GUIDELINES ON THE *MARRIAGE ACT 1961* FOR MARRIAGE CELEBRANTS

This document provides essential information on the solemnisation of marriages under the *Marriage Act 1961*. The *Marriage Act 1961* and *Marriage Regulations 1963* can be viewed online or downloaded from ComLaw.

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RECORD OF UPDATES

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WHO THESE GUIDELINES ARE FOR

Unless otherwise stated, everything in these Guidelines applies to all authorised celebrants, no matter what category they belong to (see Part 3 of these Guidelines for more information about the individual categories). So, unless otherwise stated, everything in these Guidelines applies to:

- ministers of religion who are registered by the States and Territories to solemnise marriages for a recognised denomination. This category of authorised celebrants have a registration number beginning with a letter that relates to the State or Territory in which they were registered (such as 'W', 'S', 'V', 'N')
- State and Territory Officers—whether staff of Registries of Births, Deaths and Marriages (BDM) or court officers—who have been authorised to solemnise marriages as part of their employment, and
- marriage celebrants registered by the Commonwealth under the Marriage Celebrants Program, whether they solemnise civil marriage ceremonies or marriage ceremonies for religious organisations that are not recognised denominations. Marriage celebrants in this category have a registration number beginning with the letter 'A'. Marriage celebrants registered by the Commonwealth are referred to in these Guidelines as 'Commonwealth-registered marriage celebrants'.

Where the term 'authorised celebrant' is used in these Guidelines, the information applies to all three categories of celebrant listed above. Where the term 'Commonwealth-registered marriage celebrants' is used the information only applies to the third category list above.

USING THESE GUIDELINES

These Guidelines contain hyperlinks which redirect the user around the document for ease of reference. To use a hyperlink, hold down the Ctrl button on the keyboard and click on the blue title.

Electronic versions of the *Marriage Act 1961* (Cth) and the *Marriage Regulations 1963* (Cth) may be found by clicking on the hyperlinks in this sentence. A webpage containing the current version of the legislation will appear. Other useful webpages and legislation have been hyperlinked in the document so that users can be redirected to them.

The table of contents located at the beginning of these Guidelines is also hyperlinked so that a user can be redirected quickly to the relevant page.

GLOSSARY

Authorised celebrant collectively refers to ministers of religion of recognised denominations (registered under Subdivision A of Division 1 of Part IV of the Marriage Act), State and Territory Officers (authorised by virtue of Subdivision B of Division 1 of Part IV of the Marriage Act), and

Commonwealth-registered marriage celebrants (registered under Subdivision C of Part IV of the Marriage Act) (see subsection 5(1) of the Marriage Act)

BDM means a State or Territory Registry of Births, Deaths and Marriages

Commonwealth-registered marriage celebrant means an authorised celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act under the Marriage Celebrants Program

Notice of Intended Marriage (NOIM) means the notice that parties to a marriage must give their authorised celebrant (subsection 42(1) of the Marriage Act)

1 INTRODUCTION

These Guidelines provide essential information for all authorised celebrants on the solemnisation of marriages under the *Marriage Act 1961* (Cth) and the *Marriage Regulations 1963* (Cth). The material is the best and most accurate information and guidance available on the subject matter it covers and all authorised celebrants are expected to follow the general information and guidance provided in this document. The following material is provided on the understanding that the Attorney-General's Department is not providing professional legal advice on any particular matter.

1.1 WHAT AUTHORISED CELEBRANTS NEED TO DO NOW

Authorised celebrants are expected to:

- update their practices if any of them are not consistent with these Guidelines, and
- cease using any information and discontinue any practices that are inconsistent with this document, as former advice is no longer current.

1.2 WHAT TO DO IF YOU CANNOT FIND INFORMATION IN THESE GUIDELINES

If you cannot find information in these Guidelines please contact the Attorney-General's Department for guidance. You may also wish to contact your Celebrant Association, though you should ensure guidance from your association is consistent with these Guidelines before acting on it.

You may make an enquiry by email to marriagecelebrantssection@ag.gov.au, or write to the:

Marriage Law and Celebrants Section
Access to Justice Division
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Please remember that the Attorney-General's Department does not provide legal advice to individual marriage celebrants or members of the public. This department can provide guidance only.

If you are seeking information relating to the registration of a marriage or the lodgment of paperwork relating to a marriage, you should contact the BDM in the state or territory where the marriage took place. Contact details for the BDMs are available in Part 13 of these Guidelines.

1.3 YOUR ROLE AS AN AUTHORISED CELEBRANT

Only people who are legally authorised to do so may solemnise marriages. You have an important role which is critical to the parties to the marriage, not only because of its legal consequences, but also because of its central significance to them individually and as a couple.

1.4 LIMITS OF YOUR ROLE

It is important that you understand the boundaries of your role as an authorised celebrant. You can potentially do great damage and may expose yourself to legal liability if the information you give is incorrect. It is not your role to:

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

1.5 CRITICAL MATTERS

It is critical to your role to make sure that everything is done according to the Marriage Act and the Marriage Regulations and that all necessary steps are taken to make sure the marriage will be valid.

You need to be very committed to keeping up-to-date and ensuring that you are following any changes to the law or practice.

Always be aware that the law can and does change, that practices and requirements may change and that what was once best practice may no longer be so because of these changes.

1.6 WHAT IS THE BEST WAY TO REMAIN INFORMED?

The best way to remain informed about changes to the law or practices recommended by the department is to regularly (at least monthly) visit the 'Marriage' pages on the Attorney-General's Department website.

2 MARRIAGE IN AUSTRALIA

2.1 THE SOLEMNISATION OF MARRIAGES IN AUSTRALIA

Marriage is regulated by the *Marriage Act 1961* (Cth) and the *Marriage Regulations 1963* (Cth). All marriages in Australia must be conducted in accordance with this legislation. The legislation specifies the requirements for the marriage ceremony as well as matters that arise before and after the ceremony.

The legislation applies equally to marriages involving persons who are not Australian citizens as it does to marriages involving one or two Australians. However, all authorised celebrants should be aware of the need to recommend that foreign nationals check with authorities in their own countries prior to entering into a marriage in Australia. Some overseas countries do not recognise a marriage entered into in Australia as valid, unless other requirements, such as the prior granting of permission from that country's embassy, are fulfilled. This can have implications for foreign nationals who intend to return to their country following a marriage.

In cases where a marriage involves an Australian citizen and a foreign citizen, authorised celebrants should recommend that parties obtain advice about immigration issues from the Department of Immigration and Border Protection or a registered migration agent. Details of registered migration agents can be found on the Migration Agents Registration Authority website. See Part 13 for useful contact information.

For further information on the recognition of foreign marriages in Australia, see Part 9 of these Guidelines.

2.2 THE DEFINITION OF MARRIAGE UNDER THE *MARRIAGE ACT 1961*

The Marriage Act defines marriage as 'the union of a man and a woman to the exclusion of all others, voluntarily entered into for life'.[1]

This means that same-sex couples cannot marry under Australian law. In a marriage ceremony, authorised celebrants (other than ministers of religion of recognised denominations) are required to inform the parties to the marriage of the nature of marriage according to Australian law in the terms set out in subsection 46(1) of the Marriage Act. For further information on this requirement, see Part 5.6 of these Guidelines.

[1] Subsection 5(1) of the Marriage Act

3 AUTHORISED CELEBRANTS

3.1 WHO CAN SOLEMNISE MARRIAGES UNDER THE *MARRIAGE ACT 1961*?

The *Marriage Act 1961* (Cth) provides for three categories of authorised celebrants who may solemnise marriages in Australia:

A. ministers of religion of recognised denominations (who are registered under Subdivision A of Division 1 of Part IV of the Act) (discussed in Part 3.1.1 of these Guidelines)

B. State and Territory Officers (who are authorised by virtue of Subdivision B of Division 1 of Part IV of the Act) (discussed in Part 3.1.2 of these Guidelines), and

C. Commonwealth-registered marriage celebrants (who are registered under Subdivision C of Division 1 of Part IV of the Act) (discussed in Part 3.1.3 of these Guidelines). This category contains both celebrants performing civil ceremonies and ministers of religion who are not aligned with a recognised denomination.

A person cannot be authorised to solemnise marriages under more than one category at any one time.

Further information on each of these categories of authorised celebrants is provided below.

3.1.1 MINISTERS OF RELIGION OF RECOGNISED DENOMINATIONS

WHAT IS A RECOGNISED DENOMINATION?

For a person to be eligible for registration as an authorised celebrant under Subdivision A of Division 1 of Part IV of the Marriage Act, the religious body or organisation of which the person is a minister of religion must be a 'recognised denomination'. A 'recognised denomination' is a religious body or organisation in respect of which a Proclamation by the Governor-General under section 26 of the Marriage Act is in force. Proclamation of a religious body or organisation as a recognised denomination is for the purposes of solemnising marriages in accordance with the Marriage Act only and does not confer any other status.

Ministers of religion of recognised denominations who are authorised to solemnise marriages may solemnise marriages according to any form and ceremony recognised as sufficient for the purpose by the religious body or organisation of which he or she is a minister.[2]

Authorised celebrants in this category will have a registration number beginning with letters such as 'W', 'S', 'V', 'N' according to the State or Territory in which they were registered.

[2] Subsection 45(1) of the Marriage Act

A current list of ministers of religion of recognised denominations who are authorised to solemnise marriages is kept in accordance with section 115 of the Marriage Act and published on the Attorney-General's Department website.

Applications by religious bodies or organisations seeking recognised denomination status are assessed against specific guidelines. Information on becoming a recognised denomination will be published on the Attorney-General's Department website in due course.

Enquiries about becoming a recognised denomination should be directed to the department.

AUTHORISATION OF MINISTERS OF RELIGION FROM RECOGNISED DENOMINATIONS TO SOLEMNISE MARRIAGES

A minister of religion of a recognised denomination is entitled to be registered to solemnise marriages if the person:[3]

- is nominated for registration by that denomination
- is ordinarily resident in Australia, and
- is at least twenty-one years of age.

GROUNDS FOR REFUSING TO REGISTER A MINISTER OF RELIGION FROM A RECOGNISED DENOMINATION TO SOLEMNISE MARRIAGES

A Registrar of Ministers of Religion (State and Territory BDM Registrars hold this position) may refuse an application to register a minister of a recognised denomination to solemnise marriages on the following grounds:[4]

- there are already sufficient registered ministers of religion of the denomination to meet the needs of the locality in which the applicant resides
- the applicant is not a fit and proper person to solemnise marriages, or
- the applicant is unlikely to devote a substantial part of his or her time to the performance of functions generally performed by a minister of religion.

The minister of religion may seek a review of such a decision by the Administrative Appeals Tribunal.[5]

[3] Section 29 of the Marriage Act

[4] Section 31 of the Marriage Act

[5] Section 34 of the Marriage Act

Each recognised denomination has at least one nominating authority who is a person responsible for nominating the denomination's ministers of religion for registration to solemnise marriages. Recognised denominations notify the department of the name/s of the nominating authority/ies. The Registrar of Ministers of Religion in each State or Territory keeps a list of nominating authorities. The nomination of a minister of religion for authorisation to solemnise marriages by the recognised denomination must be in the approved form (available on the Attorney-General's Department website) and signed by the nominating authority. The applicant minister must complete an application form (also available on the Attorney-General's Department website) and a statutory declaration verifying the particulars in the application. The nomination and application forms (formerly called Form10/Form 11), and the statutory declaration, are available as a one page form from CanPrint Communications.

Once completed and signed, the nomination, application and statutory declaration should be forwarded to the Registrar of Ministers of Religion (the Registrar of Births, Deaths and Marriages) in the State or Territory in which the applicant ordinarily resides.

SOLEMNISATION OF MARRIAGES BY MINISTERS OF RELIGION OF RECOGNISED DENOMINATIONS

A minister of religion of a recognised denomination may solemnise marriages anywhere in Australia, including outside the State or Territory in which they are registered.[6] A minister of religion of a recognised denomination who takes up residence in a new State or Territory should notify the BDMs in their new and previous State/Territory of residence of their new residential address.

Where a marriage is solemnised by a minister of religion of a recognised denomination, the minister may use any form and ceremony recognised as sufficient by the denomination.[7] Such celebrants are not authorised to solemnise ceremonies other than for the recognised denomination that nominated them and in accordance with the rites or form and ceremony recognised by that body. A registration under this category confers no authority to solemnise ceremonies of a minister's own devising. Therefore any deviation from a form of ceremony recognised by a religious organisation needs to be approved by the religious organisation concerned.

A minister of religion of a recognised denomination is not under any obligation to solemnise any marriage and may impose additional requirements (such as attendance at services or Church counselling) as a condition of solemnising the marriage.[8]

[6] Section 32 of the Marriage Act

[7] Subsection 45(1) of the Marriage Act

[8] Paragraph 47(b) of the Marriage Act

GROUNDS FOR REMOVING A MINISTER OF RELIGION OF A RECOGNISED DENOMINATION FROM THE REGISTER OF MINISTERS OF RELIGION

A Registrar of Ministers of Religion may remove a person's name from the register if:[9]

- the person has requested their name be removed
- the person has died
- the denomination no longer desires the person to be an authorised 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 he or she is no longer a fit and proper person to be registered
- the person has made a business of solemnising marriages for profit or gain, or
- the person is for any other reasons not a fit and proper person to solemnise marriages.

The minister of religion concerned may seek a review of such a decision from the Administrative Appeals Tribunal.[10]

3.1.2 STATE AND TERRITORY OFFICERS

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

- officers who hold the function of registering marriages solemnised in that State or Territory, or in a part of that State or Territory and who may solemnise marriages in that State or Territory by virtue of holding that office,[11] and
- other officers who have been authorised by the Attorney-General to solemnise marriages.[12]

[9] Section 33 of the Marriage Act

[10] Section 34 of the Marriage Act

[11] Subsection 39(1) of the Marriage Act

[12] Subsection 39(2) of the Marriage Act

3.1.3 COMMONWEALTH-REGISTERED MARRIAGE CELEBRANTS

BECOMING A COMMONWEALTH-REGISTERED MARRIAGE CELEBRANT

Commonwealth-registered marriage celebrants are registered under Subdivision C of Division 1 of Part IV of the Marriage Act.

Since 1 September 2003, such celebrants have been registered by the Registrar of Marriage Celebrants. The Registrar is an officer of the Commonwealth Attorney-General's Department. A Commonwealth-registered marriage celebrant has a registration number beginning with the letter 'A'.

A person is only entitled to be a Commonwealth-registered marriage celebrant if the Registrar of Marriage Celebrants is satisfied that the person:[13]

(i) is aged 18 years or over; and

(ii) has the necessary qualifications and/or skills as determined by the Registrar; and

(iii) is a fit and proper person to be a celebrant.

From 1 July 2014, a fee of $600 is payable by a person who applies to become a marriage celebrant. If registered, that person is required to pay an annual registration charge of $240 (or a smaller amount pro-rated depending on the time of year a new celebrant is registered). More information can be found on the Attorney-General's Department website.

Detailed information about how to become a Commonwealth-registered marriage celebrant, including the application fee and annual registration charge, the qualification/skills requirement, and the factors the Registrar of Marriage Celebrants must consider in determining whether a person is a fit and proper person to be a celebrant, is available on the Attorney-General's Department website.

OBLIGATIONS OF COMMONWEALTH-REGISTERED MARRIAGE CELEBRANTS

Commonwealth-registered marriage celebrants must fulfill a range of legal obligations, including complying with the Code of Practice for marriage celebrants and undertaking annual professional development activities. For further information on these obligations, refer to Part 3.1.4 of these Guidelines.

The department strongly encourages all Commonwealth-registered marriage celebrants to ensure that they maintain current professional indemnity insurance as they may be legally liable for actions taken in solemnising a marriage.

[13] Subsection 39C(1) of the Marriage Act

SOLEMNISATION OF MARRIAGES BY COMMONWEALTH-REGISTERED MARRIAGE CELEBRANTS

A Commonwealth-registered marriage celebrant may solemnise marriages anywhere in Australia including outside the State or Territory in which they reside. Most Commonwealth-registered marriage celebrants solemnise civil ceremonies.

Commonwealth-registered marriage celebrants may also solemnise religious ceremonies for a religious body or organisation that has not been proclaimed as a recognised denomination. See Part 3.1.1 of these Guidelines for information on recognised denominations.

It is the policy of the Registrar of Marriage Celebrants that a person seeking to be a Commonwealth-registered marriage celebrant who wishes to solemnise religious ceremonies must generally meet certain requirements, including providing a letter of authorisation from their religious organisation. Such a person should contact the department for further information.

3.2 OBLIGATIONS OF COMMONWEALTH-REGISTERED MARRIAGE CELEBRANTS

The obligations of Commonwealth-registered marriage celebrants are outlined in section 39G and 39FA of the Marriage Act.

Section 39G requires each Commonwealth-registered marriage celebrant to:

- conduct himself or herself in accordance with the Code of Practice for marriage celebrants prescribed by the Schedule 1A to the Marriage Regulations – see paragraph 39G(a)of the Act (discussed further Part 3.1.5 of these Guidelines)
- undertake all professional development activities required by the Registrar of Marriage Celebrants in accordance with the *Marriage Regulations 1963* (Cth) – see paragraph 39G(b) of the Act (discussed further in Part 3.1.6 of these Guidelines), and
- notify the Registrar, in writing, of a change in a person's details no longer being current or correct on the register, within 30 days; or notify the Registrar of the occurrence of an event that might have caused the Registrar to not register the person if the event had occurred before the person was registered – paragraph 39G(c) of the Act (discussed further in Part 3.1.7 of these Guidelines).

Section 39FA requires a Commonwealth-registered marriage celebrant to pay an annual celebrant registration charge, unless an exemption from this charge is granted. **Failure to pay the charge will result in deregistration unless an exemption has been granted**. Further information can be found on the Attorney-General's Department website.

3.2.1THE CODE OF PRACTICE FOR MARRIAGE CELEBRANTS (THE CODE OF PRACTICE)

Paragraph 39G(a) of the Marriage Act requires Commonwealth-registered marriage celebrants to comply with the Code of Practice in Schedule 1A to the Marriage Regulations. The Code of Practice imposes legal obligations on all Commonwealth-registered marriage celebrants.

Commonwealth-registered marriage celebrants should either have a copy of the Code of Practice prominently displayed where marrying couples can see it or provide a copy to couples to take away with them.

Some important aspects of the Code of Practice include:

- Item 4 – requires Commonwealth-registered marriage celebrants to solemnise marriages according to the legal requirements of the Marriage Act, to observe the laws of the Commonwealth and of the State or Territory where the marriage is solemnised and ensure there is no unlawful discrimination in the provision of marriage celebrancy services.
- Item 5 – lists a number of requirements relating to the preparation for, and the conduct of, the marriage ceremony. Commonwealth-registered marriage celebrants must:
  - respect the privacy and confidentiality of the couple
  - ensure secure storage of all records relating to the solemnisation of any marriages
  - ensure they are available at the venue for the ceremony no later than the time agreed with the parties
  - if the celebrant has agreed to perform more than one marriage ceremony on the same day, be available at the venue for each marriage ceremony at least 20 minutes before the agreed commencement of each ceremony (unless consecutive ceremonies are being held at the same venue)
  - ensure marriage documents are completed accurately and the relevant marriage paperwork is forwarded to the relevant State or Territory BDM for registration of the marriage within 14 days of solemnising the marriage, and
  - inform couples that they are able to make a complaint if they are unhappy with the Commonwealth-registered marriage celebrant's service, and provide couples with information provided by the department on how to make complaints.
- Item 6 – requires Commonwealth-registered marriage celebrants to maintain up-to-date knowledge about the range of information and services designed to enhance and sustain marrying couples throughout their relationship, not just in the period immediately preceding the marriage ceremony. Commonwealth-registered marriage celebrants must also inform marrying couples about this range of services. Meeting this obligation requires ongoing action by Commonwealth-registered marriage celebrants. The family relationship services

available in their area should be reviewed by them annually at least to ensure the information they provide to marrying couples is up-to-date.

3.2.2 ONGOING PROFESSIONAL DEVELOPMENT

Commonwealth-registered marriage celebrants must complete:

- ongoing professional development (OPD) activities totaling five hours each year, and
- as part of their five hours of OPD complete any compulsory activity set by the Registrar of Marriage Celebrants.[14]

Information about the OPD obligations of Commonwealth-registered marriage celebrants is published on the Attorney-General's Department website.

