Australian Government
Attorney-General's Department

Guidelines on the *Marriage Act 1961*

for authorised celebrants

CONTENTS

CHAPTER 1: USING THE GUIDELINES

Acknowledgement of Country

The Commonwealth Attorney-General's Department would like to acknowledge the traditional custodians of country throughout Australia and their connections to land, sea and community and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples. We pay our respect to their Elders past and present.

The guidelines

1.1. Marriage in Australia is regulated by the *Marriage Act 1961* (Cth) (Marriage Act) and the Marriage Regulations 2017 (Marriage Regulations).

1.2. The Marriage Act and the Marriage Regulations also apply to Norfolk Island, Christmas Island and the Cocos (Keeling) Islands.[1] They do not apply to the Australian Antarctic Territory.

1.3. The *Guidelines on the* Marriage Act 1961 *for authorised celebrants* (the guidelines) are intended to assist authorised celebrants to understand the requirements for solemnising marriages under the Marriage Act and the Marriage Regulations.

1.4. The guidelines are not law and **do not constitute legal advice**. The guidelines provide general information only.

Who the guidelines are for

1.5. These guidelines are for all authorised celebrants who solemnise marriages in Australia. These guidelines are not directed to Chaplains of the Australian Defence Forces, and Australian Defence Force officers who solemnise marriages overseas under Part V of the Marriage Act.

1.6. In these guidelines, a reference to 'authorised celebrants' is a reference to:

- **ministers of religion of recognised denominations** registered under Subdivision A of Division 1 of Part IV of the Marriage Act
- **state or territory officers** authorised to solemnise marriages under Subdivision B of Division 1 of Part IV of the Marriage Act
- **Commonwealth-registered marriage celebrants**, which includes:
    - marriage celebrants (not being ministers of religion) registered under Subdivision C of Division 1 of Part IV of the Marriage Act, and
    - marriage celebrants registered under Subdivision C of Division 1 of Part IV of the Marriage Act (who are ministers of religion) including those who have elected to be identified as **'religious marriage celebrants'** on the register of marriage celebrants under Subdivision D.

[1] Subsection 8(1) of the Marriage Act.

1.7. Note: ‘Commonwealth-registered marriage celebrants’ is not a term used in the Marriage Act. For clarity and convenience this is the term that will be used throughout these guidelines to denote the above.

Overview of the guidelines

1.8. The guidelines are divided into the following chapters:

Chapter 1 provides an overview of who the guidelines are for, what they contain and where celebrants can seek further assistance.

Chapter 2 provides an overview of the categories of celebrants authorised to solemnise marriages in Australia and some of the key administrative arrangements and requirements that apply to each.

Chapter 3 outlines the requirements that apply in relation to the Notice of Intended Marriage, the notice period and the Declaration of No Legal Impediment to Marriage. It also discusses the evidence that must be produced to an authorised celebrant prior to the solemnisation of a marriage.

Chapter 4 outlines the legal requirements for marriage ceremonies in Australia, including relating to the monitum, the form of ceremony, witnesses and interpreters. It explains the different requirements for marriages solemnised by Commonwealth-registered marriage celebrants, state or territory officers, and ministers of religion of a recognised denomination. This chapter also provides guidance on the other types of ceremonies that authorised celebrants may choose to participate in, including commitment ceremonies and renewal of vows.

Chapter 5 outlines the requirements for marriage certificates, including how to complete them and registering the marriage.

Chapter 6 outlines the consequences of a valid and invalid marriage and the grounds on which a marriage may be void. This chapter includes information on the requirement that both parties freely and genuinely consent to the marriage, and the requirements for marriage of a minor.

Chapter 7 outlines the offences under the Marriage Act and the Marriage Regulations that authorised celebrants, parties to a marriage, and other persons involved in the marriage ceremony should be aware of. In addition, this chapter covers offences relating to forced marriage and statutory declarations.

Appendix A provides general guidance in relation to separate meetings.

Further assistance for authorised celebrants

1.9. The Attorney-General’s Department website contains a variety of resources for authorised celebrants looking to learn more about their obligations. This includes general guidance material, newsletters and information about associations and networks for celebrants.

1.10. Authorised celebrants can also contact the Attorney-General’s Department and the state and territory registries of births, deaths and marriages for assistance.

Contacting the Commonwealth Attorney-General's Department

1.11. The Attorney-General's Department administers the Marriage Act and the Marriage Regulations. If you cannot find the information you need in these guidelines you may wish to contact the Attorney-General's Department for **general guidance** about the marriage paperwork *before a marriage is solemnised*, or any of the legal requirements to solemnise a marriage in Australia. **The Attorney-General's Department cannot, and does not purport to provide, legal advice in relation to any particular matter.**

The Attorney-General's Department can be contacted by:

- Emailing the Registrar of Marriage Celebrants at: marriagecelebrantssection@ag.gov.au
- If it is urgent, calling the Marriage Celebrants Section on 1800 550 343 between 10.00am-12.30pm and 1.00pm-4.00pm Tuesday-Thursday (AEST). Calls outside these hours will go to voicemail and be answered at the earliest opportunity.

Contacting registries of births, deaths and marriages

1.12. Marriages are registered in the state or territory in which they are solemnised.

1.13. The registry of births, deaths and marriages in the state or territory where a marriage is solemnised can assist with questions relating to the marriage paperwork that is submitted after the marriage has been solemnised. This includes questions about whether the state or territory registry of births, deaths and marriages will accept a form for registration or the lodgement of paperwork relating to a marriage (including the use of a births, deaths and marriages portal, if applicable) and any questions about state or territory borders.

Contact details for the state and territory registries of births, deaths and marriages are available from their individual websites.

Contacting the Department of Home Affairs

1.14. An authorised celebrant should direct couples seeking information about visa requirements to the Department of Home Affairs. This includes information relating to what visa is required:

- to marry in Australia on a holiday
- to bring an overseas partner to Australia
- if they wish to remain in Australia after they are married.

The Department of Home Affairs can be contacted:

- in Australia, by calling 131 881
- outside Australia, by calling +61 2 6196 0196

Other contact details for the Department of Home Affairs can be found on its website.

CHAPTER 2: AUTHORISED CELEBRANTS

This chapter provides an overview of the categories of celebrants authorised to solemnise marriages in Australia and some of the key administrative arrangements and requirements that apply to each.

2.1. KEY MESSAGES

There are three main categories of celebrants authorised to solemnise marriages in Australia:

- **ministers of religion of recognised** denominations registered under Subdivision A of Division 1 of Part IV of the Marriage Act
- **state or territory officers** authorised to solemnise marriages under Subdivision B of Division 1 of Part IV of the Marriage Act
- **Commonwealth-registered** marriage **celebrants**, which includes:
    - **marriage celebrants** (not being ministers of religion) registered under Subdivision C of Division 1 of Part IV of the Marriage Act, and
    - marriage celebrants registered under Subdivision C of Division 1 of Part IV of the Marriage Act (who are ministers of religion) including those who have elected to be identified as **'religious marriage celebrants'** on the register of marriage celebrants under Subdivision D.

A list of all authorised celebrants is available on the Attorney-General's Department's website.[2]

In these guidelines, the different categories of celebrants that are authorised to solemnise marriages in Australia are referred to collectively as **'authorised celebrants'**.

There are some legal obligations that apply to all authorised celebrants and some that only apply to certain categories of celebrants. Where possible, these distinctions will be made clear in these guidelines. However, celebrants should ensure they are aware of all legal obligations that apply to their particular circumstances.

Changes to the Marriage Act, applying from 9 July 2024, clarified that a celebrant can only be registered or authorised under one subdivision of the Marriage Act at a time (this change does not apply to those already registered or authorised under multiple subdivisions prior to 9 July 2024).

Ministers of religion of recognised denominations

2.2. Ministers of religion of recognised denominations who are authorised to solemnise marriages are registered under Subdivision A of Division 1 of Part IV of the Marriage Act.

[2] Section 115 of the Marriage Act.

2.3. A recognised denomination is a religious body or organisation that has been proclaimed by the Governor-General under section 26 of the Marriage Act.

2.4. A minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act can solemnise marriages at any place in Australia.[3]

2.5. Ministers of religion of a recognised denomination are regulated by the relevant state or territory registry of births, deaths and marriages where they ordinarily reside.

Registrars of ministers of religion

2.6. There is a Registrar of Ministers of Religion for each state and territory.[4]

2.7. Each Registrar of Ministers of Religion is responsible for maintaining a register of ministers of religion who are authorised to solemnise marriages under Subdivision A and are ordinarily resident in the state or territory.[5]

Notifying the Registrar of changes in circumstances

2.8. A minister of religion authorised to solemnise marriages under Subdivision A of Division 1 of Part IV of the Marriage Act must notify the Registrar of Ministers of Religion for the state or territory where they ordinarily reside if:

- the minister of religion changes their name, address or designation, or
- the minister of religion ceases to exercise, or ceases to be entitled to exercise, the functions of a minister of religion of the denomination by which he or she was nominated for registration.[6]

2.9. The minister of religion must notify the Registrar within 30 days of the relevant change in circumstance occurring.

Grounds for removing a minister of religion of a recognised denomination from the register of ministers of religion

2.10. A state or territory Registrar of births, deaths and marriages, may remove the name of a minister of religion of a recognised denomination from the register if:[7]

- 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

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3 Section 32 of the Marriage Act.
4 Subsection 27(1) of the Marriage Act.
5 Subsection 27(4) of the Marriage Act.
6 Section 35 of the Marriage Act.
7 Section 33 of the Marriage Act.

- the person is for any other reason not a fit and proper person to solemnise marriages
- the person is registered or authorised under more than one subdivision of the Marriage Act at a time
- the person is, for any other reason, not entitled to registration under this subdivision.

2.11. The minister of religion concerned may seek a review of such a decision from the Administrative Review Tribunal.[8]

Fees for marriages solemnised by ministers of religion

2.12. 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.[9] However, a minister of religion of a recognised denomination will 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.[10]

State and territory officers authorised to solemnise marriages

2.13. Under Subdivision B of Division 1 of Part IV of the Marriage Act, certain state and territory officers are authorised to solemnise marriages.

2.14. In particular, subsection 39(1) of the Marriage Act authorises a person who has the function of registering marriages solemnised in a certain state or territory or part of a state or territory to solemnise marriages in that state or territory (or the relevant part).

2.15. Additionally, the Attorney-General may authorise, by written instrument, other state and territory officers to solemnise marriages.[11] The instrument of authorisation will set out:

- where the state or territory officer is authorised to solemnise marriages, and
- any conditions which the state or territory officer's authorisation is subject to.[12]

A list of state and territory officers authorised to solemnise marriages is published on the Attorney-General's Department's website.

Commonwealth-registered marriage celebrants

2.16. Subdivision C of Division 1 of Part IV of the Marriage Act provides for the registration by the Commonwealth of:

- **marriage celebrants** (not being ministers of religion) registered under Subdivision C of Division 1 of Part IV of the Marriage Act, and

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8 Section 34 of the Marriage Act.
9 Section 118 of the Marriage Act.
10 Subparagraph 33(1)(d)(ii) of the Marriage Act.
11 Subsection 39(2) of the Marriage Act.
12 Subsection 39(3) of the Marriage Act.

- marriage celebrants registered under Subdivision C of Division 1 of Part IV of the Marriage Act (who are ministers of religion) including those who have elected to be identified as **'religious marriage celebrants'** on the register of marriage celebrants under Subdivision D.

2.17. Commonwealth-registered marriage celebrants are regulated by the Commonwealth Attorney-General's Department.

2.18. The guidance in this section is directed at *all* Commonwealth-registered marriage celebrants unless otherwise stated – noting that, in certain circumstances, religious marriage celebrants are permitted to refuse to solemnise a marriage.

2.19. Commonwealth-registered marriage celebrants registered under Subdivision C of Division 1 of Part IV of the Marriage Act may solemnise marriages at any place in Australia.[13]

Registrar of Marriage Celebrants

2.20. The Registrar of Marriage Celebrants is an employee of the Attorney-General's Department.[14] The Registrar has a variety of functions including dealing with applications to become a marriage celebrant and registering marriage celebrants,[15] regulating the performance of marriage celebrants[16] and taking disciplinary measures against marriage celebrants.[17]

2.21. The Registrar of Marriage Celebrants is also responsible for maintaining an online register of Commonwealth-registered marriage celebrants.[18]

Notifying the Registrar of relevant changes in circumstances

2.22. Commonwealth-registered marriage celebrants are required to notify the Registrar of Marriage Celebrants within 30 days of:

- a change to any details previously provided to the Registrar and to any details entered in the register of Commonwealth-registered marriage celebrants relating to the marriage celebrant[19]
- a change to the email address, postal address or telephone number of the marriage celebrant[20]
- the occurrence of an event that might have caused the Registrar not to register the person as a marriage celebrant if the event had occurred before the person was registered.[21]

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13 Section 39F of the Marriage Act.
14 Section 39A of the Marriage Act.
15 Subsections 39D(2)–(7) of the Marriage Act.
16 Section 39H of the Marriage Act.
17 Section 39I of the Marriage Act.
18 Section 39B of the Marriage Act.
19 Subparagraph 39G(1)(c)(i) and subsection 39G(3) of the Marriage Act and paragraph 58A(a) of the Marriage Regulations.
20 Subparagraph 39G(1)(c)(i) and subsection 39G(3) of the Marriage Act and paragraph 58A(b) of the Marriage Regulations.
21 Subparagraph 39G(1)(c)(ii) of the Marriage Act.

2.23. The Registrar of Marriage Celebrants may take disciplinary measures against a marriage celebrant if satisfied that the celebrant has not complied with this obligation.[22]

Annual registration charge for Commonwealth-registered marriage celebrants

2.24. Commonwealth-registered marriage celebrants must pay an annual celebrant registration charge.[23]

2.25. Each financial year, Commonwealth-registered marriage celebrants who are liable to pay the celebrant registration charge will receive a written notice from the Registrar of Marriage Celebrants which sets out:

- the amount of the celebrant registration charge that is payable by the marriage celebrant
- the day the celebrant registration charge is due (referred to as the charge payment day), and
- other information required by subsection 44(2) of the Marriage Regulations.[24]

2.26. The charge payment day will be at least 30 days after the day on which the notice is sent to the marriage celebrant. The celebrant registration charge must be paid by the end of the charge payment day.[25]

2.27. The notice will be sent to the marriage celebrant's email address.[26] If no email address has been provided to the Registrar, it will be sent to the principle residential address or postal address (if different to the principle residential address) provided by the marriage celebrant to the Registrar.[27]

Applying for an exemption from the celebrant registration charge

2.28. In limited circumstances, the Registrar of Marriage Celebrants may exempt a marriage celebrant from paying the celebrant registration charge.

2.29. In particular, a marriage celebrant may apply for an exemption from liability to pay the celebrant registration charge in a particular financial year if the celebrant believes that:

- their principle address is in a remote area and there is no more than one other marriage celebrant whose principle residential address is in that remote area and has the same postcode as the marriage celebrant's principle residential address
- they will not reside in Australia at any time during the financial year, or
- they will be unable to perform as a marriage celebrant for at least 6 months of the financial year because of serious illness or caring responsibilities.[28]

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22 Paragraph 39I(1)(b) of the Marriage Act.
23 Subsection 39FA(1) of the Marriage Act.
24 Subsection 39FA(2) of the Marriage Act.
25 Subsection 39FA(1) of the Marriage Act.
26 Paragraph 44(4)(a) of the Marriage Regulations.
27 Paragraph 44(4)(b) of the Marriage Regulations.
28 Subsection 48(1) of the Marriage Regulations.

2.30. Subsection 48(2) of the Marriage Regulations sets out the requirements for an application for an exemption. Specifically, the application must be:

- made within 21 days after the notice of liability to pay the celebrant registration charge is sent to the marriage celebrant
- be accompanied by any information or documents that may assist the Registrar to decide whether to grant the exemption, and
- be accompanied by the charge exemption application fee.

2.31. A marriage celebrant who has applied for an exemption may be asked to provide additional information, within a specified period, to assist the Registrar to decide whether to grant the exemption.[29] It is important that a marriage celebrant provides the requested information within the specified period. The application will be considered withdrawn if the marriage celebrant does not provide the additional information to the Registrar within the specified period (or, if the Registrar has agreed in writing to a longer period, within that period).[30]

2.32. A marriage celebrant will be notified in writing whether their application for an exemption has been granted or refused.[31] Such notice will be provided within 21 days of the application being made or, if the Registrar has requested further information from the marriage celebrant, within 21 days of receipt of that information.[32]

2.33. Note: Further information about exemption application requirements is provided to celebrants on their celebrant registration charge notice.

Automatic exemptions from the celebrant registration charge

2.34. The Marriage Regulations provide for two automatic exemptions from the celebrant registration charge. It is not necessary for a marriage celebrant to apply for an automatic exemption.

2.35. Firstly, a marriage celebrant is exempt from paying the celebrant registration charge in a financial year if the marriage celebrant notifies the Registrar, after the start of the financial year and before the charge payment day, that the marriage celebrant no longer wishes to be registered as a marriage celebrant or has become a minister of religion of a recognised denomination.[33] This exemption only applies where the celebrant has not yet paid the celebrant registration charge for that financial year.

2.36. There is also an exemption that applies in a marriage celebrant's first year of registration, if the celebrant was granted an exemption from the registration application fee under section 42 of the Regulations.[34]

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29 Subsection 48(3) of the Marriage Regulations.
30 Subsection 48(5) of the Marriage Regulations.
31 Subsection 49(3) of the Marriage Regulations.
32 Subsection 49(3) of the Marriage Regulations.
33 Section 46 of the Marriage Regulations.
34 Section 45 of the Marriage Regulations.

Consequences of non-payment of celebrant registration charge

2.37. A marriage celebrant who fails to pay the celebrant registration charge by the charge payment day will be deregistered as a marriage celebrant. The marriage celebrant will receive a notice from the Registrar of Marriage Celebrants which:

- advises the marriage celebrant that, because they failed to pay the celebrant registration charge, they will be deregistered on the day specified in the notice, and
- states that the person may apply to the Administrative Review Tribunal under section 39J of the Marriage Act for review of the Registrar's decision to deregister the marriage celebrant.[35]

2.38. The notice will be sent to the marriage celebrant's email address.[36] If no email address has been provided to the Registrar, it will be sent to the principle residential address or postal address (if different to the principle residential address) provided by the marriage celebrant to the Registrar.[37]

2.39. The marriage celebrant is taken to be deregistered at the start of the day specified in the notice and their details will be removed from the register of Commonwealth-registered marriage celebrants.[38]

2.40. A celebrant registration charge is a debt due to the Commonwealth and may be recovered by action in court.[39]

Code of Practice for Commonwealth-registered marriage celebrants

2.41. Commonwealth-registered marriage celebrants must conduct themselves in accordance with the Code of Practice for marriage celebrants.[40] The Code of Practice is set out in Schedule 2 to the Marriage Regulations.

2.42. The Code of Practice requires that celebrants:

- maintain a high standard of service in their professional conduct and practice
- recognise the social, cultural and legal significance of marriage and the marriage ceremony in the Australian community, and the importance of strong and respectful family relationships
- comply with the requirements of the Marriage Act and the Marriage Regulations and observe the laws of the Commonwealth and of any state or territory
- respect the importance of the marriage ceremony to the parties and the other persons organising the ceremony, including by (among other things) giving the parties information and guidance to enable them to choose or compose a

35 Subsections 39FB(1)–(2) of the Marriage Act and subsection 51(2) of the Marriage Regulations.
36 Paragraph 51(3)(a) of the Marriage Regulations.
37 Paragraph 51(3)(b) of the Marriage Regulations.
38 Subsections 39FB(3)–(4) of the Marriage Act.
39 Subsection 39FA(6) of the Marriage Act.
40 Paragraph 39G(1)(a) of the Marriage Act.

marriage ceremony, including information to assist the parties to decide whether a marriage ceremony rehearsal is needed or appropriate

- respect the privacy and confidentiality of the parties and giving the parties information about how to notify the Commonwealth Attorney-General's Department of any concerns or complaints they may have regarding the marriage services provided by the marriage celebrant
- maintain an up-to-date knowledge about appropriate family relationship services in the community, and inform the parties to the marriage about the range of information and services available to them to enhance, and sustain them throughout, their relationship.

2.43. Failure to comply with the Code of Practice may result in disciplinary measures being taken against a marriage celebrant.[41]

Compulsory professional development for Commonwealth-registered marriage celebrants

2.44. As soon as practicable after the start of each calendar year, the Registrar of Marriage Celebrants is required to make a statement which sets out the professional development activities for the year and identifies which of those activities are compulsory.[42] The statement will be in the form of a legislative instrument and will explain the ways in which the professional development activities may be undertaken and/or the provider(s) of the professional development activities.[43]

2.45. Commonwealth-registered marriage celebrants must complete all compulsory professional development activities and must ensure the activities are undertaken in the way specified in the statement and/or with a provider specified in the statement.[44]

2.46. The Registrar of Marriage Celebrants may take disciplinary measures against a marriage celebrant if the Registrar is satisfied that a marriage celebrant has not complied with their professional development obligations.[45]

Exemptions from professional development obligations

2.47. In limited circumstances, the Registrar of Marriage Celebrants may grant a marriage celebrant an exemption from their professional development obligations for a particular calendar year.

Exemptions relating to a marriage celebrant's date of registration

2.48. A Commonwealth-registered marriage celebrant will receive an automatic exemption from their professional development obligations for a particular calendar year if the marriage celebrant was registered on a day during that calendar year and was awarded a Certificate IV in Celebrancy in the previous 12 months.[46]

41 Paragraph 39I(1)(b) of the Marriage Act.
42 Subsection 53(3) of the Marriage Regulations.
43 Subsections 53(3) and (5) of the Marriage Regulations.
44 Paragraph 36G(1)(b) of the Marriage Act and subsection 53(1) of the Marriage Regulations.
45 Paragraph 39I(b) of the Marriage Act.
46 Subsection 54(1) of the Marriage Regulations.

