OTHERS IN MARRIAGES SOLEMNISED BY MINISTERS OF RELIGION**

When a marriage is being solemnised by a minister of religion who is an authorised celebrant, and the couple wants someone other than the minister of religion to also be involved in the ceremony, the minister of religion should ensure that they have the following minimum role:<sup>38</sup>

- consent to be present as the supervising celebrant and to be at the ceremony in that capacity
- be part of the ceremonial group or in close proximity to it
- make their presence as the celebrant known to the assembled parties, witnesses and guests
- be available to intervene (and exercise the responsibility to intervene) if events demonstrate the need for it during the ceremony
- be responsible for ensuring that the marriage ceremony is carried out according to law, including that the marriage is solemnised according to a form and ceremony recognised as sufficient for that purpose by the religious body or organisation of which the authorised celebrant is a minister<sup>39</sup> (see [Part 5.7](#) of these guidelines)
- if they are a Commonwealth-registered marriage celebrant say the words required by subsection 46(1) of the Marriage Act in the presence of the parties, the formal witnesses and the guests before the marriage is solemnised (see [Part 5.6](#) of these guidelines)
- receive and sign the papers required by the Marriage Act, including receiving the NOIM and sighting the supporting documents each party is required to produce (see [Parts 4.1](#) and [4.2](#) of these guidelines) and signing the marriage certificates (see [Part 6](#) of these guidelines), and
- register the marriage with the appropriate BDM as required under the Marriage Act (see [Part 7](#) of these guidelines).

### **5.4 INVOLVEMENT OF OTHERS IN MARRIAGES SOLEMNISED BY AUTHORISED CELEBRANTS WHO ARE NOT MINISTERS OF RELIGION**

When a marriage is being solemnised by an authorised celebrant who is not a minister of religion, and the couple wants someone else to be centrally involved in the ceremony, the authorised celebrant should ensure that they have the following minimum role:

- consent to be present at the ceremony as the responsible authorised celebrant

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<sup>38</sup> These requirements are drawn from the decision of the Full Court of the Family Court of Australia in the case of *W and T* [1998] 23 FamLR 175.

<sup>39</sup> Subsection 45(1) of the Marriage Act

- identify themselves to the assembled parties, witnesses and guests as the celebrant authorised to solemnise the marriage
- be responsible for ensuring that the marriage ceremony is carried out according to law
- say the words required by subsection 46(1) of the Marriage Act in the presence of the parties, the formal witnesses and the guests before the marriage is solemnised (see [Part 5.6](#) of these guidelines)
- be in close proximity to the ceremonial group or part of it, see and hear the vows required by subsection 45(2) and ensure that those vows comply with the requirements of the Marriage Act (see further [Part 5.7](#) of these guidelines)
- be available to intervene (and exercise the responsibility to intervene) if events demonstrate the need for it during the ceremony
- receive and sign the papers required by the Marriage Act, including receiving the NOIM, and sighting the supporting documents each party is required to produce and sign the marriage certificates (see [Part 6](#) of these guidelines), and
- register the marriage with the appropriate BDM as required under the Marriage Act (see [Part 7](#) of these guidelines).

## **5.5 CONTENT OF THE MARRIAGE CEREMONY – SECTIONS 45 AND 46 OF THE MARRIAGE ACT**

Celebrants perform an important and valuable function, one that carries significant legal responsibilities. Celebrants should ensure they are prepared to explain the minimum marriage ceremony requirements to couples to ensure ongoing compliance with those responsibilities.

Together, sections 45 and 46 of the Marriage Act are the two central obligations of celebrants in respect of the content of the marriage ceremony. These requirements are set out below.



## 5.6 EXPLAINING THE NATURE OF THE MARRIAGE RELATIONSHIP – ‘MONITUM’ – SUBSECTION 46(1) OF THE MARRIAGE ACT

Subsection 46(1) of the Marriage Act sets out certain words—sometimes referred to as the ‘monitum’—that must be used by Commonwealth-registered marriage celebrants and State and Territory Officers in solemnising a marriage. Subsection 46(1) provides:

### 46 Certain authorised celebrants to explain nature of marriage relationship

(1) Subject to subsection (2), before a marriage is solemnised by or in the presence of an authorised celebrant, not being a minister of religion of a recognised denomination, the authorised celebrant shall say to the parties, in the presence of the witnesses, the words:

“I am duly authorised by law to solemnise marriages according to law.

“Before you are joined in marriage in my presence and in the presence of these witnesses, I am to remind you of the solemn and binding nature of the relationship into which you are now about to enter.

“Marriage, according to law in Australia, is the union of 2 people to the exclusion of all others, voluntarily entered into for life.”;

or words to that effect.

### 5.6.1 Which celebrants are required to say the words in subsection 46(1) of the Marriage Act?

All Commonwealth-registered marriage celebrants solemnising civil or religious marriages are required to say these words. This includes Commonwealth-registered marriage celebrants who were authorised before 1997, as any exemption from saying the words in subsection 46(1) of the Marriage Act no longer applies. State and Territory Officers are also required to say these words.

Celebrants who are ministers of religion for a recognised denomination, and ADF chaplains and marriage officers are not required to say these words. Such ministers and ADF chaplains and marriage officers are not Commonwealth-registered marriage celebrants.

### *5.6.2 Why is using the wording in subsection 46(1) of the Marriage Act so important?*

Commonwealth-registered celebrants and State and Territory Officers have a legal obligation to say the words in subsection 46(1) of the Marriage Act. It is the statement of their authority to solemnise the marriage. It also explains marriage under Australian law. The safest course for Commonwealth-registered celebrants or state officers in solemnising marriages is to always use the wording in the Marriage Act. Doing so will leave no room for doubt that the celebrant has complied with their obligations under the Marriage Act, and will ensure that parties are aware of the legal implications of marriage.

### *5.6.3 Can someone else participating in the ceremony say the words?*

No. Only Commonwealth-registered celebrants or State and Territory Officers can say these words.

### *5.6.4 When and how should the words be used?*

The words in subsection 46(1) of the Marriage Act must be used as part of the marriage ceremony, before the couple exchanges their vows under section 45. The celebrant must say these words to the parties to the marriage, in the presence of the witnesses (see [Part 5.6](#) of these guidelines).

### *5.6.5 Can the wording in subsection 46(1) of the Marriage Act be changed or varied in any way?*

Subsection 46(1) of the Marriage Act includes the words ‘or words to that effect’. Provided a Commonwealth-registered marriage celebrant or State or Territory Officer does not dilute the words or substitute words that alter the meaning of the words in subsection 46(1), there is some capacity to change certain words.

Noting that the safest course of action is to always follow the wording in the Marriage Act, it is possible that couples may seek to change the words. The changes set out below will not dilute or vary the meaning of the words in subsection 46(1) of the Marriage Act and may be used.

#### **First sentence**

The first sentence reads: ‘I am duly authorised by law to solemnise marriages according to law’.

Variations that keep the legal meaning are:

- ‘I am legally registered to solemnise marriages according to the law.’
- ‘I am the registered marriage celebrant authorised to solemnise this marriage according to the law (or according to law).’

## Second sentence

The second sentence reads: 'Before you are joined in marriage in my presence and in the presence of these witnesses, I am to remind you of the solemn and binding nature of the relationship into which you are now about to enter.'

Variations that keep the legal meaning are:

- changing 'solemn' to 'serious' or 'formal'
- changing 'binding' to 'permanent'
- changing 'nature' to 'promise'
- changing 'now about to enter' into 'formalising' or 'sealing' or 'binding', or
- changing 'these witnesses' to 'everyone here' or 'everybody here'.

The words 'these witnesses' should not be changed to 'family and friends' because that may not include everyone present.

## Third sentence

The third sentence reads: 'Marriage, according to law in Australia, is the union of 2 people to the exclusion of all others, voluntarily entered into for life.'

Given that the third sentence is the legal definition of marriage in Australia the words cannot be changed. Commonwealth-registered marriage celebrants and State and Territory Officers must not make the following changes to the words in the third sentence because 'marriage' is specifically defined by law:

- do not replace 'people' and 'persons' with 'man' or 'woman'. The definition is appropriate to all marrying couples.
- do not change the first part of the sentence to read: "Marriage as most of us understand it is...", and
- do not change 'for life' to 'with the intention/hope/desire that it will last for life.'

### *5.6.6 Couples express their disagreement with the definition of marriage and request that it be changed*

The definition of marriage in the Marriage Act is the law in Australia. While everyone is entitled to their individual view about such matters, Commonwealth-registered celebrants and State and Territory Officers are authorised to solemnise marriages in accordance with the law.

These celebrants will need to explain carefully to the couple that, despite their view, they are not authorised to change the definition and have a legal obligation to state it during the ceremony. This means the celebrant is not able to agree to such a request.

### 5.6.7 *Can the sentences of subsection 46(1) be separated?*

It is possible to separate the first sentence from the second and third sentences and say them at a different part of the ceremony. However, the safest course of action is to keep them together. All three sentences are required to be said, before witnesses, in every marriage ceremony solemnised by a Commonwealth-registered celebrant or State and Territory Officer. All three sentences are required to be said before the vows are exchanged.

## 5.7 FORM OF CEREMONY – VOWS – SECTION 45 OF THE MARRIAGE ACT

Section 45 of the Marriage Act describes the form and ceremony to be used by celebrants solemnising a marriage. The words used are commonly known as ‘the vows’.

There are different requirements for the form of ceremony depending on whether or not the celebrant is a minister of religion.

### 5.7.1 *Subsection 45(1) – marriages solemnised by ministers of religion – religious ceremonies*

Ministers of religion may use any form and ceremony recognised as sufficient for the purpose by their religious organisation. This is because subsection 45(1) of the Marriage Act provides:

#### Section 45 Form of ceremony

(1) Where a marriage is solemnised by or in the presence of an authorised celebrant, being a minister of religion, it may be solemnised according to any form and ceremony recognised as sufficient for the purpose by the religious body or organisation of which he or she is a minister.

Subsection 45(1) applies to all authorised celebrants who are ministers of religion. This includes both Commonwealth-registered celebrants who solemnise religious marriages, and ministers of religion for recognised denominations.

Ministers of religion of recognised denominations and Commonwealth-registered celebrants solemnising religious marriages may use any form of ceremony recognised as sufficient for the purpose by the religious body or organisation of which they are a minister. This means that the content of the ceremony and its form must have the formal approval and recognition of the religious body or organisation (usually through its governing body).

Ministers of religion for a recognised denomination solemnise marriages using the ceremony or rites approved by their denomination. For further information refer to [Part 3.2](#) of these guidelines.

### 5.7.2 *What if the couple would like to change the form of a religious ceremony?*

All authorised celebrants who are ministers of religion solemnising religious marriages should seek formal approval for the change from their religious body or organisation. This will ensure that the religious body or organisation recognises the form and ceremony as sufficient, which is what subsection 45(1) of the Marriage Act requires.

### 5.7.3 *Subsection 45(2) – non-religious (or civil) ceremonies*

Subsection 45(2) of the Marriage Act sets out the minimum words (or vows) which must be used by the couple for a non-religious (civil) ceremony to be a marriage ceremony:

#### Section 45 Form of ceremony

...(2) Where a marriage is solemnised by or in the presence of an authorised celebrant, not being a minister of religion, it is sufficient if each of the parties says to the other, in the presence of the authorised celebrant and the witnesses, the words:

“I call upon the persons here present to witness that I, A.B. (or C.D.), take thee, C.D. (or A.B.), to be my lawful wedded wife (husband or spouse)”...

or words to that effect.

### 5.7.4 *Why is using the minimum vow wording so important?*

The minimum vows set out in the Marriage Act are important and not complying may give rise to concerns about the validity of a marriage. The safest course of action for celebrant solemnising a marriage is to avoid any such issues by complying with the guidance on the vows set out below.

While a couple is entitled to rely on the certificate issued by the relevant state or territory BDM as evidence that the marriage was registered and that it was solemnised in accordance with the vows in section 45, that does not mean that non-compliance with the requirements for vows may not become an issue for a couple in individual cases.

While the married couple may gain reassurance from the BDM marriage certificate, serious consequences may follow for a celebrant who has not followed the requirements.

#### *5.7.5 What are the words in subsection 45(2)?*

Subsection 45(2) requires that each party say to the other, in the presence of an authorised celebrant (who is not a minister of religion) and the witnesses, the words:

‘I call upon the persons here present to witness that I, A.B. (or C.D.), take thee, C.D. (or A.B.), to be my lawful wedded wife (husband or spouse)’; or words to that effect.

These words must be included in the ceremony. They are the minimum words which must be exchanged by the couple to ensure that they fully understand the nature of the ceremony and that they are marrying each other.

#### *5.7.6 Who must say the vows?*

Each of the parties to the marriage must say the vows to each other.

A ‘question and answer’ form of the vows is not contemplated by the Marriage Act for non-religious marriage ceremonies. It should not be used as a substitute for the couple stating the vows set out in the Act. For example, the celebrant should not say, ‘A.B., will you take C.D., to be your lawful wedded wife (husband or spouse)?’, with the response from the other party of ‘I do’. The inclusion of a ‘question and answer’ segment in the ceremony would need to be in addition to the formal vows required by the Act being spoken by each party.

#### *5.7.7 Can the couple personalise the vows?*

Couples may wish to personalise the minimum vows. However, it is important to be aware that legally there is limited capacity to change the vows. The safest course of action is to use the wording in the Marriage Act. Under subsection 45(2), marrying couples can make a personal choice about the terms to be used in their marriage vows that best reflect their relationship. The following wording substitutions and changes are acceptable given the inclusion of ‘words to that effect’ in subsection 45(2):

- ‘husband’, or ‘wife’ or ‘spouse’ may be changed to ‘partner in marriage’
- ‘call upon’ may be changed to ‘ask’
- ‘persons’ may be changed to ‘people’
- ‘thee’ may be changed to ‘you’
- ‘persons here present’ may be changed to ‘everyone here’ or ‘everybody here’ or ‘everyone present here’ or ‘everybody present here’, or
- the couple may leave out either ‘lawful’ or ‘wedded’, but not both.

The following changes to the minimum words are not acceptable:

- ‘family and friends’ cannot replace ‘persons here present’ or ‘everyone here’.

As an example, the vows could read: ‘I ask everyone here to witness that I, A.B., take you, C.D., to be my wedded wife (husband or spouse).’

Couples wishing to personalise their vows further are able to lengthen their vows by adding their chosen wording after saying the minimum words (so long as any material added does not contradict the minimum vows). In this sense, the minimum words are the starting point from which personalised vows can be constructed.

#### *5.7.8 What names should be used in the vows (meaning of the terms ‘A.B.’ and ‘C.D.’)?*

Commonwealth-registered celebrants (other than ministers of religion), and State and Territory Officers, should use the parties’ full names (usually given name/s and surname) at some stage during the ceremony, preferably early in the ceremony, for the purpose of legal identification of the parties. The full name of the parties will be the names recorded in the NOIM.<sup>40</sup>

Where full names (as they appear in the NOIM) have been used earlier in the ceremony, it is not necessary for surnames to be used in the minimum vows. This is because the identity of the parties to the marriage has already been established. Couples may choose to use their first, or first and middle, names only.