It is the responsibility of all Commonwealth-registered marriage celebrants to regularly monitor this website to ensure they have fully complied with their OPD obligations each year. If celebrants do not comply with their OPD obligations, the Registrar of Marriage Celebrants may take disciplinary measures against them.

3.2.3INFORMING THE REGISTRAR OF MARRIAGE CELEBRANTS OF CHANGES TO PERSONAL CIRCUMSTANCES

Commonwealth-registered marriage celebrants must inform the Registrar of Marriage Celebrants of any changes to their contact details, including phone numbers and email address, within 30 days. This information must be provided in writing.[15]

Commonwealth-registered marriage celebrants must also notify the Registrar in writing if something occurs that might affect their entitlement to registration.[16] This may include:

- being convicted of a criminal offence
- starting a new business, hobby or employment that is related to weddings or marriage and that might create a potential conflict of interest with the performance of their duties as a Commonwealth-registered marriage celebrant (for further information see the Conflict of Interest Guidelines on the Attorney-General's Department website), or
- a change in employment.

Meeting this obligation requires ongoing action on the part of all Commonwealth-registered marriage celebrants.

[14] See paragraph 39G(b) of the Marriage Act and regulation 37M of the Marriage Regulations

[15] Paragraph 39G(c)(i) of the Marriage Act

[16] Paragraph 39G(c)(ii) of the Marriage Act

Commonwealth-registered marriage celebrants can inform the Registrar of Marriage Celebrants of changes by:

- writing to the Registrar of Marriage Celebrants at the following address:

  Marriage Law and Celebrants Section
  Access to Justice Division
  Attorney-General's Department
  3-5 National Circuit
  BARTON ACT 2600

- sending an email to the Registrar of Marriage Celebrants, via the Marriage Law and Celebrants Section mailbox: marriagecelebrantssection@ag.gov.au, or

- sending a fax to: (02) 6141 3246.

From 1 July 2014, the online self-service portal will allow Commonwealth-registered marriage celebrants to make changes to contact details.

Notifying the Registrar of Births, Deaths and Marriages is not the same as notifying the Registrar of Marriage Celebrants. You must notify the Registrar of Marriage Celebrants separately.

3.2.4 PERFORMANCE REVIEWS

Section 39H of the Marriage Act enables the Registrar of Marriage Celebrants to, from time to time, review the performance of a marriage celebrant in respect of a period of time to determine whether the Registrar considers that celebrant's performance in the period is satisfactory.

In carrying out the performance review, the Registrar must take into account the following matters:[17]

- any complaint about the celebrant, what the result of the complaint was, and whether the celebrant has complied with any action required as a result of the complaint

- any information received by the Registrar concerning the performance of the duties of a celebrant

- whether the celebrant has complied with the Code of Practice for marriage celebrants

- whether the celebrant has completed the required OPD, and

- whether the celebrant has developed any physical or mental incapacity that prevents them from continuing to carry out their duties as a marriage celebrant.

[17] These factors are listed in subregulation 37N(1) of the Marriage Regulations

Paragraph 39H (3)(b) of the Act provides that the Registrar may have regard to any information in his or her possession, but is not required to seek any further information. Performance reviews are based on the information available on celebrant records held by the Attorney-General's Department. Commonwealth-registered marriage celebrants will receive a letter notifying them that their individual performance has been undertaken and the outcome of their review.

If any compliance issues arise, Commonwealth-registered celebrants will be given the opportunity to respond before any action is taken against them by the Registrar of Marriage Celebrants.

Performance reviews for Commonwealth-registered marriage celebrants will also be supplemented by an annual performance questionnaire.

3.3 DISCIPLINARY MEASURES

Commonwealth-registered marriage celebrants need to be aware that the Registrar of Marriage Celebrants may take disciplinary measures against them if they fail to meet their obligations. The list of available disciplinary measures and the circumstances in which they are able to be imposed are set out in section 39I of the Marriage Act.

The Registrar can only take disciplinary measures against a Commonwealth-registered marriage celebrant if satisfied of one of the following circumstances:[18]

- the celebrant is no longer entitled to be registered
- the celebrant has not complied with an obligation under section 39G of the Marriage Act
- the celebrant's performance was determined to be not satisfactory as a result of a performance review under section 39H of the Marriage Act
- after considering a complaint made against the marriage celebrant the Registrar considers it appropriate to take disciplinary measures, or
- the marriage celebrant's application for registration was known by the marriage celebrant to be false or misleading in a material particular.

The Registrar may take the following disciplinary action: [19]

- a written caution
- the requirement to undertake particular professional development activities
- suspension for up to six months, or
- deregistration.

[18] Section 39I Marriage Act

[19] Section 39I Marriage Act

A celebrant who is deregistered or has their registration suspended has a right of appeal to the Administrative Appeals Tribunal.[20]

3.4 RETIRING FROM THE ROLE OF COMMONWEALTH-REGISTERED MARRIAGE CELEBRANT

To retire as a Commonwealth-registered marriage celebrant, celebrants must advise the department in writing (email will suffice) that they wish to resign. Celebrants should quote their marriage celebrant authorisation number.

Once this information is received from a celebrant, the department will start the process to revoke his or her authorisation. Once the process has been completed, the celebrant will be sent a letter advising that his or her authorisation has been revoked, outlining record keeping obligations and what to do with any unused stationery.

Celebrants should advise the department of any future ceremonies they intend to perform to ensure their revocation is not processed prior to these dates.

[20] Section 39J Marriage Act

4 SOLEMNISING MARRIAGES

4.1. PROCEDURE REQUIRED BEFORE SOLEMNISING A MARRIAGE

A marriage must not be solemnised unless:

- notice of the intended marriage has been given to the authorised celebrant within the required notice period (discussed in Part 4.3 of these Guidelines)
- each party has produced the following documents to the authorised celebrant (as required by the NOIM):
  - evidence of date and place of birth (discussed further in Part 4.4 of these Guidelines)
  - evidence of identity (discussed further in Part 4.6 of these Guidelines)
  - evidence of the termination of any previous marriage, where relevant (discussed further in Part 4.8 of these Guidelines), and
- each party has made a declaration as to his or her belief that there is no legal impediment to the marriage (discussed further in Part 4.5 of these Guidelines), and
- the authorised celebrant is satisfied that the marriage will be valid, including that each party has given real consent (discussed further in Part 8.6 of these Guidelines).

The authorised celebrant must also ensure that information about marriage education and counseling is made available to the parties to the marriage (discussed further in Part 4.9 of these Guidelines).

The checklist in Part 4.2 of these Guidelines is a useful tool for celebrants to ensure that they have completed all required documents when solemnising a marriage under the *Marriage Act 1961* (Cth).

4.2 CHECKLIST FOR COMPLETING MARRIAGE DOCUMENTS

This checklist for Commonwealth-registered marriage celebrants is a step-by-step guide for completing marriage documents before registering a marriage.

BEFORE THE CEREMONY

Finalise the Notice of Intended Marriage (NOIM)

- ❒ Ensure the couple provides the NOIM to you no later than one month and no earlier than 18 months before the ceremony (Parts 4.3 & 4.3.1):
    - o unless the couple obtains a shortening of time from a prescribed authority (Part 4.3.2).
- ❒ Record on the NOIM the date you receive it.
- ❒ Check evidence of each party's date and place of birth, and note it on the NOIM (Part 4.4).
- ❒ Satisfy yourself as to each party's identity (Part 4.6).
- ❒ Check that the full names of the parties are correctly recorded (Part 4.3.5).
- ❒ Check each party is free to marry, noting on the NOIM any evidence you have seen (Part 4.5).
- ❒ Ensure an interpreter is present if you consider it necessary (eg. to establish each party is giving real consent to the marriage) or the parties request one (Parts 4.10, 5.9 and 8.6).
- ❒ Type or use block letters, identifying upper and lower case where necessary, eg. McLEOD.
- ❒ Make sure the NOIM is signed and properly witnessed (Part 4.3.9).
- ❒ Complete the 'For Celebrant's Use' section on the top of page one.
- ❒ Give the parties the *Happily Ever Before and After* brochure, and note this on the NOIM (Part 4.9).
- ❒ Make sure all questions on the NOIM are answered.

If either party is under 18 years of age

- ❒ Make sure a court order and parental (or other) consents have been obtained (Part 8.8).
    - o Marriage must take place within three months of the date of the court order and parental consents.
    - o Under no circumstances can two persons under 18 years of age marry each other.

The parties must complete their declarations of no legal impediment (formerly called Form 14)

- ❒ Accurately and legibly copy information from the NOIM to the Declaration.
    - o If a party's address or occupation has changed since completing the NOIM, updated details should be shown on the Declaration.
- ❒ Parties should sign their Declarations as close as possible to the ceremony (Part 4.8).

Prepare three marriage certificates before the ceremony

- ❒ Accurately and legibly copy information from the NOIM to the three marriage certificates:
    - o Official certificate of marriage (formerly called the Form 16) (sent to the registry of births, deaths and marriages (BDM) after the ceremony) (Part 6.1). (The official certificate should record current addresses and occupations for the parties if these details have changed since they completed the NOIM.)

- The second official certificate (your copy) (Part 6.2 & 6.3).
- Form 15 certificate (issued to the parties after the ceremony) (Part 6.4).

❒ Set out the rites used to solemnise the marriage on the marriage certificates (Part 6.7):
- For a civil ceremony, use the words 'according to the Marriage Act 1961'.
- If you are a minister of religion, you may record that the marriage was solemnised according to the rites of your religious organisation.

❒ Complete the 'record of use form' for the Form 15 certificate (Part 6.5).

AT THE CEREMONY

❒ Before commencing ensure:
- There are at least two witnesses present who are over the age of 18 years (Part 5.8).
- If relevant, an interpreter is present, and completes the statutory declaration on the back of the certificate of faithful performance by the interpreter (formerly called the Form 24) (Part 5.9).

❒ Include the 'monitum' explaining the nature of the marriage relationship (Part 5.6).

❒ Include vows (Part 5.7).
- Parties must say the words in subsection 45(2) of the *Marriage Act 1961* for a civil ceremony.
- If you are a minister of religion, use a ceremony approved by your religious organisation.

Be satisfied that the marriage will be valid

❒ You must be satisfied that a proposed marriage will be valid at all times *before* the conclusion of the ceremony (Part 8.6).

Sign the marriage certificates

❒ All three marriage certificates must be signed by you, the parties and the two witnesses.
- Record the same names for the couple as are recorded on the NOIM on all three certificates.
- Record the same names for the witnesses on the official certificate of marriage (formerly called the Form 16) and the second official certificate, and ensure witnesses clearly print their full names.

❒ Hand the Form 15 certificate to one of the parties (Part 6.4).

AFTER THE CEREMONY

❒ If relevant, ensure the interpreter gives you the completed certificate of faithful performance by the interpreter (formerly called the Form 24) (Part 5.9).

❒ Complete the last page of the NOIM by recording the date and place of marriage and rites used, signing the 'Celebrant's signature' section and recording your celebrant number.

❒ Within 14 days of the ceremony, send the official certificate of marriage, declarations of no legal impediment, and NOIM (together with any supporting documents) to the registry of births, deaths and marriages (BDM) in the state or territory where the marriage took place (Part 7).

❒ Keep records of every marriage you perform in a secure place for at least six years (Part 6.5).
- Including the 'record of use' form and marriage register.

4.3 NOTICE OF INTENDED MARRIAGE

Section 42 of the *Marriage Act 1961* (Cth) requires the parties to an intended marriage to give the authorised celebrant at least one month's written notice prior to the solemnisation of the marriage. This notice is known as the Notice of Intended Marriage (NOIM).

HOW CAN AN AUTHORISED CELEBRANT OBTAIN A NOTICE OF INTENDED MARRIAGE?

The form of the NOIM has been approved by the Attorney-General.[21] Copies of the NOIM are available here and can be purchased from CanPrint Communications.

A NOIM must be in accordance with the approved form and must contain the parties' particulars as required in the approved form.

4.3.1 WHEN THE NOIM MUST BE RECEIVED

The NOIM must be given to the authorised celebrant no earlier than 18 months and no later than one month before the date of the marriage.[22] A notice expires after 18 months, and a marriage may not be solemnised if the NOIM was received more than 18 months before the date of the proposed marriage. Parties are encouraged to produce their evidence of date and place of birth as well as evidence of identity and the end of any previous marriage (if relevant) at the time of lodging the NOIM. However, this document may be produced at any time before the marriage is solemnised. For the purposes of complying with the timeframes required for lodging the NOIM it is sufficient for an authorised celebrant to sight scanned (emailed) or faxed copies of the documents at the time of lodgement of the NOIM, provided the originals are sighted by the authorised celebrant before the marriage is solemnised.

4.3.2 CIRCUMSTANCES FOR AUTHORISING MARRIAGE WHERE NOIM IS LODGED WITH LESS THAN THE REQUIRED NOTICE TIME – 'SHORTENING OF TIME'

A prescribed authority may authorise a marriage to be solemnised despite the authorised celebrant receiving the NOIM within one month of the date of the marriage.[23] A list of prescribed authorities is published on the Attorney-General's Department website.

[21] See paragraph 119(3)(c) of the Marriage Act

[22] Paragraph 42(1)(a) of the Marriage Act

[23] Subsection 42(5) of the Marriage Act and Schedule 1B to the Marriage Regulations

WHEN CAN A PRESCRIBED AUTHORITY CONSIDER A SHORTENING OF TIME REQUEST?

The five circumstances in which an application for shortening of time may be considered by a prescribed authority are set out in Schedule 1B to the *Marriage Regulations 1963* (Cth). These are limited to:

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

WHAT SHOULD AN AUTHORISED CELEBRANT DO IF A COUPLE WANTS THEIR MARRIAGE SOLEMNISED LESS THAN ONE MONTH AFTER THE CELEBRANT RECEIVES THE NOIM?

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

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

- the reason for seeking a shortening of time must fall within one of the 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 granting of a shortening of time is not automatic, and
- a prescribed authority may charge an application fee – celebrants should suggest that the couple check if a fee is charged when making an appointment.

The authorised celebrant should also advise the parties to the marriage to make an appointment with the prescribed authority and to take the completed NOIM and any other documentary evidence to prove why they require a shortening of time (for example, medical certificates or a travel itinerary). This is the only circumstance in which a celebrant should release the completed NOIM to the parties to the intended marriage. Parties should return the NOIM to the celebrant after a shortening of time is obtained.

WHAT CASES FALL WITHIN THE CIRCUMSTANCES WHEN A SHORTENING OF TIME MAY BE GRANTED?

Schedule 1B to the Marriage Regulations provides examples of each of the given sets of circumstances. Whether a particular situation falls within one of these is a matter for the prescribed authority, not the authorised celebrant. The department is unable to provide advice on particular situations other than to provide the information in these Guidelines and the Marriage Regulations.

WHAT SORT OF MATERIAL WILL THE PRESCRIBED AUTHORITY REQUIRE TO CONSIDER THE APPLICATION?

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

Such material should include a letter from a medical practitioner if they are seeking a shortening of time on medical grounds, or receipts for payments or wedding invitations if the circumstance is wedding or celebration arrangements. The prescribed authority will be looking at the dates payments were made or invitations sent to gauge the genuineness of the need to shorten time.

If the circumstance relates to relocation for employment the prescribed authority will be looking for evidence of the date on which the applicant was informed of the posting or employment relocation as opposed to the date on which the posting is to commence (unless the posting or employment relocation has been brought forward).

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

HOW DOES THE PRESCRIBED AUTHORITY GRANT A SHORTENING OF TIME?

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

4.3.3 THE ONE MONTH NOTICE PERIOD

WHAT DOES GIVING THE NOTICE 'NOT LATER THAN ONE MONTH BEFORE THE DATE OF THE MARRIAGE' MEAN?

Important Note: The information previously provided by the department including in the *Explanatory Material on the Marriage Act 1961 for Marriage Celebrants* regarding the calculation of the one month period is no longer current. The *Acts Interpretation Act 1901* was amended by the *Acts Interpretation Amendment Act 2011* commencing on 27 December 2011. Section 2G provides that in any Act, month means a period: starting at the start of any day of one of the calendar months; and ending: immediately before the start of the corresponding day of the next calendar month; or if there is no such day – at the end of the next calendar month.

The term 'month' is defined in section 2G of the *Acts Interpretation Act 1901* as follows:

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

(a) starting at the start of any day of one of the calendar months; and

(b) ending:

(i) immediately before the start of the corresponding day of the next calendar month; or

(ii) if there is no such day—at the end of the next calendar month.

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

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

(2) In any Act, a reference to a period of 2 or more months is a reference to a period:

(a) starting at the start of a day of one of the calendar months (the starting month); and

(b) ending:

(i) immediately before the start of the corresponding day of the calendar month that is that number of calendar months after the starting month; or

(ii) if there is no such day—at the end of the calendar month that is that number of calendar months after the starting month.

Example 1: A reference to 6 months starting on 15 December in a year is a reference to a period

starting on that day and ending immediately before 15 June in the next year.

Example 2: A reference to 6 months starting on 31 October in a year is a reference to a period starting on that day and ending at the end of April in the next year (because April is the calendar month coming sixth after October and does not have 31 days).

Further examples:

- a month starting on 15 December in a year ends immediately before 15 January in the next year (therefore the first day the marriage can be solemnised is 15 January)
- a month starting on 31 August in a year ends at the end of September in that year because September is the calendar month coming after August and does not have 31 days (therefore the first day the marriage can be solemnised is 1 October), and
- a month starting on 29, 30 or 31 January ends at the end of February in that year because February is the calendar month coming after January and does not have 31 days (therefore the first day the marriage can be solemnised is 1 March). This applies regardless of whether it is a leap year.

HOW DO THE PARTIES GIVE THE NOTICE IF THEY ARE OVERSEAS OR INTERSTATE UNTIL LESS THAN ONE MONTH BEFORE THE MARRIAGE?

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

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

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

WHEN DOES THE ONE MONTH PERIOD COMMENCE?

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

The one month notice period can also begin when the authorised celebrant is given a completed NOIM signed by one party to the intended marriage. This situation only arises when the signature of the other party cannot conveniently be obtained at least one month prior to the proposed ceremony, for example, where one party is overseas. The NOIM can be lodged when signed by only one of the parties to the proposed marriage provided the other party signs the NOIM in the presence of the authorised celebrant before the marriage is solemnised. The authorised celebrant must be satisfied that the party who has not signed the NOIM has a genuine reason for not being able to do so at the time, is fully aware of the marriage and that their documents are in order. Authorised celebrants should exercise caution in these situations as a party to a marriage may attempt to use this exception for a 'surprise wedding'. For further information on surprise weddings, see Part 12.1 of these Guidelines.

When an authorised celebrant receives a NOIM, they must write the date on which the NOIM was received in the space provided. This is the date the NOIM is lodged.

For further information on how to calculate the one month period, see above under the heading 'WHAT DOES GIVING THE NOTICE 'NOT LATER THAN ONE MONTH BEFORE THE DATE OF THE MARRIAGE' MEAN?'

4.3.4 COMPLETING THE NOIM

Authorised celebrants should advise parties to complete the NOIM with care. They should read the notes on the front of the printed form before completing the NOIM. It is recommended that parties type, or use block letters, to complete the form. If the NOIM is downloaded from the internet, care should be taken to download and print all four pages so that couples can read all the Notes, including the Privacy Note. The authorised 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.

WHAT IF A PARTY DOES NOT KNOW THE INFORMATION REQUIRED BY THE NOIM?

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

In order to make the NOIM effective, they should also provide the authorised celebrant with a statutory declaration as to his or her inability to ascertain the particulars not included in the NOIM, and the reasons for that inability, before the marriage is solemnised. Celebrants should not solemnise a marriage until a satisfactory statutory declaration is received. The requirements for completing a statutory declaration are explained further in Part 12.5 of these Guidelines.

However, a statutory declaration is not necessary for the information required under items 9, 10, 11 or 12, or the date of a previous marriage ceremony under item 14.

COMPLETING ITEM 15 ON THE NOIM – CHILDREN OF PREVIOUS MARRIAGE

When completing item 15 on the NOIM, parties should include children born to the previous married couple, whether or not those children were born before or after the previous marriage took place. The *Family Law Act 1975* (Cth) provides that children of a marriage include a child of the husband and wife born before the marriage.[24]

RECORDING THE MARRIAGE RITES ON THE NOIM

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

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

Authorised celebrants should record the same marriage rites for a particular marriage on both the NOIM and the Form 15 marriage certificate and the official certificate of marriage (See Part 6.7).