2.49. The Registrar of Marriage Celebrants also has the discretion to exempt a person from their professional development obligations for a particular calendar year if the Registrar is satisfied that complying with their professional development obligations that year would be onerous because of the date the person became registered as a marriage celebrant.[47]

2.50. Commonwealth-registered marriage celebrants do not have to apply to the Registrar in order to receive one of the above-mentioned exemptions.[48] The Registrar will notify a marriage celebrant in writing if they have received such an exemption.[49]

Exemptions for exceptional circumstances

2.51. It is also possible for a marriage celebrant to apply in writing to the Registrar of Marriage Celebrants for an exemption if the marriage celebrant believes they have not been or will not be able to comply with their professional development obligations that year because of exceptional circumstances.[50]

2.52. Subsection 57(2) of the Marriage Regulations sets out the requirements for an application for an exemption. Specifically, the application must:

- be made during the calendar year that the exemption relates to, and
- explain the exceptional circumstances, and
- be accompanied by:
    - any information or documents that may assist the Registrar to decide whether to grant the exemption, and
    - the professional development exemption application fee.

2.53. A marriage celebrant who has applied for an exemption may be asked to provide additional information, within a specified period, to assist the Registrar to decide whether to grant the exemption.[51] It is important that a marriage celebrant provide the requested information within the specified time period. The application will be considered withdrawn if the marriage celebrant does not provide the additional information to the Registrar within the specified period (or, if the Registrar has agreed to a longer period in writing, within that period).[52]

2.54. The Registrar will send written notice to a marriage celebrant who has applied for an exemption which sets out whether the exemption has been granted or refused.[53]

47 Subsection 55(1) of the Marriage Regulations.
48 See note 2 in subsection 54(1) and note 2 in subsection 55(1) of the Marriage Regulations.
49 Subsections 54(2) and 55(2) of the Marriage Regulations.
50 Subsection 57(1) of the Marriage Regulations.
51 Subsection 57(4) of the Marriage Regulations.
52 Subsection 57(5) of the Marriage Regulations.
53 Subsection 58(3) of the Marriage Regulations.

Performance reviews for Commonwealth-registered marriage celebrants

2.55. The Registrar of Marriage Celebrants may, from time to time, review the performance of a Commonwealth-registered marriage celebrant during a certain period to determine whether the celebrant's performance during that period was satisfactory.[54]

2.56. In reviewing the performance of a marriage celebrant, the Registrar must consider:

- any complaint about the marriage celebrant dealt with by the Registrar during the period
- whether any disciplinary measures have been taken against the marriage celebrant during the period
- whether the marriage celebrant complied with any such disciplinary measures taken against the marriage celebrant
- whether the marriage celebrant complied with any other requirements made of the marriage celebrant by the Registrar, or any undertaking given by the marriage celebrant, during the period
- any information received by the Registrar about the marriage celebrant's performance of the duties of a marriage celebrant during the period
- whether the marriage celebrant has complied with a Code of Practice for marriage celebrants that applied at any time during the period
- whether the marriage celebrant has undertaken the required professional development activities in relation to the calendar year that ended before the end of the period
- whether the marriage celebrant has developed any physical, intellectual or mental disability that prevents the marriage celebrant from continuing to carry out the duties of a marriage celebrant.[55]

Unsatisfactory performance

2.57. A marriage celebrant will receive written notice if the Registrar of Marriage Celebrants is considering making a determination that a marriage celebrant's performance in a particular period was not satisfactory. In particular, the notice will set out:

- that the Registrar is intending to make a determination that the marriage celebrant's performance was not satisfactory, unless, before the date specified in the notice, the marriage celebrant satisfies the Registrar that the marriage celebrant's performance was satisfactory, and
- that any representations made to the Registrar before the date specified in the notice will be considered by the Registrar.[56]

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54 Subsection 39H(1) of the Marriage Act.
55 Paragraph 39H(3)(a) of the Marriage Act and subsection 59(1) of the Marriage Regulations.
56 Paragraph 39H(4)(a) of the Marriage Act.

2.58. A determination that a marriage celebrant's performance in a particular period was not satisfactory will be made in writing within 14 days after the date specified in the notice.[57]

2.59. Unsatisfactory performance may result in disciplinary measures being taken against the marriage celebrant.[58]

Disciplinary measures taken against Commonwealth-registered marriage celebrants

2.60. The Registrar of Marriage Celebrants can take disciplinary measures against a marriage celebrant if the Registrar:

- is satisfied that the marriage celebrant is no longer entitled to be registered as a marriage celebrant
- is satisfied that the marriage celebrant is no longer entitled to be identified as a religious marriage celebrant on the register of marriage celebrants
- is satisfied that the marriage celebrant has not complied with an obligation under section 39G of the Marriage Act
- has determined in writing under section 39H of the Marriage Act that the marriage celebrant's performance in respect of a period was not satisfactory
- is satisfied that it is appropriate to take disciplinary measures against the marriage celebrant after considering a complaint in accordance with the complaints resolution procedures established under paragraph 39K(c) of the Marriage Act
- is satisfied that the marriage celebrant's application for registration was known by the marriage celebrant to be false or misleading in a material particular
- is satisfied that the marriage celebrant's notice under section 39DB or 39DD(2)(b) of the Marriage Act (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.[59]

2.61. The disciplinary measures that can be taken against a marriage celebrant are as follows:

- cautioning the marriage celebrant in writing
- requiring the marriage celebrant to undertake any of the professional development activities set out in section 60 of the Marriage Regulations
- suspending the marriage celebrant's registration for a period of up to six months
- deregistering the marriage celebrant

57 Paragraph 39H(4)(c) of the Marriage Act.
58 Paragraph 39I(1)(c) of the Marriage Act.
59 Subsection 39I(1) of the Marriage Act.

- if the marriage celebrant is identified as a religious marriage celebrant, removing the identification of the marriage celebrant as a religious marriage celebrant for up to 6 months or permanently.[60]

2.62. A marriage celebrant can apply to the Administrative Review Tribunal for review of a decision to suspend a marriage celebrant's registration or deregister a marriage celebrant or to remove the identification of the marriage celebrant as a religious marriage celebrant for a period of time or permanently.[61]

2.63. If the Registrar decides to take disciplinary action against a marriage celebrant, the marriage celebrant will receive written notice of the decision, the reasons for it and the disciplinary measure being taken.[62] The notice will also set out that the marriage celebrant has a right to Administrative Review Tribunal review of the decision where applicable.

2.64. The Registrar is entitled to inform the community in any way the Registrar thinks appropriate that disciplinary measures are being taken against a marriage celebrant.[63]

Charging fees as a Commonwealth-registered marriage celebrant

2.65. Commonwealth-registered marriage celebrants may charge couples an appropriate fee for solemnising a marriage. The amount charged is a matter between the celebrant and the couple. While not required by the Act or Regulations, it is suggested that Commonwealth-registered marriage celebrants set out their terms and conditions in an agreement or contract, including refunds or arrangements for transferring a NOIM.

2.66. The Registrar of Marriage Celebrants has no power regarding the refund of payments made to a marriage celebrant. Any issues regarding the refund of payments should be pursued via relevant state and territory authorities.

Advertising as a marriage celebrant

2.67. In any document relating to the performance of services as a marriage celebrant, including advertisements, a celebrant must disclose whether or not they are a religious marriage celebrant.[64]

2.68. The Registrar of Marriage Celebrants may take disciplinary measures against a marriage celebrant if the Registrar is satisfied that the celebrant has failed to comply with this requirement.[65]

Resignation or deregistration of a Commonwealth-registered marriage celebrant

2.69. Commonwealth-registered marriage celebrants can resign through their self-service portal or by notifying the Registrar of Marriage Celebrants that they no longer wish to

60 Subsection 39I(2) of the Marriage Act.
61 Subsection 39J(1) of the Marriage Act.
62 Paragraph 39I(4)(a) of the Marriage Act.
63 Paragraph 39I(4)(b) of the Marriage Act.
64 Paragraph 39G(1)(d) of the Marriage Act.
65 Paragraph 39I(1)(b) of the Marriage Act.

be registered as a marriage celebrant. Upon receiving a notification, the Registrar of Marriage Celebrants will remove a marriage celebrant's name from the register of marriage celebrants.[66]

2.70. Once a marriage celebrant is deregistered, they are no longer authorised to solemnise marriages in Australia. Following resignation or deregistration, the Department will typically write to the marriage celebrant explaining what to do with marriage stationery, such as any blank Form 15 Certificates of Marriage in the marriage celebrant's possession.

2.71. A person who wishes to reregister as a marriage celebrant must reapply under section 39D of the Marriage Act to be registered as a marriage celebrant.

Commonwealth-registered religious marriage celebrants

2.72. Subdivision D of Division 1 of Part IV of the Marriage Act provides that a person may be identified as a religious marriage celebrant on the register of marriage celebrants in certain circumstances.

2.73. A person is entitled to be identified as a religious marriage celebrant if:

- the person is registered as a marriage celebrant under Subdivision C of Division 1 of Part IV of the Marriage Act, and
- the person is a minister of religion.[67]

2.74. A person who meets these requirements may give the Registrar of Marriage Celebrants notice that they wish to be identified as a religious marriage celebrant.[68]

2.75. There are also a number of celebrants who became religious marriage celebrants when marriage equality began. On 9 December 2017, all ministers of religion who were registered as a marriage celebrant under Subdivision C of Division 1 of Part IV of the Marriage Act were identified as religious marriage celebrants.[69] Further, for 90 days from 9 December 2017, any marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act was able to notify the Registrar of Marriage Celebrants that they wished to be identified as a religious celebrant, provided that choice was based on their religious beliefs.[70] It is no longer possible for celebrants who are not ministers of religion to be registered as a religious marriage celebrant.

Are celebrants obliged to solemnise any marriage?

2.76. The Marriage Act does not require authorised celebrants to agree to solemnise a marriage. Appropriate reasons for refusing to solemnise a marriage could include the authorised celebrant having another booking on the proposed date of the ceremony, family commitments or concerns about the validity of the marriage. However, authorised celebrants are required to comply with anti-discrimination laws. This

66 Subparagraph 43(2)(e)(i) of the Marriage Act.
67 Section 39DA of the Marriage Act.
68 Sections 39DA and 39DB of the Marriage Act.
69 Subsection 39DD(1) of the Marriage Act.
70 Subsection 39DD(2) of the Marriage Act.

means an authorised celebrant cannot refuse to solemnise a marriage for discriminatory reasons.

2.77. There are some limited exceptions in the Marriage Act which allow ministers of religion and religious marriage celebrants to refuse to solemnise a marriage for reasons that might otherwise breach anti-discrimination laws. Specifically, subsection 47(3) of the Marriage Act allows a minister of religion to refuse to solemnise a marriage if:

- the refusal conforms to the doctrines, tenets or beliefs of the religion of the minister's religious body or religious organisation
- the refusal is necessary to avoid injury to the religious susceptibilities of adherents to that religion, or
- the minister's religious beliefs do not allow the minister to solemnise the marriage.

2.78. Similarly, subsection 47A(1) of the Marriage Act enables a religious marriage celebrant to refuse to solemnise a marriage if the celebrant's religious beliefs do not allow the celebrant to solemnise the marriage.

2.79. There is no equivalent exception for authorised celebrants who are not ministers of religion or religious marriage celebrants. This means that authorised celebrants who are not ministers of religion or religious marriage celebrants may breach anti-discrimination laws if they refuse to solemnise a marriage due to religious beliefs.

2.80. Commonwealth-registered marriage celebrants should also keep in mind that clause 4(c) of the Code of Practice for marriage celebrants requires a celebrant to avoid unlawful discrimination in the provision of marriage celebrancy services.

2.81. Celebrants should consult the Australian Human Rights Commission for information on anti-discrimination laws.

Additional conditions imposed by ministers of religion

2.82. Under subsection 47(2) of the Marriage Act, ministers of religion are permitted to make it a condition of solemnising a marriage that the NOIM is given to the minister earlier than the Marriage Act requires or that additional requirements to those provided by the Marriage Act are complied with (for example, an additional requirement might be that the parties attend pre-marriage counselling). The minister of religion may refuse to solemnise the marriage if the condition is not met.

CHAPTER 3: THE NOTICE OF INTENDED MARRIAGE AND THE DECLARATION OF NO LEGAL IMPEDIMENT TO MARRIAGE

This chapter outlines the requirements that apply, under the Marriage Act, in relation to:

- the Notice of Intended Marriage (NOIM)
- the notice period
- the Declaration of No Legal Impediment to Marriage (DONLIM)
- the evidence that must be produced to a celebrant prior to the solemnisation of a marriage.

Notice of Intended Marriage

3.1. KEY MESSAGES

A celebrant must not solemnise a marriage unless the parties to the intended marriage gave the celebrant a Notice of Intended Marriage (NOIM) that complies with section 42 of the Marriage Act. The key requirements are that:

- the NOIM was given to the celebrant no earlier than 18 months before the date of the marriage and no later than one month before the date of the marriage, or a shortening of time was granted by a prescribed authority
- the NOIM is in the form approved by the Attorney-General, which is available on the Attorney-General's Department's website
- the parties to the intended marriage and the celebrant have completed each of the required sections of the NOIM
- the NOIM was signed by the parties in the presence of an authorised person (the people authorised to witness NOIMs are listed in paragraphs 42(2)(c) and (d) of the Marriage Act)
- the celebrant does not have any reason to believe the NOIM contains a false statement, an error, or is defective.

The information that parties provide on the NOIM must be true and correct, to the best of their knowledge and belief, at the time it is provided. Celebrants should remind parties that it is an offence under section 104 of the Marriage Act to give a NOIM to an authorised celebrant, or sign a NOIM that the person knows contains a false statement, an error, or is defective.

What is a NOIM?

3.2. Section 42 of the Marriage Act requires that parties to an intended marriage give the celebrant solemnising their marriage written notice of the intended marriage. This notice is known as the Notice of Intended Marriage (NOIM).

3.3. There are very specific requirements for a NOIM set out in section 42 of the Marriage Act. These requirements include when the NOIM must be given to the celebrant, the information that the NOIM must contain, and the celebrant's obligations when they receive a NOIM.

3.4. The approved form for the NOIM is available on the Attorney-General's Department's website and must be used by celebrants and parties to an intended marriage.

3.5. It is very important that the requirements for a NOIM are followed, as a celebrant must not solemnise a marriage unless the parties to the marriage have given the celebrant a NOIM in accordance with the requirements of section 42.

The notice period

3.6. The NOIM must be given to the authorised celebrant no earlier than 18 months before the date of the marriage and no later than one month before the date of the marriage.[71]

3.7. The celebrant must write the date of receipt on the NOIM.[72] There is a section on the NOIM for celebrants to do this. The celebrant must not backdate the NOIM.

Calculating the notice period

3.8. There are specific rules for how timeframes in Commonwealth laws are to be calculated. Those rules are set out in the *Acts Interpretation Act 1901* (Cth) (Acts Interpretation Act) and should be followed when calculating the one month notice period for receiving the NOIM.

3.9 The Acts Interpretation Act says that month is considered to be a period that:

- starts at the start of any day of one of the calendar months, and
- ends 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.[73]

The Acts Interpretation Act also says that a period of time that ends before a specified day does not include that day.[74] This means that the one month period before the date of the marriage does not include the date of the marriage.

71 Paragraph 42(1)(a) of the Marriage Act.
72 Subsection 70(1) of the Marriage Act.
73 Subsection 2G(1) of the *Acts Interpretation Act 1901.*
74 Subsection 36(1) of the *Acts Interpretation Act 1901.*

Examples of how to calculate the one month notice period

Example 1: If the parties to an intended marriage give the NOIM to a celebrant on 15 November, the first day the marriage could be solemnised would be 15 December.

Example 2: If the parties to an intended marriage give the NOIM to the celebrant on 31 August, the first day the marriage could be solemnised would be 1 October that year. This is because September (being the calendar month after August) only has 30 days.

Example 3: In a year that is not a leap year, the notice period for a NOIM given on 29, 30 or 31 January ends at the end of February in that year. For a NOIM given to a celebrant on 29, 30 or 31 January, the first day the marriage can be solemnised is 1 March of that year.

Example 4: In a leap year, the notice period for a NOIM given on 29 January, ends on 28 February, and the first day that the marriage could be solemnised is 29 February of that year.

Giving less than one month's notice

3.10. If the parties to an intended marriage have not provided the NOIM to the celebrant within the minimum one month notice period, they can apply to a prescribed authority for authorisation to marry despite not providing the required notice.

3.11. A prescribed authority may authorise a marriage to be solemnised despite the celebrant receiving the NOIM less than one month before the date of the marriage if the prescribed authority is satisfied that certain circumstances exist.[75] This is often referred to as a 'shortening of time'.

3.12. A list of prescribed authorities is published on the Attorney-General's Department's website.

When can a prescribed authority authorise a shortening of time?

3.13. There are five circumstances in which a prescribed authority may authorise a shortening of time. Those circumstances are set out in Schedule 3 to the Marriage Regulations and are explained below. A prescribed authority has no discretion to grant a shortening of time outside the circumstances set out in Schedule 3.

3.14. Schedule 3 also sets out the matters that the prescribed authority may take into account when considering whether to authorise a shortening of time. These matters provide a helpful indication of the type of material that parties should provide to a prescribed authority when requesting a shortening of time.

<u>Employment-related or other travel commitments</u>

3.15. A prescribed authority may authorise a shortening of time if satisfied that the marriage should be solemnised despite the lack of required notice because a party to the marriage or someone involved with the proposed wedding has employment commitments that require the party's absence from the location of the proposed wedding for a considerable period of time, or has other travel commitments.

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75 Subsection 42(5) of the Marriage Act.

3.16. When considering whether employment-related or other travel commitments exist, the prescribed authority may take into account:

- documents relating to the employment commitments of a party to the marriage, such as a letter of offer and a letter of acceptance
- documents relating to the travel of a person, such as a dated receipt or a ticket
- any explanation provided for not giving the notice sooner or not postponing the proposed wedding
- whether hardship would be caused to a party to the marriage if the marriage is not solemnised as proposed
- any other matter that the prescribed authority thinks is relevant.

Wedding or celebration arrangements

3.17. A prescribed authority may authorise a shortening of time if satisfied that the marriage should be solemnised despite the lack of required notice because of the binding nature of wedding/celebration arrangements, or religious considerations.

3.18. When deciding whether to grant a shortening of time because of the binding nature of wedding arrangements or religious considerations, the prescribed authority may consider:

- documents showing the extent of preparations for the proposed wedding, such as receipts showing dates and amounts of payments connected with the wedding
- the nature of any religious consideration
- any explanation provided for not giving the notice sooner or not postponing the proposed wedding
- whether hardship would be caused to a party to the marriage if the marriage is not solemnised as proposed
- any other matter that the prescribed authority thinks is relevant.

Medical reasons

3.19. A prescribed authority may authorise a shortening of time if satisfied that the marriage should be solemnised despite the lack of required notice because a party to the marriage, or someone involved with the proposed wedding is suffering from a medical condition of a serious nature.

3.20. When deciding whether medical reasons exist, the prescribed authority may consider:

- a letter from a medical practitioner or other health professional confirming the relevant health circumstances of a party to the marriage or a person involved with the proposed wedding
- any explanation provided for not giving the notice sooner
- any other matter that the prescribed authority thinks is relevant.

Legal proceedings

3.21. A prescribed authority may authorise a shortening of time if satisfied that the marriage should be solemnised despite the lack of required notice because a party to the marriage is involved in legal proceedings.

3.22. In deciding whether to authorise a shortening of time because of legal proceedings, the prescribed authority may consider:

- a sealed copy of any applicable court order
- a letter from the party's solicitor stating the dates and nature of a pending court proceeding
- any explanation provided for not giving the notice sooner or for not postponing the proposed wedding
- whether hardship would be caused to a party to the marriage if the marriage is not solemnised as proposed
- any other matter that the prescribed authority thinks is relevant.

Error in giving notice on the part of the celebrant

3.23. A prescribed authority may authorise a shortening of time if satisfied that the marriage should be solemnised despite the lack of required notice because:

- only due to error on the part of an authorised celebrant (or a person the parties believed to be an authorised celebrant) the NOIM was not given, the NOIM was invalid or a NOIM given earlier was lost, and
- arrangements have been made for the proposed wedding to take place within less than one month.

3.24. The circumstances must relate to an error on the part of the celebrant, not the parties to the intended marriage. In deciding whether to authorise a shortening of time because of an error on the part of the celebrant, the prescribed authority may consider:

- documents confirming why the notice was not given, such as a letter confirming an earlier interview between the authorised celebrant and the parties to the marriage
- a letter from the person to whom the notice was given explaining why the notice was invalid or lost
- documents showing the arrangements made in connection with the proposed wedding
- any other matter that the prescribed authority considers relevant.

What should a celebrant do if parties to an intended marriage want to request a shortening of time?

3.25. If the parties to an intended marriage indicate that they would like to request a shortening of time, the celebrant should explain the following key points to the couple:

- whether a shortening of time should be granted is a matter for a prescribed authority to decide, not the celebrant
- the granting of a shortening of time is not guaranteed
- the reason for seeking a shortening of time must fall within one of the prescribed categories (described above) 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 parties may need to make an appointment with a prescribed authority and provide to the prescribed authority the completed NOIM and documentary evidence to demonstrate why they require a shortening of time
- a prescribed authority may charge an application fee.

3.26. The celebrant must ensure that the NOIM has been properly completed and give it to the parties to take with them to any appointment with the prescribed authority. This is the only circumstance in which a celebrant should 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.

What happens if a shortening of time is authorised?

3.27. If the prescribed authority is satisfied that a relevant circumstance for shortening the notice period to less than one month exists, they will indicate this on the NOIM.