Nicknames alone should not be used for the vows. However, shortened names or nicknames may be added to the names used in the vows. For example ‘...I, Elizabeth Jane (Liz), take you, Peter John (Buddy)...’. Nicknames may be used elsewhere in the ceremony, on the condition that full legal names have been used earlier in the ceremony.

#### *5.7.9 The saying of vows in situations where a person is unable to speak*

Subsection 45(2) of the Marriage Act requires each party to say the vows to each other. If the party is able to say the vows then they should do so. However if they are not able to do so for exceptional medical reasons (for example, the party has had a stroke or has a tracheotomy, leaving them unable to speak), it is sufficient that they communicate the vows by another means that is understood by the other party to the marriage, the celebrant, the two witnesses and those present. The medical circumstances must be exceptional and long-lasting in nature.

If a party to a marriage communicates in a sign language, such as Auslan, they may say their vows using that sign language. For information on use of interpreters in this situation see [Part 5.9](#) of these guidelines.

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<sup>40</sup> For information about recording the names of the parties on the NOIM please see [Part 4.5.7](#) of these guidelines.

#### *5.7.10 What are the consequences if the requirements of section 45 are not satisfied?*

Section 48 of the Marriage Act states that in certain circumstances a marriage not solemnised in accordance with Part IV Division 2 of the Act will be invalid. Subsection 48(2) of the Act sets out a number of exceptions to section 48, but section 45 is not included in the list of exceptions. This means that if the celebrant is not a minister of religion, and the ceremony does not satisfy the minimum requirements of subsection 45(2), namely the exchange of vows as specified in the Marriage Act, the marriage may be void. Likewise, if the celebrant is a minister of religion the ceremony must be a form of ceremony recognised as sufficient by the religious body concerned or the marriage may be void. It is therefore very important that celebrants comply with the minimum requirements of section 45 in relation to the ceremony.

### **5.8 WITNESSES**

Under section 44 of the Marriage Act, a marriage may not be solemnised unless at least two persons are present at the ceremony who are, or appear to the person solemnising the marriage to be, over the age of 18 years. These are the people who will sign the marriage certificates in their capacity as the witnesses to the marriage. When completing the marriage certificates the witnesses to the marriage should record their names in full, including any middle names.

The object of requiring the attendance of witnesses is that their evidence will be available to establish the identity of the parties or to testify as to the circumstances in which the ceremony was performed. It is therefore best practice (but not a requirement of the Marriage Act) that the witnesses know the parties to the marriage. Arranging for the attendance of witnesses at the marriage ceremony is the responsibility of the parties to the marriage. The celebrant is not responsible for providing witnesses.

### **5.9 INTERPRETERS**

Section 112 of the Marriage Act provides that where a celebrant considers it desirable to do so, the celebrant may use the services of an interpreter in, or in connection with, a marriage ceremony. It is prudent for a celebrant to use the services of an interpreter when any one person among the celebrant, parties or witnesses do not understand the language in which the marriage ceremony will be conducted. This includes ceremonies conducted in a sign language, such as Auslan.

The interpreter must be a person other than a party to the marriage, and they must be able to meet the requirements set out in section 112 of the Marriage Act. It is the celebrant's responsibility to decide whether an interpreter is necessary.

Subsection 112(2) of the Marriage Act states that the celebrant must not solemnise a marriage at which the services of an interpreter are to be used unless the celebrant has received a statutory declaration by the interpreter stating that they understand, and are able to converse in, the language/s required.



#### *5.9.1 Witnesses to the marriage to also act as interpreter*

The roles of the two witnesses are to observe that the marriage is duly solemnised and to sign the marriage certificates. The Marriage Act does not prohibit an interpreter and a witness being one and the same person, however, it is recommended that the professionalism of the interpreter is not compromised by a celebrant agreeing that the interpreter is also a witness to the marriage. Ultimately it is the celebrant who must determine whether an interpreter is desirable in order to ensure the marriage is validly solemnised.

#### *5.9.2 Certificate of faithful performance*

Immediately after the ceremony the interpreter must give the celebrant a certificate of the faithful performance of their services as interpreter. The certificate must be in the approved form.<sup>41</sup> The approved form for the certificate of faithful performance by the interpreter is available on the [Attorney-General's Department's](#) website.

The celebrant must forward the statutory declaration and certificate of faithful performance by the interpreter to the appropriate registering authority with the registration copy of the marriage certificate.

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<sup>41</sup> See paragraph 119(3)(i) of the Marriage Act.

## PART 6 MARRIAGE CERTIFICATES

The following outlines the requirements for marriage certificates, including how to complete them, as well as record keeping obligations for celebrants.

### 6.1 HOW MANY MARRIAGE CERTIFICATES MUST A CELEBRANT PREPARE AND SIGN?

Three marriage certificates must be prepared for each marriage.

#### Marriage Certificates

Section 50 of the Marriage Act requires the celebrant to prepare and sign the following three marriage certificates for each marriage they solemnise:

1. the official certificate of marriage, which is sent to the relevant BDM for registration purposes (discussed further in [Part 6.2](#) of these guidelines)
2. the second official certificate of marriage kept by the celebrant or the church (discussed further in [Part 6.3](#) of these guidelines), and
3. the Form 15 certificate of marriage, which is given to the parties (discussed further in [Part 6.4](#) of these guidelines).

Each of these certificates is regarded as evidence of the marriage so a celebrant must take the utmost care in preparing and signing them.<sup>42</sup>

It will be necessary for celebrants to prepare all three certificates before the ceremony.

If the ceremony does not take place, the certificate for the parties (see [Part 6.4](#)) should be destroyed and the details recorded on the record keeping sheet (the 'record of use form'). The registration copy (official certificate of marriage) should also be destroyed and the butt of the registration copy should be marked 'cancelled'. The entry in the register (second official certificate) should also be marked 'cancelled'. Further information on the requirements for the three different certificates is set out below.

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<sup>42</sup> Subsection 45(3) of the Marriage Act states that a certificate of marriage prepared and signed in accordance with section 50 is conclusive evidence that the marriage was solemnised in accordance with that section.

### *6.1.1 Can a celebrant provide a couple with a souvenir certificate as well as the official certificate?*

No other certificates that include the words 'marriage certificate' or contain the Commonwealth Coat of Arms can be issued. A replacement certificate cannot be issued in case of damage or loss. Other souvenirs that do not purport to be a marriage certificate are acceptable, such as a framed copy of the vows, or a copy of the ceremony. Please note that some BDMs issue commemorative certificates to couples, however these are not official certificates of marriage.

## **6.2 THE OFFICIAL CERTIFICATE OF MARRIAGE, SENT TO THE BDM FOR REGISTRATION**

The official certificate of marriage is the official certificate sent to the BDM for registration purposes. It should be detached from the butt (if the certificate book is used) and written or printed as legibly as possible.

The official certificate has the declarations of the parties on the back. For further information on the declarations of no legal impediment, please see [Part 4.14](#) of these guidelines.

The celebrant must forward the official certificate to the BDM in the state or territory where the marriage was solemnised within 14 days of the ceremony.<sup>43</sup> With the certificate, the celebrant should send the NOIM, any order under section 12 of the Marriage Act, and any statutory declarations, consents and dispensations with consents relating to the marriage that are in their possession.<sup>44</sup>

The particulars on the official certificate must correspond exactly with the particulars on the NOIM. If there is an obvious error on the NOIM, the relevant particular should not be included in the certificate until the NOIM has been corrected. For further information on correcting errors on the NOIM, please see [Part 4.9.5](#) of these guidelines.

Celebrants should take particular care in transcribing or copying the spelling of names and details. The Australian Passports Office may reject any BDM certificate in which the spelling of the names differs from that on the birth certificate. Inaccuracy may result in a person having to pay a fee to a BDM for the official register to be corrected.

## **6.3 THE SECOND OFFICIAL CERTIFICATE KEPT BY THE CELEBRANT OR THE CHURCH**

The second official certificate is the celebrant's copy of the marriage certificate. This certificate may take the form of an entry in a marriage register.

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<sup>43</sup> Section 50 of the Marriage Act.

<sup>44</sup> Refer to [Part 8.7](#) of these guidelines for further information regarding marriage where one party is not of marriageable age.

The particulars on the second marriage certificate must be exactly the same as the particulars on the official registration certificate (Official certificate of marriage). The BDM is entitled to request the second marriage certificate.<sup>45</sup>

#### *6.3.1 Second official certificate – requirements for ministers of religion*

Ministers of religion may be issued with church marriage registers. The entry in the celebrant's copy of the marriage certificate is sometimes referred to as the 'second marriage certificate'. Church registers need to be securely stored.

Ministers of religion are required by the Marriage Regulations to add the second Official Certificate of Marriage to the records of the parish or district in which the marriage was solemnised; the records of the church in which the marriage was solemnised; or the records of the religious body or religious organisation.

#### *6.3.2 Second official certificate – requirements for celebrants who are not ministers of religion?*

Celebrants who are not ministers of religion must retain the second official certificate of marriage for six years starting on the day, after the day the marriage was solemnised. The Marriage Regulations 'turn off' the requirements to keep the Official Certificate of Marriage if the marriage celebrant dies or becomes permanently incapacitated. This provides certainty that, if such a scenario arises, a celebrant's family or other persons can choose how to deal with these documents. If the family or other persons decide to destroy the documents they should do so safely, for example by shredding the documents. If they decide to keep the documents they should be kept securely.

#### *6.3.3 Second official certificate – requirements for celebrants who are State and Territory Officers?*

Certain celebrants who are members of the staff of registering authorities in the states and territories have been exempted from preparing second official marriage certificates.<sup>46</sup> In circumstances in which members of staff of registering authorities in the states and territories have been authorised to solemnise marriages but have not been exempted from preparing a second official marriage certificate, they are required to keep the certificate for six years from the date of the marriage. If the person's authorisation ceases before the end of the six year period, they must send the certificate to, or deal with it as authorised by, the relevant BDM.

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<sup>45</sup> Section 78 of the Marriage Regulations.

<sup>46</sup> Subsection 77(3) of the Marriage Regulations.

## **6.4 FORM 15 CERTIFICATE OF MARRIAGE GIVEN TO THE PARTIES**

The Form 15 certificate of marriage is the certificate the celebrant must issue to the parties. It is not a document of identity but it is evidence that a couple is married and hence that their legal status has changed.

The Form 15 certificate of marriage must be purchased from [CanPrint Communications](#).

The Form 15 certificate has security features built in during the printing stage, and a unique identifying number on the back. Celebrants should advise marrying couples that the certificate given to them is an important document and should be kept in a safe place with other official documents. They should be advised that the certificate cannot be replaced if it is lost. Couples should also be advised that the Form 15 certificate of marriage cannot replace the need to obtain an official marriage certificate from the relevant BDM for some purposes, such as applying for an Australian passport, and in some states and territories, a driver licence. This is stated on the back of the certificate and attention should be drawn to those words.

### *6.4.1 What is a celebrant required to do with the Form 15 marriage certificate?*

Immediately after the marriage certificates have been signed, the celebrant should hand the Form 15 certificate of marriage to one of the parties to the marriage. The details of the use of this certificate should previously have been recorded on the record keeping sheet (see further information below).

## **6.5 RECORDS A CELEBRANT MUST KEEP FOR THE FORM 15 MARRIAGE CERTIFICATE (RECORD OF USE FORM)**

Celebrants must record the number of each Form 15 certificate of marriage they are issued with, what happens to the certificate and the date on which they use it.

Celebrants must record the following details on the record-keeping form:

- their name and registration number
- the serial number on the certificate
- the date they used the certificate
- how the certificate was used (see following section).

#### *6.5.1 What date should a celebrant record on the record keeping form for the Form 15 certificate of marriage?*

The date to be recorded is the date the celebrant used the certificate in any way. This includes:

- completing the certificate and giving the certificate to a marrying couple at their wedding – in which case the celebrant records the names of the parties to the wedding and the date it was given to them
- if the certificate was spoiled and had to be destroyed – for example by spilling something on it – the celebrant records that the certificate was destroyed, the reason for the destruction and the date on which it was destroyed
- if the celebrant transferred the certificate to another celebrant – the celebrant transferring the certificate records the other celebrant's name and registration number and the date on which the certificate was transferred to the other celebrant.

#### *6.5.2 What should a celebrant do if Form 15 certificates of marriage are lost or stolen?*

If Form 15 certificates of marriage issued to a celebrant are lost or stolen the celebrant must do two things:

- record how many were lost or stolen – on the record keeping form if they still have it
- notify the department immediately.

#### *6.5.3 What is the purpose of celebrants recording what happens to each Form 15 certificate of marriage they are issued?*

Celebrants must ensure they have a complete record of what happens to each Form 15 certificate of marriage they are issued. Each marriage certificate issued to a celebrant and then to a couple after 1 September 2005 is traceable.

The supplier keeps a record of which numbers are supplied to each celebrant and provides these to the department.

The celebrant keeps a record of what happens to each certificate and who it is given to. This process means the authenticity of each certificate can be verified.

This department has sought to minimise the additional work and obligation placed on celebrants as much as possible by not requiring that they send or supply the record sheets to anyone (except in the circumstances that follow). However, celebrants must keep the record sheets with their other marriage documents in a secure place for six years from the date of the last entry on the sheet. It is an offence under the Marriage Regulations for a celebrant to contravene this record-keeping

requirement. Subparagraph 5(b)(iii) of the [Code of Practice](#) requires Commonwealth-registered marriage celebrants to maintain appropriate facilities for the secure storage of records.

The Marriage Regulations ‘turn off’ the requirements to keep the record sheets if the marriage celebrant dies or becomes permanently incapacitated. This provides certainty that, if such a scenario arises, a celebrant’s family or other persons can choose how to deal with these documents. If the family or other persons decide to destroy the documents they should do so safely, for example by shredding the documents. If they decide to keep the documents they should be kept securely.

#### *6.5.4 When must celebrants provide their record keeping forms for Form 15 certificates of marriage?*

Celebrants may be required to provide a copy of their record in relation to a particular certificate or certificates if requested to do so by a specified person, such as the Registrar or another person authorised by the Minister.<sup>47</sup>

If a celebrant is required to provide a copy of their record or records they will receive a written request to do so. The request will state the certificate number(s) for which records are required, who the record must be provided to and the date it must be provided. It is an offence under the Marriage Regulations if a celebrant does not, or cannot, provide the record when requested in writing to do so.<sup>48</sup>

For the purposes of a Commonwealth-registered marriage celebrant’s performance review they may be asked for the records relating to a particular period. Failure to produce the records is a serious matter that would be taken into account in assessing the celebrant’s performance.

## **6.6 NAMES ON MARRIAGE CERTIFICATES**

The names on the marriage certificates should correspond exactly with the names on the NOIM. Celebrants should ensure that they have seen the original documents from which those names were derived, rather than relying only on the NOIM. This is because simply copying all information from the NOIM may result in the repetition of a previous error. This is particularly important if a NOIM is transferred from one celebrant to another before the marriage ceremony (see [Part 5.2.1](#) of these guidelines).

The names on all three marriage certificates must be the same.

It is important for celebrants to make each of the parties aware that any discrepancy between their name as it appears on the birth certificate, or on a change of name certificate, and their name as it appears on the marriage documents, may mean they may encounter problems if they wish to obtain an Australian passport issued in their married name in the future.