NOIMS CONTAINING FALSE STATEMENTS

Authorised celebrants should advise parties that it is an offence for a person to give a NOIM to an authorised celebrant if the person giving the notice knows that the NOIM contains a false statement or is defective.[25] If an authorised celebrant is in any doubt whether a NOIM is defective, he or she should contact the department as soon as practicable after receipt and before the solemnisation of the marriage. If an authorised celebrant believes a NOIM contains false statements he or she should not accept the NOIM.

WHAT HAPPENS TO THE NOIM AFTER A MARRIAGE?

Items 1–7 and 9–10 of the NOIM correspond exactly to the items on the BDM issued official certificate of marriage which authorised celebrants prepare and forward to the relevant BDM after the marriage.

[24] Section 60F of the Family Law Act

[25] Section 104 of the Marriage Act

Item 8, which asks about length of residence in Australia, is not reflected on the BDM certificate. The information in item 8 and items 11 to 16 of the NOIM are forwarded by the BDM to the Australian Bureau of Statistics. The ABS records non-identifying information from the NOIM, and uses the information to generate national statistics on marriage and the family in Australia.

4.3.5 RECORDING THE NAMES OF THE PARTIES ON THE NOIM

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

The rules in Australia for obtaining documents of identity such as an Australian passport have been significantly strengthened over recent years. Authorised 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 will be caused to the couple in having documents corrected at a later date.

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

Change of name requirements vary across BDMs. For example, the ACT and Tasmanian BDMs are unable to change the name on a registered marriage, or register a change of name, retrospectively (in the case of an error please refer to Part 6.10 of these Guidelines). A person registering a change of name after their marriage does not enable the ACT or Tasmanian BDMs to update their marriage register to the person's new name, as the register reflects the person's name at the time of the marriage. Similarly, in the ACT and Tasmania a change of name cannot be backdated to the date of the marriage. Similar provisions may apply in other States and Territories. This may have implications for a married person seeking identity documents following a marriage.

Authorised 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) to obtain their own advice.

There is a Frequently Asked Questions section at Part 4.3.8 of these Guidelines to further assist authorised celebrants to determine how to record names on the NOIM and marriage certificates.

GENERALLY THE NAME ON A PERSON'S BIRTH CERTIFICATE SHOULD BE RECORDED ON THE NOIM

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

WHEN CAN A PERSON USE A DIFFERENT NAME ON THE NOIM TO THE NAME ON THEIR BIRTH CERTIFICATE?

BDM-ISSUED CHANGE OF NAME CERTIFICATE

If a person has changed their name from the name on their birth certificate by way of a BDM-issued change of name certificate they should write this 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 BDMs will amend a person's name on their birth record in certain circumstances instead of issuing a change of name certificate, in this situation the person should record the name on their amended birth certificate.

CHANGE OF NAME BY DEED POLL

Prior to BDMs granting change of name certificates (commencing in about the late 1990s), a person could change their name by Deed Poll. A person who changed their name by Deed Poll may 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. An authorised celebrant with concerns about the validity of Deed Poll documentation provided to them by a person should contact the relevant BDM for guidance.

ERROR IN SPELLING OF NAME ON BIRTH OR CHANGE OF NAME CERTIFICATE

A person who believes there is an error in the spelling of their name on their birth certificate, or change of name certificate, should contact the BDM in the State or Territory where they live, or were born, and enquire about having the certificate corrected. If their birth certificate or change of name certificate is amended they should then record that name on the NOIM.

A person who has changed their name by usage without any formal process should be directed to the relevant BDM to apply for a change of name certificate.

CHANGE OF NAME BY MARRIAGE

A party who has changed their name by marriage, and retained their previous spouse's surname, may record that surname on the NOIM. The surname recorded should be exactly as it appears on the BDM-issued official marriage certificate, or Court-issued divorce certificate, for the party's previous marriage. See the case study on the correct use of documents, and Part 4.3.8 of these Guidelines (Frequently Asked Questions – Names on Notices of Intended Marriage and on Marriage Certificates) for further assistance in such situations.

USE OF NAME ON CERTIFICATE OF AUSTRALIAN CITIZENSHIP

A Certificate of Australian Citizenship is evidence of the commencement of a person's identity in Australia. A person's name as recorded on such a certificate should not be recorded on the NOIM unless the person also has photo identification in that name, such as a driver's licence, proof of age card; an Australian or overseas passport. If a person wanting to marry has no evidence of their identity other than a Certificate of Australian Citizenship, the authorised celebrant should contact the department for guidance.

WHAT NAMES/TERMS MUST NOT BE USED ON THE NOIM?

Terms such as 'ka', 'aka' and 'nee' must not be used on the NOIM.

WHAT SHOULD A CELEBRANT DO IF A PERSON WANTS TO USE A NAME ON THEIR NOIM BUT DOES NOT HAVE THE APPROPRIATE EVIDENCE FOR THAT NAME?

In cases other than those described above, where a party wants to use a different name on the NOIM to the name on their birth certificate, they should apply to the BDM in the State or Territory where they were born or where they live for a change of name certificate to be issued to them or for their name to be amended on their birth certificate. The party should first enquire with the relevant BDM in order to find out the requirements and timeframes for obtaining a change of name in that State or Territory. While waiting for the formal change of name, the party may provide the NOIM to the authorised celebrant using the name on their current birth certificate. The NOIM can then be amended once the formal change of name is obtained. Please note that the NOIM can only be corrected *prior to* the solemnisation of the marriage. Please refer to Part 4.1.21 of these Guidelines for further information on correcting the NOIM.

If a person refuses to use the name stated on their birth certificate, and does not fall within one of the scenarios described above for when another name may be recorded in the NOIM, the authorised celebrant should outline the possible difficulties the person may face in the future when attempting to obtain an Australian passport, or possibly other identity documents, in the name they wish to use. If the person insists this will never be an issue for them, they may list their preferred name on the NOIM. As with any advice or recommendations provided by an authorised celebrant, the celebrant should make a written record of their advice, and give a copy of that advice to the person. It may be prudent for the authorised celebrant to include a copy of the advice with the documents sent to the

BDM to register the marriage, as well as keeping the advice as part of their personal records. Some BDMs will scan the letter of advice and retain it as part of the marriage register.

4.3.6 WHAT A CELEBRANT SHOULD DO IF A PARTY HAS DIFFERENT NAMES IN THE DOCUMENTS THEY PROVIDE TO ESTABLISH THEIR DATE AND PLACE OF BIRTH AND THEIR IDENTITY

Each party to a marriage must give their authorised celebrant documents that establish their date/place of birth and identity. In most cases people use the name recorded on their birth certificate, meaning that name will be recorded on all documents they give their authorised celebrant, and in the NOIM.

If a party gives their authorised celebrant documents recording different names, the authorised celebrant should check the party has provided a sufficient chain of documents that both establish their identity and link the names. The case studies below demonstrate such a chain of documents and how to use them.

4.3.7 FREQUENTLY ASKED QUESTIONS - NAMES ON NOTICES OF INTENDED MARRIAGE AND ON MARRIAGE CERTIFICATES

Subsection 42(8) of the *Marriage Act 1961* (Cth) requires authorised celebrants to establish the identities of the parties to a marriage. Accuracy in recording names helps ensure that everyone is satisfied as to the identity of persons intending to marry, and that they can prove that they are who they claim to be.

A major focus of all Australian Governments has been putting in place systems to deal with identity fraud. As an example of this, and as a result of amendments to the *Passports Act 2005,* the Australian Passport Office has developed rules which are strictly enforced concerning names on Australian passports. These rules are relevant to marrying couples as anyone wishing to apply for a passport in their married name will need to strictly adhere to these rules.

QUESTIONS AND ANSWERS – NAMES ON NOTICES OF INTENDED MARRIAGE AND ON MARRIAGE CERTIFICATES

The following list of Frequently Asked Questions should provide authorised celebrants with the information they need to advise couples about the completion of the names section in the NOIM.

It will also assist celebrants to explain to couples how they will be writing their names on the three certificates of marriage.

This advice is intended to assist couples and is in accordance with the *Marriage Act 1961*.

GENERAL ISSUES

Use of the terms 'ka', 'aka' and 'nee'

In the past marriage celebrants have been advised to use terms such as 'ka', 'aka' and 'nee' in circumstances when a party has a name which is different from their birth name. **These terms must no longer be used in any circumstances**.

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

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

NAMES ON THE NOTICE OF INTENDED MARRIAGE

Q.1 What names should parties write on the NOIM?

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

If a person has changed their name from the name on their birth certificate by way of a BDM issued Change of Name Certificate, or Deed Poll (prior to BDMs starting to issue Change of Name Certificates from the late 1990s), they should write this name exactly as it appears on the change of name certificate or Deed Poll documentation on the NOIM.

If a person has changed their name by marriage and retained a previous spouse's surname they may record that surname on the NOIM. Authorised celebrants should ensure the party has written their surname exactly as it appears on the previous marriage certificate or Court-issued Divorce Certificate.

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

NAMES ON BIRTH CERTIFICATES

Q.2 What if a person believes the spelling on his or her birth certificate is incorrect? For example, the name on their birth certificate is spelt 'Vicky' and they have always used 'Vicki'.

A: Authorised celebrants should tell the person that their name as it appears on their birth certificate and their name as it appears on the NOIM should be the same.

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

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

Q.3 What if a person does not want all their given names on the NOIM? For example, they have four given names on the birth certificate and they have always only used two of those names

A: They should use all four names on the NOIM. Authorised celebrants should tell the person that their name as it appears on their birth certificate and their name as it appears on the NOIM should be the same. Authorised celebrants should also tell the person that any discrepancy between their name as it appears on their birth certificate and their name as it appears on the marriage documents may mean that they will encounter problems if they wish to obtain an Australian passport in their married name.

Q.4 Is there anything a party can do to overcome the problems raised in Questions 2 and 3 of using a different name from that on their birth certificate?

A: Yes. They can apply to the BDM in the State or Territory where they were born or where they live for a Change of Name certificate to be issued to them to reflect the spelling of their name that they commonly use, or to reflect the given names they actually use.

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

They can then use the name on the Change of Name certificate on the NOIM, rather than the birth certificate name.

Q.5 A party to a marriage has lived for many years with a step-father and though not formally adopted has always used that step-father's name. Which name should they use on the NOIM?

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

CHANGE OF NAME

Q.6 If a party would like to use a name other than the name on their birth certificate, can they lodge a NOIM before obtaining a Change of Name Certificate in order to meet the one month minimum timeframe for giving notice?

A: Yes. They can lodge the NOIM but must record the name on their birth certificate. This can be amended once the Change of Name certificate is obtained and prior to the completion of the marriage certificates. Parties should ask the relevant BDM how long this process will take. It will vary but should be less than the one month's minimum notice period.

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

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

Q.7 A party to a marriage tells an authorised celebrant that they changed their name by usage and have a driver's licence and a Medicare card in that new name. Which name should be used?

A: In this case the person should use the name on their birth certificate. If they do not wish to do this they can apply to the BDM in the State or Territory where they live or were born for a Change of Name certificate to be issued to reflect the name changed by usage.

Q.8 Does this mean a person cannot change their name by usage?

A: No it does not mean this. A person can change their name by usage. However, a name gained by common usage may be difficult to substantiate and many government agencies require a Change of Name certificate issued by a BDM as evidence of a person's name.

Q.9 A party to a marriage changed their name by Deed Poll many years ago. Can they use this name on the NOIM?

A: Yes, they may use this name.

Generally, a change of name by Deed Poll that was registered before the commencement of the Change of Name Certificate BDM process in the relevant State or Territory is still a valid change of name. If an authorised celebrant has any doubt as to the validity of a person's Deed Poll documentation they should contact the relevant BDM for further guidance.

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

Q.10 What is the difference between a change of name by Deed Poll and a Change of Name certificate?

A: In the past a person wishing to formally change their name would lodge an instrument with the State Registrar of Deeds or Titles. This was called changing your name by Deed Poll. That process has now largely been replaced throughout the States and Territories by Change of Name procedures under which a person applies to have a change of name registered with the State or Territory BDM.

Change of Name certificate procedures differ from Deed Poll procedures and both procedures vary between the States and Territories. Most States will only register a change of name for a person whose birth has been registered in that State or who has been resident there for a certain period of time.

Parties should be advised to check where and how to apply for the Change of Name certificate. In some States Deed Poll name changes have been transferred to the Register of Change of Names. People who have changed their name by Deed Poll should check with the BDM in the State or Territory where the change was executed whether they need to obtain a Change of Name certificate.

Q.11 An authorised celebrant has a party who does not wish to obtain a Change of Name certificate before their marriage and wishes to use the name they have changed by usage alone. What should the celebrant tell this person?

A: The authorised celebrant should advise this person to think carefully about whether they may ever need identity documents, including a passport, in the future. It may be possible to formally change their name after the marriage but the process may be more complicated for them. The celebrant should advise the party to check with the relevant State or Territory BDM.

Q.12 An authorised celebrant has a party who does not wish to apply for a Change of Name certificate under any circumstances. What should the celebrant do in this case?

A: If a person refuses to use the name stated on their birth certificate, and does not fall within one of the scenarios described in Q1 above for when another name may be recorded in the NOIM, the celebrant should outline the possible difficulties they may face in the future when attempting to obtain an Australian passport, or possibly other identity documents, in the name they wish to use.

If the person insists this will never be an issue for them, they may list their preferred name on the NOIM. The authorised celebrant should make a written record of this advice, and give a copy of it to the person. It may be prudent for the celebrant to include a copy of the advice with the documents sent to the BDM to register the marriage, as well as keeping the advice

as part of their personal records. Some BDMs will scan the letter of advice and retain it as part of the marriage register.

PARTY BORN OVERSEAS

Q.13 A party to a marriage was born overseas and does not have an overseas birth certificate. What name should they put on the NOIM?

A: If the person does not have, or is not able to obtain, a birth certificate an authorised celebrant will need to see a passport issued by the Australian government or a government of an overseas country as evidence of the person's date and place of birth. If that is not possible, the celebrant should require a statutory declaration executed under the *Statutory Declarations Act 1959* from the person to meet the requirements of section 42 of the Act relating to evidence of date and place of birth.

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

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

If the person is an Australian citizen then the name as shown on their Citizenship Certificate may be used on the NOIM **only if** the person also has photo ID in the same name as the name on their Citizenship Certificate: such as a drivers licence, proof of age/photo card; or an Australian or overseas passport.

Please note that in this case the celebrant would **only** be using the Certificate of Australian Citizenship to confirm the person's name/identity, and not for the purpose of checking the person's date and place of birth.

ERROR ON CERTIFICATE OF AUSTRALIAN CITIZENSHIP

Q.14 What if a person tells an authorised celebrant there is an error in the name on their Certificate of Australian Citizenship?

A: The celebrant should advise the person to approach the Department of Immigration and Border Protection about having the error corrected. If this is not possible they will need to apply to the BDM in the State or Territory where they live for a Change of Name certificate to be issued to reflect the correct spelling of their name.

PARTY PREVIOUSLY MARRIED

Q.15 A party has been married before and they are divorced or their spouse has died. What surname should they put on the NOIM?

A: A person in this situation has a choice.

If they continued using their birth name during the prior marriage they should record this name on the NOIM.

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

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

Q.16 A party has been married before, they are divorced or their spouse has died and the first marriage took place overseas. What surname should they put on the NOIM?

A: A person in this situation has a choice.

If they continued using their birth name during the prior marriage they should record this name on the NOIM.

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

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

NAMES ON THE MARRIAGE CERTIFICATES

Q.18 What names should be written (or printed) on the marriage certificates?

A: The names on the marriage certificates should be exactly the same as the names on the NOIM.

An authorised celebrant should always cross check the NOIM with the original documents from which those names were derived i.e. the birth certificates, marriage certificates or Change of Name certificates and not just rely on copying from the NOIM. If the celebrant copies from the NOIM they may repeat an error from the NOIM.

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

Q.19 Do the names on all three marriage certificates need to be the same?

A: Yes. All three marriage certificates which the couple signs are evidence that the marriage took place.

The authorised celebrant must use the same name on all three marriage certificates, i.e. Form 15 certificate of marriage, the retained certificate and the official certificate of marriage (formerly the Form 16) (the certificate forwarded to BDM for registration of the marriage).

SIGNATURES ON MARRIAGE DOCUMENTS

Q.20 How should the NOIM be signed?

A: The NOIM should be signed using the person's usual signature.

Please see the section entitled 'Signing and witnessing the NOIM' at Part 4.3.9 of these Guidelines for more information on signing NOIMs.

Q.21 How should the marriage certificates be signed?

A: The marriage certificates should all be signed using the parties' usual signatures.

The signatures should be the same as the signatures on the NOIM and on the declarations of no legal impediment (formerly called the Form 14). The certificates should be signed in the pre-marriage names.

Please see the section entitled 'Signing the marriage certificates' at Part 6.8 of these Guidelines for more information on signing marriage certificates.

4.3.8 TOTAL PERIOD OF RESIDENCE IN AUSTRALIA

Item 8 of the NOIM requires the parties to state the total period that they have resided (lived or stayed) in Australia, if they were born outside of Australia.

The NOIM makes provision for giving both 'years' and 'months' of residence. Months as well as years need only be given where the party has been resident in Australia for less than two years. Where the party has been resident in Australia for over two years, the number of completed years only need be given. For example, a period of five years, nine months residence need be stated only as five years. If

a party has only been in Australia for a period of days it is unnecessary to record this information. Authorised celebrants should be aware that there is no minimum residency requirement prior to a marriage being solemnised in Australia.

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

4.3.9 SIGNING AND WITNESSING THE NOIM

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

Where the signature of one party to the intended marriage cannot conveniently be obtained at least one month prior to the proposed ceremony, the NOIM may be signed by one of the parties to the proposed marriage, as long as the other party signs it in the presence of an authorised celebrant before the marriage is solemnised.[26] This enables parties to give notice of their intended marriage when one party is overseas or interstate. The authorised celebrant must be satisfied that the party who has not signed has a genuine reason for not being able to do so at the time, is fully aware of the marriage and that the parties' documents are all in order. If the parties request advice on obtaining a visa for a party who resides outside Australia the celebrant should direct them to the Department of Immigration and Border Protection.

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

Authorised celebrants should treat all lodgments of a NOIM with only one signature with caution and make appropriate inquiries of the party who has not signed. Authorised celebrants must always ask why it is not convenient for the second party to sign the NOIM (see Part 12.1 of these Guidelines regarding surprise weddings, and Part 8.6 of these Guidelines on consent).

WHO MAY WITNESS A NOIM SIGNED IN AUSTRALIA?

A NOIM signed in Australia must be signed in the presence of one of the following:[27]

- an authorised celebrant
- a Commissioner for Declarations under the *Statutory Declarations Act 1959*

[26] Subsection 42(3) of the Marriage Act

[27] See Subsection 42(2) of the Marriage Act

- a justice of the peace
- a barrister or solicitor
- a legally qualified medical practitioner, or
- a member of the Australian Federal Police or the police force of a State or Territory.

Where one signature on the NOIM is provided less than one month before the marriage, then subsection 42(3) of the Marriage Act requires an authorised celebrant to witness this signature.

Authorised celebrants should note the following points in relation to signatures being witnessed in Australia:

- A person who proposes to witness the signature of a party to a NOIM in Australia must belong to one of the categories listed above.
- The list is not the same as the list of persons before whom a Commonwealth statutory declaration may be made.
- A Commissioner for Declarations is not the same as a person before whom a Commonwealth Statutory Declaration may be made – they are specifically appointed people who will have written evidence of their appointment.
- Commissioners for Declarations are appointed under State and Territory laws. Only some States and Territories appoint Commissioners for Declarations. If the parties to the marriage wish to use a Commissioner for Declarations, the parties should check whether Commissioners exist in the jurisdiction in which they reside. The best way to do this is by contacting the relevant State or Territory government where the NOIM is to be witnessed.

WHO MAY WITNESS A NOIM SIGNED OUTSIDE AUSTRALIA?

A NOIM signed outside Australia must be signed in the presence of one of the following:[28]

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

[28] See Subsection 42(2) of the Marriage Act

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

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

WHAT IS A NOTARY PUBLIC?

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

WHAT HAPPENS IF A PERSON OVERSEAS IS FINDING IT DIFFICULT TO LOCATE A PERSON FROM THE REQUIRED CATEGORY TO WITNESS THEIR SIGNATURE ON THE NOIM?