3.28. The parties should then return the original NOIM to the celebrant. It is very important the NOIM is returned before the marriage is solemnised.

3.29. Where a shortening of time is authorised, the celebrant must tick the box provided on the NOIM to indicate that authority for marriage despite late notice was granted.

Completing the NOIM

Please note: This section of the guidelines will be updated in due course to reflect any changes made to the Notice of Intended Marriage form.

3.30. The NOIM form is available on the Attorney-General's Department's website. This form has been approved by the Attorney-General and must be used by celebrants and parties to an intended marriage.[76] A NOIM completed using any other form will not be valid.

3.31. The NOIM can be printed and completed in hard copy or electronically.

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[76] Section 119 of the Marriage Act.

3.32. Celebrants should advise parties to complete the NOIM with care. 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 before signing the NOIM.

3.33. When completing the NOIM, the parties and the celebrant should follow the instructions set out in the form.

Information that must be included in a NOIM

3.34. The parties to an intended marriage are required to provide information about themselves in a NOIM. There are also sections of the NOIM that are to be completed by an authorised celebrant.

3.35. If a party is unable to ascertain all of the particulars required for the NOIM after reasonable inquiry, they should write 'unknown' in the appropriate space/s. The NOIM will still be effective provided that, prior to solemnising the marriage, the party gives the celebrant a statutory declaration as to their inability to ascertain the particulars not included on the NOIM, and the reasons for that inability.[77] Celebrants must not solemnise a marriage until a satisfactory statutory declaration is received.

Description of parties

3.36. The NOIM requires parties to an intended marriage 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: 'Partner', 'Bride' or 'Groom'. It is up to each party to decide which option they want to use to describe themselves in the marriage forms.

Gender

3.37. There is an optional section on the NOIM for parties to identify their gender as either female, male or non-binary. As this section is optional, parties do not have to complete it. A NOIM is still effective if this section is left blank.

3.38. 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.

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

The parties' names

3.40. Parties are required to provide their family name and their given name(s) on the NOIM.

3.41. The names recorded on the NOIM will be used to create the official marriage documents and should be the legal names of the parties. 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

[77] Subsection 42(4) of the Marriage Act.

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.

3.42. 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.

3.43. Section 53 of the *Australian Passports Act 2005* (Cth) 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.

3.44. Change of name requirements vary across registries of births, deaths and marriages. It is recommended that celebrants check with the relevant registry for information on change of name as it may have implications for a married person seeking identity documents following a marriage.

3.45. 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 the relevant registry of births, deaths and marriages) to obtain their own advice.

<u>Using the name recorded on a party's birth certificate</u>

3.46. 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 on the NOIM.

3.47. However, there are a variety of circumstances in which a party will be required to record a different name on the NOIM to the name on their birth certificate.

<u>Change of name certificate issued by a registry of births, deaths and marriages</u>

3.48. If a person has changed their name by way of a change of name certificate issued by a state or territory registry of births, deaths and marriages, they must write the changed name on 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 registries of births, deaths and marriages 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 written on their amended birth certificate.

Change of name by deed poll

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

Parties who have been previously married

3.50. Where a party has been previously married, the name that should be recorded on the NOIM will depend on the name the person has chosen to use.

3.51. If they continued using the name on their birth certificate during the previous marriage, and have continued to use that name after the marriage, they must record this name on the NOIM.

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

3.53. A party who changed their name by a marriage, and retained their previous spouse's surname, may record that surname on the NOIM. Alternatively, they may record their birth name on the NOIM if they can demonstrate a chain of evidence between their birth name and married name.

3.54. **Frequently asked questions (FAQ): Recording the parties' names on the NOIM**

What if there is a spelling error on the birth certificate or change of name certificate?

If a person believes there is an error in the spelling of their name on their birth certificate, or on their change of name certificate (where relevant), they should contact the registry of births, deaths and marriages in the state or territory where they live, or were born, to enquire about having the certificate corrected.

While waiting for the correction, the party should provide the NOIM to the celebrant using the name on their current birth certificate or change of name certificate. The NOIM can then be amended once the correction is made. Please note the NOIM can only be corrected prior to the solemnisation of the marriage.

What if a person has changed their name through social usage?

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

The party should first enquire with the relevant births, deaths and marriages registry 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 should 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.

What if a party refuses to use the name on their birth certificate or other official legal documentation?

If a party refuses to use the name on their birth certificate or other official legal documentation (change of name certificate, deed poll etc.), the celebrant should remind the party that it is an offence under section 104 of the Marriage Act to give a NOIM to a celebrant that contains a false statement, an error, or is defective.

Celebrants should also be aware that it is an offence under section 99 of the Marriage Act for a celebrant to solemnise a marriage if the celebrant has any reason to believe the NOIM contains a false statement, an error, or is defective.

Conjugal status

3.55. Parties are required to state their conjugal status on the NOIM. The term 'conjugal status' means whether the party has ever been legally married before. Parties should not include information about relationships other than previous marriages.

3.56. The NOIM requires parties to tick a box to indicate that their conjugal status is:

- widowed
- divorce pending
- divorced, or
- never validly married.

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

Parties who have been previously married

3.58. If a party has indicated on the NOIM that they were widowed, divorced or have a divorce pending, they must produce evidence of the termination of their previous marriage to the celebrant prior to the marriage being solemnised. The celebrant must indicate on the NOIM that they were given evidence of the end of the previous marriage.[78] There is a section on the NOIM for celebrants to do this.

[78] Subparagraph 70(2)(c)(i) of the Marriage Regulations.

Parties with a divorce pending

3.59. 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 appropriate for a party to check 'Divorce pending' on the NOIM. However, the marriage cannot be solemnised until the divorce has taken effect and evidence of the divorce must be given to the celebrant prior to the solemnisation of the marriage.

3.60. If a party ticks 'Divorce pending' when completing the NOIM, and this was correct when the celebrant received the NOIM, the NOIM does not need to be corrected when the divorce is finalised.

Annulments

3.61. In circumstances where a party 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'.

3.62. A decree of nullity or an annulment 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.

3.63. If a party informs the celebrant that their previous marriage was annulled, the celebrant should request evidence of the annulment or decree of nullity. The celebrant must indicate on the NOIM that the celebrant was given evidence of the annulment.[79]

Details about the parties' parents

3.64. The NOIM requires that the parties to the marriage provide details about their parents. Parent refers to a party's legal parent. This may include a person who is named on the birth certificate, an adoptive parent or a person otherwise recognised as the parent by declaration of a court. In most cases people will list their parents as per their birth certificates or adoption papers.

Sections to be completed by the celebrant

3.65. There are a number of sections of the NOIM that are to be completed by the celebrant. Some of these sections are to be completed before the ceremony, while others are completed after the ceremony. The NOIM clearly indicates when the relevant sections are to be completed.

3.66. When completing the NOIM, the celebrant must use their full legal name, which should match their name on the register of marriage celebrants.

3.67. The section to be completed after the ceremony requires the celebrant to provide information about the date and location of the ceremony,[80] and the type of ceremony used.

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79 Subparagraph 70(2)(c)(ii) of the Marriage Regulations.

80 Subsection 70(3) of the Marriage Regulations.

Location of the ceremony

3.68. This information is important in determining the correct state or territory for registration of the marriage.

3.69. A marriage may be solemnised by an authorised celebrant on any day, at any time, and at any place in Australia. The registration of the marriage occurs under the law of the state or territory where the marriage was solemnised. If a marriage is intended to be solemnised at sea, in an aircraft or on a moving vehicle, inquiries should first be made of the relevant state or territory registry to ensure that a marriage in those particular circumstances can be registered under the relevant state or territory law and, if so, what details the registry will require about the location of the ceremony.

Type of ceremony used

3.70. All marriages in Australia must be solemnised in accordance with the provisions of the *Marriage Act 1961*.

3.71. Authorised celebrants who are ministers of religion should also record that the marriage was solemnised according to the rites of their religious body or organisation. Such celebrants should write the full name of their religious body or organisation exactly as it appears on the Register of Marriage Celebrants.

Authorisation number

3.72. Authorisation 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.

Correcting errors in a NOIM

3.73. Subsection 42(9) of the Marriage Act provides that a celebrant may permit an error in a NOIM to be corrected, by either of the parties to the marriage, in the celebrant's presence at any time before the marriage has been solemnised. A celebrant may treat a corrected NOIM as having been originally given in its corrected form.

3.74. If a NOIM was completed in hard copy, it is recommended that the correction be made by ruling a line through the original text and adding the new text. The correction should be initialed by the party correcting the error and by the celebrant.

3.75. If a NOIM has been signed and completed electronically, the incorrect information can be deleted by either party to the marriage and replaced with the correct information. If possible, it is recommended that parties correcting a NOIM electronically include a note next to the corrected information indicating that the information has been corrected and which party the correction was made by.

3.76. If a celebrant notices an error in a NOIM, it must be corrected before the marriage is solemnised. The NOIM may not be corrected after the marriage has been solemnised. If an unintentional error is discovered after a marriage has been solemnised, the celebrant may wish to send a covering note explaining the error to the registry of births, deaths and marriages when registering the marriage.

3.77. 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 lodged.

Making false statements in a NOIM

3.78. 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 an error or is defective.[81]

3.79. A celebrant must not solemnise a marriage if they have any reason to believe that the NOIM contains a false statement, an error, or is defective.[82] To do so would be an offence under section 99 of the Marriage Act.

Signing and witnessing the NOIM

3.80. The NOIM must generally be signed by each of the parties to the intended marriage.[83]

NOIMs signed in Australia

3.81. Under paragraph 42(2)(c) of the Marriage Act, a NOIM signed in Australia must be signed under the observation (whether or not by means of a facility that enables audio and visual communication between persons in different places) of one of the following, **who must also be in Australia:**

- an authorised celebrant
- a Commissioner of Declarations under the *Statutory Declarations Act 1959*[84]
- a justice of the peace
- a barrister or solicitor
- a medical practitioner[85]
- a member of the Australian Federal Police or the police force of a state or territory.

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81 Section 104 of the Marriage Act.

82 Subsection 42(8) of the Marriage Act.

83 Paragraph 24(2)(b) of the Marriage Act.

84 The reference to Commissioners for Declarations under the *Statutory Declarations Act 1959* would only include Commissioners appointed by the Attorney-General (or delegate) prior to the amendment of that Act in December 1991, which removed the references to such offices (see the Schedule to the *Law and Justice Legislation Amendment Act 1991*). While that change did not abolish the positions (and indeed, provided for Commissioners to continue to hold the office, 'during the Attorney-General's pleasure') there would be few if any persons continuing to hold this position.

85 A medical practitioner means a person who is registered under the *Health Practitioner Regulation National Law Act 2009* (Cth) (Health Practitioner Regulation National Law Act) in the medical profession (section 5 of the Marriage Act). This does not include pharmacists or physiotherapists. If in doubt, the parties to the marriage should ask the medical practitioner if they are registered under the *Health Practitioner Regulation National Law Act* in the medical profession.

3.82. Celebrants should advise parties to the intended marriage that the witness to their signature is required to complete all relevant fields, as well as adding their credentials.

NOIMs signed outside of Australia

3.83. Under paragraph 42(2)(d) of the Marriage Act, a NOIM signed outside Australia must be signed under the observation (whether or not by means of a facility that enables audio and visual communication between persons in different places) of one of the following, **who must also be outside Australia:**

- an Australian Diplomatic Officer
- an Australian Consular Officer
- a notary public (a notary public is a legal officer with specific authority to witness legal documents, usually with an official seal)
- an employee of the Commonwealth authorised under paragraph 3(c) of the *Consular Fees Act 1955* (Cth) (Consular Fees Act)
- an employee of the Australian Trade Commission authorised under paragraph 3(d) of the Consular Fees Act.

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

3.85. Celebrants should advise parties to the intended marriage that the witness to their signature is required to complete all relevant fields, as well as adding their credentials.

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

3.87. In addition to utilising audio visual conferencing, couples may also visit an Australian embassy, high commission or consulate to have the NOIM witnessed.

What if a party's signature cannot be obtained?

3.88. If the signature of one party to the intended marriage cannot conveniently be obtained at the time notice is given, the NOIM may be signed by one of the parties to the proposed marriage so long as the other party signs it in the presence of a celebrant before the marriage is solemnised.[86] This enables parties to give notice of their intended marriage when one party is overseas or otherwise not able to sign the NOIM. 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 convenient for the second party to sign the NOIM.

3.89. A surprise wedding is not a circumstance in which it would be appropriate for a celebrant to accept a NOIM signed by only one party (see 'Surprise weddings' in chapter 4).

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86 Subsection 42(3) of the Marriage Act.

3.90. 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.

Marriage education and counselling

3.91. Section 42(5A) of the Marriage Act requires a celebrant, as soon as practicable after receiving the NOIM, to give the parties a document outlining the obligations and consequences of marriage, and indicating the availability of marriage education and counselling. A copy of the document should be given to each party to the intended marriage. The Attorney-General has approved a document that should be used for this purpose. That document is available on the Attorney-General's Department's website.[87]

3.92. The document may be provided to the parties electronically or in hard copy.

3.93. The celebrant is required to tick a box on the NOIM to indicate that the celebrant has complied with section 42(5A) by giving each party to the marriage a copy of the relevant document.

3.94. Celebrants should also remember that the Code of Practice for marriage celebrants (contained in Schedule 2 of the Marriage Regulations) requires marriage celebrants to maintain up-to-date knowledge about appropriate family relationship services, and to inform the parties to a marriage about information and services available to enhance and sustain them throughout their relationship.

Dealing with the NOIM after the ceremony

3.95. After the ceremony, the celebrant must forward the NOIM to the registry of births, deaths and marriages in the state or territory where the marriage was solemnised, along with the version of the official certificate of marriage that contains the DONLIM on the reverse side, any order made under section 12 (if one exists) authorising the marriage of a minor, and any statutory declarations, consents and dispensations with consents relating to the marriage that are in the celebrant's possession.[88]

3.96. The NOIM is forwarded by the relevant registry of births, deaths and marriages 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.

3.97. If the parties to the marriage request a copy of the NOIM, this may be provided to them. It is best practice that any copies of the NOIM are clearly marked with the word 'copy'.

Transferring the NOIM

3.98. In some circumstances, the celebrant who was given the NOIM will not be able to solemnise the marriage. Subsection 42(6) of the Marriage Act permits a marriage to be solemnised by any marriage celebrant who has possession of the NOIM if:

- the original celebrant has died, is absent or ill

87 As at August 2025 the document is titled 'Happily Ever (before and) After'.
88 Subparagraph 50(4)(a)(i) of the Marriage Act.

- for any other reason, it is impracticable for the original celebrant to solemnise the marriage
- the parties to the intended marriage have requested that the authorised celebrant give the notice to another authorised celebrant.

3.99. A celebrant who solemnises a marriage in place of another celebrant is responsible for ensuring all legal obligations for the solemnisation of marriage are met, including the requirement to check the evidence of the parties' dates and places of birth, the evidence of identity and any evidence of the dissolution of a previous marriage (if applicable). Additionally, the DONLIM must be remade before the new celebrant. If there is not enough time to prepare and sight all the necessary legal paperwork and ensure all other legal requirements are met, the new celebrant should refuse to solemnise the marriage and could instead choose to offer a commitment ceremony.

3.100. The replacement celebrant should record details of the transfer of the NOIM in the 'Transfer of Notice of Intended Marriage to another celebrant' section on the NOIM. If relevant, the original celebrant must also keep records about the details of the transfer of the Form 15 Certificate of Marriage on their record of use form.

3.101. A NOIM should not be transferred to another celebrant if the reasons for transfer do not fall within those listed in subsection 42(6) of the Marriage Act. In those circumstances, the parties should complete a new NOIM and give it to the new celebrant. Alternatively, if the marriage is proposed to be solemnised less than one month from the date the NOIM would be received by the new celebrant, the parties may wish to request a shortening of time from a prescribed authority.

Declaration of No Legal Impediment to Marriage

3.102. **KEY MESSAGES**

Each party to an intended marriage must make a Declaration of No Legal Impediment to Marriage (DONLIM) in the physical presence of the celebrant. The declaration must be made before the marriage is solemnised and must be in the form approved by the Attorney-General, which is available on the Attorney-General's Department's website.

A celebrant must not solemnise a marriage if they have any reason to believe that a DONLIM contains a false statement, error or is defective.

What is a Declaration of No Legal Impediment to Marriage?

3.103. A celebrant must not solemnise a marriage unless each party to the intended marriage has made a written declaration in the physical presence of the celebrant as to:

- their conjugal status (i.e. whether the party has ever been legally married before)
- their belief that there is no legal impediment to the marriage, and
- either:
  - that they are 18 years of age or older, or

- if they are under 18, their date of birth and that an order authorising them to marry the other party to the marriage has been made under section 12 of the Marriage Act.[89]

This declaration is referred to as the Declaration of No Legal Impediment to Marriage.

3.104. If a celebrant has reason to believe that a DONLIM contains a false statement, error or is defective, the celebrant must not solemnise the marriage.[90] To solemnise a marriage in such circumstances is an offence under section 99 of the Marriage Act.

3.105. The declaration must be made using the approved form, which is available on the Attorney-General's Department's website.[91] The declaration must be on the reverse side of one of the official certificates of marriage.[92] This is the official certificate of marriage that the celebrant must forward to the registry of births, deaths and marriages in the state or territory in which the marriage was solemnised.[93]

When should the Declaration of No Legal Impediment to Marriage be made?

3.106. The declarations must be made before the marriage is solemnised. It is an offence for a celebrant to solemnise a marriage unless both parties have made their declarations of no legal impediment to the marriage.[94]

3.107. It is recommended that the declarations are made 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 between providing their NOIM 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 that indicates they have a divorce pending, they cannot sign the DONLIM 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 make the declaration. Celebrants may wish to have the parties sign the declaration as part of the 'separate meeting' that a celebrant is required to hold with each party to the marriage before the marriage is solemnised.

Establishing the party is of marriageable age

3.108. The DONLIM contains a section for parties to indicate that they are of marriageable age (i.e. 18 years or older).

Where a party is under 18, they must provide their date of birth. The celebrant should check that a section 12 order has been obtained from a court and, if given, check that

89 Subsection 42(1)(c) of the Marriage Act and section 71 of the Marriage Regulations.
90 Subparagraph 42(8)(b)(ii) of the Marriage Act.
91 Section 119 of the Marriage Act.
92 Subsection 50(3) of the Marriage Act.
93 Subparagraph 50(4)(a)(i) of the Marriage Act.
94 Section 99 of the Marriage Act. The penalty for this offence is five penalty units or imprisonment for 6 months.

the consent or consents required under sections 13 or 14 of the Marriage Act are adequate and in order.

Evidence that must be produced to the celebrant

3.109. **KEY MESSAGES**

A celebrant must not solemnise a marriage unless the following information has been produced to the celebrant:

- evidence that satisfies the celebrant that the parties to the marriage are the parties referred to on the NOIM
- evidence of each party's date and place of birth, in the form prescribed by paragraph 42(1)(b) of the Marriage Act, and
- if the party was previously married, evidence of the termination of that marriage.

Evidence of identity

3.110. A celebrant must not solemnise a marriage unless the celebrant is satisfied that the parties to the marriage are the parties referred to on the NOIM.[95] To be satisfied of the parties' identities, the celebrant will need to sight evidence of their identity.

3.111. The Marriage Act does not prescribe the documents required to be sighted as evidence of identity. 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 or photo card issued by a state or territory
- 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 form of photo identification not listed above).

3.112. 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 party provide alternate evidence.

Different names on identity documents

3.113. If the documents provided by a party to establish their identity have a different name on them than the name recorded on the NOIM, the celebrant should ensure the party has provided a sufficient chain of documents to establish their identity and link the names.

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95 Paragraph 42(8)(a) of the Marriage Act.

Evidence of date and place of birth

3.114. A celebrant must not solemnise a marriage unless the parties to the intended marriage have provided the celebrant with evidence of their date and place of birth.[96] This requirement is separate from, and additional to, the requirement under paragraph 42(8)(a) of the Marriage Act that the celebrant is satisfied that the parties to the marriage are the parties referred to on the NOIM.

3.115. Paragraph 42(1)(b) of the Marriage Act lists the documents that are acceptable evidence of a party's date and place of birth. The documents to be considered are in the following order:

- an official certificate of birth, or an official extract of an entry in an official register, showing the date and place of birth of the party
- a passport issued by a government of an overseas country showing the date and place of birth of the party, or an Australian passport, showing the date and place of birth of the party, or
- a statutory declaration from the party or a parent of the party stating that:
  - it is impracticable to obtain an official birth certificate or extract, and the reasons why it is impracticable, 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.

3.116. To comply with paragraph 42(1)(b) of the Marriage Act, a celebrant must have been provided with one of the above documents before solemnising the marriage. There are no alternate means, or substitute documents, that can be used as evidence of date and place of birth e.g. it is not possible to use a titre de voyage (a non-citizen travel document).

3.117. It is an offence under section 99 of the Marriage Act to solemnise a marriage before the necessary evidence of date and place of birth has been produced by each party to the marriage.

3.118. There is a section on the NOIM for the celebrant to indicate what evidence of date and place of birth was produced by the parties.

3.119. **Frequently asked questions (FAQ): Evidence of date and place of birth**

What should the celebrant do once the necessary evidence is produced?

The celebrant should tick the appropriate box on the NOIM to indicate the evidence of date and place of birth that each party produced. The birth certificate, 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.

96 Paragraph 42(1)(b) of the Marriage Act.

When is evidence of date and place of birth required to be produced to the celebrant?

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.

When is it 'impracticable' to obtain an official birth certificate or extract?

This is a question of whether, in the circumstances of the particular case, as a practical matter, a birth certificate or extract could be obtained.[97]

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

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

What if the evidence produced is in another language?

If a party provides a document as evidence of their date and place of birth that is written in another language or alphabet, the celebrant should advise the couple to seek a translation of the document by an accredited translator. A list of translators is available on the National Accreditation Authority for Translators and Interpreters website.