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<sup>47</sup> Section 73 of the Marriage Regulations.

<sup>48</sup> Section 73(7) of the Marriage Regulations.

## **6.7 RECORDING THE MARRIAGE RITES ON THE MARRIAGE CERTIFICATES**

When recording the rites used to solemnise a marriage on the Form 15 and certificates of marriage, Commonwealth-registered marriage celebrants who solemnise civil marriages, and State and Territory Officers, should write 'according to the *Marriage Act 1961*'.

Celebrants who are ministers of religion (including both Commonwealth-registered marriage celebrants, and ministers of a recognised denomination) must record that the marriage was solemnised according to the rites of their religious organisation. Such celebrants must write the full name of their organisation exactly as it appears on the Register of Marriage Celebrants.

Celebrants must record the same marriage rites for each marriage on both the NOIM and the Form 15 and official marriage certificates (See [Part 4.5.3](#)).

## **6.8 SIGNING THE MARRIAGE CERTIFICATES**

Each of the parties to the marriage, the two witnesses and the celebrant must sign all three marriage certificates. This must occur immediately after the solemnisation of the marriage.

The signatures should be the usual signatures of the persons. The parties should sign in the same manner as they did on the NOIM. Care should be taken to see that the signatures of each party accords with the names as set out in the certificate. Where a discrepancy appears by reason of the use of a particular form of signature, the words 'usual signature' should be added beside the signature. Where there appears to be a likelihood that difficulty may occur in deciphering a signature, the names should be added in pencil, preferably in block letters.

If either of the parties or the witnesses is unable to write, a mark may be made by the person as follows:

[Name – e.g. John X Brown]

[His mark]

[Name of witness to the mark]

Any of the persons present (over the age of 18) may witness the mark. The person witnessing the signature or mark must actually be present and witness the signature or mark.

The celebrant should write their registration number on the official certificate of marriage and the marriage certificate register (the marriage celebrant's copy of the marriage certificate, or second marriage certificate).



*6.8.1 Can other people (in addition to the two witnesses) add their signature to the parties' (Form 15) certificate of marriage?*

No. As explained above, the parties' certificate is an official certificate of the marriage and additional material must not be placed on it.

The two witnesses are the official legal witnesses to the marriage under law and their presence serves a legal purpose. That purpose is to be able to swear in court, or elsewhere, as to the identity of the parties or to testify to the circumstances in which the ceremony was performed, including the date and place.

If couples request additional signatures on the parties' certificate a celebrant should explain that it is not possible because it is an official certificate and the two witnesses serve an official purpose.

Similarly, additional signatures should not be added to the back of the Form 15 certificate.

*6.8.2 Can the children of one or both of the parties add their names to the parties' certificate of marriage?*

If the children are under the age of 18 years they cannot sign the certificate. If they are over the age of 18 years, and acting as one of the two witnesses, they may sign the certificate in that capacity.

## **6.9 WHAT HAPPENS TO THE THREE MARRIAGE CERTIFICATES AFTER THE MARRIAGE CEREMONY**

To summarise the information provided above, the three marriage certificates are handled as follows following the marriage ceremony:

- The official certificate of marriage (the registration copy) with the declaration of no legal impediment must be forwarded by the celebrant to the BDM in the state or territory where the marriage was solemnised. This must occur within 14 days of the marriage, together with the other required documents.

It is the responsibility of the celebrant, not the parties to the marriage, to register the marriage. Under no circumstances should a celebrant give the official certificate of marriage, or any other marriage documents, to any other person (including either or both of the parties to the marriage) to carry out this obligation. The obligation falls on the celebrant only.

- The second official certificate must be kept by a Commonwealth-registered marriage celebrant for six years and by a minister of religion for a recognised denomination indefinitely. A Commonwealth-registered marriage celebrant may destroy the second official marriage certificate after six years although they are not obliged to do so. A minister of religion for a recognised denomination is not able to do this. Some BDMs will accept the celebrant registers so Commonwealth-registered marriage celebrants should check with the BDM before destroying the records. The second official marriage certificates (including

church registers) and record keeping sheets are important legal documents and need to be kept in secure storage.

- The Form 15 certificate of marriage (the parties' certificate) should be handed to one of the parties, the details having previously been recorded on the record keeping sheet.

## **6.10 CORRECTION OF ERRORS IN THE MARRIAGE CERTIFICATES**

Sometimes it may be necessary, either before or after the marriage ceremony, to correct errors on a marriage certificate.

If the error is discovered after the certificates have been prepared and before the ceremony takes place, the NOIM must first be corrected and the corrections then made also in the certificates. Alterations should not be made in the certificate for the parties; a new certificate should be prepared incorporating the correct particulars, and a record kept of the destruction of the spoilt certificate.

Where the errors are not discovered until after the ceremony, corrections may be made whilst the parties and witnesses are still present. If a correction is required to the Form 15 certificate for the parties at this stage, the correction should be made on the signed certificate – a new or replacement certificate should not be issued under any circumstances. No corrections should be made to the Form 15 certificate after the ceremony, where the parties and witnesses are no longer present. While no corrections should be made by the celebrant after this time, any error should be indicated in pencil on both official copies, and, if necessary, a covering note of explanation sent to relevant state or territory BDM with the registration copy.

Where the registration copy has already been sent to the BDM, the celebrant should bring any errors to the notice of that authority, but should not make corrections to their copy. Under no circumstances should any words be erased when correcting errors. When making a correction, the words to be omitted should be lightly ruled through and, if necessary, others inserted. A correction should be initialed in the margin opposite the correction.

## **6.11 LOST CERTIFICATES**

Where the registration certificate of marriage (official certificate of marriage) is lost or destroyed, the registering authority may require the celebrant to prepare a certified copy of the second official certificate and send it to the registering authority.<sup>49</sup>

If the Form 15 certificate of marriage is lost or destroyed, it cannot be replaced under any circumstances.

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<sup>49</sup> Section 78 of the Marriage Regulations.

## **PART 7 REGISTERING THE MARRIAGE**

### **7.1 MARRIAGE AND OTHER SUPPORTING DOCUMENTS**

Subsection 50(4) of Marriage Act requires the celebrant to forward the official certificate of marriage and the NOIM (together with supporting documents) to the BDM in the state or territory in which the marriage was solemnised within 14 days of the marriage being solemnised. Some states and territories allow these documents to be lodged online. Celebrants should make enquiries with the relevant BDM about the availability of this option.

Other necessary supporting documents that should also be sent to the relevant BDMs with the official certificate of marriage will depend on the circumstances of the marriage. Such documents may include any official translations of documents, copies of parental consents or court orders for an underage marriage, statutory declarations or the certificate of faithful performance by the interpreter.

Note that BDMs have different practices as to what supporting documents are required so it is important that this is checked with the relevant BDM.

Marriages are then registered in the state or territory in which they are solemnised, in accordance with the law of that state or territory. Copies of, and extracts from, entries in the register of marriages can be obtained from the registering authority in the state or territory in which the marriage is registered.

It is the responsibility of the celebrant, not the parties to the marriage, to forward the documents to the BDM to register the marriage. Under no circumstances should the documents be given to any other person, including either or both of the parties to the marriage, to carry out this obligation. The obligation belongs to the celebrant only.

Serious consequences may arise for the celebrant and the couple if the celebrant does not forward the documents to the BDM to register the marriage within the required time. Disciplinary measures, in the form of a caution, being required to undertake professional development, suspension or deregistration, could be taken against a Commonwealth-registered marriage celebrant who does not comply with their obligation to register a marriage. A minister of religion of a recognised denomination could be removed from the register of ministers of religion for failing to comply with this obligation.<sup>50</sup>

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<sup>50</sup> Section 33 of the Marriage Act.

## PART 8 ESTABLISHING THAT THE PROPOSED MARRIAGE WILL BE VALID

### 8.1 WHY IT IS IMPORTANT TO ESTABLISH THAT THE PROPOSED MARRIAGE IS VALID

A valid marriage changes the legal status of the parties to the marriage. This has potentially far-reaching implications for the parties which include:

- official identity documentation – a married person can obtain official identity documentation, such as an Australian passport, in their married name (subject to the Australian Passport Office rules)
- financial arrangements – provisions in the [Family Law Act](#) regulate how the married couple's financial arrangements will be determined should they separate
- inheritance of property – marriage invalidates any will made by either party to the marriage prior to the marriage (unless the will is made in contemplation of the particular marriage). Also, dissolution of marriage may revoke, or otherwise affect the operation of, the will of a party.

A celebrant must be satisfied that a proposed marriage will be valid at all times prior to the conclusion of the marriage ceremony.

#### *8.1.1 Consequences for an invalid marriage*

The celebrant may have committed an offence.<sup>51</sup> The Registrar of Marriage Celebrants may also take disciplinary measures against a Commonwealth-registered marriage celebrant.<sup>52</sup>

One of the negative consequences for the couple may be that they have to apply to the Family Court for a declaration as to the validity of their marriage. They may also have to go through a second marriage ceremony under section 113 of the Marriage Act (see [Part 10](#) of these guidelines). Each of these processes can be stressful, expensive and difficult for the couple.

A valid marriage usually invalidates any existing will. The position of each member of the couple and members of their families may be considerably affected if a marriage is not valid.

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<sup>51</sup> Under section 100 of the Marriage Act it is an offence for a person to solemnise a marriage or purport to solemnise a marriage if they have reason to believe there is a legal impediment to the marriage or it would be void. Further details on offences in the Marriage Act refer to [Part 12](#) of these guidelines.

<sup>52</sup> Section 39I of the Marriage Act.

## 8.2 GROUNDS ON WHICH A MARRIAGE MAY BE VOID

When a celebrant is approached by a couple to solemnise a marriage, the celebrant must satisfy themselves that the marriage is not void by reason of any of the following grounds set out in subsection 23B(1) of the Marriage Act.

A marriage may be void where:

- either of the parties is, at the time of the marriage, lawfully married to some other person
- the parties are within a prohibited relationship
- by reason of section 48 of the Marriage Act the marriage is not valid
- the consent of either of the parties is not a real consent because it was obtained by duress or fraud, a party was mistaken as to the identity of the other party or as to the nature of the ceremony performed or that party is mentally incapable of understanding the nature and effect of the marriage ceremony, or
- either of the parties is not of marriageable age.

Each ground is explored in more detail below.

### 8.2.1 *Prior undissolved valid marriage*

A marriage is void

A marriage is void where either of the parties is, at the time of the marriage, lawfully married to another person (paragraph 23B(1)(a) of the Marriage Act).

### 8.2.2 *Why is it important to establish that neither party is lawfully married to another person at the time of the marriage?*

If one of the parties is still married to someone else, the marriage will be invalid.

The celebrant is likely to have committed an offence.<sup>53</sup>

One of the parties will have committed the offence of bigamy which carries a penalty of five years imprisonment.<sup>54</sup>

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<sup>53</sup> Under section 100 and potentially section 99 of the Marriage Act.

<sup>54</sup> Section 94 of the Marriage Act.

### *8.2.3 How does a celebrant establish that a party is not still married?*

A person who is already validly married cannot marry someone else under Australian law until the first marriage has ended.

A person who has been previously married must provide the celebrant with proof that any prior marriage has ended whether by divorce or by the death of the other party.<sup>55</sup>

It is the party's obligation to satisfy the celebrant that they are not already married to another person. If they cannot do so the celebrant must not solemnise the marriage.

Please refer to [Part 4.10](#) of these guidelines for information about what evidence must be produced to the celebrant.

## **8.3 PARTIES IN A PROHIBITED RELATIONSHIP**

A marriage is void where the parties are within a prohibited relationship (paragraph 23B(1)(b) of the Marriage Act).

Prohibited relationships are marriages:

- between a person and an ancestor or descendant
  - an ancestor is someone from whom a person is descended (parent or grandparent)
  - a descendant is someone descended from the person (child/grandchild), or
- between a person and their sibling (whether whole or half-blood).

### *8.3.1 What about adoption?*

Prohibited relationships under the Marriage Act include a relationship traced through or to an adopted child and the adoptive parent or each of the adoptive parents. Adopted children are treated as the children of the adoptive parents.

Adoption, for the purposes of invalid marriage, includes an adoption that has been annulled, cancelled or discharged or that has ceased to be effective. If adopted more than once, the child is deemed to be the child of each of their adoptive parents as well as of their birth parents.

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<sup>55</sup> Subsection 42(10) of the Marriage Act.

### 8.3.2 *Examples of prohibited relationship situations*

The prohibited relationship requirements means a person cannot marry their:

- grandparent
- parent,
- sibling or half-sibling
- child, or
- grandchild.

In addition, individuals who were adopted by the same adults but have never lived together are in a prohibited relationship. This includes cases where an adoption has been annulled, cancelled or discharged.

What is not a prohibited relationship:

- An uncle may marry his niece or nephew and an aunt may marry her nephew or niece.
- Cousins may marry each other.
- Individuals who have lived together in the one family but were not adopted by the adults who raised them are not in a prohibited relationship.

A celebrant should exercise caution when a party to a proposed marriage refers to the couple being raised as step-siblings, or refers to any family connection between them. In such a case the celebrant should question them closely to ensure there is no prohibited relationship.

## **8.4 MARRIAGE INVALID DUE TO FAILURE TO COMPLY WITH SECTION 48 OF MARRIAGE ACT**

### **Invalidity**

Under section 48 of the Marriage Act a marriage solemnised otherwise than in accordance with sections 13, 42, 44 or 46 is not a valid marriage. A marriage may be invalid where:

- the vows do not comply with section 45 of the Marriage Act, or
- there is doubt that the marriage ceremony took place.

There are a number of exceptions to section 48.<sup>56</sup> Circumstances falling within these exceptions will not result in an invalid marriage. However, marrying couples or celebrants may still commit an offence under the Marriage Act if the Marriage Act is not complied with.

## **8.5 THE CONSENT OF THE PARTIES IS NOT REAL CONSENT**

### *8.5.1 Why is it important to check that a person is giving real consent to a marriage?*

Consent is an important and a potentially difficult area for celebrants. Issues of consent generally arise infrequently but can be difficult to assess when they do.

Celebrants should be aware that it is an offence to cause another person to enter into a forced marriage or to be a party to a forced marriage (this offence does not apply to the victim of forced marriage).<sup>57</sup> For further information, see [Part 12.4](#) of these guidelines.

A forced marriage is not the same as an arranged marriage. In a forced marriage, the victim does not consent to the marriage. An arranged marriage is a marriage in which the spouses have the right to accept or refuse the marriage arrangement that their respective families have made. The Marriage Act does not prevent a person from consenting to marry another person that they do not know or have not met prior to the marriage ceremony.

Marriages that appear to be contrived or a ‘sham’ entered into solely for the purposes of a visa are not prohibited by the Marriage Act. As long as both parties are consenting to the marriage, it is not your role, as the marriage celebrant, to determine the genuineness of the relationship. If you have concerns about the authenticity of a marriage you are asked to solemnise, you may wish to report your concerns (you can do this anonymously) to the Department of Home Affairs on telephone 131 881 or website at [www.homeaffairs.gov.au](http://www.homeaffairs.gov.au). There is no obligation on an authorised celebrant to do so. The existence of a marriage does not automatically entitle a person to a visa.

