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Message from our team

Welcome to the spring 2020 edition of Marriage Celebrant Matters.

Since our last newsletter we acknowledge that celebrants have experienced, and are still experiencing, some very difficult times. Many of our celebrants were affected by the bushfires and now face the uncertainty of the Coronavirus pandemic that affects us all. We appreciate your concerns and the feedback that we have received.

The department has released the 2019-2020 Marriage Celebrants Program cost recovery implementation statement. The statement, which can be found on our [website](#) provides an update on financial performance and also forecasts into the future financial years.

The MLCS met with celebrant association and network representatives on 5 May 2020 via teleconference. These meetings, held biannually, provide an opportunity to discuss a wide range of issues. Issues discussed included:

- Ongoing Professional Development – 2021 onwards
- Forms review
- COVID-19 measures impacting the department

Further detail on the meeting is available in the meeting minutes on the [Marriage celebrant associations and networks page](#) on our website.

Key dates

July-August 2020

The [Attorney-General](#) has agreed to set the 2020-21 celebrant registration charge at \$0. The Government recognises social distancing measures agreed by the National Cabinet in response to COVID-19 have impacted on the number of weddings solemnised and marriage celebrants losing business.

Marriage celebrants were issued with a celebrant registration charge notice on 13 July 2020 as this is required under section 39FA of the Marriage Act 1961. However, marriage celebrants will not need to take any further action in regard to this notice and will remain registered for 2020-21.

Reducing the charge to \$0 will only be for one financial year, 2020-2021. A decision will be made prior to July 2021, in accordance with the cost recovery guidelines, as to what the celebrant registration charge will be for 2021-22.

31 December 2020

The 2020 OPD obligation remains in place. You have until 31 December 2020 to complete your OPD. To ensure you do not miss out on fulfilling your OPD obligation we encourage you to contact your training provider to discuss how you may undertake your training as face to face sessions may no longer be an option.

The department has made available a one hour OPD activity which consists of 25 questions on legal aspects of marriage in Australia. The OPD activity is available on your self-service portal and is free of charge. Guidance on how to access and complete the OPD activity is available in our factsheet – 'Knowledge of the law – 2020 OPD activity' available on our [website](#).

In exceptional circumstances, you can apply for an exemption from completing OPD. You have until 31 December 2020 to apply to the Registrar of Marriage Celebrants for an exemption. Applications can be made via the self-service portal. We suggest that celebrants make arrangements to undertake their OPD sooner rather than later and work with the OPD providers on the method of delivery.

Coronavirus and the marriage celebrant

We appreciate that there is uncertainty amongst marriage celebrants and couples regarding the different public health orders about social distancing in effect across Australia. Please note the Marriage Act 1961 has not changed and marriages still need to be solemnised in accordance with the Act. State and Territory Governments are responsible for implementing social distancing measures. Questions on gatherings and social distancing should be directed to State and Territory Governments. Access to current directions/orders in each State/Territory are set out below:

NSW	https://www.nsw.gov.au/covid-19
QLD	https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19
VIC	https://www.dhhs.vic.gov.au/state-emergency
SA	https://www.covid-19.sa.gov.au/
WA	https://www.wa.gov.au/government/covid-19-coronavirus
TAS	https://www.coronavirus.tas.gov.au/facts/tasmanian-government-response
NT	https://coronavirus.nt.gov.au/
ACT	https://www.covid19.act.gov.au/home

Please note that the department cannot provide guidance on State/Territory laws and if you write to us on this issue we will direct you to the above web links.

The MLCS is currently, for the most part, working remotely. The 1800 number has been switched to voicemail and will be for the foreseeable future. We are not responding to messages left on the voicemail. If you have an enquiry you should email us on marriagecelebrantssection@ag.gov.au. We will advise celebrants when answering the 1800 number returns.

Streamlining of the application process to become a marriage celebrant

From the 16 March 2020, the department introduced a new application form for registration as a marriage celebrant. The new application form is accompanied by an amended assessment process.

The new application form reduces the amount of information required from an applicant while still meeting the legal requirements under the Marriage Act 1961 and the policy objectives of the Marriage Celebrants Program. The applications streamlining is consistent with the Government's policy on reducing red tape and will reduce the regulatory burden for aspiring celebrants.

Aspiring marriage celebrants must continue to satisfy requirements under the Marriage Act in order to be registered as a marriage celebrant. A person's entitlement to be registered as a marriage celebrant is set out under section 39C of the Marriage Act. A person needs to: be over the age of 18, hold the relevant qualification (a Certificate IV in Celebrancy), and be a fit and proper person.

Compliance with 2019 OPD obligations

As you will be aware the Registrar actively monitors compliance with OPD each year.

In 2019, 97 per cent of marriage celebrants complied with their OPD obligations. This is a great result and provides assurances to the department that the majority of celebrants are maintaining appropriate knowledge to legally solemnise marriages according to Australian law.

Disciplinary measures have been imposed, on a case-by-case basis, on celebrants who failed to comply with their obligations.

New guidance material available on our website

To assist all marriage celebrants with their knowledge of legal requirements for solemnising marriages in Australia, the department has introduced new Notice of intended marriage (NOIM) guidance material on its website.

The factsheets [‘Tips for completing Notices of Intended Marriage’](#) and [‘Fact scenarios and Mock Notice of Intended Marriage examples’](#) will provide direction on how to correctly complete the NOIM, as well as providing examples of the NOIM being completed using a number of different scenarios.

We have also posted a new factsheet on ‘Correcting marriage documentation’. The purpose of this factsheet is to provide guidance on when forms such as the NOIM, certificate of marriage and official certificate of marriage can be amended, and who has authority to amend the documentation.

Commissioner for Declarations

We have received a number of enquiries from celebrants relating to witnessing of the NOIM by a Commissioner for Declarations under the Statutory Declarations Act 1959.

A Commissioner for Declarations under the Statutory Declarations Act 1959 to witness the NOIM is **not** the same as a person who is a prescribed person under the Statutory Declarations Act 1959 (examples being a postal manager, bank officer etc). We understand that this has caused some confusion around who is authorised to witness the signing of the NOIM.

Section 42(2) of the Marriage Act provides that a NOIM may be signed by a party in Australia in the presence of a Commissioner for Declarations under the Statutory Declarations Act 1959. A Commissioner for Declarations is not defined in the current Statutory Declarations Act. The definition last appeared in the 1991 version of this Act under the former section 4 as follows: ‘Commissioner for Declarations’ means a person appointed under this Act or under a State Act to be a Commissioner for Declarations’. The Commonwealth repealed this definition in 1991 and the Commonwealth no longer appoints people to this position.

A person who previously held this title under Commonwealth law (ie prior to 1991), still holds this title unless it has been cancelled. Therefore, if someone holds this title, only then they would be able to witness a NOIM.

We note, that as no one has been appointed to this position since 1991, there may not be many people who fit into this category today.

If there is any doubt around the status of the Commissioner for Declarations we recommended that a party find another witness for the NOIM as set out in section 42(2) of the Marriage Act, such as an authorised celebrant, a justice of the peace, a barrister or solicitor, a medical practitioner or a member of the Australian Federal Police or the police force of a State or Territory.

Declaration of no impediment

A number of enquiries have been received from celebrants relating to the timing of the completion of the declaration of no legal impediment (the Declaration).

The Declaration must be signed before the marriage is solemnised, however, the Marriage Act does not give a maximum allowable time frame for the Declaration to be signed before the ceremony.

We recommend (as best practice) this to occur as close as possible to the ceremony, to ensure the celebrant has the greatest certainty as to the party's conjugal status, and that there is no legal impediment to the marriage ie, that the parties are consenting to the marriage by understanding the nature and effect of the marriage ceremony.

Signing as close to the ceremony as possible is important where parties have signed a NOIM but need to establish that they are free to marry (eg their divorce order has taken effect).

It also ensures that the celebrant is satisfied that parties understand the nature and effect of the marriage ceremony in cases where capacity may be an issue such as in relation to failing health.

Ultimately it is up to the celebrant to ensure the Declaration is completed correctly before the marriage takes place. It is an offence under section 99 of the Marriage Act to solemnise a marriage in contravention to section 42 of the Act.

Transferring a NOIM

It is the responsibility of the first celebrant to ensure that the notice is transferred, safely. 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. While the NOIM contains personal information relating to the parties, the NOIM is not the legal responsibility of the parties, and should not be given to them to transfer to the second celebrant. The transfer of the NOIM can be done electronically (by email, a photograph attached to a text message or facsimile), by hand or registered post, to the second celebrant. If transferred electronically, there is no requirement to provide the original hardcopy NOIM to the second celebrant before the wedding takes place.

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, except that a new NOIM does not need to be completed by the parties.

The replacement celebrant who solemnises a 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 sight all the necessary legal paperwork, a commitment ceremony should be offered.

Where parties engage a second celebrant, there is no legal obligation on the first celebrant to transfer the NOIM, and in some circumstances, the parties will be required to complete a new NOIM with the second celebrant, and if needed, seek a shortening of time from a prescribed authority.

Questions

The MLCS is committed to improving communications with marriage celebrants and other stakeholders in streamlining processes and procedures.

The MLCS welcomes feedback and comments via email at marriagecelebrantssection@ag.gov.au.

If you have any questions about the information provided in this newsletter or have something you would like to see covered please contact us.

Contact us

Due to COVID-19 restrictions the phone service is not operational until further notice, if you have an enquiry please email us at: marriagecelebrantssection@ag.gov.au.

We recommend that celebrants who have an urgent enquiry add 'urgent' or the date of the upcoming wedding to the subject matter heading of their email.