Are copies of official documents sufficient?

The document produced to the celebrant must be an original document. Copies of official documents are not sufficient.

Is an expired passport acceptable as evidence of date and place of birth?

Yes, 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. However, 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).

Further, 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.

Evidence that a previous marriage has ended

3.120. If the DONLIM states that a party to the intended marriage is divorced or that their last spouse has died, a celebrant must not solemnise the marriage unless evidence of the divorce or the death of the party's spouse is produced to the celebrant.[98] It is an offence under section 99 of the Marriage Act to solemnise a marriage without such evidence.

3.121. The NOIM contains a number of sections which require the celebrant to give information about the evidence they sighted to satisfy themselves that the previous marriage has ended. It is up to the celebrant to determine whether they are satisfied with the evidence provided to them. A celebrant must not solemnise a marriage if they are uncertain whether a party is divorced or that the party's former spouse has died. Doing so may also be an offence under section 100 of the Marriage Act, which prohibits celebrants solemnising a marriage where there is reason to believe there is a legal impediment to the marriage, or that the marriage would be void. A party already being lawfully married to another person is a legal impediment to the marriage.

Evidence of divorce

3.122. Evidence of divorce should take the form of the actual certificate of divorce, decree absolute or overseas issued equivalent. Couples should be clearly advised that the marriage cannot take place until the evidence of the divorce has been produced. If a party has been married several times before, only the divorce order (or equivalent) for the most recent marriage is required.

Divorces granted in Australia

3.123. 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'.

97 *Re El Sombrero Ltd* [1958] 1 Ch 900, 904; *Community Association DP270212 v Registrar-General (NSW)* (2004) 62 NSWLR 25 at [18] – [22].

98 Subsection 42(10) of the Marriage Act.

When divorce granted	Required evidence of divorce
5 January 1975 to 1 July 2002	**'decree absolute'** A 'decree nisi' is not sufficient.
1 July 2002 to 3 August 2005	**'certificate of divorce'** 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	**'certificate of divorce'** Wording on the certificate will refer to a 'divorce order'.
13 February 2010 to current	**'divorce order'** Issued electronically. A celebrant may accept a divorce order where the seal and signature are not in colour.

3.124. 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.

3.125. A divorce granted by a church in Australia is not the same as a divorce order made by a court, and does not demonstrate that a person is free to marry.

Divorces granted overseas

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

3.127. The Attorney-General's Department is unable to verify the validity of foreign divorce documents or divorce procedures.

3.128. A celebrant with concerns about overseas divorce documents should advise the party to contact the relevant embassy or high commission to seek written confirmation that the documents provided are appropriate evidence of divorce in that country. 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.

3.129. 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 1975* (Cth), 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.

3.130. Difficulties may 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 is unable to obtain records from overseas. Further, a 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.

3.131. 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. A celebrant must not solemnise a marriage if they are uncertain whether the prior marriage has been dissolved.

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

- the circumstances of the divorce, including when and where the divorce occurred
- 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.

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

3.134. If a statutory declaration is used, it should be forwarded to the appropriate registering authority with the official marriage certificate.

Evidence of the death of a former spouse

3.135. If a party's spouse died in Australia, the party should be able to obtain the death certificate from the registry of births, deaths and marriages 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.

3.136. Where the death certificate cannot be provided, the celebrant should 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, if this is not an option, the celebrant should request that the party obtain legal advice that the evidence available would support a conclusion that the spouse had died.

3.137. In limited circumstances, 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. A celebrant must not solemnise a marriage if they are uncertain whether the former spouse is deceased.

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

- the circumstances of their spouses' death
- 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.

3.139. 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.

3.140. If a statutory declaration is used, it should be forwarded to the appropriate registering authority with the official marriage certificate.

Documents provided in another language

3.141. If a party to an intended marriage produces a document as evidence of their identity, date and place of birth, or the end of their previous marriage that is written 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 translation of the document.

3.142. 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 Attorney-General's Department recommends that they are identified through the NAATI website and that the translator or interpreter is accredited at Level 3 or higher.

3.143. The Marriage Act and 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.[99] However, it is important to understand that not all bilingual or multilingual celebrants will be able to authoritatively translate documents.

3.144. 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 registry of births, deaths and marriages in the state or territory in which the marriage was solemnised. These supporting documents may include official translations of documents.

[99] Section 11 of the Marriage Regulations.

Case studies about how to use a chain of documents

3.145. **Example 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. Following that marriage, she used the name Jane Brown. She was divorced from Tim Brown and has provided the following documents to the celebrant prior to the marriage ceremony:

- a birth certificate issued by a registry of births, deaths and marriages in Australia which records her name as Jane Smith
- a marriage certificate issued by a registry of births, deaths and marriages which also records her name as Jane Smith
- a Family Court issued Certificate of Divorce for her marriage to, and subsequent divorce from, Tim Brown which records her name as Jane Brown
- a current Australian passport which records her name as Jane Brown.

Which name should be recorded on the NOIM?

The chain of documents provides sufficient evidence of a link between the names Jane Smith and Jane Brown.

The name recorded on the marriage documents should be Jane's legal name, which may be Jane Smith or Jane Brown, depending on whether Jane chooses to revert to her maiden name (Jane Smith) or use her previous married name (Jane Brown).

Proof of identity

The passport, which contains a photograph of Jane, is sufficient evidence for the celebrant to be satisfied, for the purposes of paragraph 42(8)(a) of the Marriage Act, that Jane Brown is the same person referred to on the NOIM, along with the chain of documents showing links between Jane Brown and Jane Smith.

Evidence of date and place of birth

Jane's birth certificate or passport can be used as evidence of her date and place of birth for the purposes of paragraph 42(1)(b) of the Marriage Act.

Evidence of the termination of Jane's previous marriage

The Certificate of Divorce is sufficient evidence, for the purposes of subsection 42(10) of the Marriage Act to demonstrate that Jane's previous marriage has ended.

3.146. **Example 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 it 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 National Accreditation Authority for Translators and Interpreters.

When the prospective groom returns with the translation, the certificate gives his 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 should advise the groom that the name ‘Dimitry Alexandrovich Antonov’ must be recorded on the NOIM, as that is the name on his birth certificate and he has not provided a change of name certificate to indicate that his name has been formally changed. The Medicare card, driver licence and credit card are not sufficient evidence that the groom’s name has been formally changed. If the prospective groom would like to use the name ‘John Antony’ on the NOIM, the celebrant should advise him to apply to the appropriate registry of births, deaths and marriages for a change of name to ‘John Antony’. If he were to do that and bring the change of name certificate to the celebrant, the NOIM could be corrected before the marriage is solemnised and the name on the change of name certificate – ‘John Antony’ – could be used on the NOIM and other marriage documents.

CHAPTER 4: THE MARRIAGE CEREMONY

Chapter 4 outlines the legal requirements for marriage ceremonies in Australia, including relating to the monitum, the form of ceremony, witnesses and interpreters. It explains the different requirements for marriages solemnised by Commonwealth-registered marriage celebrants, state or territory officers, and ministers of religion of a recognised denomination.

This chapter also provides guidance on the other types of ceremonies that authorised celebrants may choose to participate in, including commitment ceremonies and renewal of vows.

4.1. KEY MESSAGES

Authorised celebrants perform an important and valuable function, one that carries significant legal responsibilities. Authorised celebrants are responsible for ensuring that marriage ceremonies are conducted in accordance with the requirements of the Marriage Act and Marriage Regulations.

The following requirements apply to all marriages:

- a marriage must be solemnised by an authorised celebrant who is physically present where the marriage takes place and is authorised to solemnise marriages at that place
- a marriage may be solemnised on **any day, at any time and at any place** in Australia, and
- at least 2 people who are, or appear to the person solemnising the marriage to be, over the age of 18 years must be present as **witnesses**.

There are different requirements for marriages solemnised by Commonwealth-registered marriage celebrants, state or territory officers authorised to solemnise marriages, and ministers of religion of a recognised denomination.

Under subsection **45(1)** of the Marriage Act, where a marriage is solemnised by an authorised celebrant who is a **minister of religion** (whether of a recognised denomination or not) the celebrant must strictly adhere to the rites and customs of their church, religious organisation or recognised denomination.

Under subsection **45(2)**, where a marriage is solemnised by an authorised state or territory officer or a Commonwealth-registered marriage celebrant (**not being a minister of religion**), the parties to the marriage must say the legal vows.

Subsection 46(1) sets out specific words (often referred to as the '**monitum**') that explains to the parties the nature of the marriage relationship. The monitum should be said before the vows.

Ceremony	Solemnised by an authorised celebrant in their capacity as a:	Requirements
Civil ceremony	Commonwealth-registered **marriage celebrant** or a **state or territory officer** from a registry of births, deaths and marriages (BDM) or a court	Monitum −s46(1) and Legal vows − s45(2)
Religious ceremony	**Commonwealth-registered marriage celebrant who is a minister of religion** (but not of a recognised denomination)	Monitum −s46(1) and Rites and customs of the religious body or organisation – s45(1)
Religious ceremony	**Minister of religion of a recognised denomination**	Rites and customs of the recognised denomination − s45(1)

Legal requirements for marriage ceremonies in Australia

Marriages must be solemnised by an authorised celebrant

4.2. A marriage must be solemnised by an authorised celebrant who is physically present at the place where the marriage takes place and is authorised to solemnise marriages at that place.[100]

Time and place

4.3. A marriage occurring in Australia may be solemnised on any day, at any time, and at any place in Australia.[101]

4.4. The marriage must be registered in the state or territory where the marriage was solemnised.

Witnesses

4.5. 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.[102]

100 Subsection 39(3) and section 41 of the Marriage Act.
101 Subsection 40(1) and section 43 of the Marriage Act.
102 Subsection 50(2) of the Marriage Act.

4.6. The official certificate of marriage requires that the witnesses record their full name, which should include any middle names.

4.7. The purpose 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 legal requirement of the Marriage Act) that the witnesses know the parties to the marriage. Selecting and arranging for the attendance of witnesses at the marriage ceremony is the responsibility of the parties to the marriage, and witnesses should be introduced to the celebrant before the ceremony. The celebrant is not responsible for providing witnesses.

Section 46: Explaining the Nature of the Marriage Relationship

4.8. Authorised celebrants (**not being a minister of religion of a recognised denomination**) have an obligation to explain the nature of the marriage relationship to the parties before solemnising the marriage. Subsection 46(1) of the Marriage Act sets out the words (sometimes referred to as the 'monitum') that the celebrant must say to the parties to the marriage.

4.9. The monitum is to be:

- used as part of the marriage ceremony before the couple exchanges their vows under section 45, and
- said in the presence of the witnesses.

4.10. Subsection 46(1) requires the celebrant to say:

"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.

These words are a statement of the celebrant's authority to solemnise the marriage and explain the nature of marriage under Australian law.

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

4.11. Subsection 46(1) of the Marriage Act requires that Commonwealth-registered marriage celebrants and state and territory officers authorised to solemnise marriages say the words set out in subsection 46(1) or 'words to that effect'. This means there is some capacity to change certain words, provided a celebrant does not dilute the words or substitute words that alter the meaning of the words in subsection 46(1).

4.12. The safest course of action is to always follow 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 the parties are aware of the legal implications of marriage.

4.13. It is possible that some couples may request that a celebrant say different words to those set out in subsection 46(1). 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

4.14. 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

4.15. 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 'into which you are now about to enter' into 'which you are now 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

4.16. 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.'

The third sentence contains the legal definition of marriage in Australia, as stated in subsection 5(1) of the Marriage Act. The definition is the law in Australia. As such celebrants must not make any changes to the words in the third sentence. This includes the following changes:

- 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..."
- do not change 'for life' to 'with the intention/hope/desire that it will last for life.'

If a celebrant is requested to change the third sentence because the couple do not agree with the definition of marriage, the celebrant should carefully explain 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.

Can someone else participate in the ceremony say the words in subsection 46(1)?

4.17. The Commonwealth-registered marriage celebrant or the state and territory officer solemnising the marriage is required to say the words in subsection 46(1). It is not permissible for someone else participating in the ceremony to say the words on behalf of the celebrant.

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

4.18. It is possible to separate the three sentences in subsection 46(1), provided all three are said to the parties, before the vows are exchanged and in the presence of the witnesses. However, the safest course of action is to keep them together. This will remove any doubt about whether the celebrant has complied with subsection 46(1).

Section 45: The form of ceremony

4.19. It is extremely important that the celebrant and parties meet the requirements of section 45 of the Marriage Act – otherwise the marriage may be invalid.

4.20. Under subsection **45(1)**, ministers of religion (whether of a recognised denomination or not) solemnising a marriage must strictly adhere to the rites and customs of their church, religious organisation or recognised denomination.

4.21. Under subsection **45(2)**, where a marriage is solemnised by an authorised state or territory officer or a Commonwealth-registered marriage celebrant (not being a minister of religion), the parties to the marriage must say the legal vows.

Subsection 45(2): The legal vows

4.22. Subsection 45(2) sets out the words (commonly referred to as 'the vows') which must be used by the parties to the marriage.

The parties must say the following words to each other in the presence of the celebrant and the witnesses:

*"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 (*or *husband,* or *spouse)"*

or words to that effect.

Can the couple personalise the vows?

4.23. The words in subsection 45(2) 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.

4.24. Subsection 45(2) requires that each of the parties say the words contained in subsection 45(2) or 'words to that effect'. This means there is some scope to change certain words. However, noting that a marriage may be invalid if the parties do not comply with subsection 45(2), the safest course of action is to use the wording in the

Marriage Act. Any changes must not dilute the words or substitute words that alter the meaning of the words in subsection 45(2).

4.25. The following substitutions and changes are acceptable:

- ‘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.

4.26. The following changes to the words in subsection 45(2) 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).’

4.27. As subsection 45(2) only contains the minimum words that must be said by the parties, couples wishing to personalise their vows further are able to lengthen their vows by adding their chosen wording before or after they say the words required by subsection 45(2). Any material added must not contradict the words in subsection 45(2). In this sense, the minimum words are the starting point from which personalised vows can be constructed.

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

4.28. The parties’ full names should be used 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 on the NOIM.

4.29. Where full names have been used earlier in the ceremony, it is not necessary for surnames to be used in the minimum vows. This is because the identities of the parties to the marriage have already been established. Couples may choose to use their first, or first and middle, names only.

4.30. 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.

Can the ‘question and answer’ format of vows be used?

4.31. A ‘question and answer’ form of the vows is not contemplated by the Marriage Act for marriage ceremonies solemnised by Commonwealth-registered marriage celebrants and state and territory officers. It should not be used as a substitute for the couple stating the vows set out in subsection 45(2). 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 subsection 45(2) being spoken by each party to the marriage.

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

4.32. Subsection 45(2) of the Marriage Act requires each party to say the vows to each other. However, if a party is not able to say the vows for exceptional medical reasons at the time of the ceremony (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, and the two witnesses.

4.33. In circumstances where a party to a marriage communicates the vows by means other than speaking, the celebrant should keep detailed records that explain the exceptional medical circumstances and the alternate means used to communicate the vows.

4.34. If a party to a marriage communicates in a sign language, such as Auslan, they may say their vows using that sign language.

Subsection 45(1): The rites and customs of the relevant religious body or organisation

4.35. **Authorised celebrants who are ministers of religion** are not subject to the requirements of subsection 45(2) when solemnising marriages. Instead, subsection 45(1) of the Marriage Act permits ministers of religion to use any form and ceremony recognised as sufficient 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).

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

4.36. All authorised celebrants who are ministers of religion should seek formal approval for any changes to the form of the religious ceremony from their religious body or organisation. This will ensure that the religious body or organisation recognises the form and ceremony as sufficient, as is required by subsection 45(1) of the Marriage Act.

Involvement of others in marriage ceremonies

4.37. 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 authorised celebrant.

4.38. Participation in the conduct of a marriage ceremony by someone other than an authorised 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.

4.39. When a couple wants someone other than the authorised celebrant to be involved in the ceremony, the celebrant must:[103]

- consent to being present at the ceremony in the capacity as the authorised celebrant solemnising the marriage
- be in the presence of the ceremonial group or in close proximity to it
- identify themselves to the assembled parties, witnesses and guests as the celebrant authorised to solemnise the marriage, and
- be available to intervene (and exercise the responsibility to intervene) if steps are taken during the ceremony that are inconsistent with the Marriage Act.

4.40. An authorised celebrant's obligations remain the same when other people take part in the ceremony. The authorised celebrant is still responsible for the validity of the marriage and must ensure the legal requirements in the Marriage Act are met. For example, a Commonwealth-registered marriage celebrant or a state or territory officer authorised to solemnise marriages (not being a minister of religion of a recognised denomination) is still responsible for explaining the nature of the marriage relationship by stating the words in subsection 46(1) of the Marriage Act. The authorised celebrant is still the person who must solemnise the marriage and their functions and responsibilities cannot be carried out by someone else. Further, the obligations and offence provisions explained in chapter 7 of these guidelines still apply to the authorised celebrant in relation to the ceremony.

Interpreters

4.41. **KEY MESSAGES**

An authorised celebrant should use the services of an interpreter if one of the parties to the marriage, or witnesses to the marriage, does not understand the language in which the ceremony will be conducted.

Interpreters play a crucial role in establishing that the parties to the marriage have provided real consent to the marriage. A marriage may be void where there is an absence of real consent.

Before solemnising the marriage, the authorised celebrant must receive a statutory declaration from the interpreter stating that they understand, and are able to converse in, the languages required.

Immediately after the ceremony, the interpreter must give the authorised celebrant a certificate of the faithful performance of their services as interpreter.

4.42. If an authorised celebrant considers it desirable to do so, the celebrant may use the services of an interpreter in, or in connection with, a marriage ceremony.[104] It is appropriate for an authorised celebrant to use the services of an interpreter if any

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103 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.

104 Subsection 112(1) of the Marriage Act.

person among the celebrant, parties to the marriage 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.

4.43. The interpreter **cannot be a party to the marriage.**[105]

4.44. An authorised 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 languages required.[106] Within 14 days after the solemnisation of the marriage, the authorised celebrant must forward the statutory declaration to the appropriate registering authority with the Official Certificate of Marriage and other required documents.[107]

4.45. It is the celebrant's responsibility to decide whether an interpreter is necessary, including to assist a party to complete the requisite marriage forms.

Interpreters play a crucial role in establishing the consent of the parties

4.46. As discussed in further detail in chapter 6 of these guidelines, a marriage may be void if the consent of either of the parties is not real consent because:

- it was obtained by duress or fraud
- the party is mistaken as to the identity of the other party or as to the nature of the ceremony performed, or
- the party did not understand the nature and effect of the marriage ceremony.[108]

4.47. Consequently, **an authorised celebrant must ensure that both parties freely and genuinely consent to the marriage.**

4.48. Where one of the parties to the marriage does not understand the language in which the marriage ceremony will be conducted, interpreters play a crucial role in establishing that the party understands the nature of the marriage ceremony and consents to the marriage. An authorised celebrant must not solemnise a marriage if they have any doubt about the consent of either of the parties.

4.49. Courts have previously found marriages to be void in circumstances where a language barrier has led a party to be mistaken about the nature of the ceremony performed. For example, in *Thang & Lua* [2019] FamCA 195, the applicant had very little understanding of written or spoken English and was of the understanding that he was participating in a commitment ceremony. This was a basis upon which the Family Court found the marriage to be void.

4.50. In *Garner v Lee* [2011] FamCA 1000, the applicant met the respondent at a coffee shop, and after approximately three months of communicating regularly he went to a business address with the intention of discussing immigration issues so the respondent could remain in Australia. At the address, discussions took place in a

105 Subsection 112(1) of the Marriage Act.
106 Subsection 112(2) of the Marriage Act.
107 Subparagraph 50(4)(a)(i) of the Marriage Act.
108 Paragraph 23B(1)(d) of the Marriage Act.

language the applicant did not understand. He was asked to sign a document and his photograph was taken. Unbeknownst to the applicant, a marriage ceremony had been conducted. The Court found the marriage was void on the basis that the applicant was deceived as to the nature of the ceremony.

4.51. In both of the above cases, the applicants did not understand the words spoken at the ceremony or the documents they signed. To ensure the parties understand the nature of the ceremony performed, it is recommended that an interpreter translates the ceremony and any documents signed by the parties, including the marriage certificates.

Interpreters should generally provide their services in person

4.52. Given the crucial role that interpreters play in establishing that the parties understand the nature of the marriage ceremony performed, interpreters should provide their services in person, at the ceremony. It is not recommended that celebrants agree to interpreters providing their services remotely, via phone or video. In certain rare situations, such as where an interpreter of a particular language or dialect is not available in the state or territory, or is unable to travel to the location of the ceremony in extreme and last-minute circumstances, then it may be sufficient for the interpreter to appear remotely.

Witnesses to the marriage should not act as interpreter

4.53. The role of the two witnesses to the marriage is 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, to ensure the responsibilities of the witness and the interpreter are both fulfilled, it is best practice that an interpreter is not a witness to the marriage.

Certificate of faithful performance

4.54. Immediately after the ceremony, the interpreter must give the authorised celebrant a certificate of the faithful performance of their services as interpreter.[109] The certificate must be in the approved form.[110] The approved form for the certificate of faithful performance by the interpreter is available on the Attorney-General's Department's website.

Other types of ceremonies

Second marriage ceremonies

4.55. Paragraph 113(1)(a) of the Marriage Act prohibits persons who are already legally married to each other from going through a further form or ceremony of marriage to each other, in Australia or as a member of the Australian Defence Force overseas. In other words, people who are already legally married to each other must not marry each other again.[111]

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109 Subsection 112(3) of the Marriage Act.