### *8.5.2 Doubts about whether a party is consenting or capable of consenting to the marriage?*

If a celebrant has any doubt about whether the consent of a party is a real consent at any time prior to, or even during the marriage ceremony, they must address the matter and are entitled to take such steps as they believe necessary to address their concerns.

These steps include questioning the party concerned.

A celebrant who believes the consent of one or both parties is not a real consent (for example, where the consent was obtained by duress or fraud; or the party is mistaken as to the identity of the other party or as to the nature of the ceremony performed; or the party is not capable of

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<sup>56</sup> Paragraphs 48(2)(a)-(f) of the Marriage Act.

<sup>57</sup> It is an offence under section 270.7B of the Criminal Code Act 1995 to engage in conduct that causes another person to enter into a forced marriage – penalty 7 years imprisonment or 9 years if an aggravated offence.



understanding the nature and effect of the marriage ceremony) should refuse to marry the couple, even if the marriage ceremony has commenced. A celebrant may also wish to contact the Australian Federal Police.

#### *8.5.3 When is consent to a marriage not real consent?*

Both parties must consent to being married and understand the nature and effect of marriage. The factors to establish real consent are listed in subsection 23B(1)(d) of the Marriage Act:

##### **Consent**

A person's consent to a marriage is not real if:

- the consent is obtained by duress or fraud
- one of the parties is mistaken as to:
  - the identity of the other party, or
  - the nature of the ceremony performed, or
- a party is not capable of understanding the nature and effect of the marriage ceremony.

A determination of whether any of these grounds have rendered a marriage void is a matter for the Family Court of Australia.

## **8.6 HOW CAN A CELEBRANT ASSESS WHETHER A PERSON'S CONSENT IS REAL?**

### *8.6.1 Speak to the party in the absence of any other party*

If a celebrant forms a view that any of the above grounds may be present when a couple approaches them to solemnise a marriage, they should discuss the matter with the party concerned in the absence of the other party to ensure that the consent is a real consent. This is particularly important if the celebrant is concerned that a party may be experiencing duress or is mentally incapable of understanding the nature and effect of the marriage ceremony.

The discussion with the other party should also occur in the absence of third parties such as parents.

A mistake as to the nature of the ceremony performed may arise, for example, where a person thought the ceremony was a betrothal ceremony and not a marriage ceremony.

In cases where there is doubt about whether a party is incapable of understanding the nature and effect of the marriage ceremony, a simple or general understanding will be sufficient. A high level of understanding is not required. The celebrant should ask questions of the person about whom they

have concerns in order to gauge the level of their understanding of the marriage ceremony and what it involves. For example, why they want to marry the other person, what marriage is or where they will be living after the marriage.

#### *8.6.2 Speak to third parties*

In addition to speaking to the party concerned a celebrant can speak to third parties (e.g. in cases of incapacity a celebrant might be assisted by speaking with medical experts who know the party or other people such as family members, carers or staff at the nursing home where a person is living if they are elderly or have a disability) to assess if consent is real. When speaking to third parties, it is important to respect the privacy of the person involved. You should seek permission from the person to approach certain people, tell them who you would like to speak to and why, and let them know what you are going to say. Information about consent and persons with disability is in [Part 8.8.5](#) of the guidelines.

#### *8.6.3 Keep detailed records*

A celebrant should thoroughly document any conversations they have to assess a person's consent to marry. This means if any questions arise at a later date the celebrant has a record of their decision making process. This is important because celebrants may be called upon to give evidence in court as to the consent of the parties.

#### *8.6.4 Concerns about consent*

Celebrants should be aware that issues of consent can arise at any time prior to the conclusion of the marriage ceremony. It is vital that a celebrant is satisfied that both parties genuinely consent to the marriage. If at any point a celebrant is unsure of the genuine consent of either party they should not proceed with solemnising the marriage.

A celebrant might have been satisfied that a party was capable of understanding the nature and effect of the marriage ceremony before the ceremony was due to be solemnised, but might form a different view as a result of the party's conduct during the marriage ceremony itself. In such a case the celebrant should not proceed to solemnise the marriage until satisfied that the party is capable of understanding the nature and effect of the marriage ceremony.

Other consent issues that arise on the day of the marriage ceremony can include, for example, duress or a party to the marriage who is drunk, intoxicated, under the influence of drugs, or otherwise appears to be in an altered mental state to an extent that this could impair their ability to consent to the marriage.

For example, if alcohol or drugs are involved, the party should be displaying a reasonable level of comprehension or understanding of the nature and effect of marriage. A person who has had an alcoholic drink prior to the ceremony but is not inebriated is most likely to be able to be in a position to consent to the marriage. However, a person who is intoxicated is unlikely to be in a position to form the necessary understanding of the nature and effect of marriage. It is an authorised

celebrant's responsibility to refuse to proceed with the solemnisation of the marriage if the parties are so affected by drugs and/or alcohol that the marriage would be void due to a lack of consent. Ultimately, this is something that can only be determined on the day and requires the individual judgment of the celebrant. The celebrant may wish to offer to conduct a commitment ceremony, with the legal marriage being performed at a later date. The celebrant should take the best efforts to extract themselves from the situation as safely as possible. It may be a good idea to explain issues of consent, and your responsibilities, with the couple prior to the day of the ceremony, especially if you think it might become an issue.

Under no circumstances should a celebrant agree to do a surprise wedding (refer to [Part 11.1](#) of these guidelines for further information on surprise weddings).

#### *8.6.5 Capacity to understand the nature and effect of marriage*

Capacity is the concept that refers to a person's ability to make independent decisions. Every adult is presumed to have capacity to make decisions. This means that unless there is a valid trigger to justify a further assessment of a person's capacity, authorised celebrants should generally treat everyone as if they are capable of understanding the nature and effect of the marriage ceremony. It is especially important to value and respect the importance of presuming capacity of a person with a disability to make a decision in relation to marriage. Article 23 of the *Convention on the Rights of Persons with a Disability* recognises the right of people with disabilities to marry and have a family. Although the Marriage Act recognises the need to protect a person with disability from exploitation, by voiding a marriage where they did not understand the nature and effect of marriage, it is not intended to result in a barrier for people with a disability to marry.

Authorised celebrants should not assume a person lacks capacity based on appearances eg, advanced age, a disability, physical impairment or where the person has difficulty communicating. Many people may have difficulty communicating and expressing themselves however, with assistance, their capacity for making their own decisions is clear. There are many support tools that can be used to assist in communication, such as Auslan, a word or picture board or other Alternative and Augmentative Communication system (such as picture boards or computer programs) that might be used by the person.

#### *8.6.6 Identifying consent issues*

The following questions may assist a celebrant to identify situations where consent issues may arise:

- Is one party silent or looking down all the time?
- Has the couple been accompanied by extended family or friends who do some or much of the talking in response to the celebrant's questions?
- Does one party answer all of the questions for the other party as well as for themselves?

- Is there any sign that a party cannot manage their own affairs, for example, being in full care in a nursing home or being subject to a guardianship order?
- Does one of the parties seem vague or unclear about the purpose of the meeting with the celebrant, or are they unable to give any information about themselves and why they want to be married?
- Does the party understand English? If not, the celebrant should insist that an interpreter is used or, if an interpreter is not available, pass the marriage onto a celebrant who speaks that language.

## **8.7 MARRIAGEABLE AGE IN AUSTRALIA**

The marriageable age in Australia is 18 years.<sup>58</sup> A person under the age of 16 cannot marry under any circumstances. Two people under the age of 18 cannot marry under any circumstances.

It is an offence for a person to solemnise, or purport to solemnise, a marriage if the person has reason to believe that one or both of the parties are not of marriageable age. The celebrant must therefore carefully check the age of both parties from their birth certificates or extracts. It is also an offence for a person to go through a form of ceremony of marriage with a person who is not of marriageable age.<sup>59</sup> For further information on offences, refer to [Part 12](#) of these guidelines.

In circumstances in which one of the parties to a marriage is not of marriageable age, the marriage is void unless the required orders and consents have been obtained (see below).

## **8.8 REQUIREMENTS FOR MARRIAGE OF A MINOR – WHEN ONE PARTY IS AGED 16-18 YEARS**

### *8.8.1 The minimum requirements*

The two minimum requirements under which a person aged between 16 and 18 years may marry a person over the age of 18 are:

- a judge or magistrate has made an order authorising the person to marry a particular person of marriageable age (over 18 years), and
- the required consents (e.g. parental, guardian etc) have been given or dispensed with.

It is important to note that parental consent to the marriage of an underage person is generally required but is not sufficient on its own. There must be a court order authorising the marriage in all cases.

These minimum requirements are explained below.

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<sup>58</sup> Section 11 of the Marriage Act.

<sup>59</sup> Section 95 of the Marriage Act.

It is a minor's responsibility to make an application to a Judge or magistrate for an order, and to obtain any written consents needed. If a minor needs assistance, they should consider seeking legal advice. A celebrant must not solemnise the marriage unless the two requirements above are met.

The celebrant should carefully ascertain the facts and circumstances of the party who is aged less than 18 years to ensure that the necessary consents have been obtained. It is the celebrant's responsibility to ensure that necessary requirements have been met before they solemnise the marriage.

The Marriage Regulations set out additional requirements that must be met in relation to a minor's marriage. The Marriage Regulations make it clear that:

- the minor must give the marriage celebrant the order made by the Judge or magistrate (subsection 8(2))
- the marriage celebrant must not solemnise the marriage unless they have been given the order *before* the ceremony (subsection 8(3)), and
- the marriage celebrant must indicate on the Notice of Intended Marriage form, *before* they solemnise the marriage, that they were given the consents and the order (paragraph 70(2)(b)).

The celebrant may accept a NOIM for a party that is under the age of 18 years, if they will be 18 years at the date of the marriage. No consents or court orders will be required in this situation.

#### *8.8.2 First requirement – court order*

A person aged 16 to 18 years may apply to a Judge or magistrate in a state or territory for an order authorising them to marry a particular person of marriageable age.<sup>60</sup> The authorisation of a Judge or magistrate is required in all cases where one party is under the age of 18 years.

Application to the Judge or magistrate must be made by the person seeking the order, and must be made in the approved form, the notice of application for order authorising marriage under marriageable age, which is available on the department's [website](#).

The procedure for a person under marriageable age to make an application for a court order for permission to marry is set out in sections 7 to 33 of the Marriage Regulations.

A celebrant must ensure the court order has been obtained before solemnising the marriage. The marriage must take place within three months after the date of the court order.

If either party is under marriageable age, the marriage is invalid unless the required court order and consents have been obtained.

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<sup>60</sup> Section 14 of the Marriage Act.

Should a marriage involving an underage person take place without the required court order and consents the marriage celebrant may have committed an offence.<sup>61</sup> The marriage will also be void.<sup>62</sup>

### *8.8.3 What will the Judge or magistrate consider when making the decision?*

The Judge or magistrate must be satisfied of two things:

- that the applicant is at least 16 years, and
- the circumstances of the case are so exceptional and unusual as to justify the making of the order.

Whether or not the order is made is at the discretion of the Judge or magistrate.

If the order is not granted the person cannot marry even if parental consent has been granted.

If the order is granted authorising the particular marriage, the applicant is of marriageable age in relation to their marriage to that particular person (also of marriageable age) specified in the order but not otherwise.

The marriage must take place within three months of the court order.

It is recommended that celebrants advise parties, or their parents, seeking such an order to seek legal advice. It is not possible to provide any guidance as to the circumstances under which an order may be granted as that is entirely a matter for the Judge or magistrate concerned. The Marriage Act requires that the circumstances must be 'exceptional' and 'unusual'.

### *8.8.4 Second requirement – consent*

In addition to the court order, it is also necessary to obtain the consent of any person whose consent to the marriage is required. This is usually the parents of the party who is not of marriageable age.<sup>63</sup> The marriage must be solemnised within three months of the date of this consent.<sup>64</sup>

Such consents are not necessary if the party has already been previously married. A court order is still required in such a case.

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<sup>61</sup> See section 95 and potentially section 100 of the Marriage Act if the celebrant had reason to believe there was a legal impediment. See [Part 12](#) of these guidelines for Offences.

<sup>62</sup> Paragraph 23B(1)(e) of the Marriage Act.

<sup>63</sup> Section 13 of the Marriage Act.

<sup>64</sup> Section 13 of the Marriage Act.

Unless this consent is the consent of a Judge or magistrate (under Part II of the Marriage Act), it must be in writing and must<sup>65</sup>:

- a) identify the person giving the consent
- b) identify the parties to the intended marriage, and
- c) indicate the capacity in which the person's consent is required.

Where a celebrant solemnises the marriage of a minor and a document is produced to the celebrant as the consent of the person whose consent is required by the Marriage Act, the celebrant must, by writing on the consent, state the manner in which they satisfied themselves that the person who gave the consent is a person whose consent is so required.<sup>66</sup> This does not apply to the consent of a Judge, a magistrate given under Part II of the Marriage Act.<sup>67</sup>

#### *8.8.5 How may a person who is illiterate or a person with a disability consent?*

In all circumstances, the person before whom the consent is given (for example the marriage celebrant) has to be satisfied that the person giving the consent understands what they are consenting to, and that consent is given freely. Generally, the celebrant before whom the consent is given should be satisfied that:

- the contents of the consent have been drawn to the attention of the person giving the consent, and
- the person giving the consent understands the matter about which consent is being given, including what they are consenting to and what this means.

Drawing the contents of the consent to the attention of the person giving the consent can include reading the consent, or communicating it to the person in a way that would make the content of the consent clear to them. For example, if the person is vision impaired, the celebrant could: read the content of the consent to them; show the consent to them using a computer with a screen reader, text-to-speech software or a braille display; or use other technology for the vision impaired.

If the person giving the consent is physically incapable of signing the consent, the person before whom the consent is given should be satisfied that the person has indicated that the contents of the consent are true.

It is recommended that celebrants before whom consent is given keep records of the steps they took to draw a person's attention to the contents of the consent; to establish understanding, and, if a

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<sup>65</sup> Section 9 of the Marriage Regulations.

<sup>66</sup> Subsection 9(2) of the Marriage Regulations.

<sup>67</sup> Subsection 9(3) of the Marriage Regulations.

person is physically incapable of signing the consent, how the person giving the consent has indicated that the contents of the consent are true.

#### *8.8.6 What happens if a parent or guardian cannot be contacted to give consent?*

In such cases the minor may apply to a prescribed authority to dispense with the consent of a person whose consent to the marriage is required where their views are not known.<sup>68</sup>

Where a parent refuses consent, or an application to a prescribed authority to dispense with consent is refused, the minor may apply to a judge or magistrate for their consent in place of the consent of the person whose consent is required.<sup>69</sup> There is a right of appeal, by either the minor or the person in relation to whose consent the application was made, against a judge or magistrate's decision.

The procedure for a person to apply to a judge or magistrate for consent to marry in place of the consent of the person whose consent is required is set out in sections 14 to 16 of the Marriage Regulations.

#### *8.8.7 What should a celebrant do if asked to marry a couple one of whom is underage?*

The celebrant should review the relevant parts of these guidelines before proceeding further.

The celebrant should also advise the parties that they need to obtain legal advice, the court order and necessary consents before the celebrant can agree to marry them.