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

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

4.3.10 CORRECTIONS OF ERRORS ON THE NOIM

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

An error in 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 lodged with the authorised 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.

4.4 EVIDENCE OF DATE AND PLACE OF BIRTH

Each party to a marriage must give their authorised celebrant evidence of their date and place of birth before a marriage is solemnised.[29]

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

- an official (original) certificate of birth, or an official extract of an entry in an official register showing the date and place of birth of the party,[30] or
- a statutory declaration from the party or the party's parent stating:[31]
  - it is impracticable (this does not mean not practical or convenient; it means impossible[32]) to obtain an official birth certificate or extract, and the reasons why, and
  - to the best of the declarant's knowledge and belief and as accurately as the declarant has been able to ascertain, when and where the party was born, or
- a passport issued by the Australian government or a government of an overseas country showing the date and place of birth of the party.[33]

A party's date and place of birth should be recorded exactly as it appears on the document produced as evidence. Further information on each of these options is provided below.

If the document a party provides as evidence of their date and place of birth is written in another language or alphabet, the couple should seek a translation of the document by an accredited translator. The NAATI website has a list of translators.

Parties should be encouraged to produce their evidence of date and place of birth with the NOIM, but it may be produced at any time before the marriage is solemnised. For the purposes of complying with the timeframes required for giving the NOIM it is sufficient for an authorised celebrant to see copies of documents, such as those scanned and sent via email or facsimile, as long as the originals are provided and sighted by the authorised celebrant before the marriage is solemnised. It is an offence for an authorised celebrant to solemnise a marriage before this evidence of date and place of birth has been produced by each of the parties to the proposed marriage.[34]

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[29] Paragraph 42(1)(b) of the Marriage Act

[30] Subparagraph 42(1)(b)(i) of the Marriage Act

[31] Subparagraph 42(1)(b)(ii) of the Marriage Act

[32] Concise Oxford Dictionary

[33] Subparagraphs 42(1)(b)(iii)&(iv) of the Marriage Act

[34] Subsection 99(1) of the Marriage Act

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

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

4.4.1 AN OFFICIAL CERTIFICATE OF BIRTH OR AN OFFICIAL EXTRACT

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

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

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

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

A party who does not have a passport and is able to obtain their original birth certificate or extract is expected to do so. The fact that it will cost a party money to obtain their original birth certificate or extract, or they have left it until just before the marriage ceremony to obtain it, does not make it 'impracticable' (impossible) to obtain it and is not an acceptable basis to rely on a statutory declaration.

WHAT TO DO WHEN A BIRTH CERTIFICATE DOES NOT HAVE A REGISTRATION NUMBER

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

4.4.2 A PASSPORT ISSUED BY THE AUSTRALIAN GOVERNMENT OR THE GOVERNMENT OF AN OVERSEAS COUNTRY

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

2014 amendments to the *Marriage Act 1961* (Cth) allow a party to use an Australian passport as evidence of their date and place of birth. It does not matter whether a party is born in Australia or overseas, this option is open to anyone who has an Australian passport. In order to obtain an Australian passport a party will have already proved their date and place of birth to a satisfactory standard to the Australian Passports Office.

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

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

4.4.3 A STATUTORY DECLARATION

If a party does not have a birth certificate (for example, if a party was born in a refugee camp and did not receive a birth certificate) or passport, the party, or a parent of the party, may make and give to the authorised celebrant a statutory declaration setting out the reasons why it is 'impracticable' (impossible) to obtain such a certificate or extract. The declaration must also state, to the best of the declarant's knowledge and belief, and as accurately as the declarant has been able to ascertain, when and where the party was born (see Part 12.5 of these Guidelines for further information on statutory declarations).

Other than in very exceptional circumstances, an authorised 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 very 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 would be appropriate to allow such a person to make a statutory declaration as proof of their date and place of birth.

People should be advised that the penalty for making a false declaration is four years imprisonment. Additionally, an authorised celebrant who has reason to believe that a statutory declaration contains a false statement, and solemnises the marriage anyway, may be committing an offence.[35]

[35] Section 100 of the Marriage Act

4.5 ESTABLISHING THE CONJUGAL STATUS OF THE PARTIES TO THE MARRIAGE – ITEMS 5 AND 17 OF THE NOIM

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

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

- widower
- widow
- divorced, or
- never validly married.

Where a party has never been married, or has had their marriage declared invalid or void by a court (by a decree of nullity, or an annulment), their conjugal status is 'never validly married'. Some countries (such as the Philippines) do not recognise divorce and the order ending the marriage is an annulment. In such a case the person's conjugal status is 'never validly married'. The terms 'bachelor' and 'spinster' are not to be used. For further information regarding annulments see the Part 4.8.3 below.

Item 17 of the NOIM requires the parties to state how their last marriage was terminated, if they have previously been married. The options that may be listed in item 17 of the NOIM are:

- death
- divorce, or
- nullity.

If a party has indicated on the NOIM that they were previously married (item five), and this marriage was terminated through death, divorce or nullity (item 17), they **must** produce evidence of the termination of their previous marriage to the authorised celebrant. This evidence must be produced to the authorised celebrant prior to the marriage being solemnised.

A statutory declaration is not acceptable evidence of divorce or death of a former spouse. If an authorised celebrant is faced with circumstances in which evidence of divorce or death of a former spouse is not available, noting such circumstances are exceptional, the celebrant should contact the department for guidance.

4.5.1 EVIDENCE OF DEATH OF FORMER SPOUSE

In the case of a party whose last marriage ended with the death of their spouse, couples must be advised the marriage cannot take place until evidence of the death has been provided. The evidence of the termination of that marriage will be the spouse's original death certificate.

If the party wishing to marry does not have the death certificate, and their spouse died in Australia, the party should be able to obtain the death certificate from the BDM in the State or Territory where their spouse died.

If a party's former spouse died overseas, the authorised celebrant should still sight an original death certificate. If an original death certificate is not available the authorised celebrant should contact the department for guidance.

If the party gives the authorised celebrant a death certificate in a language other than English, they also need to provide a translation of the death certificate by a NAATI accredited translator (see Part 4.10 of these Guidelines). A translation by the party, a relative or a friend is not sufficient.

If an authorised celebrant is not certain of the identity of a deceased person, they should insist on the production of a certificate that shows particulars of the previous marriage to the now deceased person, as well as evidence of the person's death.

Statutory declarations are not acceptable evidence of the death of a person's former spouse.

4.5.2 EVIDENCE OF DIVORCE

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

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

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

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

RECEIVING THE NOIM IF A DIVORCE IS PENDING

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

EVIDENCE OF DIVORCES GRANTED IN AUSTRALIA

For divorces granted in Australia the required evidence of divorce will depend on when the divorce was granted. As explained below, it will be either a 'decree absolute', 'certificate of divorce' or 'divorce order'. An authorised celebrant with concerns about whether a party has provided sufficient evidence of divorce should contact the department for guidance.

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 17 December 2011	'divorce order' (Issued electronically with no colour seals or signatures.)
From 17 December 2011	current 'divorce order' (Issued electronically with colour seal and signature. An authorised celebrant may accept a divorce order where seal and signature are not in colour.) (Wording includes the Court's jurisdictional finding that one or both parties domiciled in or a citizen of or ordinarily resident in Australia.) **Appendix** shows samples of divorce orders issued when: • there is a child or children of the marriage, or • there is a child or children of the marriage and the Registrar, while not

	being satisfied as to the arrangements for the care of the children, nevertheless has granted the divorce, or • there is no child of the marriage.

The Courts (Federal Circuit Court and the Family Court) have, since February 2010, produced divorce orders in an electronic format including an electronic seal and signature. These orders include a certification pursuant to section 56 of the *Family Law Act 1975* of the fact that the divorce order took effect on the date indicated. An authorised celebrant is entitled to rely on these orders as evidence of a person's Australian divorce.

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

EVIDENCE OF DIVORCES GRANTED OVERSEAS

If a person was divorced overseas they must provide the authorised celebrant with divorce documentation from the country where the divorce was granted.

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

An authorised celebrant with concerns about overseas divorce documents should advise the party/parties to contact the relevant embassy or high commission to seek written confirmation that the documents provided are appropriate evidence of divorce in that country (noting that in some cases a person (most notably a refugee) may not be comfortable approaching the embassy or high commission of their country of origin to seek this confirmation). This confirmation should be provided to the authorised celebrant. The Department of Foreign Affairs and Trade website has contact details for foreign embassies and high commissions in Australia (see http://protocol.dfat.gov.au/Mission/list.rails).

If the authorised celebrant is still uncertain as to whether the evidence of divorce is sufficient, or the person does not get confirmation from their country of origin's embassy or high commission, they should recommend to the party that they seek legal advice in relation to the power of the Family Court, under section 104 of the *Family Law Act 1975* (Cth), to make declarations as to the validity of an overseas annulment or a divorce. In some circumstances such a declaration that an overseas divorce is valid may be the only satisfactory evidence that a prior marriage has been dissolved.

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

It is important for authorised celebrants to be aware that it is the responsibility of the party to the proposed marriage to satisfy the celebrant that they are free to marry. An authorised celebrant should ask the couple to provide legal advice supporting the validity of any overseas divorce if the

celebrant is uncertain that the marriage has been dissolved. Celebrants should not solemnise a marriage if they are uncertain whether a prior marriage has been dissolved.

Statutory declarations are not acceptable evidence of divorce from a person's former spouse.

Authorised celebrants should seek guidance from the department where a party to a proposed marriage was married in another country before he or she came to Australia and is unable to supply evidence of the end of a previous marriage. An example is a person who came to Australia as a refugee and may be unable to obtain evidence of the end of the 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.

Under the *Family Law Act 1975* (Cth), a party to an overseas marriage can apply to the Family Court for a divorce in certain circumstances (eg. after a period of residency). It is recommended that the party seek legal advice about this potential option.

4.5.3 ANNULMENT

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

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

4.5.4 WHEN SHOULD AN AUTHORISED CELEBRANT ASK MORE QUESTIONS OF A PARTY WHO HAS BEEN PREVIOUSLY MARRIED?

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

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

4.6 ESTABLISHING THE IDENTITIES OF THE PARTIES TO THE MARRIAGE

An authorised celebrant shall not solemnise a marriage unless satisfied that the parties are the parties referred to in the NOIM.[36] This requirement is separate from, and additional to, the requirement that each party to a marriage must give their authorised celebrant evidence of their date and place of birth before a marriage is solemnised.

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

4.7 ESTABLISHING WHETHER THE PARTIES TO THE MARRIAGE ARE A MAN AND A WOMAN

Under Australian law, a marriage may only be solemnised between a man and woman.[37] In most cases, this will be straightforward. However, where a party to a marriage is transgender, intersex or of an indeterminate or unspecified gender the question may be more difficult to determine.

It is important to approach these issues with sensitivity and understanding. The department recognises that some situations can be complex. If celebrants are unsure about how to proceed they should contact the department for further guidance, ensuring that the privacy of the parties is respected at all times.

TRANS OR TRANSGENDER PERSONS

A person who is trans or transgender is someone who identifies as a gender that is different to the sex assigned to them at birth. People who are transgender are born male or female, but emotionally or psychologically identify as a different gender and are living in their preferred gender.

People who are transgender may undergo a variety of treatments as part of their transition including counselling or other psychological support, hormone therapy, sex reassignment surgery or other physical procedures.

[36] Subsection 42(8) of the Marriage Act

[37] See definition of 'marriage' in subsection 5(1) of the Marriage Act

INTERSEX PERSONS

A person who is intersex may have the biological attributes of both sexes or lack some of the biological attributes considered necessary to be defined as one sex or the other. Being intersex is always congenital, people are born intersex. Intersex variations can originate from genetic, chromosomal or hormonal variations. People who are intersex will most often identify as being either male or female.

INDETERMINATE/UNSPECIFIED SEX AND/OR GENDER

A small number of people may identify as neither male nor female. This includes people who were born male or female and people who were born intersex. The Australian Government recognises that individuals may identify and be recognised within the community as an indeterminate sex and/or gender. For this reason people may, with appropriate evidence, hold Australian Government documents (e.g. a passport) in the sex or gender X (Intersex/indeterminate/unspecified).

An authorised celebrant asked to solemnise the marriage of a person whose gender identity is X should contact the department for further guidance.

ESTABLISHING WHETHER A PARTY IS A MAN OR A WOMAN

When solemnising a marriage, an authorised celebrant needs to be confident that the couple seeking to marry are legally a man and a woman. Whether a party to a marriage is either a man or a woman is to be determined at the date of the marriage, in accordance with the ordinary meaning of 'man' or 'woman' and having regard to all the circumstances.[38] It is an offence under section 100 of the Marriage Act to solemnise, or purport to solemnise, a marriage where a celebrant has reason to believe there is a legal impediment to the marriage or that the marriage would be void. If an authorised celebrant is not satisfied that the marriage would be legally valid he or she should not solemnise the marriage.

The department recommends that celebrants explain to couples in this situation that, as their celebrant, they need to be certain that the couple are legally considered to be a man and a woman before they can solemnise the marriage, otherwise the celebrant may be committing an offence. The couple may be able to provide their celebrant with a copy of legal or medical advice that would satisfy him or her as to the legal gender of the transgender or intersex party.

A person's sex at the time of their birth is not necessarily determinative of their sex at a given time in the future. A person who has undergone gender re-assignment surgery can marry as their reassigned gender, provided that they are marrying someone of the opposite sex.

[38] *The Attorney-General for the Commonwealth & "Kevin and Jennifer" & Human Rights and Equal Opportunity Commission* [2003] FamCA 94

The *Australian Government Guidelines on the Recognition of Sex and Gender* set out the evidence accepted by Australian Government departments to establish a person's gender. Celebrants should refer to these Guidelines to understand what evidence may be used to satisfy them as to the legal gender of the party. These include:

a) a statement from a Registered Medical Practitioner or a Registered Psychologist[39]

b) a valid Australian Government travel document, such as a valid passport, which specifies their preferred gender, or

c) an amended State or Territory birth certificate, which specifies their preferred gender. A State or Territory Gender Recognition Certificate or recognised details certificate showing a State or Territory Registrar of Birth Deaths and Marriages has accepted a change in sex may also be provided as evidence.

Celebrants should understand that these guidelines do not alter the *Marriage Act 1961* and do not provide definitive legal requirements to establish whether a party is a man or a woman, however they may provide a useful starting point to assist celebrants with this determination.

If a party to a proposed marriage has a birth certificate that reflects a different gender to their presented gender or their gender is inconsistent between documents, celebrants should contact the department for guidance or seek legal advice.

If a couple has concerns about the legal validity of their marriage they should always seek independent legal advice on the matter. The department cannot provide legal advice and parties should consult a qualified legal practitioner.

4.8 DECLARATION OF NO LEGAL IMPEDIMENT (FORMERLY CALLED THE FORM 14)

Each party to an intended marriage must make a declaration before the authorised celebrant as to their conjugal status and belief that there is no legal impediment to the marriage.[40]

The declaration must be in accordance with the approved form, which is available to all authorised celebrants on the Attorney-General's Department website, or in hardcopy from CanPrint Communications. Two forms of declaration for this purpose are printed on the back of the registration certificate of marriage (official certificate of marriage – formerly the Form 16).

The declarations must be made before the marriage is solemnised. This should occur as close as possible to the ceremony, even if this requires the parties to make a special attendance on the

[39] For the purposes of this statement, **Registered Medical Practitioner** means a medical practitioner registered with the Medical Board of Australia (or equivalent overseas authority). Registered medical practitioners may specialise in various medical fields including, but not limited to, surgery, urology, gynaecology, endocrinology, psychiatry and general practice. **Registered Psychologists** means a Psychologist who holds General registration status with the Psychology Board of Australia (or equivalent overseas authority)

[40] Paragraph 42(1)(c) of the Marriage Act

authorised celebrant. The Marriage Act does not permit the declarations to be made immediately after the ceremony.

It is an offence for an authorised celebrant to solemnise a marriage unless both parties have made their declarations of no legal impediment.[41] It is also an offence for a party to knowingly give a false declaration.[42]

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

Paragraph 3 of the declaration deals with establishing that the party is of marriageable age and the party should be careful to cross out whichever statement is inapplicable. The authorised celebrant should initial the deletion in the margin. Where a party is a minor, his or her date of birth must be given. The authorised celebrant should at this stage, if this has not already been done, check that a section 12 order has been obtained from a court and check that the consent or consents required under sections 13 or 14 of the Marriage Act are adequate and in order (see Part 8.6 of these Guidelines for further information on marriage involving a minor).

If an authorised celebrant has reason to believe that there is a legal impediment to a marriage, or that a marriage would be void, the celebrant should not solemnise or purport to solemnise the marriage. To do so may be an offence.[43] This is the case even if the marrying couple has signed their declaration but the celebrant has reason to believe that declaration may be false.

4.9 MARRIAGE EDUCATION AND COUNSELLING

As soon as practicable after receiving the NOIM, an authorised celebrant must give the parties a document outlining the obligations and consequences of marriage (subsection 42(5A) of the Marriage Act). This document has been approved by the Attorney-General in the form of a brochure entitled *Happily Ever Before and After*, and indicates the availability of marriage education and counselling and other important legal matters concerning marriage.

A notation of the giving of the document should be made by the authorised celebrant in the appropriate space on the reverse side of the NOIM. If the space is left blank it will indicate that the authorised celebrant has not fulfilled their obligations.

The Code of Practice requires Commonwealth-registered marriage celebrants to maintain up-to-date knowledge about appropriate family relationship services, and information and services available to

[41] Subsection 99(1) of the Marriage Act. The penalty for this offence is $500 or imprisonment for 6 months.

[42] Section 137.1 *Criminal Code Act 1995* (Cth)

[43] Section 100 of the Marriage Act

enhance and sustain couples throughout their relationship. Marriage celebrants need to provide this information to the marrying couple at this point, and if necessary, provide referrals to relevant services to couples who seek them (see Part 3.1.5 of these Guidelines).

4.10 OBTAINING A TRANSLATOR OR INTERPRETER

Obtaining a translator or interpreter will arise in a number of contexts in preparing to solemnise a marriage. The National Accreditation Authority for Translators and Interpreters Ltd (NAATI) is the national standards and accreditation body for translators and interpreters in Australia. It is the only agency to issue accreditations for practitioners who wish to work in this profession in Australia. The NAATI website provides a searchable online directory of translators and interpreters. If the services of a translator or interpreter are required, the department recommends that they are found through the NAATI website and that the translator or interpreter is accredited at Level 3 or higher.

Although the *Marriage Regulations 1963* do not require translations to be provided by an accredited translator, it is important to understand that not all bilingual or multilingual celebrants will be able to authoritatively translate documents.

Marriage documents form part of a chain of documents a person will use over the course of their life to establish their identity and obtain identity documents. Obtaining an accredited translation will provide an audit trail of amendments to a person's record, preserving a party's name in full (especially where documents contain non-alphabetic characters). Additionally, subsection 50(4) of the *Marriage Act 1961* requires the authorised celebrant to forward the official certificate of marriage (formerly the Form 16) and the NOIM (together with supporting documents) to the BDM in the State or Territory in which the marriage was solemnised. These supporting documents may include official translations of documents, depending on the BDM in the State or Territory in which the marriage was solemnised.

The department recommends that in cases where a party to a marriage produces a document in a language other than English, the authorised celebrant (even if they can read and write in that language) recommends the couple seek an official NAATI certified translation of the document.

4.11 ACCURACY OF FORMS

Before the marriage is solemnised, authorised celebrants should check all of the marriage documents for accuracy, including accuracy of spelling and transcription. It is also advisable to have the couple check the draft documents for accuracy prior to the marriage. Authorised celebrants will need to take a great deal of care in performing this task, and it is recommended that the documents are checked and re-checked carefully at this point. Marrying couples will need to pay a fee to BDMs if errors need to be corrected later.

Although there is no legislative requirement to do so, authorised celebrants may wish to complete the marriage documents in block letters to ensure legibility.

4.12 CASE STUDIES IN THE CORRECT USE OF DOCUMENTS

CASE STUDY ONE

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

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

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

- Proof of date and place of birth (subsection 42(2)) – the authorised celebrant must use the BDM issued birth certificate.
- Proof of identity (subsection 42(8)) – the authorised celebrant needs to use the full chain of documents listed above. The BDM issued birth certificate, the BDM issued marriage certificate and the Court issued divorce certificate taken together establish the clear link in the name change from Jane Smith to Jane Brown. This chain of documents allows the authorised celebrant to record the name Jane Brown instead of Jane Smith (as recorded on the birth certificate) on the NOIM. The driver's licence, which has a photograph of Jane, establishes that Jane Brown is the same person as the person referred to in the documents. Together all these documents establish her identity.
- Evidence of the end of the previous marriage (subsection 42(10)) – the Court issued divorce certificate establishes conclusively the end of the previous marriage and so fulfils the requirement under subsection 42(10).