110 Paragraph 119(3)(i) of the Marriage Act.

111 Note that a person is also not permitted to marry if they are already validly married to someone else.

4.56. It is an offence for an authorised celebrant to purport to solemnise a marriage if the authorised celebrant knows or has reason to believe the parties are already legally married to each other.[112]

Exceptions to the prohibition on second marriage ceremonies

4.57. There are limited exceptions to the prohibition on second marriage ceremonies. Those exceptions are set out in subsection 113(2) of the Marriage Act. Specifically, subsection 113(2) allows parties who have gone through a form or ceremony of marriage with each other to go through a further form or ceremony of marriage if there is doubt as to:

- whether the parties are legally married to each other
- whether a marriage that took place outside Australia would be recognised as valid by a court in Australia, or
- whether their marriage could be proved in legal proceedings.

4.58. Before the second marriage ceremony occurs, subsection 113(3) of the Marriage Act requires that the parties produce to the authorised celebrant:

- a statutory declaration made by the parties which states 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, 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 as to whether:
    - the parties are legally married to each other, or
    - their marriage, which took place outside Australia, would be recognised as valid by a court in Australia, or
    - their marriage could be proved in legal proceedings.

4.59. A second marriage ceremony that is authorised by subsection 113(2) of the Marriage Act must comply with the requirements for a valid marriage that would otherwise apply to a marriage solemnised in Australia by an authorised celebrant. For example, a NOIM must be completed by the parties and given to the authorised celebrant in accordance with paragraph 42(1)(a) of the Marriage Act, the DONLIM must be made before the authorised celebrant and the form of ceremony must comply with section 45 of the Marriage Act.

4.60. The authorised celebrant will also need to prepare and deal with the marriage certificates in accordance with section 50 of the Marriage Act. But in addition, each marriage certificate prepared for a second marriage ceremony must bear the following endorsement:

> ‘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

[112] Subsection 99(6) of the Marriage Act.

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]'

4.61. The endorsement must use the exact words set out above and must be signed by the authorised celebrant before whom the ceremony took place.[113]

Religious ceremonies of marriage

4.62. Authorised celebrants should also be aware that the prohibition on second marriage ceremonies does not prevent two people who are already legally married to each other from going through a religious ceremony of marriage with each other, provided that the parties have produced to the person in whose presence the religious marriage ceremony is to be performed:

- a certificate of their existing marriage, and
- a statement in writing, signed by the parties and witnessed by the person in whose presence the religious marriage ceremony is to be performed, stating that:
  - the parties have previously gone through a form or ceremony of marriage with each other
  - the parties are the parties mentioned in the certificate of marriage produced with the statement
  - the parties 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.[114]

4.63. The requirements relating to the NOIM, the DONLIM, witnesses and marriage certificates do not apply to religious ceremonies of marriage involving parties who are already legally married to each other.[115]

4.64. If an authorised celebrant is asked to perform a religious ceremony of marriage where the parties are already legally married to each other, the celebrant must not prepare or issue any certificate of marriage under or referring to the Marriage Act.[116] 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.[117]

Surprise weddings

4.65. Surprise weddings involve one of the parties to the marriage being 'surprised' at or shortly before the ceremony. The most common 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

113 Subsection 113(4) of the Marriage Act and section 84 of the Marriage Regulations.
114 Subsection 113(5) of the Marriage Act.
115 Subsection 113(6) of the Marriage Act.
116 Paragraph 113(6)(a) of the Marriage Act.
117 Paragraph 113(6)(b) of the Marriage Act.

gesture. It is not a surprise wedding if both parties have signed the NOIM and only the date of the wedding or event is the surprise component.

4.66. Surprise weddings raise an important and unavoidable issue in relation to the legality of the marriage. It is best described as 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 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 lead to a void marriage due to a lack of real consent.

4.67. Authorised celebrants should not accept a NOIM signed by only one party to facilitate a surprise wedding.

Other marriage ceremonies that involve a 'surprise'

4.68. Sometimes a couple may wish to surprise their guests at an engagement party or other gathering by getting married. In this situation, both parties are involved in the planning of the ceremony and it is only the guests who are surprised. Provided the marriage otherwise complies with the requirements for a valid marriage, this arrangement does not raise any legal issues.

Pop-up weddings

4.69. 'Pop-up weddings' generally involve a marriage celebrant working with other wedding industry suppliers (for example, photographers, venues, decorators and florists) to provide a pre-arranged wedding package. There are no restrictions in the Marriage Act or the Marriage Regulations on authorised celebrants participating in pop-up weddings. However, a pop-up wedding must still comply with the requirements for a valid marriage and an authorised celebrant's involvement in a pop-up wedding must not interfere with their ability to comply with their legal duties and obligations.

Marriage ceremonies as prizes

4.70. Marriage ceremonies that are given away as a 'prize' must still comply with all of the requirements for a valid marriage. This includes the requirement under paragraph 42(1)(a) of the Marriage Act that the parties give a minimum of one month's notice of their intended marriage to the celebrant.

4.71. If the parties to an intended marriage have not provided at least one month's notice to the authorised celebrant, it is possible for the parties to apply to a prescribed authority for authorisation to marry despite not providing the required notice (referred to as a 'shortening of time'). However, it is highly unlikely that winning a marriage ceremony as a prize will fall within circumstances in which a prescribed authority may authorise a shortening of time.

Commitment ceremonies

4.72. A commitment ceremony involves two people committing to spend their lives together. Commitment ceremonies are not marriage ceremonies and have no legal effect.

4.73. Authorised celebrants may choose to conduct commitment ceremonies, but before agreeing to do so, a celebrant should make it clear to the couple and anyone else involved in the ceremony that the commitment ceremony will not result in a legally binding marriage and cannot be registered with state and territory registries of births, deaths and marriages.

4.74. As a commitment ceremony is not a marriage ceremony, the celebrant must not prepare or submit any marriage paperwork (such as the NOIM or the DONLIM). Further, an authorised celebrant must not prepare or sign a certificate of marriage or any other certificate referring to the Marriage Act for a commitment ceremony.

4.75. A commitment ceremony could incorporate important rituals, such as readings and the exchanging of rings. Authorised 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. In order to avoid doubt, authorised celebrants must avoid using the words ‘wedding’ or ‘marriage’ to describe the ceremony.

Renewal of vows ceremonies

4.76. A renewal of vows is a ceremony in which a married couple reaffirms their commitment to each other. Much like commitment ceremonies, renewal of vows ceremonies have no legal effect.

4.77. Authorised celebrants may choose to conduct renewal of vows ceremonies and should follow the guidance on commitment ceremonies above if asked to conduct a renewal of vows ceremony.

CHAPTER 5: MARRIAGE CERTIFICATES AND REGISTRATION OF MARRIAGES

This chapter outlines the requirements for marriage certificates, including how to complete them, and registering the marriage.

5.1. KEY MESSAGES

In accordance with subsection 50(1) of the Marriage Act, most **authorised celebrants** are required to prepare three marriage certificates for each marriage they solemnise. Specifically, most authorised celebrants must prepare:

- one **Form 15 Certificate** of Marriage, and
- two **Official Certificates of Marriage**.

The marriage certificates must be signed immediately after the solemnisation of the marriage.[118]

There is a limited exception to the requirement to prepare two Official Certificates of Marriage that applies to certain **state and territory officers** listed in Schedule 4 to the Marriage Regulations.[119] These officers are only required to prepare one Form 15 Certificate of Marriage and one Official Certificate of Marriage.

The Form 15 Certificate of Marriage should be handed to one of the parties to the marriage after the marriage is solemnised.[120] Information about each Form 15 Certificate of Marriage issued to an authorised celebrant must be recorded on the Record of Use Form.[121]

One of the Official Certificates of Marriage (or in cases where there is only one, the Official Certificate of Marriage) must contain the DONLIM on the reverse side.[122] That Certificate must be forwarded by the celebrant, together with required supporting documents, to the Registrar of births, deaths and marriages in the state or territory where the marriage was solemnised.[123] This must occur within 14 days after the solemnisation of the marriage.

The other Official Certificate of Marriage is to be retained by the celebrant. Authorised celebrants who are ministers of religion must add this copy of the Official Certificate of Marriage to the records of their parish, district, church or religious body organisation.[124] Authorised celebrants who are not ministers of religion must retain this copy of the Official Certificate of Marriage for 6 years starting the day after the marriage was solemnised.[125]

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118 Subsection 50(2) of the Marriage Act.
119 Section 75 of the Marriage Regulations.
120 Subsection 50(4) of the Marriage Act.
121 Subsection 73(5) of the Marriage Regulations.
122 Subsection 50(3) of the Marriage Act.
123 Subparagraph 50(4)(a)(i) of the Marriage Act.
124 Subsection 77(2) of the Marriage Regulations.
125 Subsection 77(4) of the Marriage Regulations.

The Form 15 Certificate of Marriage

5.2. An authorised celebrant must prepare a Form 15 Certificate of Marriage for each marriage that they solemnise.[126] After the solemnisation of the marriage, the celebrant must hand the Form 15 Certificate of Marriage to one of the parties to the marriage on behalf of the parties.[127]

5.3. The Form 15 Certificate of Marriage is not a document of identity, rather it is evidence that a couple is married and that their legal status has changed, even though the marriage has not yet been registered. Couples should be advised that the Form 15 Certificate of Marriage is different to the state or territory issued marriage certificate that can be ordered after the marriage is registered. Importantly, the Form 15 Certificate of Marriage cannot be used for some of the purposes that the state and territory marriage certificate can be used for.

5.4. The Form 15 Certificate of Marriage has security features built in during the printing stage and a unique identifying number on the back. CanPrint has been authorised by the Attorney-General under subsection 73(3) of the Marriage Regulations to prepare and supply Form 15 Certificates of Marriage. A copy of the authorisation is available on the Attorney-General's Department's website. The Form 15 Certificate of Marriage is available for purchase by authorised celebrants from CanPrint Communications.

5.5. 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. Parties should also be informed that the Form 15 Certificate of Marriage cannot be replaced if it is lost or destroyed.

The 'Record of Use of Form 15 Marriage Certificates'

5.6. Celebrants must record details about each Form 15 Certificate of Marriage they are issued with. Specifically, subsection 73(5) of the Marriage Regulations requires celebrants to record the following information:

- any serial number printed on the Form 15 Certificate of Marriage
- if the Form 15 Certificate of Marriage is used by the celebrant, the date of the marriage and the full names of the parties to the marriage
- if the Form 15 Certificate of Marriage is transferred to another celebrant, the date of the transfer and the full name and authorisation number (if any) of the other celebrant
- if the Form 15 Certificate of Marriage is destroyed, the date of and reason for the destruction, and
- if any other event occurs in relation to the Form 15 Certificate of Marriage, the date and other relevant details of the event.

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126 Paragraph 50(1)(a) of the Marriage Act and subsection 73(1) of the Marriage Regulations.

127 Subsection 50(4) of the Marriage Act.

5.7. Authorised celebrants must use the Record of Use Form, which is available on the Attorney-General's Department's website, to record the above information.[128]

5.8. Failing to comply with these record keeping requirements is an offence under subsection 74(1) of the Marriage Regulations. Celebrants should also remember that paragraph 5(b)(iii) of the Code of Practice for marriage celebrants (see Schedule 2 of the Marriage Regulations) requires that celebrants maintain appropriate facilities for the secure storage of records.

5.9. CanPrint Communications keeps a record of the serial numbers on the Form 15 Certificates of Marriage that are supplied to a celebrant.

5.10. These record keeping requirements ensure the certificates are traceable and that the authenticity of each certificate can be verified.

Retaining Record of Use Forms

5.11. The Marriage Regulations require authorised celebrants to retain information about Form 15 Certificates of Marriage for 6 years starting on the day after:

- the date of the marriage
- the date the Form 15 Certificate was transferred
- the date the Form 15 Certificate was destroyed, or
- the date of any other event that occurred in relation to the Form 15 Certificate of Marriage.[129]

5.12. In practice, this means celebrants must retain the Record of Use Form for 6 years and 1 day after the date of the last entry on the sheet.

5.13. There are two limited exceptions to the 6-year rule.[130] The first is if the authorised celebrant dies or becomes permanently incapacitated before the end of the 6-year period. The second is where the celebrant is a state or territory officer authorised under section 39 of the Marriage Act and their authorisation ceases before the end of the 6-year period.

Lost or stolen Form 15 Certificates of Marriage

5.14. A Form 15 Certificate of Marriage being lost or stolen before it has been used falls into the category of 'any other event that occurred in relation to the Form 15 Certificate of Marriage'. This means the celebrant must record, in the Record of Use Form, the date the Certificate was lost or stolen and any other relevant details, such as information about the circumstances in which the Certificate was lost or stolen.[131] This is the case even if the Form 15 Certificate of Marriage has not been used at all by the celebrant.

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128 Paragraph 73(6)(a) of the Marriage Regulations.
129 Paragraph 73(6)(b) of the Marriage Regulations.
130 Subparagraphs 73(6)(b)(i)–(ii) of the Marriage Regulations.
131 Paragraph 73(5)(e) of the Marriage Regulations

Providing Record of Use Forms to specified persons

5.15. The Attorney-General may request that a celebrant provide a copy of their records relating to Form 15 Certificates of Marriage to a specified person.[132]

5.16. If a celebrant is required to provide a copy of their records, they will receive a written request from the Minister. The request will state the certificate number(s) for which records are required, who the records must be provided to and the date by which the records must be provided.

5.17. Failing to comply with a written request from the Attorney-General is an offence under subsection 74(2) of the Marriage Regulations.

What to do if the ceremony does not take place

5.18. If the ceremony does not take place but the celebrant has already prepared the Form 15 Certificate of Marriage for signature, that certificate should be destroyed. Details about the certificate and its destruction will need to be recorded in the Record of Use Form.

The Official Certificates of Marriage

5.19. Most authorised celebrants are required to prepare two Official Certificates of Marriage.[133] The only exception is for certain state and territory officers, listed in Schedule 4 of the Marriage Act, who are only required to prepare one Official Certificate of Marriage.[134]

The first Official Certificate of Marriage

5.20. Within 14 days after the solemnisation of the marriage, one of the Official Certificates of Marriage must be forwarded to the appropriate registering authority of a state or territory.[135] The appropriate registering authority is the Registrar of births, deaths and marriages in the state or territory in which the marriage was solemnised, or in the case of Queensland the Registrar-General under the *Births, Deaths and Marriages Registration Act 2003* (Qld) and in the case of the ACT, the Registrar-General under the *Registrar-General Act 1993* (ACT).[136] In this chapter the appropriate registering authority is referred to as the "Registrar of births, deaths and marriages in the state or territory where the marriage was solemnised" or the "appropriate Registrar of births, deaths and marriages".

5.21. This first Official Certificate of Marriage must have the DONLIM on the reverse side of the paper.[137]

5.22. There are various supporting documents that must also be sent to the Registrar of births, deaths and marriages. Those documents, and the process for submitting them, are discussed further in this chapter.

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132 Subsection 73(7) of the Marriage Regulations.
133 Paragraph 50(1)(b) of the Marriage Act.
134 Section 50(1A) of the Marriage Act and section 75 of the Marriage Regulations.
135 Subparagraph 50(4)(a)(i) of the Marriage Act.
136 Section 6 of the Marriage Regulations.
137 Subsection 50(3) and subparagraph (4)(a)(i) of the Marriage Act.

The Second Official Certificate of Marriage

5.23. The second Official Certificate of Marriage is retained by the authorised celebrant. The requirements for dealing with the second Official Certificate of Marriage differ for each type of marriage celebrant.

5.24. The particulars on the second Official Certificate of Marriage must be exactly the same as the particulars on the first Official Certificate of Marriage which is forwarded to the Registrar of births, deaths and marriages in the state or territory where the marriage was solemnised.

5.25. The second Official Certificate of Marriage must be prepared and retained, even if the first Official Certificate of Marriage is submitted electronically to the state or territory Registrar of births, deaths and marriages.

Requirements for ministers of religion

5.26. The following requirements apply to ministers of religion in relation to the second Official Certificate of Marriage:

- Where the marriage was solemnised in a church of the relevant religious body or religious organisation that is in a parish or other district in charge of a minister of religion of that organisation or body, the certificate must be added to the records of the parish or district
- Where the marriage was solemnised in a church of the relevant religious body or religious organisation not in a parish or district of the kind referred to above, the certificate must be added to the records of the church
- Where the above two dot points do not apply, the certificate must be added to the records of the relevant religious body or religious organisation.[138]

5.27. The relevant records should be securely stored.

Requirements for other authorised celebrants

5.28. Authorised celebrants who are not ministers of religion must retain the second Official Certificate of Marriage for six years starting the day after the marriage was solemnised.[139] The certificate may be retained in paper form or electronically.[140] This requirement does not apply if the authorised celebrant dies or becomes permanently incapacitated before the 6-year period ends.[141]

Requirements for celebrants who are state and territory officers

5.29. Celebrants who are state and territory officers authorised under section 39 of the Marriage Act to solemnise marriages (and who are not authorised to prepare one Official Certificate of Marriage) should generally follow the requirements outlined above. That is, they must retain the second Official Certificate of Marriage for six

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138 Subsection 77(2) of the Marriage Regulations.
139 Subsection 77(4) of the Marriage Regulations.
140 Subsection 12(2) of the *Electronic Transactions Act 1999.*
141 Subsection 77(6) of the Marriage Regulations.

years starting the day after the marriage was solemnised. However, there is an exception to this.

5.30. If the state or territory officer's authorisation to solemnise marriages ceases before the end of the 6-year period in which the second Official Certificate of Marriage must be retained, the officer must send the second Official Certificate of Marriage to the Registrar of births, deaths and marriages in the state or territory where the marriage is solemnised, or alternatively, deal with the certificate as authorised by that Registrar.[142]

State and territory officers authorised to prepare one Official Certificate of Marriage

5.31. Some state and territory officers are exempt from the requirement to prepare a second Official Certificate of Marriage. The officers exempt from this requirement are listed in Schedule 4 to the Marriage Regulations.[143] If a state or territory officer is only required to prepare one Official Certificate of Marriage, they must deal with the certificate:

- in accordance with the law of the state or territory in which the marriage was solemnised, if that law requires the person to do anything for the purposes of binding the certificate into a register or dealing with it in any other way, or
- in any other case, by sending the certificate to, or dealing with it as authorised by, the Registrar of births, deaths and marriages in the state or territory where the marriage was solemnised.[144]

5.32. The DONLIM must be on the reverse side of the Official Certificate of Marriage.[145]

What to do if a marriage does not take place

5.33. If a marriage does not take place but the celebrant has already prepared the two Official Certificates of Marriage, the certificates should be destroyed.

Preparing the marriage certificates

5.34. Authorised celebrants should prepare all required marriage certificates prior to the ceremony, so that they are ready to be signed immediately after the marriage is solemnised.

5.35. Celebrants must take the utmost care in preparing marriage certificates, as once they are signed, they are conclusive evidence of the marriage.[146]

Names on marriage certificates

5.36. The names on the marriage certificates should correspond exactly with the names on the NOIM. However, celebrants should copy the parties' names from their identity documents onto the marriage certificates, rather than the NOIM. This is because simply copying all information from the NOIM may result in the repetition of a

142 Subsection 77(5) of the Marriage Regulations.
143 Section 75 of the Marriage Regulations.
144 Paragraph 50(4)(b) of the Marriage Act and subsection 77(3) of the Marriage Regulations.
145 Subsection 50(3) of the Marriage Act.
146 Subsection 45(3) of the Marriage Act.

previous error. This is particularly important if a NOIM is transferred from one celebrant to another before the marriage ceremony.

5.37. If, in the process of preparing the marriage certificates, the celebrant notices an error on the NOIM, the celebrant should arrange for that error to be corrected in the manner set out in chapter 3 of these guidelines.

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

Marriage rites on the marriage certificates

5.39. All marriages in Australia must be solemnised in accordance with the provisions of the *Marriage Act 1961*. This should be stated on the certificates of marriage.

5.40. Authorised celebrants who are ministers of religion must also record that the marriage was solemnised according to the rites of their religious organisation. Such celebrants should write the full name of their religious organisation exactly as it appears on the Register of Marriage Celebrants.

5.41. The marriage rites recorded on the marriage certificates should match the marriage rites recorded on the NOIM.

Souvenir certificates

5.42. Sometimes a couple might ask their celebrant to prepare a souvenir certificate of the marriage. No other certificates that include the words ‘marriage certificate’ or ‘certificate of marriage’, or containing the Commonwealth Coat of Arms should be issued. 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. It is important to ensure the parties understand the souvenir is not a legal document and it has no legal effect.

Signing the marriage certificates

5.43. Immediately after the solemnisation of the marriage, each of the parties to the marriage, the two witnesses and the celebrant must sign all of the marriage certificates.[147]

5.44. The witnesses must be present at the time the parties and the celebrant sign the marriage certificates.

5.45. The parties and witnesses should sign the marriage certificates using their usual signatures. The parties should sign in the same manner in which they signed the NOIM. Where it appears that difficulty may occur in determining the name of a person who has signed based on their signature, their names should be added in pencil, preferably in block letters.

5.46. If a party to the marriage or a witness is unable to write (for example, due to a disability), their signature can take the form of a mark or other symbol, such as an ‘X’.

147 Subsection 50(2) of the Marriage Act.

Additional signatures on the marriage certificates

5.47. Only the parties to the marriage, the two witnesses and the celebrant may sign the marriage certificates.

5.48. If a couple asks whether additional people can sign their marriage certificates (e.g. their children or other family members or members of the wedding party), the celebrant should explain that it is not possible because a marriage certificate is an official document and the two witnesses serve a legal purpose. That purpose is to be able to attest 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.

Correcting errors in the marriage certificates

5.49. Authorised celebrants should take great care in preparing marriage certificates. **Celebrants should also ask the parties and witnesses to carefully check the information contained in the certificates before signing them**, to prevent inconvenience associated with having the certificates corrected (see *Errors identified after the certificates are signed* below).

Errors identified before the marriage is solemnised

5.50. If an error is discovered after the certificates have been prepared but before the marriage is solemnised, the celebrant should first check whether the NOIM contains the same error. If it does, the NOIM will need to be corrected.

5.51. Next, the Official Certificates of Marriage should be corrected. If the Official Certificates have been completed in hard copy, the certificates can be destroyed and replaced with certificates containing correct information. If the Official Certificates have been prepared electronically, the incorrect information can be deleted by the celebrant and replaced with the correct information.

5.52. Alterations should not be made to the Form 15 Certificate of Marriage. Instead, a new certificate should be prepared incorporating the correct particulars. The celebrant will also need to make a record of the destruction of the spoiled certificate.

Errors identified at the point of signing

5.53. If an error is discovered after the marriage is solemnised, but when the celebrant, parties and witnesses come to sign the marriage certificates, the celebrant may correct the certificates. Any corrections must be made before the certificates are signed by any party.

5.54. The corrections should be made by neatly crossing out the incorrect information, inserting the correct information and initialing the margin next to the correction. Correction fluid should not be used on an Official Certificate of Marriage.

Errors identified after the certificates are signed

5.55. Where an error is identified after a certificate is signed, the authorised celebrant should deal with the certificate as required under section 50 of the Marriage Act and advise the parties that a correction will need to be made to the certificate in accordance with subsection 51(1) of the Marriage Act.

5.56. No correction should be made to a marriage certificate by the authorised celebrant. Only a Registrar of births, deaths and marriages as an authorised officer can make changes to marriage certificates (i.e. the Form 15 and Official Certificate of Marriage).[148] No corrections should be made to the NOIM.

5.57. It may be possible to satisfy a Registrar of births, deaths and marriages that there is an error on the marriage paperwork by providing a statutory declaration or by providing other evidence that confirms the error.

Registering the marriage

5.58. Marriages are registered in the state or territory in which they are solemnised, in accordance with the law of that state or territory.

5.59. The first part of the registration process involves the celebrant sending the Official Certificate of Marriage and supporting documents to the relevant Registrar of births, deaths and marriages.

Documents that must be sent to state and territory registries

5.60. As explained earlier in this chapter, the celebrant is required to send the first Official Certificate of Marriage, that has the DONLIM on the reverse side, to the Registrar of births, deaths and marriages in the state or territory in which the marriage was solemnised.[149]

5.61. Along with the Official Certificate of Marriage, the celebrant must send the following documents to the appropriate Registrar of births, deaths and marriages:[150]

- the NOIM
- any court order under section 12 of the Marriage Act
- any statutory declaration relating to the marriage, and
- any consents and dispensations with consents relating to the marriage of a minor.

5.62. All of these documents must be forwarded to the appropriate Registrar of births, deaths and marriages within **14 days** after the solemnisation of the marriage.

5.63. Some states and territories allow these documents to be lodged online. Authorised celebrants should make enquiries with the relevant registry about the availability of this option. If documents are submitted electronically, and the celebrant retains an electronic copy of the documents, the celebrant can decide to destroy the hard copies after the celebrant has confirmation the marriage has been registered.

5.64. It is the responsibility of the authorised celebrant, not the parties to the marriage, to forward the documents to the appropriate registry of births, deaths and marriages. Under no circumstances should the documents be given to any other person, including the parties to the marriage, to carry out this obligation.

148 Section 51 of the Marriage Act.
149 Subparagraph 50(4)(a)(i) of the Marriage Act.
150 Subparagraph 50(4)(a)(i) of the Marriage Act.

5.65. It is possible that some registries of births, deaths and marriages may request additional documents relating to the marriage be provided.

Consequences for failing to comply

5.66. There may be serious consequences if the authorised celebrant does not forward the required documents to the appropriate Registrar of births, deaths and marriages within the 14-day timeframe. Non-compliance with the requirement to forward the required documents within the 14 days could result in disciplinary measures being taken against the celebrant.[151]

State and territory issued marriage certificates

5.67. Once the marriage is registered, a party to the marriage can apply to the registry of births, deaths and marriages in the state or territory in which the marriage was solemnised for a state or territory issued marriage certificate. This certificate is different to the Form 15 Certificate of Marriage issued to the parties on the day of the ceremony. Importantly, it is only the state or territory issued marriage certificate that can be used to change a name after marriage and in some circumstances as an identification document.

Lost marriage certificates

5.68. If the authorised celebrant has forwarded the first Official Certificate of Marriage to the appropriate Registrar of births, deaths and marriages but that certificate is not received by the Registrar, or the registry subsequently loses or destroys the certificate, the celebrant may be asked to prepare a certified copy of the second Official Certificate of Marriage and send it to the relevant Registrar within 14 days.[152]

5.69. The certified copy of the second Official Certificate of Marriage has the same legal force and effect as if it were the first Official Certificate that was lost or destroyed.[153]

5.70. If the Form 15 Certificate of Marriage issued to the parties is lost or destroyed, it cannot be replaced under any circumstances.

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151 Section 39I of the Marriage Act.
152 Subsections 78(1)–(2) of the Marriage Regulations.
153 Subsection 78(3) of the Marriage Regulations.

CHAPTER 6: A VALID MARRIAGE

Chapter 6 outlines the consequences of a valid and invalid marriage and the grounds on which a marriage may be void.

This chapter includes information on the requirement that both parties freely and genuinely consent to the marriage, and the requirements for marriage of a minor.

6.1. KEY MESSAGES

Subsection 5(1) of the Marriage Act defines marriage as 'the union of 2 people to the exclusion of all others, voluntarily entered into for life'.

A valid marriage has legal consequences for the parties involved.

There are also serious consequences should a marriage be invalid. In particular, the authorised celebrant may have committed an offence or may have disciplinary measures taken against them. The couple may also have to undertake stressful and expensive measures to have their marriage recognised as valid, and may themselves have committed an offence in some circumstances.

For these reasons, it is very important that an authorised celebrant is satisfied that a proposed marriage will be valid at all times prior to the conclusion of the marriage ceremony. This includes, in particular, ensuring that the parties to the marriage have consented to it.

Consequences of a valid marriage

6.2. A valid marriage changes the legal status of the parties to the marriage. This has important implications for the parties, including:

- **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 1975* 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.

Consequences of an invalid marriage

6.3. If a marriage is invalid, the authorised celebrant may have committed an offence. This will be the case if the celebrant solemnised the marriage, or purported to solemnise the marriage, despite having reason to believe that there was a legal

impediment to the marriage or that the marriage would be void.[154] The circumstances in which a marriage will be void are discussed below.

6.4. A Commonwealth-registered marriage celebrant may also have breached the Code of Practice for marriage celebrants and, as a result, the Registrar of Marriage Celebrants may also take disciplinary measures against the celebrant.[155] The measures that may be taken include a written caution, the requirement to undertake additional professional development activities, suspension, or deregistration.

6.5. There are also negative consequences for the parties to an invalid marriage. Parties may have to apply to the Federal Circuit and Family Court of Australia or the Supreme Court of a state or territory for a declaration as to the validity of their marriage.[156] They may also have to go through a second marriage ceremony under section 113 of the Marriage Act. Each of these processes can be stressful, expensive and difficult for parties.

6.6. As noted above, a valid marriage usually invalidates any existing will. Consequently, the position of each party and their families under succession laws may be considerably affected if a marriage is not valid.

6.7. For these reasons, it is crucial that the authorised celebrant be satisfied that a proposed marriage will be valid at all times prior to the conclusion of the marriage ceremony.

The grounds on which a marriage may be void

6.8. **KEY MESSAGES**

Before an authorised celebrant solemnises a marriage, the celebrant must satisfy themselves that the marriage would not be void by reason of any of the grounds set out in subsection 23B(1) of the Marriage Act.

It is an offence under section 100 of the Marriage Act to solemnise a marriage if the authorised celebrant has reason to believe that there is a legal impediment to the marriage or that the marriage would be void.

A marriage may be void where any of the following applies:[157]

- either of the parties is, at the time of the marriage, lawfully married to some other person (i.e. there is a 'prior undissolved valid marriage')
- the parties are within a 'prohibited relationship'
- the marriage is not valid by reason of section 48 of the Marriage Act (concerning failures to follow required procedures for solemnising marriages)
- the consent of either of the parties is not real consent because:

154 Section 100 of the Marriage Act.
155 Section 39I of the Marriage Act.
156 Section 39 of the Family Law Act.
157 Section 23B of the Marriage Act.

- 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
- the party did not understand the nature and effect of the marriage ceremony

- either of the parties is, at the time of the marriage, not of marriageable age.

Prior undissolved valid marriage

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

6.10. It is important to establish that neither party to the marriage is lawfully married to another person because:

- a marriage is void where either of the parties is, at the time of the marriage, lawfully married to another person[158]
- a person who goes through a ceremony of marriage while still validly married to another person may have committed the offence of bigamy, which carries a penalty of 5 years imprisonment[159]
- a person who goes through a ceremony of marriage knowing, or having reasonable grounds to believe, that the other person is already validly married to a third person may also commit an offence, which carries a penalty of 5 years imprisonment,[160] and
- the celebrant will commit an offence where they solemnise a marriage, or purport to solemnise a marriage, if they have reason to believe that the marriage would be void because one of the parties may be validly married to another person.[161]

6.11. It is the party's obligation to satisfy the celebrant that they are not already married to another person.

6.12. An authorised celebrant must not solemnise the marriage of a person who has previously been married unless the person provides the celebrant with evidence that the prior marriage has ended, whether by divorce or by the death of the spouse.[162] Evidence might include a divorce certificate or a death certificate.

Parties in a prohibited relationship

6.13. A marriage is void if the parties are within a prohibited relationship.[163] A prohibited relationship is a marriage between:

- a person and an ancestor or descendant, or

158 Paragraph 23B(1)(a) of the Marriage Act.
159 Subsection 94(1) of the Marriage Act.
160 Subsection 94(4) of the Marriage Act.
161 Section 100 of the Marriage Act.
162 Subsection 42(10) of the Marriage Act.
163 Paragraph 23B(1)(b) of the Marriage Act.

- a person and their sibling[164]

6.14. An ancestor is someone from whom a person is descended (e.g. a parent or grandparent). A descendant is someone who descends from a person (e.g. a child or grandchild).

What about adopted children or adoptive parents?

6.15. For the purposes of determining whether a relationship is a prohibited relationship, the Marriage Act treats adopted children as the natural children of the adoptive parents. This means that a prohibited relationship will include a relationship traced through or to an adopted child.

6.16. A person is still considered to be an adopted child even if the adoption has been annulled, cancelled or discharged or has ceased to be effective for any reason.[165] 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.[166]

6.17. Individuals who were adopted by the same adult/s are considered to be siblings and, therefore, a marriage between them would be a prohibited relationship. This includes cases where the parties have never lived together, or where an adoption has been annulled, cancelled or discharged.

Examples of prohibited relationships

6.18. Under the Marriage Act, a person cannot marry their:

- grandparent (or great-grandparent, etc.)
- parent
- sibling or half-sibling
- child, or
- grandchild (or great-grandchild, etc.).

Examples of relationships which are not prohibited relationships

6.19. The following marriages would not be a prohibited relationship under the Marriage Act:

- a marriage between an uncle and his niece or nephew, or an aunt and her niece or nephew
- a marriage between cousins
- a marriage between individuals who have lived together in the one family but were not adopted by the adults who raised them.

6.20. An authorised 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

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164 Subsection 23B(2) of the Marriage Act.
165 Paragraph 23B(5)(a) of the Marriage Act.
166 Paragraph 23B(5)(b) of the Marriage Act.

connection between them. In such a case the authorised celebrant should question them closely to ensure there is no prohibited relationship.

Section 48 of the Marriage Act

6.21. Under subsection 48(1) of the Marriage Act, a marriage is invalid if it is not solemnised in accordance with certain provisions. For example, a marriage may be invalid under section 48 where the vows do not comply with section 45 of the Marriage Act.

6.22. Only a court can determine whether a marriage is invalid.

Marriage may still be valid despite certain failures to comply with the Marriage Act

6.23. Subsections 48(2) and (3) of the Marriage Act provide that a marriage is not invalid by reason of certain failures to comply with the requirements of the Marriage Act. In some circumstances, subsections 48(2) and (3) of the Marriage Act may protect the validity of a marriage from some of an authorised celebrant's failings, including:

- a celebrant's failure to explain the nature of the marriage relationship in accordance with section 46
- a failure to comply with any of the requirements in section 42 which relate to the NOIM
- where a marriage was solemnised by a person not authorised under the Marriage Act to solemnise a marriage, if either of the parties to the marriage believed at the time of the marriage that the person was lawfully authorised to solemnise it.

6.24. However, even though subsection 48(2) may save the validity of a marriage in some circumstances, **an authorised celebrant may in any case find themselves facing an investigation for non-compliance with their legal obligations under the Marriage Act.** This reflects the policy approach underlying the Marriage Act which places the responsibility on the celebrant to ensure that only valid marriages are solemnised and that all the requirements of the Marriage Act are followed.

The consent of the parties is not real consent

6.25. **KEY MESSAGES**

Authorised celebrants must ensure that both parties freely and genuinely consent to the marriage at all times. A marriage is void if the consent of either of the parties is not 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
- a party did not understand the nature and effect of the marriage ceremony.[167]

[167] Paragraph 23B(1)(d) of the Marriage Act.

An authorised celebrant who believes the consent of one or both parties is not real consent should refuse to marry the couple, even if the marriage ceremony has commenced.

Authorised celebrants should remember the following key information about consent:

- The parties must consent at the time of the marriage. Prior consent is not a substitute for real consent at the time of the marriage.
- A third party cannot provide real consent on behalf of a party to the marriage, even if that third party has power of attorney or is a guardian to the relevant party to the marriage.
- If you are concerned about whether a person's consent is real consent, you should speak to the person in the absence of any other party. You may also speak to third parties but should first seek permission from the person involved.
- To further safeguard real consent, an authorised celebrant is required to meet with each party to the marriage separately and in person before the marriage is solemnised. See Appendix A to these guidelines for further guidance on separate meetings.
- You should thoroughly document any conversations you have about consent. This will provide a record of your decision-making process, should you be called upon to give evidence in court as to the consent of the parties.

Assessing whether a person's consent is real consent

6.26. If an authorised celebrant forms a view that a person's consent may not be real consent, they should discuss the matter with the party concerned in the absence of the other party to ensure the consent is real consent. This is especially 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.

6.27. In cases where there is doubt about whether a party is incapable of understanding the nature and effect of the marriage ceremony, a general understanding will be sufficient. A high level of understanding is not required.

6.28. The authorised 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.

6.29. 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.

6.30. If at any point a celebrant is unsure of the genuine consent of either party, they should not proceed with solemnising the marriage.

Speak to third parties

6.31. In addition to speaking to the party concerned, an authorised celebrant can speak to third parties to assess if consent is real. For example, in cases of possible incapacity, an authorised celebrant might be assisted by speaking with family members, medical experts who know the party, guardians if relevant, or carers or staff where a person is living if they are elderly or have a disability. When speaking to third parties, it is important to respect the privacy of the person involved. It is important that you seek permission from the person to approach third parties, tell them who you would like to speak to and why, and let them know what you are going to say.

Keep detailed records

6.32. An authorised celebrant should thoroughly document any conversations they have to assess a person's consent to marry. Should questions arise at a later date, the celebrant will have 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.

Ask yourself the following questions

6.33. The following questions may assist an authorised celebrant to identify situations where consent issues may arise. It is important to note that this list is not exhaustive and there may be other considerations for celebrants depending on the specific circumstances:

- Is one party silent or otherwise not communicating?
- Is one party speaking nonsensically or constantly interrupting?
- 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?
- Is one party displaying emotions that are excessive or inappropriate in the circumstances?
- Has one party expressed feelings of shame or dishonour on the family if expectations are not met?
- Does one party answer all of the questions for the other party as well as for themselves?
- Does one party have noticeable problems with memory?
- Is there any sign that a party cannot manage their own affairs, for example, being in full-time care 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?
- Do the celebrant and the party have sufficient knowledge of each other's language? If not, the celebrant should insist that an interpreter is used or, if an interpreter is not available, pass the function of performing the marriage on to a celebrant who speaks that language.

Consent cannot be given by a third party

6.34. An authorised celebrant must not rely on a Power of Attorney or Power of Guardianship to determine the consent of a party to a marriage. That is, consent is not something that can be given by a third party on behalf of the party to the marriage.

6.35. While a third party such as a guardian cannot consent to marry on someone's behalf, they may raise issues of capacity in relation to that person.

6.36. Authorised celebrants should consider whether there is any sign that a party cannot manage their own affairs, for example, being subject to a guardianship order.

6.37. A party to an intended marriage should be advised to seek independent legal advice if they have questions about the operation of guardianship orders or powers of attorney, having regard to their particular circumstances.

Capacity of the parties

6.38. 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.

6.39. Authorised celebrants should not assume a person lacks capacity based on appearances, for example because of 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 or other Alternative and Augmentative Communication systems (e.g. picture boards or computer programs) that might be used by the person.

<u>Persons with a disability</u>

6.40. 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 the marriage ceremony, it is not intended to result in a barrier for people with a disability to marry.

6.41. If an authorised celebrant is concerned that a person with a disability may not have the capacity to understand the nature and effect of marriage, they should employ the practical advice provided above to ascertain whether the person is capable of providing real consent.

Forced, arranged and 'sham' marriages

6.42. Authorised celebrants should be aware that it is an offence to engage in conduct that causes 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).[168] See 'Offences relating to forced marriage' in Chapter 7 of these guidelines for further information.

6.43. 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 intending 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.

6.44. 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. It is not the authorised celebrant's role to determine the genuineness of the relationship so long as both parties are consenting to the marriage. If you have concerns about the authenticity of a marriage you are asked to solemnise, you may wish to report your concerns (which can be done anonymously) to the Department of Home Affairs at www.homeaffairs.gov.au. There is no obligation on an authorised celebrant to do so.

Case studies about consent

6.45. Determining whether a marriage is void because of a lack of consent is a matter for the Federal Circuit and Family Court of Australia, or the Supreme Court of a state or territory.[169] This section explores a number of case studies involving marriages that were declared void due to a lack of real consent.

6.46. ***Oliver (Deceased) v Oliver*** **[2014] FamCA 57**

The applicant was 78 years of age and had a significant medical history which included cognitive issues arising from long-standing abuse of alcohol, and dementia. He married his 49-year-old former carer (the respondent). Shortly before the marriage, the respondent accompanied the applicant to an appointment with his solicitor where he changed his will to leave everything to her.

Taking into account the evidence about the applicant's mental capacity, the age and financial disparity between the parties, the nature of the previous relationship between the parties and the financial motivations of the respondent in marrying the applicant and facilitating a change of his will, the Court found that the applicant did not have the capacity to understand the nature and effect of the marriage ceremony. Accordingly, the marriage was declared as void under subparagraph 23B(1)(d)(iii) of the Marriage Act.

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168 Section 270.7B of the Criminal Code, which is found in the Schedule to the *Criminal Code Act 1995*.

169 Subsection 39(1) of the Family Law Act.

6.47. ***Catesby and Dhillon*** **[2021] FedCFamC1F 124**

The applicant was diagnosed as having significant intellectual disability and epilepsy. She lived in supported accommodation for her adult life. The respondent was the applicant's driver. They commenced a relationship and married before a celebrant. None of the applicant's family were present at the ceremony. The applicant's sister, who was also her guardian, discovered that the marriage had occurred around 12 months after the event.

There was medical evidence that the applicant had a simplistic, 'childlike' notion of marriage and had virtually no capacity for planning or anticipating future events. There was also evidence that the applicant's disability caused a lack of control and autonomy.

The Court found the applicant did not have the capacity to understand the nature and effect of the marriage ceremony and accordingly, the marriage was void.

6.48. ***Pannos and Fotinos*** **[2020] FamCA 102**

Ms Pannos had congenital deafness, schizophrenia and an intellectual impairment. As a result of her medical conditions, she also experienced a failure of speech. Ms Pannos lived with her parents, as she was unable to administer her medications or live independently. Ms Pannos and the respondent met as children at a school for the deaf.

In October 2018, Ms Pannos went missing. A woman unfamiliar to the Pannos family arrived at their home and informed the family that Ms Pannos was married. Ms Pannos was found sitting alone on a sofa at the respondent's parent's home. She had been there for three days without any of her medication. Ms Pannos did not return home until December 2018. At this time, she was psychotic and threatening suicide if she had to return to the respondent's home. She required the immediate care of her psychiatrist.

Ms Pannos' psychiatrist gave evidence that she believed Ms Pannos did not understand that she was going to get married. The psychiatrist stated that Ms Pannos acts on the basis of her emotions and did not have the ability to make reasonable judgements for herself.

The Court found that Ms Pannos was mentally incompetent to be able to give informed consent to the marriage and accordingly, the marriage was void.

6.49. ***Breust & Devine*** **[2016] FamCA 892**

The applicant migrated to Australia and did not speak English. She met the respondent through family friends and shortly after, they commenced a relationship. The respondent advised the applicant he was in Australia on a temporary visa and was unable to work. He explained that if they registered their relationship, he would be able to work.

The applicant and the respondent attended a house, along with a small group of their family members and a marriage celebrant. The applicant claimed she was told by the respondent that this was the method to register a relationship. The applicant claimed she did not understand what was said at the ceremony or the documents that she signed, as they were in English and no interpreter was present.

For three or four weeks after the ceremony, the applicant and the respondent attended events together as 'boyfriend' and 'girlfriend' but they never lived together or became physical beyond kissing on the lips. The relationship later broke down and the applicant

contacted the marriage celebrant to inform him she wished to cancel the registration of their relationship. The marriage celebrant then advised the applicant that she was married.

The applicant claimed she had no idea she was married. She gave evidence that the ceremony lacked the characteristics of a marriage within her community, which would usually take place in a church setting with hundreds of guests.

The Court found the applicant did not give real consent because she was mistaken as to the nature of the ceremony she was participating in. On this basis, the marriage was void.

Marriageable age and the marriage of minors in Australia

6.50. **KEY MESSAGES**

A marriage is void if either of the parties was not of marriageable age at the time of the marriage.[170]

A person is of marriageable age in Australia if they have attained the age of 18 years.[171] However, a person who has attained the age of 16 years but has not yet attained the age of 18 years may marry a person of marriageable age if both of the following requirements are met:

- a judge or magistrate has made an order authorising the person to marry a particular person of marriageable age, and
- the consents required by the Marriage Act have been given or dispensed with.

While it is not the authorised celebrant's responsibility to arrange for the court order or the necessary consents, it *is* the authorised celebrant's responsibility to ensure that the requirements have been met before they solemnise a marriage involving one party who is 16 or 17 years of age.

The Marriage Act does not permit, under any circumstances, a marriage where both parties are under 18 years of age. Further, under no circumstance can a person under 16 years of age marry.

If an authorised celebrant is asked to marry a couple, one of whom is 16 or 17 years of age, the celebrant should review the guidelines and recommend, if appropriate, that the parties to the proposed marriage seek legal advice.

Requirements for marriage of a minor

6.51. There are two requirements that must be satisfied to allow a person of 16 or 17 years of age to marry a person aged 18 years or over. Those requirements are that:

170 Paragraph 23B(1)(e) of the Marriage Act.
171 Section 11 of the Marriage Act.

- a judge or magistrate has made an order authorising the person to marry a particular person of marriageable age (i.e. aged 18 years or over), and
- the consents required under the Marriage Act have been given or dispensed with.

6.52. An authorised celebrant must not solemnise the marriage unless the two requirements above are met. These requirements are explained in more detail below.

6.53. It is the 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.

6.54. It is the authorised celebrant's responsibility to ensure that the necessary requirements have been met before they solemnise the marriage. A checklist of the celebrant's responsibilities when solemnising the marriage of a minor can be found at the end of this section.

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

Offences where the two requirements are not satisfied

6.56. 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.[172] It is also an offence to solemnise a marriage in which one of the parties is not of marriageable age and does not have the required consents or dispensations of consent.[173] The authorised celebrant must therefore carefully check the age of both parties from their birth certificates or extracts, and all relevant paperwork about the necessary consents.

6.57. It may also be an offence for a person of marriageable age to go through a form of ceremony of marriage with a person who is not of marriageable age.[174]

First requirement: court order

6.58. A person of 16 or 17 years of age 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.[175] The authorisation of a judge or magistrate is required in <u>all</u> cases where one party is 16 or 17 years of age.

6.59. Section 7 of the Marriage Regulations sets out the requirements for an application to a judge or magistrate.

6.60. Where one party is 16 or 17 years of age, an authorised celebrant must not solemnise the marriage unless they have been given the court order authorising the marriage.[176]

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172 Section 100 of the Marriage Act.
173 Subsection 99(4) of the Marriage Act.
174 Section 95 of the Marriage Act.
175 Section 12 of the Marriage Act.
176 Subsection 8(3) of the Marriage Regulations.

6.61. A court order authorising the marriage of a minor ceases to have effect 3 months after the date of the order.[177] Therefore, the marriage must take place within 3 months of the date of the court order to rely on the order.

6.62. It may be appropriate for an authorised celebrant to recommend that parties applying for such an order seek legal advice.

What will the judge or magistrate consider when deciding whether to grant an order?

6.63. The judge or magistrate will hold an inquiry into the relevant circumstances and must be satisfied that:

- the person applying for authorisation to marry is at least 16 years of age, and
- the circumstances of the case are so exceptional and unusual as to justify the making of the order.[178]

6.64. The inquiry must be held in private and the judge or magistrate is required to give the person applying for the order, and so far as is reasonably practicable, any person whose consent to the marriage is required, an opportunity to be heard.[179] Any person who is given the opportunity to be heard at an inquiry may be represented by a solicitor or barrister.[180]

6.65. Whether or not the order is made is entirely at the discretion of the judge or magistrate.

6.66. If an order is granted, the person of 16 or 17 years of age is deemed to be of 'marriageable age' in relation to their marriage to the particular person specified in the order but not otherwise.[181] In other words, the person of 16 or 17 years of age is only authorised to marry the person 18 years of age or older who is specified in the order. They are not authorised to marry any other person.

When will circumstances be 'exceptional' and 'unusual'?

6.67. Each case must be considered according to its own facts. However, there are a number of general rules that can be drawn from previous court decisions.

6.68. Exceptional and unusual circumstances means 'out of the ordinary'.[182] The exceptional and unusual circumstances must relate to the particular parties involved. For example, the customs of a particular social or cultural group are not, on their own, exceptional and unusual circumstances.[183] The fact that one of the parties is pregnant is not, on its own, an exceptional and unusual circumstance.[184] However, pregnancy may be considered together with other factors.

6.69. Again, an authorised celebrant may wish to suggest that parties looking to apply for an order seek legal advice.

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177 Subsection 12(5) of the Marriage Act.
178 Subsection 12(2) of the Marriage Act.
179 Subsections 18(1)–(2) of the Marriage Act.
180 Subsection 18(3) of the Marriage Act.
181 Subsection 12(3) of the Marriage Act.
182 *K v Cullen* (1994) 53 FCR 410.
183 *Re SG* (1968) 11 FLR 326.
184 *Re K* [1964] NSWR 746.

Second requirement: consent

6.70. In addition to the court order, it is also necessary to obtain the consent of any person whose consent is required under the Marriage Act.[185] Schedule 1 to the Marriage Act lists the person/s whose consent is required. Generally, this will be the parents, guardians or persons with court ordered parental responsibility for the party who is not of marriageable age.

Persons whose consent is required		
Item	**If …**	**then this person's consent is required …**
1	(a) at least one parent of the minor is alive; and (b) there is no court order in force in relation to parental responsibility for the minor; and (c) the minor does not have a guardian as referred to in item 3 or 4 of this table	each parent
2	there is a court order in force granting parental responsibility for the minor to one or more persons (whether or not those persons are the minor's parents)	each person who, under the order, has (whether explicitly or implicitly) parental responsibility for giving consent to the minor's marriage
3	there is a guardianship order in force that: (a) relates to the minor; and (b) is made by a court, tribunal or other body of a State or Territory;	each guardian of the minor under the order
4	a person is under an Act of the Commonwealth, a State or a Territory, or an Ordinance of a Territory, a guardian of the minor to the exclusion of any other person	each guardian of the minor under the Act or Ordinance
5	a person is under an Act of a State or a Territory, or an Ordinance of a Territory, a guardian of the minor in addition to any other person whose consent is required in accordance with this table	each guardian of the minor under the Act or Ordinance and each other person whose consent is required in accordance with this table
6	no other item of this table applies	a prescribed authority

6.71. The consent must be in writing and must:

- identify the person giving the consent
- identify the parties to the intended marriage
- indicate the capacity in which the person's consent is required186
- be duly witnessed.[187]

6.72. If the consent is not in English, the celebrant must attach to the consent a translation that complies with section 11 of the Marriage Regulations.[188]

6.73. The marriage must be solemnised within three months of the date of the consent being given for the consent to remain valid.[189]

185 Subsection 13(1) and section 14 of the Marriage Act.
186 Subsection 9(1) of the Marriage Regulations.
187 Subsections 13(1)–(2) of the Marriage Act.
188 Section 10 of the Marriage Regulations.
189 Paragraph 13(1)(a)(i) of the Marriage Act.

6.74. Such consents are not necessary if the party has already been previously married.[190] A court order is still required in such a case.

6.75. Where consent is produced in writing to the celebrant solemnising the marriage, the authorised celebrant must write on the document the manner in which they satisfied themselves that the person who gave the consent is a person whose consent is required under the Marriage Act.[191] This requirement does not apply if the consent of both parents of the minor is produced to the authorised celebrant.[192]

The person must give consent freely and understand what they are consenting to

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

6.77. 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 authorised 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.

6.78. 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.

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

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

6.80. If a person whose consent to the marriage is required cannot be contacted to give consent, the minor may apply to a prescribed authority to dispense with that consent.[193] A prescribed authority is a person appointed by the Attorney-General. The list of prescribed authorities is available on the Department's website. It is important to note that a dispensation with the consent of a person to a marriage

190 Subsection 13(1) of the Marriage Act.
191 Subsection 9(2) of the Marriage Regulations.
192 Subsection 9(3) of the Marriage Regulations.
193 Section 15 of the Marriage Act.

ceases to have effect if the marriage does not take place within 3 months after the date of the dispensation.[194]

What if a parent or guardian refuses to consent?

6.81. Where a parent or guardian refuses to consent to the marriage of a minor, a judge or magistrate may consent in place of that person, subject to the requirements of the Marriage Act.

6.82. Consent given by a judge or magistrate ceases to have effect if the marriage does not take place within 3 months after the date of the consent.[195]

6.83. There is a right of re-hearing where the decision is made by a magistrate (as opposed to a judge).[196]

6.84. 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 section 14 of the Marriage Regulations.

Information which must be given to the registry of births, deaths and marriages

6.85. Within 14 days after the marriage has taken place, the celebrant must forward the following information to the registry of births, deaths and marriages in the state or territory where the marriage took place:

- the official marriage certificate
- the consents (including any translations of them if relevant)
- any dispensations of consent, and
- the court order under section 12 of the Marriage Act.[197]

Checklist for solemnising the marriage of a minor

6.86. Authorised celebrants should refer to the following checklist of additional requirements when solemnising the marriage of a minor.

194 Subsection 21(2) of the Marriage Act.
195 Subsection 21(1) of the Marriage Act.
196 Section 17 of the Marriage Act.
197 Paragraph 70(2)(b) of the Marriage Regulations.

☐ You must have been provided with the order of the judge or magistrate authorising the marriage of the parties. The order must not be dated more than 3 months before the date on which the marriage is solemnised.

☐ You must have been provided with:

- written consent of each person whose consent is required under the Marriage Act, that is witnessed in accordance with subsection 13(2) of the Marriage Act, or
- in respect of any person whose consent is required but has not been provided, an effective consent, in writing, of a magistrate or judge, or
- in respect of any person whose consent to the marriage has been dispensed with, the dispensation signed by the prescribed authority.

The consent or dispensation must not be dated more than 3 months before the date on which the marriage is solemnised.

☐ If the consent is not in English, the celebrant must attach to the consent a translation that complies with section 11 of the Marriage Regulations.

☐ Unless the consent of both parents is produced, you must write on the consent the manner in which you satisfied yourself that the consent is from a person whose consent to the marriage is required by the Marriage Act.

☐ You must write on the Notice of Intended Marriage form that the consents and dispensations (as applicable) were produced in accordance with paragraphs 13(1)(a) and (b) of the Marriage Act, and that you were given an order made under section 12 of the Marriage Act.

☐ You must not solemnise the marriage if you have reason to believe any of the following:

- a person whose consent has been produced has revoked their consent
- the signature of a person whose consent has been produced has been forged or obtained by a fraud
- a consent has been altered in a material particular without authority
- a dispensation with the consent of a person has ceased to have effect.

☐ Within 14 days after the marriage has taken place, you must forward (among other things) the marriage certificate, the court order, the consents (including any translations of the consents if relevant) and any dispensations of consent to the registry of births, deaths and marriages in the state or territory where the marriage took place.

The minor and the other party to the marriage must each provide real consent at the time the marriage is solemnised.

The validity of overseas marriages

6.87. Part VA of the Marriage Act deals with the recognition, in Australia, of marriages solemnised in a foreign country.

6.88. Generally, if a marriage is recognised as valid under the law of the country in which it was solemnised, at the time it was solemnised, the marriage will be recognised in Australia as a valid marriage.[198] However, there are some exceptions to this general rule which are set out in section 88D of the Marriage Act.

6.89. Determining whether a marriage that occurred overseas is recognised in Australia as valid is not a matter for an authorised celebrant. If an authorised celebrant is asked about the validity of a marriage that has occurred overseas, the celebrant should advise the couple to seek legal advice. This includes, for example, if in the context of completing the NOIM, a person is uncertain as to whether they are legally married overseas.

Marriages involving foreign nationals

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

6.91. If foreign nationals have any questions about marrying in Australia, authorised celebrants should recommend that they check with authorities in their own countries prior to entering into a marriage in Australia.

198 Paragraph 88C(1)(a) and subsection 88D(1) of the Marriage Act.

CHAPTER 7: OFFENCES

Chapter 7 outlines the offences under the Marriage Act and the Marriage Regulations that authorised celebrants, parties to a marriage, and other persons involved in the marriage ceremony should be aware of.

In addition, this chapter covers offences relating to forced marriage and statutory declarations.

Offences relevant to authorised celebrants

7.1. KEY MESSAGES

Authorised celebrants hold an important public office which carries significant legal obligations and responsibilities.[199] Consequently, the Marriage Act and the Marriage Regulations contain a number of offences which may be relevant where an authorised celebrant has failed to comply with their legal obligations.

It is important that authorised celebrants are aware of, and take care not to contravene, the offence provisions in the Marriage Act. A conviction under the Marriage Act can result in significant fines, and in some cases, periods of imprisonment.[200]

There are three key offence provisions in the Marriage Act that are of particular relevance to authorised celebrants:

- section 99 which makes it an offence to solemnise a marriage in contravention of prescribed sections of the Marriage Act
- section 100 which makes it an offence to solemnise a marriage where there is reason to believe there is a legal impediment to the marriage, and
- section 101 which makes it an offence for an unauthorised person to solemnise a marriage.

Each of these offences carry a penalty of imprisonment for 6 months or 5 penalty units.

In addition, failing to comply with the record keeping requirements relating to Form 15 Certificates of Marriages is an offence under section 74 of the Marriage Regulations, and carries a penalty of 2 penalty units.

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199 *Williams and Registrar of Marriage Celebrants* [2009] AATA 525 at [36].

200 The conduct may also result in disciplinary measures being imposed by the relevant Registrar.

Offences under the Marriage Act

Solemnising a marriage in contravention of prescribed sections of the Marriage Act

7.2. **Section 99 of the Marriage Act** makes it an offence to solemnise a marriage in contravention of any of the following sections of the Marriage Act:

- **Section 13** provides that a marriage of a minor must not be solemnised unless the appropriate consents, or dispensations of consent, required for the marriage of a minor have been produced to the authorised celebrant
- **Subsection 33(3)** relates to authorised celebrants who are ministers of religion of a recognised denomination. It provides that a person who has been served a notice under subsection 33(2) (which sets out various grounds upon which a person's name might be removed from the register) 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, or
    - 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 marriage must not be solemnised:
    - unless the Notice of Intended Marriage (NOIM) has been given in accordance with section 42 and has been received by the authorised celebrant solemnising the marriage not earlier than 18 months before the date of the marriage and not later than 1 month before the date of the marriage
    - unless the necessary evidence of the date and place of birth of the parties to the marriage has been produced to the authorised celebrant
    - unless each of the parties has made before the authorised celebrant a written declaration as to the party's conjugal status, the party's belief that there is no legal impediment to the marriage, and either that the party is 18 or older, or if the party is not 18 or older, their date of birth and that an order has been made under section 12 of the Marriage Act in relation to that party
    - unless the authorised celebrant is satisfied that the parties to the marriage are the parties referred to on the NOIM
    - if the authorised celebrant has reason to believe that the NOIM, the declaration or any statutory declaration supplied contains a false statement, an error, or is defective, and

- where a declaration states that a party to the marriage is divorced or has a deceased spouse, unless evidence of the divorce or death of the spouse is produced to the authorised celebrant.

- **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 to solemnise marriages 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.

7.3. The penalty for an offence under section 99 is five penalty units or imprisonment for 6 months.

Case studies involving section 99 of the Marriage Act

7.4. **Example 1: Forging marriage documents**

***Zai & Yen* [2020] FamCA 366**

Ms Zai and Mr Yen were in a relationship which ended in September 2018. Ms Zai claims that Mr Yen was abusive towards her during that relationship. In December 2018, police issued an Apprehended Domestic Violence Order against Mr Yen.

Shortly after the ADVO was issued, Mr Yen asked Ms Zai to sign a NOIM, threatening that he wouldn't 'give up and both families will suffer' if she refused to sign it. Ms Zai met with Mr Yen at a marriage celebrant's office and signed the NOIM. Before signing, Ms Zai clarified with the marriage celebrant that she only attended for the purposes of signing the NOIM and not the marriage itself. At the request of the celebrant, Ms Zai did not date the NOIM.

Later that month, Ms Zai attended the births, deaths and marriages registry and discovered she was legally married to Mr Yen. Ms Zai asked the celebrant how she could issue or register a marriage certificate without her consent or a marriage ceremony. The celebrant responded that Mr Yen said he 'didn't need the ceremony' and that the celebrant would try to 'fix it'. A few days later, the celebrant told Ms Zai there was nothing the celebrant could do.

Police records indicated that the celebrant had backdated or forged marriage documents and lodged them with births, deaths and marriages.

Ms Zai lodged a complaint with the Attorney-General's Department. Ultimately, the Attorney-General's Department deregistered the marriage celebrant and determined that the marriage celebrant had:

- Contravened section 99 of the Marriage Act by solemnising a marriage without meeting the NOIM and DONLIM requirements in section 42. A marriage celebrant must not knowingly accept documents that contain inaccurate, false or misleading statements, and
- Contravened section 100 of the Marriage Act by solemnising a marriage knowing there is a legal impediment to the marriage, being the absence of consent. A person cannot consent to a marriage when they are not present at the marriage ceremony.

The Family Court then found the marriage was void under paragraph 23B(1)(d)(i) of the Marriage Act because Ms Zai did not consent to the marriage.

Note – This case study is a summary of real events.

7.5. Example 2: Solemnising a marriage without evidence that a party to the marriage is divorced

Celebrant X is an authorised celebrant under the Marriage Act and agrees to solemnise the marriage of Ms A and Mr B. The declaration made under section 42 of the Marriage Act states that Mr B is divorced. However, Mr B tells Celebrant X that he lost all the paperwork related to his divorce in a terrible house fire 5 years ago. Mr B assures Celebrant X that he is legally divorced, as he has no reason to lie about his marital status.

Celebrant X solemnises the marriage, despite Mr B's failure to provide evidence of his divorce. A few months later, Ms A discovers Mr B never actually divorced his former partner and remains legally married to her.

The marriage between Ms A and Mr B is void under paragraph 23B(1)(a) of the Marriage Act because Mr B was, at the time of the marriage, legally married to another person.

Celebrant X is convicted of an offence under section 99 of the Marriage Act for solemnising a marriage in contravention of section 42 of the Marriage Act i.e. solemnising a marriage without evidence of a divorce having been produced to the authorised celebrant as required by subsection 42(10), in circumstances where the declaration states that a party to the marriage is divorced.

If Celebrant X had reason to believe that Mr B was still married (e.g. because he couldn't produce evidence of his divorce), it is also possible that Celebrant X could be convicted under section 100 of the Marriage Act for solemnising a marriage where there was reason to believe there is a legal impediment to the marriage; the legal impediment being that Mr B was already married to another person.

Note - This case study is designed to demonstrate an offence under section 100 of the Marriage Act. The characters and events represented are entirely fictional.

Solemnising a marriage where there is reason to believe there is a legal impediment to the marriage

7.6. **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 is very important that before solemnising a marriage, a celebrant satisfies themselves that there are no legal impediments to the marriage, and that the marriage is not void by reason of any of the grounds set out in subsection 23B(1) of the Marriage Act.

7.7. It would be an offence under section 100 of the Marriage Act for a celebrant to solemnise a marriage if they had reason to believe that:

- either of the parties was already lawfully married to some other person
- the parties are within a prohibited relationship
- either of the parties was not of marriageable age at the time of the marriage (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 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
    - the party did not understand the nature and effect of the marriage ceremony.

7.8. The penalty for contravening section 100 is 5 penalty units or imprisonment for 6 months.

Case studies involving section 100 of the Marriage Act

7.9. **Example 1: Solemnising a marriage where a party to the marriage did not provide real consent**

Celebrant Y is an authorised celebrant under the Marriage Act. His close friends Ms P and Mr O ask Celebrant Y to solemnise their marriage. Six months before the proposed date of the marriage ceremony, Ms P and Mr O give Celebrant Y a NOIM in accordance with section 42 of the Marriage Act.

Two weeks before the proposed date of the marriage ceremony, Ms P is in a serious car accident and as a result, she is hospitalised and placed on life support. Mr O contacts Celebrant Y and asks if there is any way he can solemnise the marriage before Ms P's life support is turned off. Mr O tells Celebrant Y that getting married is what Ms P would have wanted; after all, she had signed the NOIM and planned the marriage ceremony.

Celebrant Y is concerned about his obligations under the Marriage Act but he knows Ms P really did want to marry Mr O, so he agrees to solemnise the marriage while Ms P is on life support.

Celebrant Y attends the hospital and solemnises the marriage, with two of Mr O's friends in attendance as witnesses. As Ms P cannot sign the marriage certificate, her fingerprint is used as a signature.

Ms P's family is outraged when they find out about the marriage ceremony and report the matter to the police and the Attorney-General's Department.

Celebrant Y is convicted of an offence under section 100 of the Marriage Act for solemnising a marriage where there was reason to believe there was a legal impediment to the marriage. The legal impediment was that Ms P's consent to the marriage was not real consent. An unconscious person cannot understand the nature and effect of a marriage ceremony and consequently, cannot consent to marriage.

It does not matter that Ms P had previously expressed a desire to marry Mr O or that she signed the NOIM. A person must consent at the time of the marriage. Prior consent is not a substitute for real consent at the time of the marriage.

Note - This case study is designed to demonstrate an offence under section 100 of the Marriage Act. The characters and events represented are entirely fictional.

7.10. **Example 2: Solemnising the marriage of a minor**

***Omerdic v Angland* (2018) 332 FLR 87**

Mr Omerdic was the Imam of the Bosnia and Herzegovina Islamic Centre in Noble Park, Victoria and was authorised as a religious marriage celebrant to solemnise marriages under the Marriage Act.

On 29 September 2016, Mr Omerdic conducted a marriage ceremony involving a young female (Ms C) and Mr Shakir. Ms C was not of marriageable age at the time of the ceremony.

Part of the ceremony was recorded on a mobile phone, and the transcript of that recording was used as evidence about what occurred during the ceremony. The transcript reflected that a certificate was completed during the ceremony but Mr Omerdic refused to give Ms C and Mr Shakir a copy because Ms C was "very young".

During the ceremony, Mr Omerdic referred to the commitment of marriage, to Mr Shakir as a husband and Ms C as a wife, described the duties and roles of each as husband and wife, and said that they will live together as husband and wife.

The Certificate of Islamic Marriage completed during the ceremony records that Mr Shakir and Ms C were united in Islamic marriage at the Bosnia and Herzegovina Islamic Centre. However, the Certificate contained a paragraph at the bottom stating:

> This Certificate is not evidence of nor has it the effect of creating a legal marriage under the *Marriage Act 1961* (Cth) and should the parties wish to have their

marriage recognised at law the same will need to be registered as per section 80 of the *Marriage Act 1961* - The couple must file for a legal marriage as required and pursuant to the *Marriage Act 1961* (Cth). Please note that the Board of Imams do not offer any opinion or make any representation as to the enforceability or compliance with the Australian Legal System concerning this document. You should seek legal advice.

Mr Omerdic was charged with solemnising a marriage where there is reason to believe there is a legal impediment to the marriage, contrary to section 100 of the Marriage Act. At the hearing in the Magistrates' Court of Victoria, Mr Omerdic admitted that he knew Ms C was not of marriageable age. However, he disputed that he had solemnised a marriage or that he intended to solemnise a marriage. Instead, he claimed that he conducted a religious blessing or 'Nikah'.

The Magistrate convicted Mr Omerdic of the offence of having solemnised a marriage when there was reason to believe there was a legal impediment to that marriage, the legal impediment being that Ms C was not of marriageable age. Mr Omerdic then appealed to the Supreme Court of Victoria on the grounds that it was not reasonably open to the Magistrate to find that:

(a) the ceremony was completed,
(b) the ceremony was in a form recognised as sufficient for marriage by Mr Omerdic's religious body, or
(c) Mr Omerdic intended to perform a marriage when he conducted the ceremony.

The trial judge dismissed Mr Omerdic's appeal, holding it was open to the Magistrate to make the above findings.[201] In particular, the trial judge emphasised that it did not matter that Ms C and Mr Shakir did not lodge a NOIM or that the marriage was not registered under the Marriage Act because the notice and registration are not requirements for the actual 'solemnisation' of a marriage under the Marriage Act. In other words, Mr Omerdic had still carried out the act of solemnising a marriage, even though the notice and registration requirements were not met.

Mr Omerdic then applied for leave to appeal to the Victorian Court of Appeal but leave was refused.[202]

Removal from the register of Ministers of Religion

Following Mr Omerdic's conviction, the Registrar of Ministers of Religion Victoria removed Mr Omerdic's name from the register of Ministers of Religion ordinarily resident in Victoria entitled to registration under the Marriage Act. In making this decision, the Registrar relied on subparagraph 33(1)(d)(i) of the Marriage Act i.e. that Mr Omerdic's contraventions of the Marriage Act show him not to be a fit and proper person to be registered as a Minister of Religion.

Mr Omerdic applied to the Administrative Appeals Tribunal for review of that decision.

201 *Omerdic v Angland* (2018) 332 FLR 87.
202 *Omerdic v Angland* [2018] VSCA 320.

The Tribunal affirmed the Registrar's decision, finding that Mr Omerdic was not a fit and proper person to solemnise marriages.[203] In making this decision, the Tribunal referred to Mr Omerdic's conviction under section 100 of the Marriage Act, the fact he had made incorrect, inconsistent and implausible statements in explaining the circumstances of the marriage and Mr Omerdic's lack of remorse for his actions.

Note – This case study is a summary of real events. The relevant court cases are listed in the footnotes above.

Solemnisation of a marriage by an unauthorised person

7.11. **Section 101 of the Marriage Act** prohibits a person from solemnising a marriage, or purporting to solemnise a marriage in Australia or under Part V of the Marriage Act, unless the person is authorised by or under the Marriage Act to solemnise marriages.

7.12. Celebrants who have been deregistered may be subject to criminal conviction under section 101 if they continue to solemnise marriages.

7.13. The penalty for contravening section 101 is 5 penalty units or imprisonment for 6 months.

203 *Omerdic v Registrar of Ministers of Religion Victoria* [2022] AATA 1765.

Offences under the Marriage Regulations

Failure to comply with record keeping requirements

7.14. Subsection 73(5) of the Marriage Regulations requires authorised celebrants to record details about each Form 15 Certificate of Marriage they are issued with.

7.15. Failing to comply with subsection 73(5) is an offence under subsection 74(1) of the Marriage Regulations. The penalty for an offence under subsection 74(1) is two penalty units.

7.16. Further, an authorised celebrant may receive a written request from the Attorney-General to provide a copy of their records relating to Form 15 Certificates of Marriage to a specified person.[204] Failing to comply with such a request is an offence under subsection 74(2) of the Marriage Regulations and carries a penalty of 2 penalty units.

Offences relevant to marrying couples

7.17. To help ensure that parties to a marriage do not commit an offence under the Marriage Act, authorised celebrants should ensure parties are aware of the offences summarised in the table below.

Section of the Marriage Act	Offence	Penalty
94(1)	It is an offence for a person to go through a form or ceremony of marriage while still married to some other person. This is often referred to as the offence of 'bigamy'.	Imprisonment for 5 years
94(4)	It is an offence to go through a form or ceremony of marriage with a person who is married, knowing or having reasonable grounds to believe that the latter person is married.	Imprisonment for 5 years
95(1)	It is an offence to go through a form or ceremony of marriage with a person who is not of marriageable age i.e. 18 years of age (unless all requirements concerning consents and judicial order are met).	Imprisonment for 5 years
95(2)	It is an offence to go through a form or ceremony of marriage with a person who is a minor unless the minor has been previously married or the necessary consents have been given or dispensed with.	Imprisonment for 6 months or 5 penalty units
103	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 to solemnise marriages.	Imprisonment for 6 months or 5 penalty units

[204] Subsection 73(7) of the Marriage Regulations.

104	It is an offence for a person to give a NOIM to an authorised celebrant under section 42 or to 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.	Imprisonment for 6 months or 5 penalty units

Case study about offences involving parties to a marriage

7.18. ***Kirvan & Tomaras*** **[2018] FamCA 171**

In 2015, Ms Kirvan married Mr D. Shortly after, Ms Kirvan moved to Australia and separated from Mr D. Ms Kirvan commenced proceedings for a divorce but as Mr D lived overseas, there were delays in finalising the divorce. In October 2017, a divorce order was made.

In March 2017, Ms Kirvan met Mr Tomaras. He was aware that Ms Kirvan was still waiting for her divorce to be finalised. Ms Kirvan and Mr Tomaras commenced living together but were concerned as to the cultural integrity of their cohabitation because they were not married. They decided to get married, even though Ms Kirvan was still legally married to Mr D. Ms Kirvan and Mr Tomaras married in mid-2017, and the Marriage Certificate described the marital status of each of the parties as 'Never Validly Married'.

Ms Kirvan later applied to the Family Court for a decree of nullity on the basis that at the time of her marriage to Mr Tomaras, she was still married to Mr D. The Family Court declared the marriage a nullity.

However, the Court also noted that bigamy is an offence under section 94 of the Marriage Act, and that giving a NOIM to a celebrant in circumstances where the person knows the NOIM contains a false statement is also an offence under section 104 of the Marriage Act.

The Court was satisfied that Ms Kirvan clearly understood she was validly married to Mr D. The Court found that the evidence strongly supported the proposition that Ms Kirvan and Mr Tomoras were prepared to knowingly misrepresent that at the time of the marriage ceremony, Ms Kirvan remained married to Mr D. The Court described Ms Kirvan's conduct as 'a willful disregard of the requirement that she make full and frank disclosure in relation to her marital status'. The Court referred the matter to the Attorney-General to determine whether Ms Kirvan or Mr Tomaras would be prosecuted.

Note – This case study is a summary of real events.

Offences relating to forced marriage

What is a forced marriage?

7.19. KEY MESSAGES

There are three types of forced marriages under the Criminal Code. A marriage is a forced marriage if:

- a person (the victim) entered into the marriage without freely and fully consenting because of the use of coercion, threat or deception, or
- the victim entered into the marriage without freely and fully consenting because the victim was incapable of understanding the nature and effect of the marriage ceremony, or
- at the time of the marriage, either party to the marriage was under 16 years of age.[205]

Coercion, threat or deception

7.20. A marriage is a forced marriage if a party to the marriage entered into the marriage without freely and fully consenting because of the use of coercion, threat or deception. '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.

7.21. '**Coercion**' means coercing another person to do something by use of force, duress, detention, psychological oppression, abuse of power, and taking advantage of a person's vulnerability.[206]

7.22. '**Deception**' is misleading a person as to fact or as to law, by words or other conduct.[207]

7.23. A '**threat**' means a threat of coercion (e.g. a threat that force will be used against the victim unless they enter into the marriage), a threat to cause a person's deportation or removal from Australia, or a threat of any other detrimental action (unless there are reasonable grounds for the threat in connection with the provision of labour or services).[208]

The victim was incapable of understanding the nature and effect of the marriage ceremony

7.24. A marriage is a forced marriage if a party to the marriage entered into the marriage without freely and fully consenting because the victim was incapable of understanding the nature and effect of the marriage ceremony.

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205 Section 270.7A(1) of the Criminal Code.
206 Section 270.1A of the Criminal Code.
207 Sections 270.1A and 271.1 of the Criminal Code.
208 Section 270.1A of the Criminal Code.

7.25. Information about consent, including practical tips to ascertain whether a person is capable of understanding the nature and effect of the marriage ceremony, is located in chapter 6 of these guidelines.

Either party to the marriage was under 16 years of age

7.26. A marriage is a forced marriage if at the time of the marriage, either party to the marriage was under 16 years of age.

7.27. The marriage of persons under 16 years of age is <u>never</u> permitted by the Marriage Act.

What are the offence provisions relating to forced marriage?

7.28. Section 270.7B of the Criminal Code includes two offences relating to forced marriage:

- engaging in conduct that causes 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).

7.29. Both offences have penalties of 7 years imprisonment, or 9 years imprisonment in the case of an aggravated offence. An aggravated offence occurs where:

- the victim is less than 18 years old, or
- the offender subjects the victim to cruel, inhuman or degrading treatment, or
- the offender engages in conduct that gives rise to the danger of death or serious harm to the victim or another person and is reckless as to the danger.[209]

7.30. In certain circumstances, the forced marriage offences under the Criminal Code may overlap with offences under the Marriage Act. For example, an authorised celebrant who has committed an offence under section 100 of the Marriage Act by solemnising the marriage of a minor, may also have committed the offence of causing another person to enter a forced marriage under subsection 270.7B(1) of the Criminal Code.

7.31. It is important for authorised celebrants to keep in mind that the forced marriage offences do not criminalise arranged marriages. In a forced marriage, the victim does not or cannot consent to the marriage. An arranged marriage is a marriage where the spouses are introduced through involvement of a family member or other third party and have the right to accept or refuse the marriage arrangement.

<u>Offences relating to statutory declarations</u>

7.32. It is also important to note that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, which carries a penalty of 4 years imprisonment.

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209 Section 270.8 of the Criminal Code.

APPENDIX A

Separate Meetings – Your obligations under the *Marriage Act 1961*

All authorised marriage celebrants are required under the *Marriage Act 1961* (Cth) (Marriage Act) to meet with each party to the marriage **separately** and **in person** before they solemnise the marriage.

This applies to **all legal marriages** and **all authorised celebrants**, including Commonwealth-registered marriage celebrants, ministers of religion of a recognised denomination and state and territory officials authorised to solemnise marriages.

What is the purpose of separate meetings?

- Real consent is the cornerstone of the Marriage Act.
- You – as an authorised marriage celebrant – must be satisfied that each party to the marriage is providing real consent before the marriage is solemnised.
- A court may find a marriage to be void where the consent of either of the parties is not real consent.
- Under the Marriage Act, a person's consent to a marriage is not real consent if it was obtained by duress or fraud; a party is mistaken as to the identity of the other party or the nature of the ceremony performed; or a party does not have mental capacity to understand the nature and effect of the marriage ceremony. 'Duress' may include coercion or threats including psychological or emotional pressure.
- A separate meeting with a party to establish real consent has been a long-standing principle in *The Guidelines on the* Marriage Act 1961 *for authorised celebrants* where any concerns existed about consent.
- A separate meeting in person with each party to the marriage before the marriage is solemnised is intended to maintain safeguards for establishing real consent.
- Celebrants should be aware that it is an offence to cause another person to enter into a forced marriage – see section 270.7B of the *Criminal Code Act 1995*.

When should celebrants meet with each party?

- A separate meeting with each party must take place before a marriage is solemnised, regardless of when the NOIM was received (unless you have already met separately with each party to establish real consent).
- If the NOIM has been transferred to a new celebrant, the new celebrant must also meet separately with each party. This is necessary because the celebrant who solemnises the marriage must comply personally with all legal requirements.

- The timing and duration of a separate meeting with each party is at the discretion of the celebrant and the marrying couple, provided it takes place before the marriage is solemnised. Suggested opportunities may include a convenient time after receiving the NOIM; when signing the Declaration of No Legal Impediment to Marriage; or on the day of the wedding.

- If you have any concerns about consent at any stage you should meet with the parties separately and at the earliest opportunity. Meeting in advance of the wedding day will assist the celebrant to manage any concerns about real consent appropriately.

- Real consent may change over time and celebrants should exercise sound judgement about whether or not to solemnise a marriage.

- Circumstances may arise on the day of the wedding that may impact on real consent. For example, if either of the parties appear intoxicated or otherwise unable to provide real consent at that time, or for any other reason including medical issues.

Where and how should separate meetings take place?

- A separate meeting provides you with an opportunity to check in with each party to establish if they are entering into the marriage **voluntarily and freely**, and with an understanding of the binding legal nature of marriage. This involves the type of discussions you would already be familiar with in your role as an authorised celebrant.

- There is no specific set of questions or words you need to use to satisfy yourself about real consent. Open-ended questions often allow the party to express how they feel about their upcoming wedding.

- A separate meeting needs to take place in the absence of the other party to the marriage. You need to speak in person and separately with each party – but this does not mean you have to meet alone with the party. The party may choose to bring a trusted person.

- For privacy and safety reasons, do not contact third parties such as family members, interpreters etc., without the express consent of the party.

- Separate meetings are to take place in a culturally appropriate context and in line with the preferences of the party, including as to the location of the meeting. It can be in a public setting provided the privacy of the conversation can be maintained. This could be a public space agreed to by the party, such as a coffee shop or similar venue.

- If another person attends the meeting with a party, the celebrant should have regard to whether their presence appears to be coercive and take this into account in their decision whether or not to solemnise the marriage. You should not say anything that

may expose the party to risk. Instead, consider following-up with the party by telephone if you have concerns.

- Remember other people may read your emails, text messages or written communications, or may listen to your voice messages. If you need assistance about how to proceed you should contact the expert support services listed below.

- It is recommended the celebrant should keep a record of the meetings, who was present, the factors you considered and the conclusion you reached on the question of real consent. This means if any questions arise at a later date you have a record of your decision-making process. This is important because celebrants may be called upon to give evidence in court as to the consent of the parties.

- If you have any concerns whatsoever about real consent and consequent validity of a marriage, either before or on the day, you should not solemnise the marriage. You may consider offering a non-binding commitment ceremony and later solemnisation, depending on circumstances.

- **Please note:** It is important that you always act in the best interests of a party who may be at risk, by being mindful of their safety as well as your own.

- The following additional resources are available to support authorised celebrants and vulnerable parties.

What are the signs of a forced marriage?

- The crime of forced marriage not only applies to legally recognised marriages but to cultural or religious ceremonies and registered relationships.

- If someone is in, or at risk of a forced marriage, they may find it hard to tell someone about their situation.

A combination of the following signs may indicate that a person is in a forced marriage, or at risk of being made to enter into a forced marriage. Some of these signs may not be immediately obvious to an authorised celebrant but could provide a guide about the kinds of questions to ask the couple (or the person):

- The couple make a sudden announcement that they are engaged

- A party has a family history of elder siblings leaving education early or marrying early or indicating concerns of an early marriage

- Family or community members are highly controlling of a party, in and outside of the home e.g. surveillance, always accompanied, limited or no control of finances, limited or no control over life decisions, education and career choices

- A party has communications monitored or restricted

- A party exhibits signs of depression, self–harm, social isolation or substance abuse
- There is evidence of family disputes or conflict, domestic violence, abuse or running away from home
- A party expresses concern regarding an upcoming family holiday or overseas travel
- A party is unable to make significant decisions about their future without consultation or agreement from their parents or others
- A party suddenly withdraws from school, university or work
- A party demonstrates feelings of conflict or concern for the ramifications if they do not go ahead with an agreed marriage or engagement
- A party expresses concern about the risk of physical or psychological violence for not fulfilling family or community expectations
- There is evidence to suggest economic or dowry abuse including:
    - family members or others seeking to gain financially from a proposed marriage or engagement
    - ongoing demands for cash or material goods
    - threats made when financial obligations or arrangements are not met
    - concern for the ramifications if a party does not go ahead with an agreed marriage/engagement
    - intergenerational and cultural conflict within the home
    - a party expresses concern about the risk of physical or psychological violence for not fulfilling family or community expectations.

How can I help a person at risk of forced marriage to stay safe?

It is important that you always act in the best interests of a person at risk of a forced marriage, by being mindful of their safety as well as your own.

If you form a view that one of the parties may be under duress or otherwise not freely and fully consenting, you can help protect both the party and yourself by:

- dialling Triple Zero (000) if you have immediate concerns for your safety, the safety of one of the parties, or there is an emergency
- contacting the Australian Federal Police (AFP) or a specialist community organisation

- ensuring you do not attempt to set up a meeting with the party and their family or community members to discuss the situation, or contact family or community members, if you do not have the express permission of the party

- remembering that other people may read your emails, text messages or other written communications with the party

- providing the party with information about forced marriage and services that can help them

- meeting in a safe and private/culturally appropriate place, and

- if using an interpreter to communicate with a party suspected to be at risk of forced marriage, consider that the interpreter may know the person, their family or their community.

For more information on forced marriage see the People smuggling and human trafficking page of the Attorney-General's Department's website.

Resources

If you have immediate concerns for your safety, the safety of another person, or there is an emergency call Triple Zero (000).

If there is no immediate risk of harm and indicators of forced marriage are present:

- Call 131 AFP (131 237), or
- Complete the form on the 'Human trafficking, slavery and slavery-like practices (including forced marriage) information report' page of the AFP website: https://forms.afp.gov.au/online_forms/human_trafficking_form, or
- Complete the general 'report a crime' form (which covers all crime types and can also include forced marriage): https://www.afp.gov.au/report-crime.

The Australian Federal Police (AFP) can provide initial advice to people who are in, or at risk of a forced marriage, including in situations where a person needs help to make sure they won't be taken overseas. The AFP can also refer victims for support, including safe accommodation, financial support, legal advice and counselling.

Initial support is available for victims even where they don't want to assist with an investigation or prosecution. In cases where the victim is a child, the AFP will always act in their best interests. You can also provide anonymous information about criminal activity to Crime Stoppers on 1800 333 000 or www.crimestoppers.com.au.

The Forced Marriage Specialist Support Program (FMSSP) is delivered nationally by the not-for-profit organisation, Life Without Barriers. The FMSSP provides individually tailored case managed support to people who are at risk of, or who have experienced, forced marriage. Case managers help victims and survivors to access supports to help them

recover and heal from their forced marriage experiences. People at-risk, and victims and survivors, of forced marriage may self-refer to the FMSSP, or may be referred by a community organisation or government services. Anyone can contact Life Without Barriers on 1800 403 213, or through its website at www.lwb.org.au/services/forced-marriages-support/.

You can also seek additional guidance from My Blue Sky, and provide My Blue Sky's contact details to relevant parties. My Blue Sky is an easy to use website dedicated to preventing and addressing forced marriage in Australia. The website provides people in, or at risk of, forced marriage with important information and links to support services, as well as useful resources for frontline responders, service providers and the general community – see https://mybluesky.org.au/.

You can contact My Blue Sky's national forced marriage helpline on (02) 9514 8115 for free, confidential legal advice about forced marriage. The My Blue Sky helpline operates Monday to Friday between 9am and 5pm, with an out of hours recorded message. You can also get help by emailing help@mybluesky.org.au or sending an SMS to 0481 070 844.

The National Sexual Assault, Domestic and Family Violence Counselling Service is a free 24/7 confidential telephone and online counselling service, staffed by professional counsellors to assist any person who has experienced, or is at risk of family and domestic violence and/or sexual assault. You can call 1800 RESPECT (1800 737 732) or visit the National Sexual Assault, Family and Domestic Violence Counselling Service website: https://www.1800respect.org.au/.

The following specialist community organisations may also be able to provide help and advice:

- Anti-Slavery Australia: https://antislavery.org.au/
  Tel: 02 9514 966 or 02 9514 8115
  Email: antislavery@uts.edu.au
- Australian Muslim Women's Centre for Human Rights: https://amwchr.org.au/
  Tel: 03 9481 3000

You may also wish to seek advice from the National Enquiry Centre for the Federal Circuit and Family Court of Australia https://www.fcfcoa.gov.au/ or a family solicitor at your closest Legal Aid office.

The Translating and Interpreting Service (TIS National) can be contacted on 131 450 or https://www.tisnational.gov.au/