It is the celebrant's responsibility to ensure that the necessary requirements have been met before they solemnise the marriage. It is not the celebrant's responsibility to arrange for the court order or the necessary consents.

#### *8.8.8 How can a celebrant ensure they are not marrying a couple when one party is not of marriageable age?*

Celebrants can take the following steps to ensure they are not solemnising a marriage where one party is not of marriageable age:

- carefully check the age of both parties on their birth certificates
- remember the Marriage Act does not permit, under any circumstances, a marriage where both parties are under marriageable age, and
- only marry a couple where one party is aged 16 to 18 years if the required court order and consents have been obtained by the party.

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<sup>68</sup> Section 15 of the Marriage Act.

<sup>69</sup> Section 16 of the Marriage Act.



*8.8.9 What must a celebrant forward to the BDM after a marriage in which one of the parties is under marriageable age?*

The consents—and any translations of them if relevant—must be forwarded to the BDM in the state or territory where the marriage took place, along with the official marriage certificate, the court order under section 12 of the Marriage Act and any other required documents within 14 days after the marriage has taken place.

## PART 9 FOREIGN MARRIAGES

This part looks at the legal recognition in Australia of marriages that have occurred overseas, the exceptions to such legal recognition, and the documents that may provide evidence of an overseas marriage.

Marriages performed overseas by Defence Force chaplains are governed by a different part of the Marriage Act and Marriage Regulations. For further information on marriages performed overseas by Defence Force chaplains, see [Part 9.4](#) of these guidelines.

### 9.1 LEGAL RECOGNITION OF FOREIGN MARRIAGES IN AUSTRALIA

Part VA of the Marriage Act deals with the recognition in Australia of marriages entered into outside Australia under foreign laws. In general, if the marriage is recognised as valid under the law of the country in which it was entered into, at the time when it was entered into, the marriage will be recognised in Australia as a valid marriage. This is the case whether or not the marriage involves Australian or non-Australian citizens. For further information on second marriage ceremonies, please see [Part 10](#) of these guidelines.

The Marriage Act does not provide for overseas marriages to be registered in Australia. Whether an overseas marriage is recognised as valid in Australia is determined by the Marriage Act.

There are certain exceptions to the legal recognition of overseas marriage in Australia. These are explained below.

### 9.2 EXCEPTIONS TO RECOGNITION OF FOREIGN MARRIAGES

The Marriage Act provides that a marriage that is valid under the laws of another country is not recognised as valid in Australia if one or more of the following circumstances apply:<sup>70</sup>

- a) where one of the parties was already married to someone else
- b) where one of the parties was not of marriageable age (note further information below about this exception)
- c) where one of the parties are too closely related, under Australian law – that is, either as ancestor and descendant (including adoptive ancestor/descendant relationships), or as siblings (including half-siblings and adopted siblings), or

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<sup>70</sup> See sections 88D and 88E of the Marriage Act.

- d) where the consent of one of the parties was not a real consent due to
  - i. duress or fraud
  - ii. mistake, or
  - iii. mental incapacity.

#### *9.2.1 Recognition in Australia of overseas marriage where one/both parties are underage*

If neither party was domiciled in Australia at the time of the marriage, the marriage is not recognised in Australia as valid at any time while either party is under the age of 16 years.<sup>71</sup> In this situation, when both parties reach the age of 16 years, the marriage will be recognised in Australia as valid if there are no other circumstances (such as the consent of either party not being real) that invalidate the marriage.

However, if one of the parties was domiciled in Australia at the time of the marriage, both parties must have been 18 years of age at the time of the marriage for it to be recognised in Australia as valid.<sup>72</sup>

As the word ‘domiciled’ has a particular legal meaning, celebrants should recommend that parties seek professional legal advice about whether a particular situation falls within the circumstances described above.

### **9.3 EVIDENCE OF FOREIGN MARRIAGE**

A marriage certificate issued by a competent authority in a foreign country is evidence in Australia of the occurrence and validity of the marriage.<sup>73</sup> Couples should carefully retain their overseas marriage certificate as it may not be easy to replace if lost and it provides the only evidence of the overseas marriage. Overseas marriages cannot be registered in Australia.

Please note that it may not be possible to rely on a marriage certificate issued overseas for some purposes in Australia. A party to a marriage which takes place overseas may not be able to rely on an overseas marriage certificate to have an Australian driver licence or an Australian passport issued in their married name.

Celebrants should request that any foreign marriage certificates in languages other than English are translated by a NAATI endorsed translator if a person presents one (see [Part 4.16](#) of these guidelines).

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<sup>71</sup> Subsection 88D(3) of the Marriage Act.

<sup>72</sup> Paragraph 88D(2)(b) of the Marriage Act.

<sup>73</sup> Section 88G of the Marriage Act.

If a person approaches a celebrant because an Australian Government agency has raised questions about the recognition in Australia of the person's foreign marriage, it is recommended that the celebrant refer the couple to obtain legal advice.

#### **9.4 MARRIAGES SOLEMNISED OVERSEAS BY CHAPLAINS AND DEFENCE FORCE OFFICERS**

The Marriage Act allows marriages to be solemnised overseas by, or in the presence of a, Defence Force chaplain (chaplain) or a Defence Force officer authorised by the Chief of the Defence Force (officer), in limited circumstances. One party to the intended marriage must be a member of the Australian Defence Force. Part V of the Marriage Act only concerns marriages of members of the Defence Force overseas. (Previous provisions in Part V of the Marriage Act that enabled Australian consular officials to solemnise marriages were revoked on 1 January 1993.)

Defence Force chaplains and officers are authorised, under Part V of the Marriage Act, to solemnise marriages in overseas countries where at least one party is a member of the Defence Force. Part V of the Marriage Regulations deals with the solemnisation of marriages overseas.

For the purpose of Part V, an 'overseas country' means a country or place other than a part of the Queen's dominions, and includes a vessel which is for the time being in the territorial waters of such a country or place. In time of war, 'overseas country' may be given an extended meaning to include a part of the Queen's dominion that is occupied by a State at war with the Commonwealth.

An authorised celebrant cannot solemnise marriages outside Australia under the Marriage Act unless they are a chaplain or officer in the Defence Force (and one of the parties to the marriage is a member of the Defence Force).<sup>74</sup>

No NOIM is required for a marriage solemnised by a chaplain or officer. The form of declaration as to conjugal status to be made by the parties is the same as that approved for marriages in Australia. The forms of marriage certificates are the same as those used for marriages in Australia. The provisions of Part II (marriageable age and marriage of minors) of the Marriage Act do apply to marriages solemnised overseas by chaplains or officers.

Chaplains and officers must keep a record of their used or destroyed Form 15 certificates for a period of six years from the date of the use/destruction of the certificate. Marriages by chaplains or officers are to be registered in Canberra by the Registrar of Overseas Marriages, which is a function undertaken by the ACT Registrar of Births, Deaths and Marriages.

### **PART 10 SECOND MARRIAGE CEREMONIES**

Under section 113 of the Marriage Act, persons who are already legally married to each other cannot go through a further form or ceremony of marriage to each other in Australia or as a member

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<sup>74</sup> Section 71 of the Marriage Act.

of the Australian Defence Force overseas, and it is an offence for a celebrant to purport to solemnise such a marriage.

There are two exceptions to the rule in section 113. These are where:

- there is a doubt as to the legal validity of the previous marriage ceremony, or
- a couple who is already legally married wish to go through a religious marriage ceremony. See [Part 10.2](#) of these guidelines for information about a second religious marriage ceremony.

## **10.1 SECOND MARRIAGE CEREMONY – DOUBT AS TO THE VALIDITY OF PREVIOUS MARRIAGE CEREMONY**

The first exception to the general rule against second marriage ceremonies allows ceremonies for the purpose of eliminating any doubt that may exist as to whether persons are legally married. The doubt must be a real one.<sup>75</sup>

Before any such ceremony, the parties must produce to the proposed celebrant:

- a joint statutory declaration stating that they have previously gone through a form or ceremony of marriage with each other and specifying the date, place and circumstances of that ceremony. The joint statutory declaration must state that they are the parties mentioned in the marriage certificate, and
- the statutory declaration must contain a certificate by a barrister or solicitor that, on the facts stated in the declaration, there is in their opinion, a doubt whether the parties are legally married or whether their marriage could be proved in legal proceedings.<sup>76</sup>

Once the above requirements are satisfied, the provisions of the Marriage Act apply to the second marriage ceremony as if the parties were unmarried. A NOIM must be completed, the declarations as to conjugal status must be made, and the marriage certificates must be prepared and dealt with as if the parties were not married to each other, except that each copy of the certificate must bear the following endorsement—using exactly the words below—and signed by the celebrant:<sup>77</sup>

“The form or ceremony of marriage between the parties took place or was performed in accordance with subsection 113(2) of the *Marriage Act 1961*, the parties having previously gone through a form or ceremony of marriage with each other on [date of marriage] at [place of marriage]  
Dated [date]  
[Signature of authorised celebrant]”

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<sup>75</sup> Subsection 113(2) of the Marriage Act.

<sup>76</sup> Paragraph 113(3)(b) of the Marriage Act.

<sup>77</sup> Subsection 113(4) of the Marriage Act and section 84 of the Marriage Regulations.

## 10.2 SECOND RELIGIOUS MARRIAGE CEREMONIES

The other exception to the general rule against second marriage ceremonies arises where two people already married to each other wish to go through a religious marriage ceremony.<sup>78</sup> This may be in order to renew their marriage vows, to follow a civil ceremony by a religious ceremony, or to have two religious ceremonies in churches of different denominations.

In the case of a second religious marriage ceremony, the celebrant must not prepare or issue in respect of the second ceremony, any certificate of marriage under or referring to the Marriage Act. In addition, the celebrant must not issue any other document to the parties in respect of the ceremony unless the parties are described in the document as being already legally married to each other.<sup>79</sup>

In relation to a second religious ceremony involving parties who are already married, the procedures for the solemnisation of marriages under the Marriage Act do not apply. The NOIM, declarations as to conjugal status, and so on, are not to be given.<sup>80</sup>

A couple wishing to have a second religious marriage ceremony must provide the proposed celebrant with the following:<sup>81</sup>

- a certificate of their existing marriage, and
- a statement signed by them, to be witnessed by the proposed celebrant, that they have previously gone through a form or ceremony of marriage with each other; they are the parties mentioned in the certificate of marriage produced with the statement; and they have no reason to believe that they are not legally married to each other or, if their marriage took place outside Australia, they have no reason to believe that it would not be recognised as valid in Australia.

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<sup>78</sup> Subsection 113(5) of the Marriage Act.

<sup>79</sup> Subsection 113(6) of the Marriage Act.

<sup>80</sup> Subsection 113(6) of the Marriage Act.

<sup>81</sup> Paragraph 113(5)(b) of the Marriage Act.

## PART 11 OTHER MATTERS

### 11.1 SURPRISE WEDDINGS

#### *11.1.1 What is a 'surprise wedding'?*

Surprise weddings involve one of the parties to the marriage being 'surprised', either at or shortly before the ceremony. The most popular scenario involves one member of a couple wishing to 'surprise' the other party by organising the marriage without their knowledge and then presenting them with the complete ceremony as a romantic gesture.

#### *11.1.2 Would such a marriage be valid?*

Celebrants must not participate in surprise wedding ceremonies. This is because there is no guarantee that the marriage will be valid.

Surprise weddings raise an important and unavoidable issue in relation to legal validity of the marriage. It is best described as potentially placing undue pressure on the 'surprised' person to agree to the arrangement. Even if there is evidence that the person would previously have agreed to a marriage proposal, their consent to marry must not be assumed. No person can be put under pressure to enter into a marriage and the pressures imposed by a 'surprise' wedding could place in doubt the validity of the marriage under section 23B of the Marriage Act, that is, that the person's consent to the marriage was not a real consent because it was obtained by duress or fraud. For further information on the issue of consent please see [Part 8.5](#) of these guidelines.

It is not however, considered a surprise wedding where both of the parties have signed the NOIM and only the date of the wedding or event is the surprise component (provided that the minimum one month notice has been given to the celebrant). In this situation, it is a matter for the celebrant to ensure that both parties consent to the marriage, particularly where there has been some delay since signing the NOIM. It may be necessary to meet separately with the parties to ensure that one, or both, of the parties to the marriage have not changed their mind.

#### *11.1.3 Accepting a NOIM in a surprise wedding scenario*

Generally, the NOIM should be signed by both parties together, at the same time, when it is provided to their celebrant. Subsection 42(3) of the Marriage Act enables a celebrant to accept a NOIM with the signature of one party only where the signature of the other party cannot 'conveniently be obtained' at the time it is desired to give notice. The intention of this provision is to enable a couple to give notice of their intended marriage with only one party signing the NOIM if the other is overseas or interstate.

It is not intended to enable only one party to provide notice. In the case of a surprise wedding, the signature of the other party can, essentially, be conveniently obtained. Celebrants should not accept a NOIM signed by only one party in the case of a surprise wedding.

#### *11.1.4 If you are asked to solemnise a surprise wedding*

If a person approaches a celebrant with a request for a 'surprise' wedding, the celebrant should:

- advise the person of the minimum requirements for a marriage (such as giving one month's notice for the NOIM) and refuse to solemnise the marriage,
- explain to the person why surprise weddings are potentially invalid (that is because they may raise issues of consent), and
- advise the BDM in the relevant state or territory in case marriage documents are submitted.

Participation by any Commonwealth-registered marriage celebrant in a surprise ceremony may result in disciplinary measures being imposed.

### **11.2 POP-UP WEDDINGS**

'Pop-up weddings' are a growing trend in the wedding industry. A pop-up wedding generally involves a marriage celebrant working with other wedding industry suppliers (for example, photographers, decorators and florists) to provide wedding ceremonies. There is no restriction in the Marriage Act or the Marriage Regulations on authorised celebrants participating in pop-up weddings. However, your involvement in a pop-up wedding must not interfere with your ability to comply with your duties and obligations as a marriage celebrant.

### **11.3 CEREMONIES AS PRIZES**

If a celebrant is approached to participate in a marriage ceremony being given away as a 'prize', the proposer must be advised that there are minimum requirements for a valid marriage ceremony.

As outlined above in [Part 11.1](#) on surprise weddings, there may be an issue regarding the ability of both of the parties to give the minimum one month's notice to the celebrant. Additionally, a marriage in such circumstances is unlikely to fall within the categories where the marriage may be authorised by a prescribed authority despite late notice (discussed further in [Part 4.3](#) of these guidelines).

The following steps should be taken by a celebrant in the event that they are approached to participate in this type of marriage ceremony:

- advise the person of the minimum requirements for a marriage and ensure that the proposal meets the legal requirements
- advise the BDM in the relevant state or territory as they may be approached for authority to allow the solemnisation of a marriage despite late notice.



## **11.4 FEES FOR SOLEMNSING MARRIAGES**

All Commonwealth-registered marriage celebrants may charge each couple an appropriate fee for solemnising a marriage. The amount of the fee is a matter between the celebrant and the couple. Similarly, there are no prescribed fees in relation to BDM officials who solemnise marriages.