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

CASE STUDY TWO

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

- a driver's licence in the name 'John Antony' and containing a signature in that name. The photograph shows the same man as the one who provided the licence to the authorised celebrant
- a Medicare card in the name 'John Antony'
- a credit card in the name 'John Antony' and containing a signature in that name
- a document that the prospective groom tells the authorised celebrant is a birth certificate but which is not in English. When the authorised 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, and
- a Certificate of Australian Citizenship in the name 'Dimitry Alexandrovich Antonov'.

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

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

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

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

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

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

- continue to use the name 'Dimitry Alexandrovich Antonov' on all the marriage documents, or

- apply to the BDM for a change of name to ‘John Antony’. If he were to do that and bring the BDM issued change of name certificate to the authorised celebrant, the NOIM could be corrected and the name on the change of name certificate - ‘John Antony’ - could be used on all the marriage documents.

5 THE MARRIAGE CEREMONY

5.1 TIME AND PLACE

A marriage occurring in Australia may be solemnised on any day, at any time, and at any place.[44] The marriage must be registered in the State or Territory where the marriage was solemnised. To meet this requirement, and possible requirements of other countries for recognition of the marriage, marriages in aircraft and ships at sea should be avoided.

5.2 MARRIAGES TO BE SOLEMNISED BY AN AUTHORISED CELEBRANT

Section 41 of the *Marriage Act 1961* (Cth) provides that a marriage shall be solemnised 'by or in the presence of' an authorised celebrant who is authorised to solemnise marriages at the place where the marriage takes place'. Authorised celebrants, other than State and Territory Officers, may solemnise marriages anywhere in Australia.

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

Participation in the conduct of a marriage ceremony by someone other than an authorised celebrant could cover many types of involvement. It may be someone doing a special reading, a prayer or a musical interlude or the participation of a visiting minister of religion. This sort of involvement is unlikely to raise any legal issues.

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

- There is absolutely no obligation on the part of any authorised celebrant to participate in any arrangement for the conduct of a particular marriage with a person who is not authorised to solemnise marriages.
- An authorised celebrant who consents to any such arrangement and to be present in the capacity of the authorised celebrant is legally deemed to have solemnised the marriage and will be the person legally responsible for all aspects of it.[45] The legal responsibilities of the authorised celebrant in such ceremonies are the same as they would be for any other marriage ceremony.

[44] Section 43 of the Marriage Act

[45] Subsection 5(2) of the Marriage Act

- The authorised celebrant's obligations remain the same when others take part in the ceremony. The authorised celebrant is legally responsible for the validity of the marriage.
- The authorised celebrant must keep the record of the use of the Form 15 (couple's) certificate and also the Marriage Register or second marriage certificate for six years (see Part 6.4 of these Guidelines).
- Authorised celebrants who are Commonwealth-registered marriage celebrants must comply with the Code of Practice (see Part 3.1.5 of these Guidelines) and will be the person against whom a couple may lodge a complaint about the solemnisation of the marriage.

5.3 INVOLVEMENT OF OTHERS IN MARRIAGES SOLEMNISED BY MINISTERS OF RELIGION

When a marriage is being solemnised by a minister of religion who is an authorised celebrant, and the couple wants someone other than the minister of religion to also be involved in the ceremony, the minister of religion should ensure that they have the following minimum role:[46]

- consent to be present as the supervising authorised celebrant and to be at the ceremony in that capacity
- be part of the ceremonial group or in close proximity to it
- make their presence as the authorised celebrant known to the assembled parties, witnesses and guests
- be available to intervene (and exercise the responsibility to intervene) if events demonstrate the need for it during the ceremony
- be responsible for ensuring that the marriage ceremony is carried out according to law, including that the marriage is solemnised according to a form and ceremony recognised as sufficient for that purpose by the religious body or organisation of which the authorised celebrant is a minister (subsection 45(1) of the Marriage Act – see Part 5.7 of these Guidelines)
- if they are a Commonwealth-registered marriage celebrant say the words required by subsection 46(1) of the Marriage Act in the presence of the parties, the formal witnesses and the guests before the marriage is solemnised (see Part 5.6 of these Guidelines)
- receive and sign the papers required by the Marriage Act, including receiving the NOIM and sighting the supporting documents each party is required to produce (see Parts 4.1 and 4.2 of these Guidelines) and signing the marriage certificates (see Part 6 of these Guidelines), and

[46] 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.

- register the marriage with the appropriate BDM as required under the Marriage Act (see Part 7 of these Guidelines).

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

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

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

5.5 THE CONTENT OF THE MARRIAGE CEREMONY – SECTIONS 45 AND 46 OF THE *MARRIAGE ACT 1961*

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

Together, sections 45 and 46 of the Marriage Act are the two central obligations of authorised celebrants in respect of the content of the marriage ceremony.

It should be noted that different obligations relating to the content of the marriage ceremony apply to Commonwealth-registered marriage celebrants, State and Territory Officers and ministers of religion for recognised denominations.

5.6 EXPLAINING THE NATURE OF THE MARRIAGE RELATIONSHIP – 'MONITUM' – SUBSECTION 46(1) OF THE MARRIAGE ACT

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

46 Certain authorised celebrants to explain nature of marriage relationship

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

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

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

"Marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.";

or words to that effect.

WHICH CELEBRANTS ARE REQUIRED TO SAY THE WORDS IN SUBSECTION 46(1)?

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

Only authorised celebrants who are ministers of religion for a recognised denomination are not required to say these words. Such ministers are not Commonwealth-registered marriage celebrants.

WHY IS USING THE WORDING IN SUBSECTION 46(1) SO IMPORTANT?

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

has complied with their obligations under the Marriage Act, and will ensure that parties are aware of the legal implications of marriage.

CAN SOMEONE ELSE PARTICIPATING IN THE CEREMONY SAY THE WORDS IN SUBSECTION 46(1)?

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

WHEN AND HOW SHOULD THE WORDS BE USED?

The words in subsection 46(1) must be used as part of the marriage ceremony, before the couple exchanges their vows under section 45. The celebrant will need to say these words to the parties to the marriage, in the presence of the witnesses (see Part 5.7 of these Guidelines).

CAN THE WORDING IN SUBSECTION 46(1) BE CHANGED OR VARIED IN ANY WAY?

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

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

First Sentence

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

Variations that keep the legal meaning are:

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

Second Sentence

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

Variations that keep the legal meaning are:

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

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

Third sentence

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

Given that the third sentence is the legal definition of marriage in Australia the words cannot be changed. Reversing the order of the words 'man' and 'woman' would be acceptable, but that is all.

Commonwealth-registered marriage celebrants and State and Territory Officers must not make the following changes to the words in the third sentence because 'marriage' is specifically defined by law:

- do not replace 'man' and 'woman' with 'people' or 'persons'. This could signify the marriage of two people of the same sex which is specifically excluded by the definition.
- do not change the first part of the sentence to read: "Marriage as most of us understand it is...', and
- do not change 'for life' to 'with the intention/hope/desire that it will last for life.'

HOW SHOULD A COMMONWEALTH-REGISTERED MARRIAGE CELEBRANT OR STATE OR TERRITORY OFFICER RESPOND IF COUPLES EXPRESS THEIR DISAGREEMENT WITH THE DEFINITION OF MARRIAGE AND REQUEST THAT IT BE CHANGED IN THE CEREMONY?

The definition of marriage in the Marriage Act is the law in Australia. While everyone is entitled to their individual view about such matters, Commonwealth-registered marriage celebrants and State and Territory Officers are authorised to solemnise marriages in accordance with the law. Such celebrants will need to explain carefully to the couple that, despite their view, they are not authorised to change the definition and have a legal obligation to state it during the ceremony. This means the authorised celebrant is not able to agree to such a request.

CAN THE SENTENCES OF SUBSECTION 46(1) BE SEPARATED?

It is possible to separate the first sentence from the second and third sentences and say them at a different part of the ceremony. However, the safest course of action is to keep them together.

All three sentences are required to be said, before witnesses, in every marriage ceremony solemnised by a Commonwealth-registered marriage celebrant or State or Territory Officer. All three sentences are required to be said before the vows are exchanged.

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

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

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

SUBSECTION 45(1) – MARRIAGES SOLEMNISED BY MINISTERS OF RELIGION – RELIGIOUS CEREMONIES

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

> **Section 45 Form of ceremony**
>
> (1) Where a marriage is solemnised by or in the presence of an authorised celebrant, being a minister of religion, it may be solemnised according to any form and ceremony recognised as sufficient for the purpose by the religious body or organisation of which he or she is a minister.

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

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

Ministers of religion for a recognised denomination solemnise marriages using the ceremony or rites approved by their denomination. For further information refer to Part 3.1.1 of these Guidelines.

WHAT IF THE COUPLE WOULD LIKE TO CHANGE THE FORM OF A RELIGIOUS CEREMONY?

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

SUBSECTION 45(2) – NON-RELIGIOUS (OR CIVIL) CEREMONIES

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

Section 45 Form of ceremony

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

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

or words to that effect.

WHY IS USING THE MINIMUM VOW WORDING SO IMPORTANT?

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

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

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

WHAT ARE THE WORDS IN SUBSECTION 45(2)?

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

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

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

WHO MUST SAY THE VOWS?

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

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

CAN THE COUPLE PERSONALISE THE VOWS?

Couples may wish to personalise the minimum vows. However, it is important to be aware that legally there is limited capacity to change the vows. The safest course of action is to use the wording in the Marriage Act.

The following wording substitutions and changes are acceptable given the inclusion of 'words to that effect' in subsection 45(2):

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

The following changes to the minimum words are not acceptable:

- 'family and friends' cannot replace 'persons here present' or 'everyone here', and
- 'partner' cannot replace 'husband' or 'wife' or 'spouse'.

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.'

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

WHAT NAMES SHOULD BE USED IN THE VOWS (MEANING OF THE TERMS 'A.B' AND 'C.D')?

Commonwealth-registered marriage celebrants (other than ministers of religion), and State and Territory Officers, should use the parties' full names at some stage during the ceremony, preferably early in the ceremony, for the purpose of legal identification of the parties. The full name of the parties will be the names recorded in the NOIM.[47]

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

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

THE SAYING OF VOWS IN SITUATIONS WHERE A PERSON IS UNABLE TO SPEAK

Subsection 45(2) of the Marriage Act requires each party to say the vows to each other. If the party is able to say the vows then he or she should do so. However if he or she is not able to do so for exceptional medical reasons (for example, the party has had a stroke or has a tracheotomy, leaving him or her 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 authorised celebrant, the two witnesses and those present. The medical circumstances must be exceptional and long-lasting in nature.

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

[47] For information about recording the names of the parties on the NOIM please see Part 4.3.5 of these Guidelines.

WHAT ARE THE CONSEQUENCES IF THE REQUIREMENTS OF SECTION 45 ARE NOT SATISFIED?

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

5.8 WITNESSES

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

The object of requiring the attendance of witnesses is that their evidence will be available to establish the identity of the parties or to testify as to the circumstances in which the ceremony was performed. It is therefore desirable that the witnesses know the parties to the marriage. Arranging for the attendance of witnesses at the marriage ceremony is the responsibility of the parties to the marriage. The authorised celebrant is not responsible for providing witnesses and should be cautious if such a request is received from the parties.

5.9 INTERPRETERS

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

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

Subsection 112(2) of the Marriage Act states that the authorised celebrant must not solemnise a marriage at which the services of an interpreter are to be used unless the authorised celebrant has

received a statutory declaration by the interpreter stating that he or she understands, and is able to converse in, the language/s required.

Immediately after the ceremony the interpreter must give the authorised celebrant a certificate of the faithful performance of his or her services as interpreter. The certificate must be in the approved form.[48] The approved form for the certificate of faithful performance by the interpreter (formerly called the Form 24) is available on the department's website.

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

[48] See paragraph 119(3)(i) of the Marriage Act

6 THE MARRIAGE CERTIFICATES

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

HOW MANY MARRIAGE CERTIFICATES MUST AN AUTHORISED CELEBRANT PREPARE AND SIGN?

Section 50 of the *Marriage Act 1961* (Cth) requires the authorised celebrant to prepare and sign the following **three** marriage certificates for each marriage he or she solemnises:

- the official certificate of marriage (formerly the Form 16), which is sent to the relevant BDM for registration purposes (discussed further in Part 6.1 of these Guidelines)
- the second official certificate of marriage kept by the authorised celebrant or the church (discussed further in Part 6.2 of these Guidelines), and
- the Form 15 certificate of marriage, which is given to the parties (discussed further in Part 6.4 of these Guidelines).

Each of these certificates is regarded as evidence of the marriage so an authorised celebrant must take the utmost care in preparing and signing them.[49]

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

If the ceremony does not take place, the certificate for the parties (Form 15) should be destroyed and the details recorded on the record keeping sheet. The registration copy (official certificate of marriage - formerly the Form 16) should also be destroyed and the butt of the registration copy should be marked 'cancelled'. The entry in the register (second official certificate) should also be marked 'cancelled'. Further information on the requirements for the three different certificates is set out below.

CAN AN AUTHORISED CELEBRANT PROVIDE A COUPLE WITH A SOUVENIR CERTIFICATE AS WELL AS THE OFFICIAL CERTIFICATE?

No other certificates that include the words 'marriage certificate' or contain the Commonwealth Coat of Arms can be issued. A replacement certificate cannot be issued in case of damage or loss. Other souvenirs that do not purport to be a marriage certificate are acceptable, such

[49] Subsection 45(3) of the Marriage Act states that a certificate of marriage prepared and signed in accordance with section 50 is conclusive evidence that the marriage was solemnised in accordance with that section.

as a framed copy of the vows, or a copy of the ceremony. Please note that some BDMs issue commemorative certificates to couples, however these are not official certificates of marriage.

6.1 THE OFFICIAL CERTIFICATE OF MARRIAGE (FORMERLY THE FORM 16), SENT TO THE BDM FOR REGISTRATION PURPOSES

The official certificate of marriage (formerly the Form 16) is the official certificate sent to the BDM for registration purposes. It should be detached from the butt (if the certificate book is used) and written or printed as legibly as possible.

The official certificate has the declarations of the parties on the back. For further information on the declarations of no legal impediment (formerly called the Form 14), please see Part 4.5 of these Guidelines.

The authorised celebrant must forward the official certificate to the BDM in the State or Territory where the marriage was solemnised within 14 days of the ceremony.[50] With the certificate, the authorised celebrant should send the NOIM, any order under section 12 of the Marriage Act, and any statutory declarations, consents and dispensations with consents relating to the marriage that are in his or her possession.[51]

The particulars on the official certificate must correspond exactly with the particulars on the NOIM. If there is an obvious error in the NOIM, the relevant particular should not be included in the certificate until the NOIM has been corrected. For further information on correcting errors on the NOIM, please see Part 4.3.10 of these Guidelines.

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

6.2 THE SECOND OFFICIAL CERTIFICATE KEPT BY THE AUTHORISED CELEBRANT OR THE CHURCH

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

The particulars on the second marriage certificate must be exactly the same as the particulars on the official registration certificate (Official certificate of marriage - formerly the Form 16). The BDM is entitled to request the second marriage certificate. Regulation 43 of the *Marriage Regulations 1963 (Cth)* requires that an authorised celebrant or nominating authority must be able to locate and

[50] Section 50 of the Marriage Act

[51] Refer to Part 8.7 of these Guidelines for further information regarding marriage where one party is not of marriageable age.

provide a certified copy of a second official marriage certificate of a marriage conducted by them upon request of a BDM. It is an offence if an authorised celebrant cannot or does not do this and fines apply.[52]

6.3 SECOND OFFICIAL CERTIFICATE – THE REQUIREMENTS FOR MINISTERS OF RELIGION

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

If a minister of religion does not have a church register he or she should purchase a marriage register from CanPrint Communications. Regulation 42 of the Marriage Regulations requires a minister of religion of a recognised denomination to incorporate the second official certificate of marriage within the records of the parish or district of the recognised denomination for which he or she was authorised and in which the marriage took place.

Where the authorised celebrant is a minister of religion of a recognised denomination, the celebrant must handle their copy of the marriage certificate in the manner stated by the law of the State or Territory in which the marriage is solemnised. If there are no such laws, the celebrant must deal with the certificate in accordance with the directions of the officer responsible for the registration of marriages in his or her State or Territory. Second official certificates of marriage for recognised denominations must be kept indefinitely.

SECOND OFFICIAL CERTIFICATE – WHAT ARE THE REQUIREMENTS FOR AUTHORISED CELEBRANTS WHO ARE NOT MINISTERS OF RELIGION?

Authorised celebrants solemnising civil marriage ceremonies, or ministers of religion without a church-issued register, are required to purchase and maintain a marriage register which contains the second celebrant copy of the official certificate of marriage (formerly the Form 16).

Some authorised celebrants use loose copies of the official marriage certificate as the second official certificate. This practice is not recommended as it is easy for certificates to be misplaced. If a marriage register is not used authorised celebrants must ensure they keep the certificates bound in some way. It is the authorised celebrant's responsibility to ensure these records are not mislaid or damaged.

SECOND OFFICIAL CERTIFICATE – WHAT ARE THE REQUIREMENTS FOR AUTHORISED CELEBRANTS WHO ARE STATE AND TERRITORY OFFICERS?

Certain authorised celebrants who are members of the staff of registering authorities in the States and Territories have been exempted from preparing second official marriage certificates.[53]

[52] Subregulation 43(2) of the Marriage Regulations

6.4 THE FORM 15 CERTIFICATE OF MARRIAGE GIVEN TO THE PARTIES

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

The Form 15 certificate of marriage must be purchased from CanPrint Communications.

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

WHAT IS AN AUTHORISED CELEBRANT REQUIRED TO DO WITH THE FORM 15 MARRIAGE CERTIFICATE?

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

6.5 THE RECORDS AN AUTHORISED CELEBRANT MUST KEEP FOR THE FORM 15 MARRIAGE CERTIFICATE (RECORD OF USE FORM)

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

There is a record keeping form supplied with each set of Form 15 certificates of marriage. It can also be downloaded from the Attorney-General's Department website.

Authorised celebrants must record the following details on the record keeping form:

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

[53] Regulation 42A of the Marriage Regulations

WHAT DATE SHOULD AN AUTHORISED CELEBRANT RECORD ON THE RECORD KEEPING FORM FOR THE FORM 15 CERTIFICATE OF MARRIAGE?

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

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

WHAT SHOULD AN AUTHORISED CELEBRANT DO IF FORM 15 CERTIFICATES OF MARRIAGE ARE LOST OR STOLEN?

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

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

WHAT IS THE PURPOSE OF AUTHORISED CELEBRANTS RECORDING WHAT HAPPENS TO EACH FORM 15 CERTIFICATE OF MARRIAGE THEY ARE ISSUED?

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

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

The authorised celebrant keeps a record of what happens to each certificate and who it is given to.

This process means the authenticity of each certificate can be verified.

This department has sought to minimise the additional work and obligation placed on authorised celebrants as much as possible by not requiring that they send or supply the record sheets to anyone (except in the circumstances that follow).

However, authorised celebrants must keep the record sheets with their other marriage documents in a secure place for at least six years.

Paragraph 5(c) of the Code of Practice requires Commonwealth-registered marriage celebrants to maintain facilities for the secure storage of records.

When must authorised celebrants provide their record keeping forms for Form 15 certificates of marriage?

Authorised celebrants may be required to provide a copy of their record in relation to a particular certificate or certificates if requested to do so by the Attorney-General's Department or someone authorised by the Attorney-General's Department.[54]

If an authorised celebrant is required to provide a copy of their record or records they will receive a written request to do so. The request will state the certificate number(s) for which records are required, who the record must be provided to and the date it must be provided. It is an offence under the Marriage Regulations if a celebrant does not, or cannot, provide the record when requested in writing to do so.[55]

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

6.6 NAMES ON MARRIAGE CERTIFICATES

The names on the marriage certificates should correspond exactly with the names on the NOIM. Authorised celebrants should ensure that they have seen the original documents from which those names were derived, rather than relying only on the NOIM. This is because simply copying all information from the NOIM may result in the repetition of a previous error. This is particularly important if a NOIM is transferred from one authorised celebrant to another before the marriage ceremony (see Part 12.4 of these Guidelines).