The Marriage Act does not affect the right of a minister of religion who is an authorised celebrant to require or receive a fee for or in respect of the solemnisation of a marriage.<sup>82</sup> However, a minister of religion of a recognised denomination may have their name removed from the register if a Registrar of Ministers of Religion is satisfied that the minister has been making a business of solemnising marriages for the purpose of profit or gain.<sup>83</sup>

## **11.5 STATUTORY DECLARATIONS**

In addition to the declaration as to conjugal status required to be made by the parties to the intended marriage, the Marriage Act requires or permits a statutory declaration to be made in a number of cases.

There is a statutory declaration form that must be used for any Commonwealth statutory declarations. This form is to be used for all statutory declarations relating to any marriage ceremony solemnised by a celebrant. Celebrants should discard any old blank statutory declaration forms purchased before November 2004 as they can no longer be used. Commonwealth statutory declaration forms can be downloaded for free from the [Attorney-General's Department's](#) website and may be purchased from [CanPrint Communications](#).

Any statutory declaration that must be completed in relation to a marriage must be provided on this form only or it is not a valid statutory declaration. A statutory declaration form issued under state and territory legislation or any other type of statutory declaration form is not acceptable for use under the Marriage Act. If a person supplies a celebrant with a statutory declaration in relation to a marriage on a different form the celebrant must get another statutory declaration from them on the correct form.

A person who intentionally makes a false statement in a statutory declaration is guilty of an offence against the [Statutory Declarations Act 1959 \(Cth\)](#) and is liable to four years imprisonment.<sup>84</sup>

## **11.6 COMMITMENT CEREMONIES**

Celebrants may conduct commitment ceremonies for a couple. These are not marriages and the commitment ceremony must not purport to be a marriage.

As a commitment ceremony is not considered a legal marriage, the celebrant must not prepare or submit any paperwork (such as the NOIM and declarations as to conjugal status). Witnesses are not

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<sup>82</sup> Section 118 of the Marriage Act.

<sup>83</sup> Paragraph 33(1)(d)(ii) of the Marriage Act.

<sup>84</sup> Section 11 of the Statutory Declarations Act.

required for a commitment ceremony. A certificate of marriage, or any other certificate referring to the Marriage Act, must not be prepared for a commitment ceremony. In order to avoid doubt, celebrants must avoid using the words ‘wedding’ or ‘marriage’ to describe the ceremony.

A commitment ceremony could incorporate important rituals and provide photographic records; however, it has to be publicly **made clear to everyone present** that the ceremony is not a marriage.

Celebrants should deliver an appropriate introduction at the beginning of the ceremony making it clear to the guests that the ceremony is not a marriage ceremony and that if applicable the marriage has already occurred or is due to occur at a later date.

## **11.7 RENEWAL OF VOWS CEREMONIES**

Celebrants may also conduct renewal of vows ceremonies for a couple. The information in [Part 11.6](#) of these guidelines (commitment ceremonies) is applicable for renewal of vows ceremonies.

## **11.8 ARE CELEBRANTS OBLIGED TO SOLEMNISE ANY MARRIAGE?**

Section 47 of the Marriage Act provides that a minister of religion who is an authorised celebrant is not obliged to solemnise any marriage.<sup>85</sup> It also allows a minister of religion to make it a condition of solemnising a marriage that requirements additional to those provided by the Act are observed.<sup>86</sup> While there is no similar provision in the Act for celebrants who are not ministers of religion (apart from section 47A, discussed below), the Act does not impose a positive obligation on such a celebrant to solemnise any marriage. A celebrant with concerns about whether to solemnise a marriage is entitled to not proceed.

Section 47A of the Marriage Act provides that 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. The grounds upon which a religious marriage celebrant may refuse to solemnise a marriage is not limited under section 47A.

In considering this question, celebrants should be aware of their obligations under anti-discrimination laws. The [Code of Practice](#) for marriage celebrants requires Commonwealth-registered marriage celebrants to observe the laws of the Commonwealth and of the state or territory where the marriage is solemnised, and to prevent and avoid unlawful discrimination in the provision of marriage celebrancy services.

For information on anti-discrimination laws celebrants should consult the [Australian Human Rights Commission](#).

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<sup>85</sup> See subsection 47(1) of the Marriage Act.

<sup>86</sup> See subsection 47(2) of the Marriage Act.

## **11.9 PRIVACY**

A celebrant has access to the personal information of marrying couples. It is important that this information is treated sensitively. Personal information can include names, contact details, dates of birth, passport numbers and other identifying or sensitive information.

Before a celebrant passes on any personal information of a party to an intended marriage for whatever reason (including to seek advice from the department) they should first obtain the party's permission. If a party does not wish their details to be passed on the celebrant should respect this decision. There are certain exceptional circumstances where this would not apply, such as reporting a suspected forced marriage to the police.

If a celebrant makes copies of a party's documents that contain personal information the celebrant should advise the party why they are making copies, how they will be stored and when and how they will be disposed of.

A celebrant will not be breaching privacy by asking for personal information from parties to an intended marriage in order to satisfy themselves that the marriage can be validly solemnised.

## **11.10 COPYRIGHT AND MARRIAGE CELEBRANTS**

It is not the role of a marriage celebrant to obtain any necessary copyright licenses or permissions, however celebrants may be asked about some of these issues by couples as they plan their marriage ceremony or wedding reception. The below information is general information only and is not a substitute for legal advice. More information about copyright in Australia can be found below and on the Department of Communications and the Arts [website](#).

### *11.10.1 Playing music at weddings*

Playing music in public requires permission from the owners of copyright in the music, lyrics and the sound recording. The couple's wedding professional or venue may already have certain copyright licenses. However, performances of music at events such as weddings will not generally be in public even if they occur in a hotel, wedding hall or restaurant, as these events are considered private in nature.

### *11.10.2 Reproducing poetry or literature*

Copyright in published works generally subsists for the life of the author plus 70 years (and will have expired if the death of the author was prior to 1 July 1958). If the work is first published after the death of the author, copyright in the published work subsists for 70 years from the date of the first publication.

Reproducing a literary or dramatic work on a printed order of service (as opposed to merely reciting it) may require the permission of the copyright owner (author or publisher). Taking one short poem or extract from a large edition is unlikely to require permission from the owner of the copyright in the edition.

### *11.10.3 Reading or reciting an extract from a book*

Reading or reciting a reasonable portion of a published literary or dramatic work in public (provided the work is acknowledged) is an exception to copyright and no permission needs to be obtained.

### *11.10.4 Reproducing hymn or song lyrics in wedding booklets*

As literary works, hymns or song lyrics are generally protected for the life of the lyricist plus 70 years. Where the author died before 1 July 1958, copyright will have expired. Therefore, in many older hymns or songs, they can be freely used. If the lyricist is still alive permission to reprint the lyrics may be required. If there is doubt about who the music publisher is, or their contact details, the Australasian Mechanical Copyright Owners' Society (AMCOS) may be able to assist.

### *11.10.5 Filming wedding ceremonies*

[The Australasian Performing Right Association and the Australasian Mechanical Copyright Owners Society](#) (APRA|AMCOS) and [Phonographic Performance Company of Australia](#) (PPCA) provide a one-stop licence for incorporating music into films of weddings where those films have been made solely for the purpose of domestic viewing. The licence covers the separate rights in the underlying works and associated sound recordings.

### *11.10.6 Moral rights*

In addition to economic rights, authors of works also have moral rights over their works. This means that where material is reproduced, although a licence or permission from the copyright owner may not be necessary or has been obtained, there are still requirements to acknowledge the author and to not falsely attribute the work. Moral rights also protect the author against the derogatory treatment of their work. Caution should be exercised when making changes to hymns, literary pieces and musical works. Moral rights over literary, musical or artistic works last for the duration of copyright protection.

## PART 12 OFFENCES

The following Part outlines the offences contained in the Marriage Act that are relevant to celebrants, couples and other persons involved in the marriage ceremony.

### 12.1 WHY IT IS IMPORTANT FOR CELEBRANTS TO KNOW ABOUT OFFENCES UNDER THE MARRIAGE ACT

It is important that celebrants are aware of Marriage Act offences as they reflect the serious nature of the legal obligations attending the role and responsibilities of the celebrant.

They also reflect the importance of couples taking due care in supplying material to the celebrant in relation to their marriage.

A marriage at which a celebrant has officiated and in which false or inaccurate statements are made on a NOIM, or a ceremony at which an unauthorised person has purported to solemnise a marriage, may still be valid under section 48 of the Marriage Act.

Despite this, a celebrant may find themselves facing an investigation for potentially breaching one of the offence provisions because the celebrant has not fulfilled their responsibilities and duties under the Marriage Act properly.

This reflects the policy approach underlying the Marriage Act which places the responsibility on the celebrant to ensure that only valid marriages are solemnised under the Marriage Act and that all the requirements of the Marriage Act are followed. Section 48 may protect the validity of the marriage of a couple from many of a celebrant's failings, but the celebrant may still be subject to the offence provisions.

### 12.2 OFFENCES RELEVANT TO CELEBRANTS

Under the Marriage Act the following offences may be committed by a celebrant.

#### *12.2.1 Section 99 – solemnising marriage where notice or declaration not given or made etc*

Section 99 of the Marriage Act provides that it is an offence for a celebrant or person to solemnise a marriage Australia in contravention of the following sections in the Act:

- *Section 13* – provides that a marriage must not be solemnised if the appropriate consents required for the marriage of an underage person have not been obtained.
- *Subsection 33(3)* provides that a person who has been served a notice under subsection 33, shall not solemnise a marriage unless and until the person has been notified that the Registrar of Ministers of Religion has decided not to remove the person's name from the register; a period of 14 days has elapsed from the date the person was notified by the

Registrar and the person's name has not been removed from the register; or the person's name, having been removed, is restored to the register.

- *Section 42* – provides that a celebrant must not solemnise a marriage if they have *any* reason to believe that the NOIM, the declaration or any statutory declaration supplied contains a false statement or an error or is defective. The offences in section 99 also cover the provision of the NOIM within the required time (or obtaining a shortening of time), the production of evidence of date and place of birth as required, completion of the parties' declaration, sighting evidence of the end of any previous marriage as a result of death or divorce and ensuring that the celebrant has satisfied themselves as to the identities of the parties referred to in the NOIM.
- *Section 44* – provides that a marriage must not be solemnised unless there are at least two persons present as witnesses to the marriage who are, or appear to the person solemnising the marriage, to be over the age of 18 years.
- *Section 112* – provides that a marriage must not be solemnised unless the requirements relating to the use of interpreters have been met.
- *Subsection 113(1)* – provides that a person authorised by the Marriage Act must not purport to solemnise a marriage between persons who inform the celebrant that they are already legally married to each other or whom the celebrant knows or has reason to believe are already legally married to each other.
- *Section 99* – also provides for offences in relation to the solemnisation of marriages overseas under Part V of the Marriage Act in relation to giving a declaration, being satisfied as to the parties' identity, obtaining consents in relation to minors, and ensuring the citizenship requirements of the parties to the marriage are satisfied (sections 74, 75, 76, 77 and 78 of the Marriage Act).

The penalty for an offence under section 99 is five penalty units or imprisonment for six months.

#### *12.2.2 Section 100 – Legal impediment*

Section 100 of the Marriage Act provides that it is an offence for a person to solemnise a marriage, or purport to solemnise a marriage, if they have reason to believe that there is a legal impediment to the marriage or if the person has reason to believe the marriage would be void.

Consequently it would be an offence for a celebrant to solemnise a marriage if they believed that either of the parties was already married to some other person, the parties are within a prohibited relationship, either of the parties was not of marriageable age (and judicial orders and required consents had not been given) or if the consent of either of the parties to the marriage was not a real consent.

The penalty for contravening section 100 is five penalty units or imprisonment for six months.

### 12.2.3 Section 101 – Solemnisation of marriage by unauthorised person

Section 101 of the Marriage Act provides that it is an offence for a person to solemnise a marriage, or to purport to solemnise a marriage, unless the person is authorised by or under the Marriage Act to solemnise marriages.

Celebrants who have been deregistered (for example, for not paying the celebrant registration charge or for not completing their OPD) may be subject to criminal conviction under this provision if they continued to solemnise marriages.

The penalty for contravening section 101 is five penalty units or imprisonment for six months.

## 12.3 OFFENCES RELEVANT TO COUPLES

Celebrants should advise couples of the following offences that may be applicable to them:

- *Section 94* (bigamy) – it is an offence for a person to marry a person while still married to some other person.

The penalty for contravention of section 94 is imprisonment for five years.

- *Subsection 95(1)* – provides that it is an offence to go through a form or ceremony of marriage with a person who is not of marriageable age (unless all requirements concerning consents and judicial order are met).

The penalty for contravention of subsection 95(1) is imprisonment for five years.

- *Subsection 95(2)* – provides that it is an offence to go through a form or ceremony of marriage with a person who is a minor (that is, a person aged under 18) without the minor first obtaining consent to marry from their parents (or other prescribed person). The requirement for consent does not apply if the minor has previously been married.

The penalty for contravention of subsection 95(2) is imprisonment for six months.

- *Section 103* – provides that it is an offence for a person to go through a form or ceremony of marriage with another person knowing that the person solemnising the marriage is not authorised to do so, and having reason to believe that the other party to the marriage believes the person solemnising the marriage is authorised.

The penalty for contravention of section 103 is five penalty units or imprisonment for six months.

- *Section 104* – provides that it is an offence for a person to give a NOIM under section 42 or the declaration required under section 42 or sign such notices after they have been given if, to the knowledge of that person, the notice contains a false statement or error or is defective.

The penalty for contravention of section 104 is five penalty units or imprisonment for six months.

## **12.4 OFFENCES RELATING TO FORCED MARRIAGE**

On 27 February 2013 the Australian Parliament enacted the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth) which amended the *Criminal Code Act 1995* (Cth) to strengthen the capacity of investigators and prosecutors to combat all forms of human trafficking, slavery and slavery-like practices, including by introducing new offences of forced marriage. The Criminal Code defines a forced marriage as one where, because of coercion, threat or deception, a person (the victim) enters into a marriage without freely and fully consenting. ‘Coercion, threat or deception’ includes a broad range of physical and non-physical conduct that may be used by a person against the victim, or another person, to cause the victim to enter into a marriage.

The Criminal Code includes two offences of forced marriage:

- causing another person to enter into a forced marriage, and
- being a party to a forced marriage (this offence does not apply to the victim of a forced marriage).

Both offences have penalties of a maximum of seven years’ imprisonment, or nine years’ imprisonment in the case of an aggravated offence (for example, where the victim is less than 18 years old, or the offender subjects the victim to cruel, inhuman or degrading treatment).

If a celebrant suspects that they may be involved in a forced marriage they should contact the Australian Federal Police or their local police immediately. The website, [My Blue Sky](#), is a comprehensive online resource aimed at preventing and addressing forced marriage in Australia. My Blue Sky functions as a referral mechanism for people in, or at risk of, forced marriage, as well as a source of information and resources for service providers and the general public. The My Blue Sky website allows Anti-Slavery Australia to provide nationwide free, individualised legal advice to persons at risk of, or the victim of, forced marriage, primarily via email and SMS. Preliminary assistance, including free, confidential legal advice about forced marriage, is also available from My Blue Sky, through the national forced marriage helpline, on 02 9514 8115.

The My Blue Sky helpline operates Monday to Friday between 9am and 5pm, with an out-of-hours recorded message. My Blue Sky can be found at: [www.mybluesky.org.au](http://www.mybluesky.org.au).



The forced marriage offences do not criminalise arranged marriages. In a forced marriage, the victim does not consent to the marriage. An arranged marriage is a marriage whereby the spouses have the right to accept or refuse the marriage arrangement that their respective families have made.

## **12.5 OFFENCES RELATING TO STATUTORY DECLARATIONS**

It is also important to note that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence against the [Statutory Declarations Act](#) and is liable to four years imprisonment.<sup>87</sup>

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<sup>87</sup> Section 11 of the *Statutory Declarations Act 1959*.

## PART 13 REGISTERING AND RETIRING AS A CELEBRANT

### 13.1 MINISTERS OF RELIGION

#### *13.1.1 Authorisation of ministers of religion from recognised denominations to solemnise marriages*

A minister of religion of a recognised denomination is entitled to be registered to solemnise marriages if the person is:<sup>88</sup>

- nominated for registration by the recognised denomination
- ordinarily resident in Australia, and
- at least 21 years of age.

Applications by religious bodies or organisations seeking recognised denomination status are assessed against specific guidelines. Information on becoming a recognised denomination is available on the department's [website](#). Ministers of religion of recognised denominations are regulated by the Registrar of BDM in the state they reside. If a minister of religion of a recognised denomination takes up residence in a new state or territory, the minister should notify the BDMs in their new and previous state/territory of residence of their new residential address.

More information on becoming a recognised denomination is set out in the 'Fact sheet – recognised denominations' available on the department's [website](#). Enquiries about becoming a recognised denomination should be directed to the department.

#### *13.1.2 Grounds for refusing to register a minister of religion from a recognised denomination to solemnise marriages*

The Registrar of Ministers of Religion (each state and territory BDM Registrar holds this position) may refuse an application to register a minister of a recognised denomination to solemnise marriages on the following grounds:<sup>89</sup>

- there are already sufficient registered ministers of religion of the denomination to meet the needs of the locality in which the applicant resides
- the applicant is not a fit and proper person to solemnise marriages, or
- the applicant is unlikely to devote a substantial part of their time to the performance of functions generally performed by a minister of religion.

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<sup>88</sup> Section 29 of the Marriage Act.

<sup>89</sup> Section 31 of the Marriage Act.

The minister of religion may seek a review of such a decision by the Administrative Appeals Tribunal.<sup>90</sup>

Each recognised denomination has at least one nominating authority who is a person responsible for nominating the denomination's ministers of religion for registration to solemnise marriages. Recognised denominations notify the department of the name/s of the nominating authority/ies.

The department keeps a list of nominating authorities. The nomination of a minister of religion for authorisation to solemnise marriages by the recognised denomination must be in the approved form (available on the [department's website](#)) and signed by the nominating authority. The applicant minister must complete an application form (also available on the [Attorney-General's Department website](#)) and a [statutory declaration](#) verifying the particulars in the application. The nomination and application forms, and the statutory declaration, are also available from [CanPrint Communications](#).

Once completed and signed, the nomination, application and statutory declaration should be forwarded to the Registrar of Ministers of Religion (the Registrar of Births, Deaths and Marriages) in the state or territory in which the applicant ordinarily resides.

#### *13.1.3 Grounds for removing a minister of religion of a recognised denomination from the register of ministers of religion*

A state or territory Registrar of Births, Deaths or Marriages, may remove the name of a minister of religion of a recognised denomination from the register if:<sup>91</sup>

- the person has requested their name be removed
- the person has died
- the denomination no longer desires the person to be a celebrant or has ceased to be a recognised denomination
- the person has been guilty of such contraventions of the Marriage Act or the Marriage Regulations that they are no longer a fit and proper person to be registered
- the person has made a business of solemnising marriages for profit or gain, or
- the person is for any other reasons not a fit and proper person to solemnise marriages.

The minister of religion concerned may seek a review of such a decision from the Administrative Appeals Tribunal.<sup>92</sup>

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<sup>90</sup> Section 34 of the Marriage Act.

<sup>91</sup> Section 33 of the Marriage Act.

<sup>92</sup> Section 34 of the Marriage Act.

## 13.2 COMMONWEALTH-REGISTERED MARRIAGE CELEBRANTS

People wishing to apply to become a Commonwealth-registered marriage celebrant must have completed the Certificate IV in Celebrancy, which includes marriage celebrancy units, awarded by a registered training organisation. Alternatively, a course by an approved university or celebrancy skills, including fluency in an indigenous language, meets the qualification requirements to make an application for registration as a marriage celebrant.

A person is only entitled to be a Commonwealth-registered marriage celebrant if the Registrar of Marriage Celebrants is satisfied that the person:<sup>93</sup>

- (i) is aged 18 years or over
- (ii) has the necessary qualifications and/or skills as determined by the Registrar; and
- (iii) is a fit and proper person to be a celebrant.

In determining whether a person is 'fit and proper' the Registrar must take into account a number of factors, whether the person: has sufficient knowledge of the law relating to the solemnisation of marriage; is committed to advising couples of the availability of relationship support services; has good standing in the community; has not been convicted of an offence (punishable by imprisonment for one year or longer); whether the person has a conflict of interest or would gain a benefit in respect of another business; and will fulfil the obligations under section 39G of the Marriage Act (set out below). The Registrar may take into account 'any other matter considered relevant' in assessing a person as fit and proper.

An applicant is required to successfully answer a series of legal questions about marriage law and process. Applicants are required to pay a registration application fee.

### *13.2.1 Obligations of Commonwealth-registered marriage celebrants*

After registration each celebrant is responsible for paying an annual registration charge<sup>94</sup> unless exempted. This is pro-rated depending on the time of year a new celebrant is registered. Exemptions from paying these fees and charges are available in certain circumstances<sup>95</sup> – see 'Guidelines for seeking an exemption from the [application registration fee](#) and the [annual celebrant registration charge](#)'. Failure to pay the charge will result in deregistration unless an exemption from payment has been granted.

The obligations of Commonwealth-registered marriage celebrants are outlined in section 39G of the Marriage Act.

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<sup>93</sup> Subsection 39C(1) of the Marriage Act.

<sup>94</sup> Section 39FA of the Marriage Act.

<sup>95</sup> Section 49 of the Marriage Regulations.

Section 39G requires each Commonwealth-registered marriage celebrant to:

- conduct themselves in accordance with the [Code of Practice](#) for marriage celebrants prescribed by the Schedule 2 to the Marriage Regulations – see paragraph 39G(1)(a) of the Act (discussed in [Part 13.2.2](#) of these guidelines)
- undertake all professional development activities required by the Registrar of Marriage Celebrants in accordance with the Marriage Regulations – see paragraph 39G(1)(b) of the Act (discussed further in [Part 13.2.3](#) of these guidelines), and
- notify the Registrar, in writing, of a change in a person’s details no longer being current or correct on the register, within 30 days; or notify the Registrar of the occurrence of an event that might have caused the Registrar to not register the person if the event had occurred before the person was registered – paragraph 39G(c) of the Act (discussed further in [Part 13.2.4](#) of these guidelines).

More information on these obligations is detailed below.

### *13.2.2 The Code of Practice for Marriage Celebrants*

Commonwealth-registered marriage celebrants are required to comply with the [Code of Practice](#) in Schedule 2 to the Marriage Regulations.<sup>96</sup> The Code of Practice imposes legal obligations on all Commonwealth-registered marriage celebrants – that is, marriage celebrants (category C authorised celebrants) and religious marriage celebrants (category D celebrants).

Commonwealth-registered marriage celebrants should have a copy of the Code of Practice prominently displayed where marrying couples can see it, or provide a copy to couples to take away with them.

Some important aspects of the Code of Practice include:

- **Item 2** – requires Commonwealth-registered marriage celebrants to maintain a high standard of service in their professional conduct and practice. This includes ensuring:
  - appropriate personal presentation for marriage ceremonies
  - punctuality for marriage ceremonies, and
  - accuracy in preparation of documents and in the conduct of marriage ceremonies.

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<sup>96</sup> Paragraph 39G(a) of the Marriage Act.

This list is not intended to limit what conduct and practice is captured by item 2. For example, the Registrar of Marriage Celebrants would also expect a marriage celebrant providing a high standard of service to: confirm details about a marriage with the parties to the marriage; take steps to ensure that the marriage ceremony is audible, and ensure that an appropriately high standard of service is provided to all marriages the celebrant solemnises, including where the marriage celebrant is solemnising multiple marriages on the same day.

- **Item 5** – lists a number of requirements relating to the preparation for, and the conduct of, the marriage ceremony. Commonwealth-registered marriage celebrants must:
  - give the parties information and guidance to enable them to choose or compose a marriage ceremony, including information to assist the parties in deciding on whether a marriage ceremony rehearsal is appropriate or needed, and
  - respect the privacy and confidentiality of the couple by:
    - arranging facilities to interview parties
    - dealing appropriately with personal documents and information, and
    - securely storing records; ensuring the return of personal documents relating to the parties as soon as practicable (unless needed for the ceremony).
- **Item 6** – requires Commonwealth-registered marriage celebrants to maintain up-to-date knowledge about the range of information and services designed to enhance and sustain marrying couples throughout their relationship, not just in the period immediately preceding the marriage ceremony. Commonwealth-registered marriage celebrants must also inform marrying couples about this range of services. Meeting this obligation requires ongoing action by Commonwealth-registered marriage celebrants. The family relationship services available in their area should be reviewed by them annually at least to ensure the information they provide to marrying couples is up-to-date.

Whether a high standard of service has been provided will depend on the particular circumstances of each marriage.

### *13.2.3 Ongoing professional development*

Commonwealth-registered marriage celebrants must complete:

- ongoing professional development (OPD) activities totaling five hours each (calendar) year, and
- as part of their five hours of OPD complete any compulsory activity set by the Registrar of Marriage Celebrants.<sup>97</sup>

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<sup>97</sup> See paragraph 39G(b) of the Marriage Act and section 53 of the Marriage Regulations.

Information about the OPD obligations of Commonwealth-registered marriage celebrants is published on the department's [website](#). The Registrar is required to publish a list, at the beginning of each year, with a [list](#) of OPD activities (this may be updated from time-to-time).<sup>98</sup>

It is the responsibility of all Commonwealth-registered marriage celebrants to regularly monitor the department's website to ensure they have fully complied with their OPD obligations each year. If celebrants do not comply with their OPD obligations, the Registrar of Marriage Celebrants may take disciplinary measures against them. The department encourages all Commonwealth-registered marriage celebrants to ensure that they maintain current professional indemnity insurance as they may be legally liable for actions taken in solemnising a marriage.

#### *13.2.4 Informing the Registrar of Marriage Celebrants of changes to personal circumstances*

Commonwealth-registered marriage celebrants must inform the Registrar of Marriage Celebrants of any changes to their contact details, including phone numbers and email address, within 30 days. This information must be provided in writing.<sup>99</sup>

Commonwealth-registered marriage celebrants must also notify the Registrar in writing if something occurs that might affect their entitlement to registration.<sup>100</sup> This may include:

- being convicted of a criminal offence
- starting a new business, hobby or employment that is related to weddings or marriage and that might create a potential conflict of interest with the performance of their duties as a Commonwealth-registered marriage celebrant (for further information see the Conflict of Interest guidelines on the department's [website](#)), or
- a change in employment.

Meeting this obligation requires ongoing action on the part of all Commonwealth-registered marriage celebrants. The online self-service portal allows Commonwealth-registered marriage celebrants to make changes to their own contact details.

Notifying the Registrar of Births, Deaths and Marriages is not the same as notifying the Registrar of Marriage Celebrants. You must notify the Registrar of Marriage Celebrants separately.

#### *13.2.5 Performance reviews*

Section 39H of the Marriage Act enables the Registrar of Marriage Celebrants to, from time to time, review the performance of a marriage celebrant in respect of a period of time to determine whether

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<sup>98</sup> As a legislative instrument, the list is required to be published on [Federal Register of Legislation](#)

<sup>99</sup> Paragraph 39G(1)(c)(i) of the Marriage Act.

<sup>100</sup> Paragraph 39G(1)(c)(ii) of the Marriage Act.

the Registrar considers that celebrant's performance in the period is satisfactory. In carrying out the performance review, the Registrar must take into account certain matters, including:<sup>101</sup>

- any complaint about the celebrant, what the result of the complaint was, and whether the celebrant has complied with any action required as a result of the complaint
- any information received by the Registrar concerning the performance of the duties of a celebrant
- whether the celebrant has complied with the [Code of Practice](#) for marriage celebrants
- whether the celebrant has completed the required OPD, and whether the celebrant has developed any physical or mental incapacity that prevents them from continuing to carry out their duties as a marriage celebrant.

If any compliance issues arise, Commonwealth-registered celebrants will be given the opportunity to respond before any action is taken against them by the Registrar of Marriage Celebrants.

Commonwealth-registered marriage celebrants need to be aware that the Registrar of Marriage Celebrants may take disciplinary measures against them if they fail to meet their obligations. The list of available disciplinary measures and the circumstances in which they are able to be imposed are set out in section 39I of the Marriage Act.

### **13.3 DISCIPLINARY MEASURES**

The Registrar can only take disciplinary measures against a Commonwealth-registered marriage celebrant if satisfied of one of the following circumstances:<sup>102</sup>

- the celebrant is no longer entitled to be registered
- the celebrant has not complied with an obligation under section 39G of the Marriage Act
- the celebrant's performance was determined to be not satisfactory as a result of a performance review under section 39H of the Marriage Act
- after considering a complaint made against the marriage celebrant the Registrar considers it appropriate to take disciplinary measures
- the marriage celebrant's application for registration was known by the marriage celebrant to be false or misleading in a material particular, or
- the marriage celebrant's notice requesting to be identified as a religious marriage celebrant was known by the marriage celebrant to be false or misleading in a material particular.

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<sup>101</sup> Section 39H of the Marriage Act, and section 59 of the Marriage Regulations.

<sup>102</sup> Section 39I(1) of the Marriage Act.



The Registrar may take the following disciplinary action:<sup>103</sup>

- a written caution
- the requirement to undertake particular professional development activities
- suspension for up to six months, or
- deregistration.

A celebrant who is deregistered or has their registration suspended has a right of review to the Administrative Appeals Tribunal.<sup>104</sup>

#### **13.4 RETIRING FROM THE ROLE OF COMMONWEALTH-REGISTERED MARRIAGE CELEBRANT**

To retire as a Commonwealth-registered marriage celebrant, celebrants must advise the department in writing (see the template on the 'Managing your registration' [webpage](#)) that they wish to resign. Celebrants should quote their marriage celebrant authorisation number. Once this information is received from a celebrant, the department will start the process to revoke their authorisation. Once the process has been completed, the celebrant will be sent a letter advising that their authorisation has been revoked, outlining record keeping obligations and what to do with any unused marriage forms. Celebrants should advise the department of any future ceremonies they intend to perform to ensure their revocation is not processed prior to these dates.

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<sup>103</sup> Section 39I Marriage Act.

<sup>104</sup> Section 39J Marriage Act.