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

It is important for authorised celebrants to make each of the parties aware that any discrepancy between their name as it appears on the birth certificate, or on a change of name certificate, and

[54] Regulation 40 of the Marriage Regulations

[55] Regulation 40(4)(b) of the Marriage Regulations

their name as it appears on the marriage documents, may mean they may encounter problems if they wish to obtain an Australian passport issued in their married name in the future.

For further information about recording names on the marriage documents, see Part 4.3.7 of these Guidelines.

6.7 RECORDING THE MARRIAGE RITES ON THE MARRIAGE CERTIFICATES

When recording the rites used to solemnise a marriage on the Form 15 and 16 marriage certificates, Commonwealth-registered marriage celebrants who solemnise civil marriages, and State and Territory Officers, should write 'according to the *Marriage Act 1961*'.

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

Authorised celebrants should record the same marriage rites for each marriage on both the NOIM and the Form 15 and official marriage certificates (See Part 4.3.4).

6.8 SIGNING THE MARRIAGE CERTIFICATES

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

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

If either of the parties or the witnesses is unable to write, a mark may be made by the person as follows: [Name – eg. John X Brown]

[His mark]

[Name of witness to the mark]

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

The authorised celebrant should write his or her registration number on the official certificate of marriage (formerly the Form 16) and the marriage certificate register (the marriage celebrant's copy of the marriage certificate, or second marriage certificate).

CAN OTHER PEOPLE (IN ADDITION TO THE TWO WITNESSES) ADD THEIR SIGNATURE TO THE PARTIES' (FORM 15) CERTIFICATE OF MARRIAGE?

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

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

Adding other names to an official certificate serves to confuse this important matter.

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

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

CAN THE CHILDREN OF ONE OR BOTH OF THE PARTIES ADD THEIR NAMES TO THE PARTIES' CERTIFICATE OF MARRIAGE?

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

6.9 WHAT HAPPENS TO THE THREE MARRIAGE CERTIFICATES AFTER THE MARRIAGE CEREMONY?

To summarise information provided above, the following happens to the three marriage certificates after the marriage ceremony:

- The official certificate of marriage (the registration copy – formerly the Form 16) with the declaration of no legal impediment (formerly the Form 14) must be forwarded by the authorised celebrant to the BDM in the State or Territory where the marriage was solemnized. This must occur within 14 days of the marriage, together with the other required documents.

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

- The second official certificate must be kept by a Commonwealth-registered marriage celebrant for at least six years and by a minister of religion for a recognised denomination

indefinitely. A Commonwealth-registered marriage celebrant may destroy the second official marriage certificate after six years although he or she is not obliged to do so. A minister of religion is not able to do this. Some BDMs will accept the celebrant registers so Commonwealth-registered marriage celebrants should check with the BDM before destroying the records.

- The Form 15 certificate of marriage (the parties' certificate) should be handed to one of the parties, the details having previously been recorded on the record keeping sheet.
- Second official marriage certificates (including church registers) and record keeping sheets are important legal documents and need to be kept in secure storage.

6.10 CORRECTION OF ERRORS IN THE MARRIAGE CERTIFICATES

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

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

Where the errors are not discovered until after the ceremony, corrections may be made whilst the parties and witnesses are still present. If a correction is required to the Form 15 certificate for the parties at this stage, the correction should be made on the signed certificate - a new certificate should not be issued. After this, however, no corrections should be made by the celebrant, but any error should be indicated in pencil on both official copies, and, if necessary, a covering note of explanation sent to relevant State or Territory BDM with the registration copy.

Where the registration copy has already been sent to the BDM, the authorised celebrant should bring any errors to the notice of that authority, but should not make corrections to his or her copy.

Under no circumstances should any words be erased when correcting errors. When making a correction, the words to be omitted should be lightly ruled through and, if necessary, others inserted. A correction should be initialed in the margin opposite the correction.

6.11 LOST CERTIFICATES

Where the registration certificate of marriage is lost or destroyed, the registering authority may require the authorised celebrant to prepare a certified copy of the second official certificate and

send it to the registering authority.[56] Failure or inability to comply with such a request from the registering authority is an offence.[57]

[56] Subregulation 43(1) of the Marriage Regulations

[57] Subregulation 43(2) of the Marriage Regulations

7 REGISTERING THE MARRIAGE

Subsection 50(4) of *Marriage Act 1961* (Cth) requires the authorised celebrant to forward the official certificate of marriage (formerly the Form 16) and the NOIM (together with supporting documents) to the BDM in the State or Territory in which the marriage was solemnised within 14 days of the marriage being solemnised. Some states and territories allow these documents to be lodged online. Authorised celebrants should make enquiries with the relevant BDM about the availability of this option. Contact details for the BDMs can be found in Part 13 of these Guidelines.

Other necessary supporting documents that should also be sent to the relevant BDMs with the official certificate of marriage (formerly the Form 16) will depend on the circumstances of the marriage. Such documents may include any official translations of documents, copies of parental consents or court orders for an underage marriage, statutory declarations or the certificate of faithful performance by the interpreter (formerly called the Form 24). Note that BDMs have different practices as to what supporting documents are required. For example, WA BDM will usually receive any parental consents or court orders for an underage marriage, Certificates of Interpreter or statutory declarations but not other documents.

Marriages are then registered in the State or Territory in which they are solemnised, in accordance with the law of that State or Territory. Copies of, and extracts from, entries in the register of marriages can be obtained from the registering authority in the State or Territory in which the marriage is registered. Note that WA BDM does not issue extracts from the register of marriages.

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

Serious consequences may arise for the authorised celebrant and the couple if the authorised celebrant does not forward the documents to the BDM to register the marriage within the required time. Disciplinary measures, in the form of a caution, being required to undertake professional development, suspension or deregistration, could be taken against a Commonwealth-registered marriage celebrant who does not comply with their obligation to register a marriage. A minister of religion of a recognised denomination could be removed from the register of ministers of religion for failing to comply with this obligation.[58]

[58] Section 33 of the Marriage Act

8 ESTABLISHING THAT THE PROPOSED MARRIAGE WILL BE VALID

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

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

- official identity documentation – a married person can obtain official identity documentation, such as an Australian passport, in their married name (subject to the Australian Passport Office rules)
- financial arrangements – provisions in the *Family Law Act 1975* (Cth) 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.

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

WHAT ARE THE CONSEQUENCES FOR THE AUTHORISED CELEBRANT AND THE COUPLE IF THE MARRIAGE IS NOT VALID OR IF THE AUTHORISED CELEBRANT BELIEVES IT MAY NOT BE VALID?

The authorised celebrant may have committed an offence.[59] The Registrar of Marriage Celebrants may also take disciplinary measures against a Commonwealth-registered marriage celebrant.[60]

One of the negative consequences for the couple may be that they have to apply to the Family Court for a declaration as to the validity of their marriage. They may also have to go through a second marriage ceremony under section 113 of the *Marriage Act 1961* (Cth) (see Part 10 of these Guidelines). Each of these processes can be stressful, expensive and difficult for the couple.

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

[59] Under section 100 of the Marriage Act it is an offence for a person to solemnise a marriage or purport to solemnise a marriage if he or she has reason to believe there is a legal impediment to the marriage or it would be void. For further details on the offence in the Marriage Act please refer to Part 11 of these Guidelines.

[60] Section 39I of the Marriage Act

8.2 WHAT ARE THE GROUNDS ON WHICH A MARRIAGE MAY BE INVALID?

Subsection 23B(1) of the Marriage Act sets out the grounds on which a marriage may be invalid. They are:

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

When an authorised celebrant is approached by a couple to solemnise a marriage, the authorised celebrant must satisfy themselves that the marriage is not invalid by reason of any of the above grounds.

Each ground is explored in detail below.

8.3 PRIOR UNDISSOLVED VALID MARRIAGE

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

WHY IS IT IMPORTANT TO ESTABLISH THAT NEITHER PARTY IS LAWFULLY MARRIED TO ANOTHER PERSON AT THE TIME OF THE MARRIAGE?

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

The authorised celebrant is likely to have committed an offence.[61]

One of the parties will have committed the offence of bigamy which carries a penalty of five years imprisonment.[62]

[61] Under section 100 and potentially section 99 of the Marriage Act

[62] Section 94 of the Marriage Act

HOW DOES AN AUTHORISED CELEBRANT ESTABLISH THAT A PARTY IS NOT STILL MARRIED?

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

A person who has been previously married must provide the authorised celebrant with proof that any prior marriage has ended whether by divorce or by the death of the other party.[63]

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

Please refer to Part 4.8 of these Guidelines for information about what evidence must be produced to the authorised celebrant.

8.4 PARTIES IN A PROHIBITED RELATIONSHIP

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

Prohibited relationships are marriages:

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

WHAT ABOUT ADOPTION?

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

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

[63] Subsection 42(10) of the Marriage Act

WHAT ARE SOME EXAMPLES OF PROHIBITED RELATIONSHIP SITUATIONS THAT MAY ARISE?

The prohibited relationship requirements mean:

- A man cannot marry his grandmother, mother, sister or half-sister, daughter or granddaughter.
- A woman cannot marry her grandfather, father, brother or half-brother, son or grandson.
- An uncle may marry his niece and an aunt may marry her nephew.
- Cousins may marry each other.
- Individuals who have lived together in the one family but were not adopted by the adults who raised them are not in a prohibited relationship.
- Individuals who were adopted by the same adults but have never lived together are in a prohibited relationship. This includes cases where an adoption has been annulled, cancelled or discharged.

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

8.5 MARRIAGE INVALID DUE TO FAILURE TO COMPLY WITH SECTION 48 OF MARRIAGE ACT

Under section 48 of the Marriage Act a marriage solemnised otherwise than in accordance with sections 40-47 is not a valid marriage. A marriage may be invalid where:

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

There are a number of exceptions to section 48.[64] Circumstances falling within these exceptions will not result in an invalid marriage. However, marrying couples or authorised celebrants may still commit an offence under the Marriage Act if sections 40–47 are not complied with.

8.6 THE CONSENT OF THE PARTIES IS NOT REAL CONSENT

[64] Paragraphs 48(2)(a)-(f) of the Marriage Act

WHY IS IT IMPORTANT TO CHECK THAT A PERSON IS GIVING REAL CONSENT TO A MARRIAGE?

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

Changes in the community have led to the issue of consent arising more often and in a wider range of circumstances. For example, an ageing population and longer life expectancy have led to more elderly people marrying or remarrying.

Celebrants should be aware that it is an offence to cause another person to enter into a forced marriage or to be a party to a forced marriage (this offence does not apply to the victim of forced marriage) [65]. For further information, see Part 11 of these Guidelines.

A forced marriage is not the same as an arranged marriage. In a forced marriage, the victim does not consent to the marriage. An arranged marriage is a marriage in which the spouses have the right to accept or refuse the marriage arrangement that their respective families have made.

WHAT SHOULD AN AUTHORISED CELEBRANT DO IF THEY HAVE ANY DOUBTS ABOUT WHETHER A PARTY IS CONSENTING OR CAPABLE OF CONSENTING TO THE MARRIAGE?

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

These steps include questioning the party concerned and/or contacting the department for guidance.

An authorised celebrant who believes the consent of one or both parties is not a real consent (for example, where the consent was obtained by duress or fraud; or the party is mistaken as to the identity of the other party or as to the nature of the ceremony performed; or the party is mentally incapable of understanding the nature and effect of the marriage ceremony) should refuse to marry the couple, even if the marriage ceremony has commenced. An authorised celebrant may also wish to contact the Australian Federal Police.

WHEN IS CONSENT TO A MARRIAGE NOT REAL CONSENT?

Both parties must consent to becoming husband and wife and understand that is what marriage involves. The absence of real consent can only be based on the grounds listed in section 23B of the Marriage Act. These are listed below.

[65] *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth)

Under section 23B of the Marriage Act a person's consent to a marriage is not real if:

- the consent is obtained by duress or fraud
- one of the parties is mistaken as to:
  - the identity of the other party, or
  - the nature of the ceremony performed, or
- a party is mentally incapable of understanding the nature and effect of the marriage ceremony.

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

HOW CAN AN AUTHORISED CELEBRANT ASSESS WHETHER A PERSON'S CONSENT IS REAL?

SPEAK TO THE PARTY IN ABSENCE OF ANY OTHER PARTY

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

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

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

In cases where there is doubt about whether a party has the mental capacity to understand the nature and effect of the marriage ceremony, a very simple or general understanding will be sufficient. A high level of understanding is not required. 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.

SPEAK TO THIRD PARTIES

In addition to speaking to the party concerned, other steps an authorised celebrant can take to assess if consent is real include:

- speak to third parties (eg. in cases of mental incapacity an authorised celebrant might be assisted by speaking with medical experts who know the party or other people such as family members, carers or staff at the nursing home where a person is living if they are elderly or have a disability), or
- contact the department for guidance.

KEEP DETAILED RECORDS

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

CONSENT – WHEN MIGHT CONCERNS ABOUT CONSENT ARISE?

Authorised 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 an authorised celebrant is satisfied that both parties genuinely consent to the marriage. If at any point a celebrant is unsure of the genuine consent of either party he or she should not proceed with solemnising the marriage.

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

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

Under no circumstances should an authorised celebrant agree to do a surprise wedding (refer to Part 12.1 of these Guidelines for further information on surprise weddings).

SPECIFIC SITUATIONS WHERE CONSENT ISSUES MAY ARISE

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

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

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

8.7 MARRIAGEABLE AGE IN AUSTRALIA

The marriageable age in Australia is 18 years for both males and females.[66] A person under the age of 16 cannot marry under any circumstances. Two people under the age of 18 cannot marry under any circumstances.

It is an offence for a person to solemnise, or purport to solemnise, a marriage if the person has reason to believe that one or both of the parties are not of marriageable age. The authorised celebrant must therefore carefully check the age of both parties from their birth certificates or extracts. It is also an offence for a person to go through a form of ceremony of marriage with a person who is not of marriageable age.[67] For further information on offences, please refer to Part 11 of these Guidelines.

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

8.8 THE REQUIREMENTS FOR MARRIAGE OF A MINOR – THAT IS, WHEN ONE PARTY IS AGED 16-18 YEARS

THE MINIMUM REQUIREMENTS

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

(i) a judge or magistrate has made an order authorising the person to marry a particular person of marriageable age (over 18 years), and

(ii) the required consents (usually parental) have been given to the marriage.

[66] Section 11 of the Marriage Act

[67] Section 95 of the Marriage Act

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

These minimum requirements are explained below.

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

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

FIRST REQUIREMENT – COURT ORDER

A person aged 16 to 18 years may apply to a judge or magistrate in a State or Territory for an order authorising him or her to marry a particular person of marriageable age.[68] The authorisation of a judge or magistrate is required in all cases where one party is under the age of 18 years.

Application to the judge or magistrate must be made by the person seeking the order, and must be made in the approved form, the notice of application for order authorising marriage under marriageable age (formerly called the Form 7), which is available on the Attorney-General's Department website.

The procedure for a person under marriageable age to make an application for a court order for permission to marry is set out in regulations 15 to 30 of the Marriage Regulations.

An authorised celebrant must ensure the court order has been obtained before agreeing to solemnise the marriage. The marriage must take place within three months after the date of the court order.

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

Should a marriage involving an underage person take place without the required court order and consents the marriage celebrant may have committed an offence and so will the party who is not underage.[69] The marriage will also be void.[70]

[68] Section 12 of the Marriage Act

[69] See sections 95 and 99 of the Marriage Act and Part 8.7 of these Guidelines.

[70] Paragraph 23B(1)(e) of the Marriage Act.

WHAT WILL THE JUDGE OR MAGISTRATE CONSIDER WHEN MAKING THE DECISION?

The judge or magistrate must be satisfied of two things:

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

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

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

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

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

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

SECOND REQUIREMENT – CONSENT

In addition to the court order, it is also necessary to obtain the consent of any person whose consent to the marriage is required. This is usually the parents of the party who is not of marriageable age.[71] The marriage must be solemnised within three months of the date of this consent. [72]

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

Unless this consent is the consent of a judge or magistrate (under Part II of the Marriage Act), it must be in writing and must state[73]:

a) the full name and address of the person giving the consent

b) the capacity in which the person's consent is required

c) the full name of the minor, and

[71] Section 13 of the Marriage Act

[72] Section 13 of the Marriage Act

[73] Regulation7 of the Marriage Regulations

d) the full name and address of the other party to the marriage.

Where a celebrant solemnises the marriage of a minor and a document is produced to the celebrant as the consent of the person whose consent is required by the Marriage Act, the celebrant must, by writing on the consent, state the manner in which he or she satisfied himself or herself that the person who gave the consent is a person whose consent is so required.[74] This does not apply to the consent of a judge, a magistrate, or a prescribed authority under Part II of the Marriage Act, nor if the consent of both parents of the minor was produced to the celebrant.[75]

WHAT HAPPENS IF A PARENT OR GUARDIAN CANNOT BE CONTACTED TO GIVE CONSENT?

In such cases the minor may apply to a prescribed authority to dispense with the consent of a person whose consent to the marriage is required where their views are not known.[76]

Where a parent refuses consent, or an application to a prescribed authority to dispense with consent is refused, the minor may apply to a judge or magistrate for their consent in place of the consent of the person whose consent is required.[77] There is a right of appeal, by either the minor or the person in relation to whose consent the application was made, against a judge or magistrate's decision.

The procedure for a person to apply to a judge or magistrate for consent to marry in place of the consent of the person whose consent is required is set out in Regulations 10 to 14 of the Marriage Regulations.

WHAT SHOULD AN AUTHORISED CELEBRANT DO IF ASKED TO MARRY A COUPLE ONE OF WHOM IS UNDERAGE?

The authorised celebrant should review the relevant parts of these Guidelines before proceeding further.

The authorised celebrant should also advise the parties that they need to obtain legal advice, the court order and necessary consents before the celebrant can agree to marry them.

It is the authorised celebrant's responsibility to ensure that the necessary requirements have been met before they solemnise the marriage. It is not the authorised celebrant's responsibility to arrange for the court order or the necessary consents.

[74] Subregulation 7(3) of the Marriage Regulations

[75] Subregulation 7(4) of the Marriage Regulations

[76] Section 15 of the Marriage Act

[77] Section 16 of the Marriage Act

HOW CAN AN AUTHORISED CELEBRANT ENSURE THEY ARE NOT MARRYING A COUPLE WHEN ONE PARTY IS NOT OF MARRIAGEABLE AGE?

Authorised celebrants can take the following steps to ensure they are not solemnising a marriage where one party is not of marriageable age:

- carefully check the age of both parties on their birth certificates
- remember the Marriage Act does not permit, under any circumstances, a marriage where both parties are under marriageable age, and
- only marry a couple where one party is aged 16 to 18 years if the required court order and consents have been obtained by the party.

WHAT MUST AN AUTHORISED CELEBRANT FORWARD TO THE BDM AFTER A MARRIAGE IN WHICH ONE OF THE PARTIES IS UNDER MARRIAGEABLE AGE?

The consents—and any translations of them if relevant—must be forwarded to the BDM in the State or Territory where the marriage took place, along with the official marriage certificate, the court order under section 12 of the Marriage Act and any other required documents within 14 days after the marriage has taken place.

9 FOREIGN MARRIAGES

This part looks at the legal recognition in Australia of marriages that have occurred overseas, the exceptions to such legal recognition, and the documents that may provide evidence of an overseas marriage.

Marriages performed overseas by Defence Force chaplains are governed by a different part of the *Marriage Act 1961* (Cth) and *Marriage Regulations 1963* (Cth). For further information on marriages performed overseas by Defence Force chaplains, please see Part 9.4 of these Guidelines.

9.1 LEGAL RECOGNITION OF FOREIGN MARRIAGES IN AUSTRALIA

Part VA of the Marriage Act deals with the recognition in Australia of marriages entered into outside Australia under foreign laws. In general, if the marriage is recognised as valid under the law of the country in which it was entered into, at the time when it was entered into, the marriage will be recognised in Australia as a valid marriage. This is the case whether or not the marriage involves Australian or non-Australian citizens. For further information on second marriage ceremonies, please see Part 10 of these Guidelines.

The Marriage Act does not provide for overseas marriages to be registered in Australia. Whether an overseas marriage is recognised as valid in Australia is determined by the Marriage Act.