## GLOSSARY

**Authorised celebrant** collectively refers to ministers of religion of recognised denominations (registered under Subdivision A of Division 1 of Part IV of the Marriage Act); State and Territory Officers (authorised by virtue of Subdivision B of Division 1 of Part IV of the Marriage Act); Commonwealth-registered marriage celebrants, including religious marriage celebrants (registered under Subdivision C and Subdivision D of Part IV of the Marriage Act); and ADF chaplains and marriage officers authorised under Part V of the Marriage Act (see subsection 5(1) of the Marriage Act).

**BDM** means an Australian State or Territory Registry of Births, Deaths and Marriages.

**Commonwealth-registered marriage celebrant** means an authorised celebrant registered under Subdivision C or Subdivision D of Division 1 of Part IV of the Marriage Act under the Marriage Celebrants Programme.

**Department** refers to the Attorney-General's Department.

**Family Law Act** means *Family Law Act 1975* (Cth).

**Marriage** is defined under Australian law as the 'union of 2 people to the exclusion of all others, voluntarily entered into for life' – subsection 5(1) of the Marriage Act.

**Marriage Act** means the *Marriage Act 1961* (Cth).

**Marriage Regulations** means the Marriage Regulations 2017 (Cth). These repealed and replaced the Marriage Regulations 1963.

**Notice of Intended Marriage (NOIM)** means the notice that parties to a marriage must give their authorised celebrant before the marriage ceremony (subsection 42(1) of the Marriage Act).

**Registrar** means the Registrar of Marriage Celebrants established by section 39A of the Marriage Act (unless otherwise specified).

## APPENDIX A – SAMPLE DIVORCE ORDERS

### Sample of divorce order when there is a child or children of the marriage

#### FAMILY LAW ACT 1975

#### DIVORCE ORDER

IN THE FEDERAL MAGISTRATES  
COURT OF AUSTRALIA

File No: (P) XXXXXXXXXXXXXXXX

IN THE MARRIAGE BETWEEN:

XXXXXXXXXXXXXX

(Husband)

AND

XXXXXXXXXXXXXX

(Wife)

BEFORE: XXXXXXXXXXXXXXXX

DATE OF ORDER: Tuesday, 2 August 2011

MADE AT: MELBOURNE

The application of XXXXXXXXXXXXXXXX for a divorce order in relation to the marriage of the above named husband and wife, which was solemnised on thirtieth day of March 1993, was heard on the second day of August 2011.

#### THE COURT FINDS:

1. The marriage is proved.
2. The wife was at all material times ordinarily resident in Australia and has been so resident for 1 year immediately preceding the date on which the application was filed.
3. The ground for the application for a divorce order – namely, that the marriage has broken down irretrievably – is proved.

#### THE COURT, BY ORDER, DECLARES THAT IT IS SATISFIED:

4. The only child/ren of the marriage, as that expression is defined in section 55A(3), who has/have not attained the age of eighteen years is/are the child/ren:

XXXXXXXXXXXXX XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX  
XXXXXXXXXXXXX (name and date of birth of each child)

5. The Court by order declared that it was satisfied that the only child/children of the marriage who has/have not attained the age of 18 years is/are the child/children specified in the order and that proper arrangements in all the circumstances have been made for the care, welfare and development of the child/children.

#### THE COURT ORDERS:

6. A divorce order be made, such divorce order to take effect and thereby terminate the marriage on third day of September 2011.

By the Court

*David B. [Signature]*

Registrar



See Page 2 for Certificate and Notes

FILE NO: XXXXXXXXXX

**CERTIFICATE THAT THE DIVORCE ORDER HAS TAKEN EFFECT**

I certify that the divorce order made in relation to the application XXXXXXXXXXXXXXXX took effect on the third day of September 2011, thereby terminating the marriage between XXXXXXXXXXXXXXXX

By the Court

*David Byrne*



Registrar

**NOTES:**

1. If a party to the marriage proposes to make an application to a court exercising jurisdiction under the *Family Law Act 1975* as to property or as to the maintenance of that party, such application must be made within 12 months from the date upon which this divorce order takes effect. After that time such an application cannot be made without first obtaining the leave of the court to do so.
2. A divorce order which has taken effect may revoke, or otherwise affect the operation of, the Will of a party. Parties should seek legal advice about their position under the law of the State or Territory concerned.
3. A party to a marriage who marries again before this divorce order takes effect (unless the other party has died) commits the offence of bigamy.
4. If, before this divorce order takes effect, it comes to the notice of a party to the marriage that the other party has died, he or she should file an affidavit or certificate in the office of the court giving particulars of the date and place of death.

XXXXXXXXXXXXX  
XXXXXXXXXXXXX  
XXXXXXXXXXXXX

## Sample divorce order when registrar is not satisfied arrangements are in place for the child

### FAMILY LAW ACT 1975 DIVORCE ORDER

IN THE FEDERAL MAGISTRATES  
COURT OF AUSTRALIA

File No: (P)XXXXXXXXXX

IN THE MARRIAGE BETWEEN:

XXXXXXXXXX

(Husband)

AND

XXXXXXXXXX

(Wife)

BEFORE: XXXXXXXXXX

DATE OF ORDER: Tuesday, 2 August 2011

MADE AT: MELBOURNE

The application of XXXXXXXXXX for a divorce order in relation to the marriage of the above named husband and wife, which was solemnised on sixteenth day of April 2005, was heard on the second day of August 2011.

#### THE COURT FINDS:

1. The marriage is proved.
2. The wife was at all material times domiciled in Australia.
3. The ground for the application for a divorce order – namely, that the marriage has broken down irretrievably – is proved.

#### THE COURT, BY ORDER, DECLARES THAT IT IS SATISFIED:

4. The only child/ren of the marriage, as that expression is defined in section 55A(3), who has/have not attained the age of eighteen years is/are the child/ren:

XXXXXXXXXX (name of child and birth date)

5. There are circumstances by reason of which the divorce should take effect even though the Court is not satisfied that proper arrangements in all the circumstances has been made for the care, welfare and development of the child/children.

#### THE COURT ORDERS:

6. A divorce order be made, such divorce order to take effect and thereby terminate the marriage on third day of September 2011.

By the Court

*David Byrne*

Registrar



See Page 2 for Certificate and Notes

FILE NO: (P) XXXXXXXXXX

**CERTIFICATE THAT THE DIVORCE ORDER HAS TAKEN EFFECT**

I certify that the divorce order made in relation to the application of XXXXXXXXXX took effect on the third day of September 2011, thereby terminating the marriage between XXXXXXXXXX and XXXXXXXXXX.

By the Court

*David Byrne*



Registrar

**NOTES:**

1. If a party to the marriage proposes to make an application to a court exercising jurisdiction under the *Family Law Act 1975* as to property or as to the maintenance of that party, such application must be made within 12 months from the date upon which this divorce order takes effect. After that time such an application cannot be made without first obtaining the leave of the court to do so.
2. A divorce order which has taken effect may revoke, or otherwise affect the operation of, the Will of a party. Parties should seek legal advice about their position under the law of the State or Territory concerned.
3. A party to a marriage who marries again before this divorce order takes effect (unless the other party has died) commits the offence of bigamy.
4. If, before this divorce order takes effect, it comes to the notice of a party to the marriage that the other party has died, he or she should file an affidavit or certificate in the office of the court giving particulars of the date and place of death.

XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

## Sample divorce order when there is no child of the marriage

### FAMILY LAW ACT 1975

#### DIVORCE ORDER

IN THE FEDERAL MAGISTRATES  
COURT OF AUSTRALIA

File No: (P) XXXXXXXXXXXXXXXX

IN THE MARRIAGE BETWEEN:

XXXXXXXXXXXXXX

(Husband)

AND

XXXXXXXXXXXXXX

(Wife)

BEFORE: XXXXXXXXXXXXXXXX

DATE OF ORDER: Tuesday, 2 August 2011

MADE AT: MELBOURNE

The application of XXXXXXXXXXXXXXXX for a divorce order in relation to the marriage of the above named husband and wife, which was solemnised on thirtieth day of March 1993, was heard on the second day of August 2011.

#### THE COURT FINDS:

1. The marriage is proved.
2. The wife was at all material times ordinarily resident in Australia and has been so resident for 1 year immediately preceding the date on which the application was filed.
3. The ground for the application for a divorce order – namely, that the marriage has broken down irretrievably - is proved.

#### THE COURT, BY ORDER, DECLARES THAT IT IS SATISFIED:

4. The only child/ren of the marriage, as that expression is defined in section 55A(3), who has/have not attained the age of eighteen years is/are the child/ren:

XXXXXXXXXXXXXX XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXX (name and date of birth of each child)

5. The Court by order declared that it was satisfied that the only child/children of the marriage who has/have not attained the age of 18 years is/are the child/children specified in the order and that proper arrangements in all the circumstances have been made for the care, welfare and development of the child/children.

#### THE COURT ORDERS:

6. A divorce order be made, such divorce order to take effect and thereby terminate the marriage on third day of September 2011.

By the Court

*David Byrne*

Registrar



See Page 2 for Certificate and Notes

FILE NO: (P) XXXXXXXXXXXXX

**CERTIFICATE THAT THE DIVORCE ORDER HAS TAKEN EFFECT**

I certify that the divorce order made in relation to the application of XXXXXXXXXXXXX took effect on the third day of September 2011, thereby terminating the marriage between XXXXXXXXXXXXX and XXXXXXXXXXXXX.

By the Court

*David Byrne*



Registrar

**NOTES:**

1. If a party to the marriage proposes to make an application to a court exercising jurisdiction under the *Family Law Act 1975* as to property or as to the maintenance of that party, such application must be made within 12 months from the date upon which this divorce order takes effect. After that time such an application cannot be made without first obtaining the leave of the court to do so.
2. A divorce order which has taken effect may revoke, or otherwise affect the operation of, the Will of a party. Parties should seek legal advice about their position under the law of the State or Territory concerned.
3. A party to a marriage who marries again before this divorce order takes effect (unless the other party has died) commits the offence of bigamy.
4. If, before this divorce order takes effect, it comes to the notice of a party to the marriage that the other party has died, he or she should file an affidavit or certificate in the office of the court giving particulars of the date and place of death.

XXXXXXXXXXXXX  
XXXXXXXXXXXXX  
XXXXXXXXXXXXX



## APPENDIX B – CHECKLIST – MARRIAGE CELEBRANT OBLIGATIONS WHEN SOLEMNISING MARRIAGE

This is a checklist for completing marriage documents—before the ceremony, at the ceremony and after the ceremony. The checklist is also available as a fact sheet on the department’s website – see the [Celebrant resources page](#).

### *Before the ceremony*

#### *Finalise the notice of intended marriage (NOIM)*

- ☐ Ensure the couple provides the NOIM to you no later than one month and no earlier than 18 months before the ceremony (unless the couple obtains a shortening of time from a [prescribed authority](#)).
- ☐ Record on the NOIM the date you receive it.
- ☐ Check, and note on the NOIM, evidence of each party’s date and place of birth.
- ☐ Satisfy yourself as to each party’s identity (AGD recommends checking photo ID).
- ☐ Check that the full names of the parties are correctly recorded.
- ☐ Check each party is free to marry, noting on the NOIM whether they are related and any evidence you have seen about how any previous marriage ended.
- ☐ Ensure an interpreter is present if you consider it necessary (eg. to establish each party is giving real consent to the marriage) or the parties request one.
- ☐ Type or use block letters, identifying upper and lower case where necessary, eg. McLEOD.
- ☐ Make sure the NOIM is signed by both parties and has been witnessed by a person authorised to do so (see the list contained on the NOIM).
  - The NOIM may be signed by one party only where the other signature cannot be conveniently obtained. The other party must sign the NOIM in the presence of the authorised celebrant before the marriage is solemnised.
- ☐ Complete the ‘For Celebrant’s Use’ section.
- ☐ Give each of the parties a copy of the *Happily Ever Before and After* brochure, and note this on the NOIM.
- ☐ Make sure all questions on the NOIM are answered.

#### *If either party is under 18 years of age*

- ☐ Make sure a court order and parental (or other) consents have been obtained.
  - Marriage must take place within three months of the date of the court order and parental consents.
  - Under no circumstances can two persons under 18 years of age marry each other.

#### *Ensure the parties complete their declarations of no legal impediment*

- ☐ Accurately and legibly copy information from the NOIM to the declaration.
  - If a party’s address or occupation has changed since completing the NOIM, updated details should be shown on the declaration, but the NOIM should not be amended.
- ☐ Parties should sign their declarations as close as possible to the ceremony.

#### *Prepare three marriage certificates before the ceremony*

- ☐ Accurately and legibly copy information from the NOIM to the three marriage certificates:

- Official certificate of marriage (to be sent to the registry of births, deaths and marriages (BDM) after the ceremony, with the declaration of no legal impediment printed on the reverse side).
- The second official certificate (your copy).
- Form 15 certificate (issued to the parties immediately after the ceremony).
- ☐ Set out the rites used to solemnise the marriage on the marriage certificates:
  - For a civil ceremony (including if you are a religious marriage celebrant performing civil ceremonies), use the words ‘according to the *Marriage Act 1961*’.
  - If you are a minister of religion, you may record that the marriage was solemnised according to the rites of your religious organisation.

### *At the ceremony*

- ☐ Before commencing the ceremony, ensure:
  - There are at least two witnesses present who are over the age of 18 years.
  - If relevant, an interpreter is present, and has completed the statutory declaration on the certificate of faithful performance by interpreter.
- ☐ Include the ‘monitum’ explaining the nature of the marriage relationship.
- ☐ Include vows.
  - Parties must say the words in subsection 45(2) of the Marriage Act for a civil ceremony (including if the civil ceremony is solemnised by a religious marriage celebrant who performs civil ceremonies).
  - If you are a minister of religion, use a ceremony approved by your religious organisation.

### *Be satisfied that each party consents to the proposed marriage*

- ☐ You must be satisfied that each party to the marriage is consenting to the marriage at all times *before* the conclusion of the ceremony.

### *Sign the marriage certificates*

- ☐ All three marriage certificates must be signed by you, the parties and the two witnesses.
  - Record the same names for the couple as are recorded on the NOIM on all three certificates.
  - Record the same names for the witnesses on all certificates and ensure witnesses clearly print their full names.
- ☐ Hand the Form 15 certificate to one of the parties.

### *After the ceremony*

- ☐ If relevant, ensure the interpreter completes and gives you the certificate of faithful performance by interpreter.
- ☐ Complete the NOIM by recording the date and place of marriage and rites used, signing the ‘Celebrant’s signature’ section and recording your celebrant number.
- ☐ Within 14 days of the ceremony, send the official certificate of marriage, declarations of no legal impediment, and NOIM (together with any supporting documents) to the registry of births, deaths and marriages (BDM) in the state or territory where the marriage took place.
  - Supporting documents could include statutory declarations, a certificate of faithful performance by interpreter, the court orders and consents authorising a minor’s marriage and/or a prescribed authority’s consent to a shortening of time.

- ☐ Complete the 'record of use form' for the Form 15 certificate. You must keep records of every marriage you perform in a secure place for six years starting on the day, after the day the marriage was solemnised. This requirement relates to the official certificate of marriage (marriage register) and the 'record of use form'.