There are certain exceptions to the legal recognition of overseas marriage in Australia. These are explained below.

9.2 EXCEPTIONS TO RECOGNITION OF FOREIGN MARRIAGES

The Marriage Act provides that a marriage that is valid under the laws of another country is not recognised as valid in Australia if one or more of the following circumstances apply:[78]

a) where one of the parties was already married to someone else

b) where one of the parties was not of marriageable age (note further information below about this exception)

c) where the parties are too closely related, under Australian law – that is, either as ancestor and descendant (including adoptive ancestor/descendant relationships), or as brother and sister (including half-brother and half-sister and adopted brothers and sisters), or

[78] See sections 88D and 88E of the Marriage Act.

d) where the consent of one of the parties was not a real consent due to

   i. duress or fraud

   ii. mistake, or

   iii. mental incapacity.

The Marriage Act also provides that a union solemnised in a foreign country between a man and another man, or a woman and another woman, must not be recognised as a marriage in Australia.[79]

RECOGNITION IN AUSTRALIA OF OVERSEAS MARRIAGE WHERE ONE/BOTH PARTIES UNDERAGE

If neither party was domiciled in Australia at the time of the marriage, the marriage is not recognised in Australia as valid at any time while either party is under the age of 16 years.[80] In this situation, when both parties reach the age of 16 years, the marriage will be recognised in Australia as valid if there are no other circumstances (such as the consent of either party not being real) that invalidate the marriage.

However, if one of the parties was domiciled in Australia at the time of the marriage, both parties must have been 18 years of age at the time of the marriage for it to be recognised in Australia as valid.[81]

As the word 'domiciled' has a particular legal meaning, authorised celebrants should recommend that parties seek professional legal advice about whether a particular situation falls within the circumstances described above.

9.3 EVIDENCE OF FOREIGN MARRIAGE

A marriage certificate issued by a competent authority in a foreign country is evidence in Australia of the occurrence and validity of the marriage.[82] Couples should carefully retain their overseas marriage certificate as it may not be easy to replace if lost and it provides the only evidence of the overseas marriage. Overseas marriages cannot be registered in Australia.

Please note that it may not be possible to rely on a marriage certificate issued overseas for some purposes in Australia. A party to a marriage which takes place overseas may not be able to rely on an overseas marriage certificate to have an Australian driver's licence or an Australian passport issued in their married name.

[79] Section 88EA of the Marriage Act

[80] Subsection 88D(3) of the Marriage Act

[81] Paragraph 88D(2)(b) of the Marriage Act

[82] Section 88G of the Marriage Act

Authorised celebrants should request that any foreign marriage certificates in languages other than English are translated by a NAATI endorsed translator if a person presents one (see Part 4.10 of these Guidelines).

If a person approaches an authorised celebrant because an Australian Government agency has raised questions about the recognition in Australia of the person's foreign marriage, it is recommended that the authorised celebrant refer the couple to obtain legal advice.

9.4 MARRIAGES SOLEMNISED OVERSEAS BY DEFENCE FORCE CHAPLAINS

The Marriage Act allows marriages to be solemnised overseas by, or in the presence of a, Defence Force chaplain, in limited circumstances. One party to the intended marriage must be a member of the Australian Defence Force.

Defence Force chaplains are authorised, under Part V of the Marriage Act, to solemnise marriages in overseas countries where at least one party is a member of the Defence Force. Part IV of the Marriage Regulations deals with the solemnisation of marriages overseas.

For the purpose of Part V, an 'overseas country' means a country or place other than a part of the Queen's dominions, and includes a vessel which is for the time being in the territorial waters of such a country or place. In time of war, 'overseas country' may be given an extended meaning to include a part of the Queen's dominion that is occupied by a State at war with the Commonwealth.

An authorised celebrant cannot solemnise marriages outside Australia under the Marriage Act unless he or she is also a chaplain in the Defence Force.[83] Conversely, a Defence Force chaplain is not authorised to solemnise marriages in Australia unless he or she is also an authorised celebrant.

No NOIM is required for a marriage solemnised by a chaplain. The form of declaration as to conjugal status to be made by the parties is the same as that approved for marriages in Australia. The forms of marriage certificates are the same as those used for marriages in Australia. The provisions of Part II (marriageable age and marriage of minors) of the Marriage Act apply to marriages overseas by chaplains.

Marriages by chaplains are to be registered in Canberra by the Registrar of Overseas Marriages, the ACT Registrar of Births, Deaths and Marriages.

[83] Section 77 of the Marriage Act

10 SECOND MARRIAGE CEREMONIES

Under section 113 of the *Marriage Act 1961* (Cth), persons who are already legally married to each other cannot go through a further form or ceremony of marriage to each other in Australia or as a member of the Australian Defence Force overseas, and it is an offence for an authorised celebrant to purport to solemnise such a marriage.

There are two exceptions to the rule in section 113. These are where:

(i) there is a doubt as to the legal validity of the previous marriage ceremony, or

(ii) a couple who is already legally married wish to go through a religious marriage ceremony. See Part 12.6 of these Guidelines for information about commitment ceremonies.

10.1 SECOND MARRIAGE CEREMONY – DOUBT AS TO THE VALIDITY OF PREVIOUS MARRIAGE CEREMONY

The first exception to the general rule against second marriage ceremonies allows ceremonies for the purpose of eliminating any doubt that may exist as to whether persons are legally married. The doubt must be a real one.[84]

Before any such ceremony, the parties must produce to the proposed authorised celebrant:

- a joint statutory declaration stating that they have previously gone through a form or ceremony of marriage with each other and specifying the date, place and circumstances of that ceremony. The joint statutory declaration must state that they are the parties mentioned in the marriage certificate, and
- the statutory declaration must contain a certificate by a barrister or solicitor that, on the facts stated in the declaration, there is in his or her opinion, a doubt whether the parties are legally married or whether their marriage could be proved in legal proceedings.[85]

Once the above requirements are satisfied, the provisions of the Marriage Act apply to the second marriage ceremony as if the parties were unmarried. A NOIM must be completed, the declarations as to conjugal status must be made, and the marriage certificates must be prepared and dealt with as if the parties were not married to each other, except that each copy of the certificate must bear the following endorsement—using exactly the words below—and signed by the authorised celebrant:[86]

[84] Subsection 113(2) of the Marriage Act

[85] Paragraph 113(3)(b) of the Marriage Act

[86] Subsection 113(4) of the Marriage Act and regulation 73 of the Marriage Regulations

"The form or ceremony of marriage between the abovementioned parties took place or was performed in pursuance of subsection 113(2) of the *Marriage Act 1961*, those parties having previously gone through a form or ceremony of marriage with each other on the

. . . . . .day of . . . . . .

20 . . . . . .at . . . . . .

Dated the . . . . . day of . . . . . 20 . . . . . .

(Signature of celebrant)".

10.2 SECOND RELIGIOUS MARRIAGE CEREMONIES

The other exception to the general rule against second marriage ceremonies arises where two people already married to each other wish to go through a religious marriage ceremony.[87] This may be in order to renew their marriage vows, to follow a civil ceremony by a religious ceremony, or to have two religious ceremonies in churches of different denominations.

In the case of a second religious marriage ceremony, the authorised celebrant must not prepare or issue in respect of the second ceremony, any certificate of marriage under or referring to the Marriage Act. In addition, the authorised 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.[88]

In relation to a second religious ceremony involving parties who are already married, the procedures for the solemnisation of marriages under the Marriage Act do not apply. The NOIM, declarations as to conjugal status, and so on, are not to be given.[89]

A couple wishing to have a second religious marriage ceremony must provide the proposed authorised celebrant with the following:[90]

- a certificate of their existing marriage, and
- a statement signed by them, to be witnessed by the proposed authorised celebrant, that they have previously gone through a form or ceremony of marriage with each other; they are the parties mentioned in the certificate of marriage produced with the statement; and they have no reason to believe that they are not legally married to each other or, if their

[87] Subsection 113(5) of the Marriage Act

[88] Subsection 113(6) of the Marriage Act

[89] Subsection 113(6) of the Marriage Act

[90] Paragraph 113(5)(b) of the Marriage Act

marriage took place outside Australia, they have no reason to believe that it would not be recognised as valid in Australia.

11 OFFENCES

The following outlines the offences contained in the *Marriage Act 1961* (Cth) that are relevant to authorised celebrants, couples and other persons involved in the marriage ceremony.

11.1 WHY IT IS IMPORTANT FOR AUTHORISED CELEBRANTS TO KNOW ABOUT OFFENCES UNDER THE MARRIAGE ACT

It is important that authorised celebrants are aware of Marriage Act offences as they reflect the serious nature of the legal obligations attending the role and responsibilities of the authorised celebrant.

They also reflect the importance of couples taking due care in supplying material to the authorised celebrant in relation to their marriage.

A marriage at which an authorised celebrant has officiated and in which false or inaccurate statements are made on a NOIM, or a ceremony at which an unauthorised person has purported to solemnise a marriage, may still be valid under section 48 of the Marriage Act.

Despite this, an authorised celebrant may find himself or herself facing an investigation for potentially breaching one of the offence provisions because the authorised celebrant has not fulfilled his or her responsibilities and duties under the Marriage Act properly.

This reflects the philosophy underlying the Marriage Act which places the responsibility on the authorised celebrant to ensure that only valid marriages are solemnised under the Marriage Act and that all the requirements of the Marriage Act are followed. Section 48 may protect the validity of the marriage of a couple from many of an authorised celebrant's failings, but the authorised celebrant may still be subject to the offence provisions.

11.2 OFFENCES RELEVANT TO AUTHORISED CELEBRANTS

Under the Marriage Act the following offences may be committed by an authorised celebrant.

SECTION 99 – SOLEMNISING MARRIAGE WHERE NOTICE OR DECLARATION NOT GIVEN OR MADE ETC

Section 99 of the Marriage Act provides that it is an offence for an authorised celebrant to solemnise a marriage in contravention of the following sections in the Act:

- *Section 42* – provides that an authorised celebrant must not solemnise a marriage if he or she has *any* reason to believe that the NOIM, the declaration or any statutory declaration supplied contains a false statement or an error or is defective. The offences in section 99 also cover the provision of the NOIM within the required time (or obtaining a shortening of time), the production of evidence of date and place of birth as required, completion of the parties' declaration, sighting evidence of the end of any previous marriage as a result of

death or divorce and ensuring that the celebrant has satisfied himself or herself that the parties are those referred to in the NOIM.

- *Section 13* – provides that a marriage must not be solemnised if the appropriate consents required for the marriage of an underage person have not been obtained.
- *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 authorised celebrant to be, over the age of 18 years.
- *Subsection 33(3)* provides that a person who has been served a notice under subsection 33, shall not solemnise a marriage unless and until the person has been notified that the Registrar of Ministers of Religion has decided not to remove the person's name from the register; a period of 14 days has elapsed from the date the person was notified by the Registrar and the person's name has not been removed from the register; or the person's name, having been removed, is restored to the register.
- *Section 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 an authorised celebrant 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.
- The penalty for an offence under section 99 is $500 or imprisonment for six months.

SECTION 100 – SOLEMNISING MARRIAGE WHERE REASON TO BELIEVE THERE IS A LEGAL IMPEDIMENT

Section 100 of the Marriage Act provides that it is an offence for an authorised celebrant to solemnise a marriage, or purport to solemnise a marriage, if they have reason to believe that there is a legal impediment to the marriage or if the person has reason to believe the marriage would be void.

Consequently it would be an offence for an authorised celebrant to solemnise a marriage if they believed that either of the parties was already married to some other person, the parties are within a prohibited relationship, either of the parties was not of marriageable age (and judicial orders and required consents had not been given) or if the consent of either of the parties to the marriage was not a real consent.

The penalty for contravening section 100 is $500 or imprisonment for six months.

SECTION 101 – SOLEMNISATION OF MARRIAGE BY UNAUTHORISED PERSON

Section 101 of the Marriage Act provides that it is an offence for a person to solemnise a marriage, or to purport to solemnise a marriage, unless the person is authorised by or under the Marriage Act to solemnise marriages.

The penalty for contravening section 101 is $500 or imprisonment for six months.

11.3 OFFENCES RELEVANT TO COUPLES

Authorised celebrants should advise couples of the following offences that may be applicable to them:

- *Section 94* (bigamy) – it is an offence for a person to marry a person while still married to some other person.

  The penalty for contravention of section 94 is imprisonment for five years.

- *Section 95* – provides that it is an offence to go through a form or ceremony of marriage with a person who is not of marriageable age (unless all requirements concerning consents and judicial order are met).

  The penalty for contravention of section 95 is imprisonment for five years.

- *Section 103* – provides that it is an offence for a person to go through a form or ceremony of marriage with another person knowing that the person solemnising the marriage is not authorised to do so, and having reason to believe that the other party to the marriage believes the person solemnising the marriage is authorised.

  The penalty for contravention of section 103 is $500 or imprisonment for six months.

- *Section 104* – provides that it is an offence for a person to give a NOIM under section 42 or the declaration required under section 42 or sign such notices after they have been given if, to the knowledge of that person, the notice contains a false statement or error or is defective.

  The penalty for contravention of section 104 is $500 or imprisonment for six months.

11.4 OFFENCES RELEVANT TO OTHERS INVOLVED IN THE MARRIAGE CEREMONY

An interpreter commits an offence under section 106 of the Marriage Act if they do not furnish the certificate required under section 112, or they make a false statement in that certificate.

Sections 74-78 create a number of offences which relate only to Australian Defence Force chaplains solemnising marriages overseas.

11.5 OFFENCES RELATING TO FORCED MARRIAGE

On 27 February 2013 the Australian Parliament enacted the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth). The Act amended the *Criminal Code Act 1995* (Cth) to strengthen the capacity of investigators and prosecutors to combat all forms of human trafficking, slavery and slavery-like practices, including by introducing new offences of forced marriage.

The Criminal Code defines a forced marriage as one where, because of coercion, threat or deception, a person (the victim) enters into a marriage without freely and fully consenting.

'Coercion, threat or deception' includes a broad range of physical and non-physical conduct that may be used by a person against the victim, or another person, to cause the victim to enter into a marriage.

The Criminal Code includes two offences of forced marriage:

- causing another person to enter into a forced marriage, and
- being a party to a forced marriage (this offence does not apply to the victim of a forced marriage).

Both offences have penalties of four years' imprisonment, or seven years' imprisonment in the case of an aggravated offence (for example, where the victim is less than 18 years old, or the offender subjects the victim to cruel, inhuman or degrading treatment).

If a celebrant suspects that they may be involved in a forced marriage he or she should contact the Australian Federal Police or their local police immediately. The celebrant may also wish to contact the department for guidance.

The forced marriage offences do not criminalise arranged marriages. In a forced marriage, the victim does not consent to the marriage. An arranged marriage is a marriage whereby the spouses have the right to accept or refuse the marriage arrangement that their respective families have made.

11.6 OFFENCES RELATING TO STATUTORY DECLARATIONS

It is also important to note that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence against the *Statutory Declarations Act 1959* and is liable to four years imprisonment.[91]

[91] Section 11 of the *Statutory Declarations Act 1959*.

12 OTHER MATTERS

12.1 SURPRISE WEDDINGS

WHAT IS A 'SURPRISE WEDDING'?

Surprise weddings involve one of the parties to the marriage being 'surprised', either at or shortly before the ceremony. The most popular scenario involves one member of a couple wishing to 'surprise' the other party by organising the marriage without their knowledge and then presenting them with the complete ceremony as a romantic gesture.

WOULD SUCH A MARRIAGE BE VALID?

Authorised celebrants must not participate in such ceremonies. This is because there is no guarantee that the marriage will be valid.

Surprise weddings raise an important and unavoidable issue in relation to legal validity of the marriage. It is best described as potentially placing undue pressure on the 'surprised' person to agree to the arrangement. Even if there is evidence that the person would previously have agreed to a marriage proposal, their consent must not be assumed. No person can be put under pressure to enter into a marriage and the pressures imposed by a 'surprise' wedding could place in doubt the validity of the marriage under section 23B of the *Marriage Act 1961* (Cth), that is, that the person's consent to the marriage was not a real consent because it was obtained by duress or fraud. For further information on the issue of consent please see Part 8.6 of these Guidelines.

ACCEPTING A NOIM IN A SURPRISE WEDDING SCENARIO

Generally, the NOIM should be signed by both parties together, at the same time, when it is provided to their authorised celebrant. Subsection 42(3) of the Marriage Act enables an authorised celebrant to accept a NOIM with the signature of one party only where the signature of the other party cannot 'conveniently be obtained' at the time it is desired to give notice. The intention of this provision is to enable a couple to give notice of their intended marriage with only one party signing the NOIM if the other is overseas or interstate. It is not intended to enable only one party to provide notice. In the case of a surprise wedding, the signature of the other party can, essentially, be conveniently obtained. Authorised celebrants should not accept a NOIM signed by only one party in the case of a surprise wedding.

WHAT SHOULD AN AUTHORISED CELEBRANT DO IF ASKED TO SOLEMNISE A SURPRISE WEDDING?

If a person approaches an authorised celebrant with a request for a 'surprise' wedding, the authorised celebrant should:

- advise the person of the minimum requirements for a marriage (such as giving one month's notice for the NOIM) and refuse to solemnise the marriage
- advise the department of the approach, and
- advise the BDM in the relevant State or Territory in case marriage documents are submitted.

Participation by any Commonwealth-registered marriage celebrant in a surprise ceremony and it may result in disciplinary measures being imposed.

12.2 CEREMONIES AS PRIZES

If an authorised celebrant is approached to participate in a marriage ceremony being given away as a 'prize', the proposer must be advised that there are minimum requirements for a valid marriage ceremony.

As outlined above in Part 12.1 of these Guidelines on surprise weddings, there may be an issue regarding the ability of both of the parties to give the minimum one month's notice to the authorised celebrant. Additionally, a marriage in such circumstances is unlikely to fall within the categories where the marriage may be authorised by a prescribed authority despite late notice (discussed further in Part 4.3.2 of these Guidelines).

The following steps should be taken by an authorised celebrant in the event that they are approached to participate in this type of marriage ceremony:

- advise the person of the minimum requirements for a marriage and ensure that the proposal meets the legal requirements
- advise the department that they have been approached to participate in a marriage ceremony being given away as a prize, and
- advise the BDM in the relevant State or Territory as they may be approached for authority to allow the solemnisation of a marriage despite late notice.

12.3 FEES FOR SOLEMNSING MARRIAGES

All Commonwealth-registered marriage celebrants may charge each couple an appropriate fee for solemnising a marriage. The amount of the fee is a matter between the celebrant and the couple. Similarly, there are no prescribed fees in relation to BDM officials who perform marriages.

The Marriage Act does not affect the right of a minister of religion who is an authorised celebrant to require or receive a fee for or in respect of the solemnisation of a marriage.[92] However, a minister of religion of a recognised denomination may have his or her name removed from the register if a

[92] Section 118 of the Marriage Act

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.[93]

12.4 AUTHORISED CELEBRANT NOT AVAILABLE

Although in nearly every case a marriage will be solemnised by the authorised celebrant to whom the NOIM was originally given, the marriage may be solemnised by any authorised celebrant who has possession of the NOIM where the original proposed celebrant has died, is absent from the place of the intended marriage, is ill, or it is impracticable for that person to solemnise the marriage.[94]

It is the responsibility of the first celebrant to ensure that the notice is transferred, safely, by hand or registered post, to the second celebrant. It is the responsibility of the couple to pay any fees charged by the first celebrant for services up to and including the cost of transferring the notice to the second celebrant.

An authorised celebrant who performs a marriage in place of another authorised celebrant to whom the NOIM was given originally, must comply personally with all the requirements of section 42 of the Marriage Act, save that a new NOIM need not be given by the parties. That is, the authorised celebrant who solemnises the a marriage is required under the Marriage Act to check the parties' evidence of date and place of birth and evidence of identity and evidence of dissolution of previous marriage (if applicable).

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

12.5 STATUTORY DECLARATIONS

In addition to the declaration as to conjugal status required to be made by the parties to the intended marriage, the Marriage Act requires or permits a statutory declaration to be made in a number of cases.

There is a statutory declaration form that must be used for any Commonwealth statutory declarations. This form is to be used for all statutory declarations relating to any marriage ceremony conducted by any authorised celebrant. Authorised celebrants should discard any old blank statutory declaration forms purchased before November 2004 as they can no longer be used. Commonwealth statutory declaration forms can be downloaded from the Attorney-General Department's website and may be purchased from CanPrint Communications.

Any statutory declaration that must be completed in relation to a marriage must be provided on this form only or it is not a valid statutory declaration. A statutory declaration form issued under State

[93] Paragraph 33(1)(d)(ii) of the Marriage Act

[94] Subsection 42(6) of the Marriage Act

and Territory legislation or any other type of statutory declaration form is not acceptable for use under the Marriage Act. If a person supplies an authorised celebrant with a statutory declaration in relation to a marriage on a different form the authorised celebrant must get another statutory declaration from them on the correct form.

A person who intentionally makes a false statement in a statutory declaration is guilty of an offence against the *Statutory Declarations Act 1959* (Cth) and is liable to four years imprisonment.[95]

12.6 COMMITMENT CEREMONIES

Authorised celebrants may conduct commitment ceremonies for a couple. These are not marriages and the commitment ceremony must not purport to be a marriage.

As a commitment ceremony is not considered a legal marriage, the authorised celebrant must not prepare or lodge any paperwork (such as the NOIM and declarations as to conjugal status). Witnesses are not required for a commitment ceremony. A certificate of marriage, or any other certificate referring to the Marriage Act, must not be prepared for a commitment ceremony. In order to avoid doubt, it is recommended that celebrants avoid using the words 'wedding' or 'marriage' to describe the ceremony.

A commitment ceremony could incorporate important rituals and provide photographic records; however, it has to be publicly made clear to everyone present that the ceremony is not a marriage.

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 the marriage has already occurred or is due to occur at a later date.

12.7 RENEWAL OF VOWS CEREMONIES

Authorised celebrants may also conduct renewal of vows ceremonies for a couple. The information in Part 12.6 of these Guidelines (commitment ceremonies) is applicable for renewal of vows ceremonies.

12.8 CEREMONIES BETWEEN SAME-SEX COUPLES

Australian law specifies that marriage is between a man and a woman.[96] This means that same-sex couples cannot marry under Australian law. There is nothing preventing authorised celebrants conducting a ceremony, such as a commitment ceremony, to publicly celebrate a same-sex relationship. However, this must not purport to be a marriage. Where such ceremonies are conducted authorised celebrants must ensure that the nature of the ceremony is made clear to

[95] Section 11 of the Statutory Declarations Act

[96] Section 5 of the Marriage Act

those attending and no documents are prepared in relation to the ceremony for the purposes of the Marriage Act.

12.9 ARE AUTHORISED CELEBRANTS OBLIGED TO SOLEMNISE ANY MARRIAGE?

Section 47 of the Marriage Act provides that a minister of religion who is an authorised celebrant is not obliged to solemnise any marriage.[97] It also allows a minister of religion to make it a condition of solemnising a marriage that requirements additional to those provided by the Act are observed.[98] While there is no similar provision in the Act for authorised celebrants who are not ministers of religion, the Act does not impose a positive obligation on such a celebrant to solemnise any marriage. An authorised celebrant with concerns about whether to solemnise a marriage is entitled not to proceed.

In considering this question authorised celebrants should be aware of their obligations under anti-discrimination laws. The Code of Practice for marriage celebrants requires Commonwealth-registered marriage celebrants to observe the laws of the Commonwealth and of the state or territory where the marriage is solemnised, and to prevent and avoid unlawful discrimination in the provision of marriage celebrancy services.

For information on anti-discrimination laws celebrants should consult the Australian Human Rights Commission.

12.10 PRIVACY

An authorised celebrant has access to the personal information of marrying couples. It is important that this information is treated sensitively.

Personal information can include names, contact details, dates of birth, passport numbers and other identifying or sensitive information.

Before a celebrant passes on any personal information of a party to an intended marriage for whatever reason (including to seek advice from the department) he or she should first obtain the party's permission. If a party does not wish their details to be passed on the celebrant should respect this decision. There are certain exceptional circumstances where this would not apply, such as reporting a suspected forced marriage to the police.

If a celebrant makes copies of a party's documents that contain personal information the celebrant should advise the party why he or she is making copies, how they will be stored and when and how they will be disposed of.

[97] See paragraph 47(a) of the Marriage Act

[98] See paragraph 47(b)(ii) of the Marriage Act

A celebrant will not be breaching privacy by asking for personal information from parties to an intended marriage in order to satisfy himself or herself that the marriage can be validly solemnised.

12.11 COPYRIGHT AND MARRIAGE CELEBRANTS

It is not the role of a marriage celebrant to obtain any necessary copyright licences or permissions, however celebrants may be asked about some of these issues by couples as they plan their marriage ceremony or wedding reception. The below information is general information only and is not a substitute for legal advice.

More information about copyright in Australia can be found below and on the Attorney-General's Department website.

PLAYING MUSIC AT WEDDINGS

Playing music in public, requires permission from the owners of copyright in the music, lyrics and the sound recording. However, performances of music at events such as weddings will not generally be in public even if they occur in a hotel, wedding hall or restaurant, as these events are considered private in nature.

REPRODUCING POETRY OR LITERATURE

Copyright in published works subsists for the life of the author plus 70 years (or 50 years where the death of the author was prior to 1 January 1955).

Reproducing a literary or dramatic work on a printed order of service (as opposed to merely reciting it) may require the permission of the copyright owner (author or publisher). Taking one short poem or extract from a large edition is unlikely to require permission from the owner of the copyright in the edition.

READING OR RECITING AN EXTRACT FROM A BOOK

Reading or reciting a reasonable portion of a published literary or dramatic work in public (provided the work is acknowledged) is an exception to copyright and no permission needs to be obtained.

REPRODUCING HYMN OR SONG LYRICS IN WEDDING BOOKLETS

As hymns or song lyrics are protected for the life of the lyricist plus 50 years, where the author died before 1 January 1955, copyright would have expired in many older hymns or songs, in which case they can be freely used. If the lyricist is still alive permission to reprint the lyrics may be required. If there is doubt about who the music publisher is, or their contact details, the Australasian Mechanical Copyright Owners' Society (AMCOS) may be able to assist.

FILMING WEDDING CEREMONIES

The Australasian Performing Right Association and the Australasian Mechanical Copyright Owners Society (APRA|AMCOS) and Phonographic Performance Company of Australia (PPCA) provide a one stop licence for incorporating music into films of weddings where those films have been made solely for the purpose of domestic viewing. The licence covers the separate rights in the underlying works and associated sound recordings.

MORAL RIGHTS

In addition to economic rights, authors of works also have moral rights over their works. This means that where material is reproduced, although a licence or permission from the copyright owner may not be necessary or has been obtained, there are still requirements to acknowledge the author and to not falsely attribute the work. Moral rights also protect the author against the derogatory treatment of their work. Caution should be exercised when making changes to hymns, literary pieces and musical works. Moral rights over literary, musical or artistic works last for the duration of copyright protection.

13 USEFUL CONTACTS

MARRIAGE LAW AND CELEBRANTS SECTION, AUSTRALIAN GOVERNMENT ATTORNEY-GENERAL'S DEPARTMENT

Website: http://www.ag.gov.au/celebrants

Phone: 1800 550 343

Fax: (02) 6141 3246

Email: marriagecelebrantssection@ag.gov.au

Post: Marriage Law and Celebrants Section
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

REGISTRIES OF BIRTHS, DEATHS AND MARRIAGES

NEW SOUTH WALES

Website: http://www.bdm.nsw.gov.au

Phone: 1300 629 736 (for marriage celebrants)
13 77 88 (public enquiries)

Post: NSW Registry of Births, Deaths and Marriages
GPO Box 30
SYDNEY NSW 2001

Location: 35 Regent Street
Chippendale
SYDNEY NSW 2008

NSW Celebrants only – Registrations, certificate application forms and other enquiries:

online_celebrant@agd.nsw.gov.au

SOUTH AUSTRALIA

Website: http://www.cbs.sa.gov.au/bdm/index.html

Phone: 131 882

Post: Births, Deaths and Marriages Registration Office

GPO Box 1351

ADELAIDE SA 5001

Location: Level 2, Chesser House,

91-97 Grenfell Street

ADELAIDE SA 5000

AUSTRALIAN CAPITAL TERRITORY

Website: http://www.ors.act.gov.au/community/births_deaths_and_marriages

Phone: (02) 6207 3000

Email: ors@act.gov.au

Post: GPO Box 158

CANBERRA CITY ACT 2601

Location: 255 Canberra Avenue

FYSHWICK ACT 2609

NORTHERN TERRITORY

Website: http://www.nt.gov.au/justice/bdm/index.shtml

Phone: (08) 8999 6119

Fax: (08) 8999 6324

Email: RegistrarGeneral.DOJ@nt.gov.au

Post: Registry of Births, Deaths and Marriages

GPO Box 3021

DARWIN NT 0801

Location:	Ground Floor, Nichols Place
	Cnr Cavenagh and Bennett Streets
	DARWIN NT 0800

TASMANIA

Website:	http://www.justice.tas.gov.au/bdm/
Phone:	1300 135 513
Fax:	(03) 6233 6444
Email:	bdm@justice.tas.gov.au
Post:	Registry of Births, Deaths and Marriages
	GPO Box 198
	HOBART TAS 7001

VICTORIA

Website:	www.bdm.vic.gov.au
Phone:	1300 369 367
Email:	Please follow Contact Us/Email Us link on the Victorian BDM website
Post:	Victorian Registry of Births, Deaths and Marriages
	GPO Box 4332
	MELBOURNE VIC 3001
Location:	Ground floor, 595 Collins Street Melbourne

WESTERN AUSTRALIA

Website: http://www.bdm.dotag.wa.gov.au/

Phone: 1300 305 021

Post: Registry of Births, Deaths and Marriages

PO Box 7720
Cloisters Square

PERTH WA 6850

Location: Level 10, 141 St Georges Terrace

PERTH WA 6000

QUEENSLAND

Website: http://www.justice.qld.gov.au/justice-services/births-deaths-and-marriages

Phone: 1300 366 430

Email: bdm-mail@justice.qld.gov.au

Post: Registry of Births, Deaths and Marriages

PO Box 15188

CITY EAST QLD 4002

Location: 110 George Street

BRISBANE QLD 4000

OTHER USEFUL CONTACTS

CANPRINT

Website: http://www.canprint.com.au/

Phone: 02) 6295 4422

Fax: (02) 6295 4473

Post: CanPrint Communications

PO Box 7575

CANBERRA BC ACT 2610

Location: 16 Nyrang Street

FYSHWICK ACT 2609

NATIONAL ACCREDITATION AUTHORITY FOR TRANSLATORS AND INTERPRETERS LTD (NAATI)

Website: http://www.naati.com.au/home_page.html

Phone: 1300 557 470

Email: info@naati.com.au

AUSTRALIAN PASSPORT OFFICE

Website: https://www.passports.gov.au/Web/index.aspx

Phone: 131 232

Email: passports.australia@dfat.gov.au

ACCESS TO JUSTICE WEBSITE (IF LEGAL ADVICE IS REQUIRED)

Website: http://www.accesstojustice.gov.au/

DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION

Website: http://www.immi.gov.au/

Phone: 131 881

OFFICE OF THE MIGRATION AGENTS REGISTRATION AUTHORITY (MARA)

Website: https://www.mara.gov.au/Home/default.aspx

Phone: 1300 226 272 or (02) 9078 3552

Fax: (02) 9078 3591

Post: Office of the Migration Agents Registration Authority

PO Box Q1551

QVB NSW 1230

Location: Level 10, 111 Elizabeth Street

Sydney NSW Australia

AUSTRALIAN FEDERAL POLICE

Phone: 131 237

APPENDIX – SAMPLE DIVORCE ORDERS

SAMPLE OF DIVORCE ORDER WHEN THERE IS A CHILD OR CHILDREN OF THE MARRIAGE

FAMILY LAW ACT 1975

DIVORCE ORDER

IN THE FEDERAL MAGISTRATES COURT OF AUSTRALIA **File No: (P) XXXXXXXXXXXXX**

IN THE MARRIAGE BETWEEN:

XXXXXXXXXXXXX **(Husband)**

AND

XXXXXXXXXXXXX **(Wife)**

BEFORE: **XXXXXXXXXXXXX**
DATE OF ORDER: Tuesday, 2 August 2011
MADE AT: MELBOURNE

The application of **XXXXXXXXXXXXX** for a divorce order in relation to the marriage of the above named husband and wife, which was solemnised on thirtieth day of March 1993, was heard on the second day of August 2011.

THE COURT FINDS:

1. The marriage is proved.
2. The wife was at all material times ordinarily resident in Australia and has been so resident for 1 year immediately preceding the date on which the application was filed.
3. The ground for the application for a divorce order – namely, that the marriage has broken down irretrievably - is proved.

THE COURT, BY ORDER, DECLARES THAT IT IS SATISFIED:

4. The only child/ren of the marriage, as that expression is defined in section 55A(3), who has/have not attained the age of eighteen years is/are the child/ren:

   XXXXXXXXXXXXX **XXXXXXXXXXXXX** **XXXXXXXXXXXXX**
   XXXXXXXXXXXXX *(name and date of birth of each child)*

5. The Court by order declared that it was satisfied that the only child/children of the marriage who has/have not attained the age of 18 years is/are the child/children specified in the order and that proper arrangements in all the circumstances have been made for the care, welfare and development of the child/children.

THE COURT ORDERS:

6. A divorce order be made, such divorce order to take effect and thereby terminate the marriage on third day of September 2011.

By the Court

Registrar

See Page 2 for Certificate and Notes

DRAFT

FILE NO: XXXXXXXXXX

CERTIFICATE THAT THE DIVORCE ORDER HAS TAKEN EFFECT

I certify that the divorce order made in relation to the application **XXXXXXXXXXXXX** took effect on the third day of September 2011, thereby terminating the marriage between **XXXXXXXXXXXXX**

By the Court

Registrar

NOTES:

1. If a party to the marriage proposes to make an application to a court exercising jurisdiction under the *Family Law Act 1975* as to property or as to the maintenance of that party, such application must be made within 12 months from the date upon which this divorce order takes effect. After that time such an application cannot be made without first obtaining the leave of the court to do so.

2. A divorce order which has taken effect may revoke, or otherwise affect the operation of, the Will of a party. Parties should seek legal advice about their position under the law of the State or Territory concerned.

3. A party to a marriage who marries again before this divorce order takes effect (unless the other party has died) commits the offence of bigamy.

4. If, before this divorce order takes effect, it comes to the notice of a party to the marriage that the other party has died, he or she should file an affidavit or certificate in the office of the court giving particulars of the date and place of death.

DRAFT

XXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

SAMPLE DIVORCE ORDER WHEN THERE IS A CHILD OR CHILDREN OF THE MARRIAGE AND THE REGISTRAR, WHILE NOT BEING SATISFIED AS TO THE ARRANGEMENTS FOR THE CHILD OR CHILDREN'S CARE, NEVERTHELESS HAS GRANTED THE DIVORCE

FAMILY LAW ACT 1975

DIVORCE ORDER

IN THE FEDERAL MAGISTRATES COURT OF AUSTRALIA **File No: (P)XXXXXXXXXX**

IN THE MARRIAGE BETWEEN:

XXXXXXXXXX **(Husband)**

AND

XXXXXXXXXX **(Wife)**

BEFORE: **XXXXXXXXXX**
DATE OF ORDER: Tuesday, 2 August 2011
MADE AT: MELBOURNE

The application of **XXXXXXXXXX** for a divorce order in relation to the marriage of the above named husband and wife, which was solemnised on sixteenth day of April 2005, was heard on the second day of August 2011.

THE COURT FINDS:

1. The marriage is proved.
2. The wife was at all material times domiciled in Australia.
3. The ground for the application for a divorce order – namely, that the marriage has broken down irretrievably - is proved.

THE COURT, BY ORDER, DECLARES THAT IT IS SATISFIED:

4. The only child/ren of the marriage, as that expression is defined in section 55A(3), who has/have not attained the age of eighteen years is/are the child/ren:

   XXXXXXXXXX *(name of child and birth date)*

5. There are circumstances by reason of which the divorce should take effect even though the Court is not satisfied that proper arrangements in all the circumstances has been made for the care, welfare and development of the child/children.

THE COURT ORDERS:

6. A divorce order be made, such divorce order to take effect and thereby terminate the marriage on third day of September 2011.

By the Court

Registrar

See Page 2 for Certificate and Notes

DRAFT

FILE NO: (P) XXXXXXXXXX

CERTIFICATE THAT THE DIVORCE ORDER HAS TAKEN EFFECT

I certify that the divorce order made in relation to the application of **XXXXXXXXXX** took effect on the third day of September 2011, thereby terminating the marriage between **XXXXXXXXXX** and **XXXXXXXXXX**.

By the Court



Registrar

NOTES:

1. If a party to the marriage proposes to make an application to a court exercising jurisdiction under the *Family Law Act 1975* as to property or as to the maintenance of that party, such application must be made within 12 months from the date upon which this divorce order takes effect. After that time such an application cannot be made without first obtaining the leave of the court to do so.

2. A divorce order which has taken effect may revoke, or otherwise affect the operation of, the Will of a party. Parties should seek legal advice about their position under the law of the State or Territory concerned.

3. A party to a marriage who marries again before this divorce order takes effect (unless the other party has died) commits the offence of bigamy.

4. If, before this divorce order takes effect, it comes to the notice of a party to the marriage that the other party has died, he or she should file an affidavit or certificate in the office of the court giving particulars of the date and place of death.

DRAFT

XXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXX

SAMPLE DIVORCE ORDER WHEN THERE IS NO CHILD OF THE MARRIAGE

FAMILY LAW ACT 1975

DIVORCE ORDER

IN THE FEDERAL MAGISTRATES COURT OF AUSTRALIA **File No: (P) XXXXXXXXXXXXX**

IN THE MARRIAGE BETWEEN:

XXXXXXXXXXXXX **(Husband)**

AND

XXXXXXXXXXXXX **(Wife)**

BEFORE: **XXXXXXXXXXXXX**

DATE OF ORDER: Tuesday, 2 August 2011

MADE AT: MELBOURNE

The application of **XXXXXXXXXXXXX** for a divorce order in relation to the marriage of the above named husband and wife, which was solemnised on thirtieth day of March 1993, was heard on the second day of August 2011.

THE COURT FINDS:

1. The marriage is proved.
2. The wife was at all material times ordinarily resident in Australia and has been so resident for 1 year immediately preceding the date on which the application was filed.
3. The ground for the application for a divorce order – namely, that the marriage has broken down irretrievably - is proved.

THE COURT, BY ORDER, DECLARES THAT IT IS SATISFIED:

4. The only child/ren of the marriage, as that expression is defined in section 55A(3), who has/have not attained the age of eighteen years is/are the child/ren:

   XXXXXXXXXXXXX **XXXXXXXXXXXXX** **XXXXXXXXXXXXX**
   XXXXXXXXXXXXX *(name and date of birth of each child)*

5. The Court by order declared that it was satisfied that the only child/children of the marriage who has/have not attained the age of 18 years is/are the child/children specified in the order and that proper arrangements in all the circumstances have been made for the care, welfare and development of the child/children.

THE COURT ORDERS:

6. A divorce order be made, such divorce order to take effect and thereby terminate the marriage on third day of September 2011.

By the Court

Registrar

FEDERAL MAGISTRATES COURT OF AUSTRALIA
AUSTRALIA

See Page 2 for Certificate and Notes

DRAFT

FILE NO: (P) XXXXXXXXXXXXX

CERTIFICATE THAT THE DIVORCE ORDER HAS TAKEN EFFECT

I certify that the divorce order made in relation to the application of **XXXXXXXXXXXXX** took effect on the third day of September 2011, thereby terminating the marriage between **XXXXXXXXXXXXX** and **XXXXXXXXXXXXX**.

By the Court

Registrar

NOTES:

1. If a party to the marriage proposes to make an application to a court exercising jurisdiction under the *Family Law Act 1975* as to property or as to the maintenance of that party, such application must be made within 12 months from the date upon which this divorce order takes effect. After that time such an application cannot be made without first obtaining the leave of the court to do so.

2. A divorce order which has taken effect may revoke, or otherwise affect the operation of, the Will of a party. Parties should seek legal advice about their position under the law of the State or Territory concerned.

3. A party to a marriage who marries again before this divorce order takes effect (unless the other party has died) commits the offence of bigamy.

4. If, before this divorce order takes effect, it comes to the notice of a party to the marriage that the other party has died, he or she should file an affidavit or certificate in the office of the court giving particulars of the date and place of death.

DRAFT

XXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX