



Australian Government
Attorney-General's Department

Explanatory Material on the *Marriage Act 1961* for Marriage Celebrants

This document provides essential information on the solemnization of marriages under the *Marriage Act 1961* and has been extensively updated.

The *Marriage Act 1961* and *Marriage Regulations 1963* are available to the public for purchase from CanPrint Communications, tel: 1300 656 863 and can be viewed on the Internet at: <http://ScalePlus.law.gov.au> or <http://www.comlaw.gov.au>

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EXPLANATORY MATERIAL ON THE *MARRIAGE ACT 1961*

WHAT IS MARRIAGE?

Marriage, according to Australian law, is the union of a man and a woman, to the exclusion of all others, voluntarily entered into for life. A definition containing these words was added to the *Marriage Act 1961* (“the Act”) in 2004. These words were in use prior to 2004 in Section 46(1) of the Act and were adopted in section 43(a) of the *Family Law Act 1975* (“the FLA”). Authorised celebrants (other than ministers of religion of recognised denominations) are required to inform parties about to be married of the nature of marriage according to Australian law in the terms set out in subsection 46(1) of the Act. Subsection 43(a) of the FLA directs family courts to have regard to the protection of that union as so defined. Marriage is regulated under the Act and all marriages in Australia must be conducted in accordance with this Act.

WHO CAN SOLEMNISE MARRIAGES UNDER THE ACT?

IN AUSTRALIA UNDER AUSTRALIAN LAW

The Act makes provision for three different classes of 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;
- b) State and Territory officers under Subdivision B of Division 1 of Part IV of the Act;
- c) Marriage celebrants authorised by the Commonwealth under Subdivision C of Division 1 of Part IV of the Act.

Persons in class (b) above may only solemnise a marriage in the State or Territory (or that part of a State or Territory) in which they have been registered.

In addition to the classes of celebrants listed above, it should be noted that, in certain limited circumstances, marriages involving at least one foreign national may be solemnised in Australia under Division 3 of Part IV by a diplomat or consular officer of the foreigner’s country.

(A) Ministers of Religion of Recognised Denominations

The term “minister of religion” as defined in the Act is a general term, comprehending the various persons, by whatever title known, who are either recognised by a religious body or religious organisation as having authority to solemnise marriages according to the rites or customs of that body or organisation, or are specifically nominated by a religious body or organisation to be authorised celebrants for the purposes of the Act.

A registered minister of religion may solemnise a marriage anywhere in Australia (including Norfolk Island). This provision meets the needs of a minister whose work is carried out in more than one State or Territory by allowing a minister to solemnise marriages outside their State or Territory of registration.

The Act specifically provides that it does not impose on an authorised celebrant who is a minister of religion any obligation to solemnise any marriage, nor does it prevent an authorised celebrant, who is a minister of religion, from making it a condition of solemnisation of marriage that requirements additional to those provided by the Act are observed. This means that a minister of religion can impose additional religious requirements (such as attendances at services or Church counselling) as a condition of performing the ceremony. A marriage celebrant from a recognised denomination is registered to conduct marriages according to the rites (or form of ceremony) of their religious organisation only.

In order that a person may become registered as a minister of religion under Subdivision A of Division 1 of Part IV of the Act, the religious body or organisation of which the person is a minister of religion must be a recognised denomination.

Recognised Denominations

A recognised denomination means a religious body or organisation in respect of which a Proclamation under section 26 of the Act is in force. Recognition is for the purposes of the Act only and does not confer any other status. A list of the denominations that are presently proclaimed to be recognised denominations is kept in accordance with section 15 of the Act and is published on the Internet, at the following address:

www.ag.gov.au/celebrants

Applications by religious organisations seeking recognised denomination status under section 26 of the Act are assessed against specific criteria.

Enquiries concerning obtaining recognised denomination status should be directed to:

Marriage Celebrants Section
Civil Justice Division
Attorney-General's Department
National Circuit
BARTON ACT 2600

How do I become registered as a minister of religion of a recognised denomination?

A minister of religion of a recognised denomination is entitled to be registered as an authorised celebrant if:

- the person is twenty-one years of age; and
- is ordinarily resident in Australia; and
- is nominated for registration by the person's denomination.

The nomination by the recognised denomination must be in the prescribed form (Form 10 in the *Marriage Regulations 1963* (the Regulations)) and be signed by the appropriate nominating authority. Each denomination must have notified the Attorney-General of the name or names of the nominating authority or authorities for that denomination. The Registrar of Ministers of Religion in each State or Territory has a list of nominating authorities.

An application for registration must be made by the applicant minister on the prescribed form (Form 11). The particulars set out in the application for registration must be verified by the applicant by way of a statutory declaration (see section on statutory declarations). When completed and signed, the nomination, application and statutory declaration should be forwarded to the Registrar of Ministers of Religion for the State or Territory in which the applicant ordinarily resides. The forms of nomination, application and statutory declaration are printed on the one form, which may be obtained from a Registrar of Ministers of Religion.

The Act sets out cases where, a Registrar of Ministers of Religion may refuse registration, or may remove the name of a minister from the register. These include cases in which 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. In any of these cases, the minister may apply to the Administrative Appeals Tribunal to have the decision reviewed.

A person's name may be removed on the grounds that the person has requested their name be removed, the person has died, the denomination has ceased to be a recognised denomination, the person has been guilty of such contraventions of the Act that he or she is no longer fit and proper, the person has made a business of solemnising marriages for profit or gain, or is not a fit and proper person to solemnise marriages.

A register is kept in each State or Territory of ministers of religion of recognised denominations resident in that State or Territory. The register from each state is regularly updated and published as a list in accordance with section 115 of the Act. This list can be found on the internet at www.ag.gov.au/celebrants.

(B) State and Territory Officers

A person who, under the law of a State or Territory, has the function of registering marriages solemnised in that State or Territory or in a part of that State or Territory, may solemnise marriages in that State or Territory or in that part of the State or Territory, as the case may be, by virtue of holding that office. Marriages solemnised by Registrars may occur in the Registry office or another location agreed by the parties.

In addition, other State or Territory officials may be authorised by the Attorney-General to solemnise marriages, and some officials have been so authorised. The geographic area of their authorisation to solemnise marriage is limited by the terms of their authorisation.

(C) Marriage celebrants appointed by the Commonwealth

Since 1 September 2003, marriage celebrants in this category have been appointed by a Registrar of Marriage Celebrants within the Attorney-General's Department.

People who wish to be registered as marriage celebrants by the Commonwealth must have completed training or been assessed to ensure they satisfy core competencies. In addition they have to satisfy the Registrar that they are fit and proper persons to be registered. The factors the Registrar of Marriage Celebrants must consider in deciding whether a person is a fit and proper person to be registered as a marriage celebrant are set out in section 39C(2) of the Act. Information about training and registration in this category can be found on the Internet at www.ag.gov.au/celebrants

Marriage celebrants appointed by the Commonwealth must fulfil a range of obligations including compliance with a Code of Practice and undertaking professional development activities annually. The performance of marriage celebrants in this category is also to be subject to review. Reviews must take place within five years from 1 September 2003 or within 5 years from the date on which a celebrant is first registered. Reviews may be conducted more regularly if required.

SOLEMNISATION OF MARRIAGES IN AUSTRALIA

Introduction

The Act sets out a uniform scheme for the solemnisation of marriages by authorised celebrants. This scheme deals with the actual marriage ceremony itself as well as matters that arise prior to and after the marriage ceremony.

The provisions of the Act apply equally to marriages involving persons who are not Australian citizens as they do to marriages involving one or two Australians. However, marriage celebrants and ministers of religion 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 in that overseas country, despite its validity in Australia, 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 own country following the marriage.

In addition, celebrants and ministers should consider, in appropriate cases, the need to recommend (where a marriage involves an Australian citizen and a foreign citizen) that parties obtain advice about immigration issues from the Department of Immigration and Citizenship.

PROCEDURE REQUIRED PRIOR TO SOLEMNISING A MARRIAGE

A marriage should not be solemnised unless notice of the intended marriage has been given to the proposed celebrant, evidence of date and place of birth of the parties has been produced to the proposed celebrant, and each of the parties has made a declaration as to his or her belief that there is no legal impediment to the marriage. These matters are dealt with in detail below.

Notice of intended marriage (NOIM)

A form of notice of intended marriage (NOIM) has been prescribed by regulation. Copies of the form may be purchased or downloaded from the Internet at www.ag.gov.au/celebrants

A notice of intended marriage must be in accordance with the prescribed form and must contain such particulars in relation to the parties as are indicated in the prescribed form. Parties should be advised to read all the instructions carefully before completing the form. You may need to explain aspects of the form.

Items 1 to 10 of the NOIM correspond exactly to the items on the Births Deaths and Marriages Registry (BDM) issued certificates of marriage, except that Item 8 on the NOIM, which asks about length of residence in Australia, if born outside Australia, is

not reflected on the BDM certificate. Item 8 and Items 11 to 16 are required for statistical purposes.

Where a party to an intended marriage is unable, after reasonable inquiry, to ascertain all of the particulars in relation to that party required to be contained in the notice, this should be indicated by writing “not known” in the appropriate space or spaces.

In order to make the notice effective, the party must supply to the proposed celebrant, before the marriage is solemnised, a statutory declaration as to his or her inability to ascertain the particulars not included in the notice and the reasons for that inability (please see section on statutory declarations).

Completing the notice

Parties should be advised to exercise every care in completing the NOIM. They should be advised to read the notes on the front of the printed form before completing the notice and to type, or use block letters, in completing 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. There is no objection to the authorised celebrant or any other person doing the actual writing of the particulars given to him or her by the parties desiring to give the notice.

It should be drawn to the attention of parties that it is an offence for a person to give a notice to an authorised celebrant if the person giving the notice knows that the notice contains a false statement or an error or is defective.

The following points about the NOIM are drawn to the attention of authorised celebrants.

Names

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. You should ensure that they write their name **exactly** as it appears on their birth certificate. 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 change of name certificate they should write this name on the NOIM.

In cases where parties have obtained a Change of Name certificate you should ensure that they have written their name **exactly** as it appears on the Change of Name certificate.

In cases where parties have changed their name by marriage and have retained a previous spouse's **surname** you should ensure that they have written their surname **exactly** as it appears on the previous marriage certificate.

Their given names should be written **exactly** as they appear on the parties' birth certificates or Change of Name certificates as appropriate.

Terms such as "ka", "aka" and "nee" must **not** be used.

For more information about what name should be used on the NOIM, for example in circumstances where a party says the spelling of their name on their birth certificate is incorrect, or that they have changed their name through usage, please see the section entitled "Names on Notice of Intended Marriage" commencing on page 49 of these materials.

Item 5. Conjugal status

Where a party has never been married, or has gone through a void ceremony of marriage, their conjugal status is "never validly married". The terms "bachelor" and "spinster" are not to be used. A void marriage may be evidenced either by a decree or by some other satisfactory evidence (for example, a certificate of the conviction of the other party to the void marriage for bigamy).

A void marriage is of no effect in law and does not require a decree of nullity declaring it void. However, a decree of nullity, where it is obtained, is a judicial recognition that the marriage is void and there is no longer any need to consider whether the facts show that the marriage is void or not.

In any case where a previous marriage is stated to be void, if the celebrant is in any doubt about the evidence produced to support this, the celebrant should seek the advice of the registering authority in the State or Territory concerned.

Item 8. If the party born outside Australia, total period of residence in Australia

The printed form makes provision for giving both "years" and "months" of residence. Months as well as years need be given only 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 (and not six years).

Where a party is only in Australia for a number of days or weeks this should be recorded on the form accordingly.

Item 17. How last marriage terminated

Where a party is a divorced person or a widow or widower, evidence of the divorce or evidence of the death of that party's previous spouse must be produced to the celebrant before the marriage is solemnised. This evidence should take the form of the actual certificate of divorce (or decree absolute) or the death certificate, or an official copy of the decree or death entry, as the case requires.

Where the celebrant is not certain of the identity of a deceased person, he or she 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. The NOIM makes provision for a note of the production of the evidence of death, dissolution or nullity.

A NOIM can be received by a celebrant even though a party is, or both parties are, still married to another person at the date of receipt of the notice. In such cases it is sufficient that the married party or parties note when filling in the form that they are still married, that a divorce order is being sought and giving the termination date of the previous marriage and the date upon which the certificate of divorce is expected. For divorces finalised before 1 July 2002 the evidence of divorce was called the decree absolute. Following amendments to the Family Law Act the terms 'decree nisi' and 'decree absolute' were replaced by the term 'divorce order'. The Certificate of Divorce is evidence that a divorce has occurred. The date on which a new marriage can take place is the date from which the divorce order 'takes effect'. The wording in the Certificate of Divorce is (roughly) '*In relation to the marriage solemnised on the [date] I certify that the divorce order made by the Court on the [date] takes effect from the [date *].*' The take-effect date* is the date marriage celebrants should focus on.

The important issue, of course, is that the celebrant sights evidence that the party is no longer married prior to the ceremony. For this purpose, certificate of divorce, a decree absolute or overseas issued equivalent must be sighted. Couples must be clearly advised that the marriage **cannot** take place until the divorce has been sighted. It should be sighted, at the latest, on the day before the ceremony.

Where a party has been married several times before, only the divorce order for the most recent marriage need be sighted by the celebrant if that divorce order was pronounced by the Family Court of Australia. Celebrants may be satisfied that the party, in such cases, is not married as in order for the Family Court of Australia to pronounce a divorce order it must first be satisfied that a marriage existed in the first place.

Where a party presents evidence of a divorce order which was granted overseas the validity of the decree will be determined by section 104 of the *Family Law Act 1975*. It is the responsibility of the party to satisfy the celebrant that they are free to marry. If the celebrant is not satisfied the party should be advised to seek legal advice. The Family Court has the power to make declarations as to the validity of a marriage or 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.

Signature

If signed in Australia

The notice must be signed by each of the parties in the presence of an authorised celebrant, a Commissioner for Declarations under the *Statutory Declarations Act 1959*, a justice of the peace, a barrister or solicitor, a legally qualified medical practitioner or a member of the Australian Federal Police or the police force of a State or Territory.

If signed overseas

The notice must be signed by each of the parties in the presence of an Australian Diplomatic Officer, an Australian Consular Officer, an employee of the Commonwealth authorised under paragraph 3(c) of the *Consular Fees Act 1955*, an employee of the Australian Trade Commission authorised under paragraph 3 (d) of the *Consular Fees Act 1955*, or a notary public.

‘Notary public’ is an office that has been in existence for many hundreds of years. Notaries public are to be found in every country and are essential for the continued conduct of international government and private business. There is no definition of the term in the Act because it is such a well recognised office internationally that there was no need to do so.

A summary of the position is that a notary public is a legal officer with specific authority to witness legal documents usually with an official seal. The Concise Oxford Dictionary defines the position as being a person publicly authorised to draw up or attest contracts and perform other formalities.

It is not possible for the Attorney-General’s Department to provide a list of all notaries. Notaries public will be listed in telephone directories overseas and are readily available. A law office would be able to direct a person to one (for example to witness and sign documents for businesses overseas).

It is the responsibility of a party to a marriage to locate an appropriate witness overseas and not the responsibility of the celebrant. Most couples overseas will be able to visit an Australian Embassy, High Commission or Consulate to have the NOIM witnessed.

The notice should ordinarily be signed by both parties before it is given to the proposed celebrant. However, where the signature of a party to an intended marriage cannot conveniently be obtained at the time when it is desired to give the notice, the notice may be signed by the party giving it and the notice will be effective if it is signed by the other party in the presence of the authorised celebrant at any time before the marriage is solemnised. The celebrant must be satisfied that the party who does not sign has a genuine reason for not being able to do so at the time (see section concerning surprise weddings).

Date of receipt by celebrant

When a celebrant receives a notice, the celebrant must endorse on the notice, in the space provided, the date on which the notice was received. This is the date the notice is lodged (ie when the signed copy is received by the celebrant). Notice is not received on the date a booking or other arrangements are made.

Period

Up to 18 months notice can be given. However, at least one month's notice **must** be given. The marriage may not be solemnised before the expiration of one month after the date on which the notice is received by the proposed celebrant. One month means one calendar month e.g. (a) when a notice is received by a celebrant on 15 March the marriage may not be solemnised before 16 April but may be solemnised on that day (b) when a notice is received by a celebrant on 31 May the marriage may not be solemnised before 1 July but may be solemnised on that day.

The Act expressly provides that it does not impose on an authorised celebrant who is a minister of religion any obligation to solemnise any marriage or prevent the minister from making it a condition of solemnising a marriage that longer notice of intention to marry than the period of one month required by the Act be given or requirements additional to those provided by the Act be observed. Thus the churches are free to fix their own periods of notice, being one month or more, and to maintain their own observances (for example, publication of banns in the parties' respective parish churches on three Sundays or the publication of the intended marriage by the mode usually adopted by the particular religious denomination, religious organisation or congregation).

Shortening of time for notice

Provision has been made for shortening the period of the notice to less than one month, but the giving of the notice itself prior to the marriage ceremony cannot be dispensed with. The power to shorten time has been given to prescribed authorities.

A prescribed authority may, if satisfied that circumstances prescribed by regulation have been met, authorise an authorised celebrant to solemnise a marriage notwithstanding that the notice of intended marriage has been received by the authorised celebrant less than one month before the date of the marriage.

There are five categories of circumstances set out in the regulations. These are:

- Employment related or other travel commitments,
- Wedding or celebration arrangements, or religious considerations,
- Medical reasons
- Legal proceedings
- Error in giving notice

The reason for seeking a shortening of time for notice must fall within one of these categories before an application can be considered. There is no capacity to grant shortening of time outside these circumstances. Celebrants and couples need to understand that shortening of time is not automatic. When making a decision the prescribed authority will weigh up the information provided in support of the application.

For example, if a couple seeks a shortening of time because a party to the marriage, or someone involved with the proposed wedding, has a serious medical condition the prescribed authority must consider their application. The regulation lists a number of matters the prescribed authority may take into account when making the decision. These include a letter from a medical practitioner or other medical evidence. The prescribed authority should also consider why the notice was not given in time and can take into account anything else they think is relevant.

Another example could be if a couple seeks a shortening of notice time because of the binding nature of the wedding or celebration arrangements. An example of a typical fact situation might involve payment for a wedding venue that is non-refundable. The regulation lists a number of matters to be considered when making the decision. These include documents such as receipts for payments or wedding invitations. The dates that payments were made or invitations sent may provide a good indication of the genuineness of the need to shorten time in this circumstance. The prescribed authority could also consider why the couple failed to give notice in time, why they cannot postpone the wedding, and what hardship they will suffer if they are required to postpone the wedding. The hardship might be financial. It might also be emotional. It is up to the prescribed authority to consider the individual case.

An authorised celebrant cannot reduce the period of notice in relation to a marriage that he or she is to solemnise unless he or she is also a prescribed authority (for example, where he or she is a State or Territory registering authority). In this case, the prescribed authority can reduce the period of notice if satisfied that the circumstances prescribed by regulation have been met, and may solemnise the marriage if there is no other authorised celebrant suitable to the parties conveniently available.

No form of application for shortening time has been prescribed and the application can be made orally. Where an authorised celebrant is asked to reduce the time, 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 prescribed authority should inquire into the reasons for applying for a shortening of time and satisfy themselves that the relevant circumstances have been met. The prescribed authority should make a note in the box provided at the foot of the NOIM, sign it, add his or her designation and the words "Prescribed Authority" and write the date. If the marriage is to be solemnised by an authorised celebrant other than the prescribed authority, the prescribed authority should hand the notice back to the parties to give to the proposed celebrant.

Stale notices

A notice is stale after 18 months; therefore, a marriage may not be solemnised if the notice was received more than 18 months before the date of the proposed marriage. Where parties will be overseas until less than one month prior to the marriage it is permissible for the parties to lodge the notice by post.

It is also worth noting again that whilst the notice should ordinarily be signed by both parties before it is given to the proposed celebrant, where the signature of a party to an intended marriage cannot conveniently be obtained at the time when it is desired to give the notice, the notice may be signed by the party giving it and the notice will be effective if it is signed by the other party in the presence of the authorised celebrant at any time before the marriage is solemnised. This enables the notice to be lodged notwithstanding that the parties to the proposed marriage will not be present in the same place during the 18 month period until less than one month before the proposed ceremony. The celebrant must be satisfied that the party who has not signed has a genuine reason for not being able to do so at the time and is fully aware of the marriage (see section concerning surprise weddings) and that their documents are all in order..

If a celebrant is in any doubt whether a NOIM is in order, he or she should refer the notice to a registering authority as soon as practicable after receipt and in any case before solemnising the marriage.

Corrections of errors in notice

Where a NOIM given to an authorised celebrant is found to contain an error, the authorised celebrant may permit the error to be corrected 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 authorised celebrant. The corrected notice may then be treated as having been given in its corrected form.

Evidence of birth

A safeguard contained in the Act against underage persons getting married, is the requirement that there must be produced to the proposed celebrant, in respect of each party, an official certificate of birth, or an official extract of an entry in an official register showing the date and place of birth of the party. A birth certificate or extract is also a useful means of checking some of the details in the notice of intended marriage.

Evidence of date of birth must be produced in **every** case, without exception, notwithstanding that a party has been previously married or appears to be over the age of 18 years.

A party born in Australia is expected to provide an official birth certificate or official extract of a birth certificate in all but the most exceptional cases.

If a party is unable to produce a birth certificate or extract, the party, or a parent of the party, must make and give to the proposed celebrant a statutory declaration setting out the reason why it is impracticable (that is impossible) to obtain such a certificate or extract and stating, 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 section on statutory declarations).

People should be advised of the penalties for making false declarations which is 4 years imprisonment. Notwithstanding the making of such a statutory declaration, a celebrant who had reason to believe it contained a false statement would commit an offence if he or she solemnised the marriage.

As stated above other than in very exceptional circumstances, a celebrant should not accept a statutory declaration where the person has been born in Australia, as it is almost always possible to obtain a birth certificate or extract from the State or Territory of birth.

The fact that it will cost the party money to obtain the certificate or extract or that the party has left it too late to obtain the document prior to the ceremony is not a sufficient excuse and does not make it "impracticable" to obtain it for the purposes of s.42(1)(b)(ii).

Passports

An Australian passport must not be relied upon for evidence of date and place of birth because the Act does not provide for this. For a person born overseas a birth certificate or a passport issued by a government of an overseas country, showing the date and place of the party's birth will be acceptable. It should be noted that it will frequently be possible for a party born overseas to obtain a birth certificate or extract. Where a person born overseas has neither a birth certificate nor a passport issued by a government of an overseas country, a statutory declaration will be acceptable.

If it appears that the date of birth on a birth certificate or extract has been altered, the celebrant should refer the certificate or extract to the nearest registering authority.

Parties should be encouraged to produce the certificates, extracts, overseas passports or statutory declarations with the NOIM, but they may be produced at any time before the marriage is solemnised. It is an offence for a celebrant to solemnise a marriage before this evidence of date of birth has been produced.

When the celebrant has seen the evidence of birth and found it satisfactory, the celebrant should strike out the appropriate words depending on what evidence has been produced.

A certificate, extract of birth or overseas passport should be returned to the party or person producing it, but any statutory declaration should be retained and forwarded to the appropriate registering authority with the official marriage certificate.

Identity of the parties

The celebrant must ensure that the couple he or she marries are the same as the parties in the Notice. This duty is separate from establishing the date and place of birth of the parties and establishing that any previous marriage from them has ended. You must also establish the identity of each of the parties to the proposed marriage. The best thing to ask for in carrying out this duty is a document with the person's photo on it eg a driver's licence or passport. Citizenship papers may also help in this regard.

Declarations as to conjugal status and no legal impediment to the marriage

Prior to the solemnisation of the marriage, each of the parties to the intended marriage must make and subscribe before the proposed celebrant a declaration, in accordance with the prescribed form, as to the party's conjugal status and to the party's belief that there is no legal impediment to the marriage. Two forms of declaration for this purpose are printed on the back of the registration certificate of marriage.

The declarations must be made before the marriage is solemnised. Preferably, these should be made as close as possible to the ceremony, even if this requires a special attendance on the celebrant for the purpose. The 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 and subscribed their declarations.

The conjugal status of a party given in his or her declaration should be the same as that given in item 5 of the NOIM unless the party was waiting upon a dissolution of marriage 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 to be taken to dissolve that marriage and the conjugal status given in the declaration will be "divorced".

Paragraph 2 of the declaration deals with possible legal impediments to the marriage. Paragraph 3 deals with establishing that the party is of marriageable age and the party should be careful to cross out whichever statement is inapplicable. The celebrant should initial the deletion in the margin. Where a party is a minor, his or her date of birth must be given. The celebrant should at this stage, if this has not already been done, check that the section 12 judicial order has been obtained and check that the consent or consents produced under s13 or s14 of the Act are adequate and in order. If neither party is a minor, the celebrant should strike out the words "consents received" on the back of the NOIM.

Availability of marriage education and counselling

As soon as practicable after receiving the NOIM, an authorised celebrant must give to the parties a document outlining the obligations and consequences of marriage. This brochure is called *Happily Ever Before and After*, and indicates the availability of marriage education and counselling.

Where a party is not present when the NOIM is given, as well as giving a copy of the document to the party present, a copy should be posted to the other party at the address

given for that party in the NOIM. Where neither is present when the NOIM is received a copy should be posted to each party at the respective addresses given in the NOIM.

A notation of the giving of the documents should be made in the appropriate space on the reverse of the NOIM. If copies were not available the celebrant should note this on the form and not leave the space blank. If the space is left blank it may indicate that the celebrant has not fulfilled their obligations.

The Code of Practice, applicable to celebrants authorised by the Commonwealth, also requires celebrants to maintain up-to-date knowledge about appropriate family relationship services in your community and inform parties about the range of information and services available to them to enhance and sustain them throughout their relationship. Celebrants should be able to provide information, and if necessary referrals, to couples who seek them. Celebrants are not required or expected to provide these services themselves, but are in the perfect position to provide information to marrying couples about the services that are available. This is a valuable role celebrants are required to fulfil.

WHEN IS A MARRIAGE NOT ABLE TO BE SOLEMNISED?

Where the marriage will be a void marriage

Under section 23B of the Act-

A marriage will be a void marriage where:

- (a) either of the parties is, at the time of the marriage, lawfully married to some other person;
- (b) the parties are within a prohibited relationship;
- (c) by reason of section 48 the marriage is not a valid marriage;
- (d) the consent of either of the parties is not a real consent because:
 - (i) it was obtained by duress or fraud;
 - (ii) that party is mistaken as to the identity of the other party or as to the nature of the ceremony performed; or
 - (iii) that party is mentally incapable of understanding the nature and effect of the marriage ceremony; or
- (e) either of the parties is not of marriageable age;

and not otherwise.

Each of these grounds is explored in more detail below.

Under section 100 of the Act it is an offence for 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.

Prior undissolved valid marriage

A person who is already validly married cannot marry someone else under Australian law until the first marriage has ended. A person who has been previously married must provide the celebrant with proof that any prior marriage has ended whether by divorce or by the death of the other party.

It is important to be aware that persons can both marry and divorce overseas. Marriages that take place overseas are generally recognised as valid under Australian law, subject to a number of exceptions. These exceptions basically mirror the reasons listed above in which a marriage conducted in Australia will be void. The key issue is whether the marriage is valid according to the law of the country where it was solemnised.

A divorce that is granted overseas may be valid providing that the person who sought the divorce or their former spouse satisfied the jurisdictional requirements set out in section 104 of the *Family Law Act 1975*.

Celebrants 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.

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. This might happen as a result of war or natural disaster. Where this has occurred, celebrants would be best to refer the party to obtain legal advice, or suggest that they obtain assistance from the Family Court of Australia as to how to go about seeking a divorce or a declaration that their previous divorce was valid.

It must be remembered that if the celebrant solemnises the marriage without satisfying themselves that the previous marriage has ended they may be liable to a penalty.

Where the parties are too closely related (prohibited relationships)

A marriage is void where the parties are within a prohibited relationship. The prohibited relationships for the purposes of marriage are set out in Section 23B of the Act.

Marriages of parties within a prohibited relationship are marriages between a person and their ancestor or descendant and marriages between a brother and sister (whether of the whole blood or the half-blood). For example, a marriage between a grandfather and his granddaughter is prohibited; however, a marriage between an aunt and her nephew would be permissible. Marriages between first cousins are also permitted.

For the purposes of determining whether a prohibited relationship exists, these relationships include a relationship traced through, or to, a person who is or was an adopted child. This includes adoptions which have been annulled, cancelled or discharged. The relationship between an adopted child and the adoptive parents is deemed to have been a natural relationship of child and parent.

In other words, a person who has been adopted has a prohibited relationship with both their natural ancestors and siblings as well as any adoptive ancestors and siblings.

In practice this requirement means 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.

Marriage invalid by reason of section 48

Section 48 provides that a marriage solemnised otherwise than in accordance with sections 40-47 is not a valid marriage. Section 48 then provides a series of exceptions to this. The validity of marriages that are not solemnised in accordance with most of these sections is not affected. However, if a marriage is solemnised by a person who is not authorised to solemnise marriages and the parties knew of this, the marriage will be invalid. The marriage will also be invalid if it does not comply with section 45 relating to the form of ceremony.

While the validity of the marriage may be protected if some requirements are not complied with, marriage celebrants need to be aware that non-compliance with many of these requirements may constitute an offence under the Act.

Lack of real consent

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

- The consent is obtained by duress or fraud;
- The consent is not real consent because one of the parties is mistaken as to the identity of the other party or as to the nature of the ceremony performed; or
- The consent is not a real consent because 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. If a marriage celebrant forms a view that any of the above grounds may be present when a couple approaches them to conduct a wedding, they must discuss the matter with the party concerned to ensure that consent is a real consent. If any issues concerning consent arise in the celebrant's mind they should interview the parties separately to ensure there are no issues of duress.

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 of 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. Again the marriage 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. The celebrant should question the party about whom s/he has concerns separately and with that party's permission may ask questions of third parties including family, carers or medical personnel if the celebrant thinks it necessary.

The celebrant should document any conversations of this type, so that if any questions arise at a later date the celebrant has a record of his or her decision making process. These notes do not need to be formal but should be sufficient to act as an aid to the celebrant's memory of events

Where one or both of the parties are under marriageable age

The Act provides uniform marriageable ages for males and females throughout Australia.

A person is of marriageable age if they have attained the age of 18 years. This has been the marriageable age for both males and females since changes raising the marriageable age from 16 to 18 years for females came into effect on 1 August 1991. A person under the age of 16 cannot marry.

Requirement for a court order

Under section 12 of the Act, a person between 16 and 18 years of age 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.

If the judge or magistrate is satisfied that the applicant has attained the age of 16 years and that the circumstances of the case are so exceptional and unusual as to justify the making of the order, the judge or magistrate may make the order. The making of such an order is at the discretion of the particular judge or magistrate. If the order is made authorising the particular marriage, the applicant is of marriageable age in relation to their marriage to the particular person of marriageable age specified in the order, but not otherwise.

The celebrant must ensure that the court order under s 12 has been obtained before agreeing to solemnise the marriage.

The Act does not permit, under any circumstances, a marriage where **both** parties are under marriageable age.

Where either of the parties to a marriage is not of marriageable age, the marriage is void unless the required orders and consents have been obtained.

It is an offence for a person to solemnise, or purport to solemnise, a marriage if the person has reason to believe that one or both of the parties are not of marriageable age. The celebrant must therefore carefully check the age of both parties from their birth certificates or extracts.

It is also an offence for a person to go through a form of ceremony of marriage with a person who is not of marriageable age.

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

The court order authorising a marriage involving one party who is not of marriageable age, must be produced to the celebrant who solemnises the marriage who must forward it to the appropriate registering authority of the State or Territory in which the marriage was solemnised, with the official marriage certificate.

An order authorising a marriage involving a person under marriageable age ceases to have effect if the marriage to which the order relates does not take place within three months.

Celebrants should advise couples, or their parents, seeking such an order to seek legal advice in these circumstances. It is **not** the responsibility of the celebrant to arrange for the section 12 order or the necessary consents.

Consents

In addition to the court order it is also necessary to obtain the consents of any persons whose consent to the marriage is required (normally the parents). The celebrant should carefully ascertain the facts and circumstances of the party who is aged less than 18 years to ensure that the necessary consents have been obtained.

It should be noted that the consent of parents or other persons normally required are not necessary if the minor has already been previously married. The authorisation of a judge or magistrate is, however, still required.

In some 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.

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 the judge's or magistrate's consent in place of the consent of the person whose consent is required; an appeal lies to a judge, by either the minor or the person in relation to whose consent the application was made, against a magistrate's decision.

It is the celebrant's responsibility to ensure that necessary requirements have been met before they solemnise the marriage.

Form of consent

A form of consent has not been prescribed, and any form of words that complies with the requirements of the Act and regulation 7 should be accepted. The consent must give the full name and address of the person giving the consent and the capacity in which the person is giving the consent (ie, father, mother, etc), the full name of the minor and the full name and address of the other party to the marriage. If the document does not contain all the particulars as to the name and address but sufficiently identifies the person giving the consent and the parties to the marriage, the consent should be accepted.

The consent must be in writing and must be witnessed, if signed in Australia, by an authorised celebrant, a Commissioner for Declarations under the *Statutory Declarations Act 1959*, a justice of the peace, a barrister or solicitor, a legally qualified medical practitioner or a member of the Australian Federal Police or the police force of a State or Territory.

If signed outside Australia the consent must be witnessed by an Australian Diplomatic Officer, an Australian Consular Officer, an employee of the Commonwealth authorised under paragraph 3(c) of the *Consular Fees Act 1955*, an employee of the Australian Trade Commission authorised under paragraph 3 (d) of the *Consular Fees Act 1955*, or a notary public.

Where the consents of two persons are required, whether mother and father or otherwise, their consents should, if possible, be given on the one form. Each signature

must be witnessed, but it may be witnessed by the same person. The date on which each consent is witnessed must be given.

A person must not subscribe his or her name as a witness unless that person is satisfied on reasonable grounds as to the identity of the person giving the consent to the marriage, and the consent bears the date on which he or she subscribes his or her name as a witness.

A consent is ineffective if it is dated earlier than three months before the date on which the marriage is solemnised, and a fresh consent must be obtained before the marriage can be solemnised.

The consents (and any translations) must be forwarded by the celebrant to the State or Territory registering authority with the official marriage certificate.

Statutory guardians

Where the law in force in a State or Territory provides that a person specified by that law is to be the guardian of a minor to the exclusion of any parent or other guardian of the minor, that person is the person whose consent is required to the marriage of the minor. Similarly, where such a law provides that a specified person is to be a guardian in addition to the parents or other guardian of the minor, the consent of that person is required in addition to the consent of the persons whose consents are required by the Schedule.

Consent not in English

Where a consent by a person to the marriage of a minor is not written in the English language, a certified translation into English must be produced. The celebrant may make the translation, if he or she is competent to do so.

The person who made the translation must certify on the translation that it is a translation of the consent and that he or she is competent to make the translation.

The certified translation must be attached to the consent and forwarded to the appropriate registering authority with the official marriage certificate. Failure to comply with these requirements is an offence.

Dispensing with consent

There is an exception to the rule that the consents of the parents to the marriage of a minor must be obtained. A prescribed authority may dispense with the consent of a person to a proposed marriage where the authority:

- (a) is satisfied that it is impracticable, or that it is impracticable without delay that would, in all the circumstances of the case, be unreasonable, to ascertain the views of that person with respect to the proposed marriage;

- (b) has no reason to believe that the person would refuse his or her consent to the proposed marriage; and
- (c) has no reason to believe that facts may exist by reason of which it could reasonably be considered improper that the consent should be dispensed with.

An application to dispense with a consent must be made by the minor in writing in the prescribed form, copies of which may be obtained from any registering authority.

Consent of judge or magistrates in place of parents, guardians

Where a person whose consent to the proposed marriage of a minor is required by the Act refuses to consent to the marriage, the minor may apply to a judge or magistrate for the consent of the judge or magistrate to the marriage in place of the consent of that person. The judge or magistrate will hold an inquiry into the relevant facts and circumstances and, if satisfied that a person's refusal to consent to the marriage is unreasonable, the judge or magistrate may consent in the place of the person who has refused consent.

Consent ineffective after three months

As in the case of consents by parents, a consent to a marriage given by a magistrate or a judge in place of the consent of another person ceases to have effect if the marriage does not take place within three months after the date of the consent.

Where a celebrant has any doubt as to the consents required, the celebrant should consult the nearest State or Territory Registrar of Births Deaths and Marriages.

THE MARRIAGE CEREMONY

Time and Place

A marriage may be solemnised on any day, at any time and at any place. It need not necessarily be solemnised in a building. The marriage must be solemnised in Australia, or within Australian territorial waters.

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. A marriage cannot be conducted in Antarctica under the Act as the Act does not extend to that continent.

Marriages to be solemnised by authorised celebrant

Section 41 of the Act provides that a marriage must 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. Marriage celebrants, other than State and Territory officers, are authorised to solemnise marriages anywhere in Australia.

It is often the practice that people who are not authorised celebrants (normally people requested by the couple) play a large part in a marriage ceremony. Authorised celebrants are responsible for ensuring, however, that they do not allow other people to perform functions that should be undertaken only by the authorised celebrant.

The Act does not provide explicit instruction on the minimum role that must be played by the authorised marriage celebrant in a marriage ceremony but it does draw some distinctions between ministers of religion (especially those belonging to recognised denominations) and celebrants conducting civil ceremonies and imposes additional requirements on celebrants who are not ministers of religion.

The Full Court of the Family Court of Australia in the case of *W and T* [1998] 23 FamLR 175 considered the meaning of the words ‘...by or in the presence of...’ an authorised celebrant and offered some guidance on the minimum role that should be played by an authorised religious marriage celebrant in order that there be no confusion. In the course of the decision it was noted that the Act required a greater degree of involvement in the ceremony on the part of an authorised marriage celebrant conducting civil ceremonies.

In the event that a marriage is being solemnised by a minister of religion, and someone other than the authorised marriage celebrant is taking a role in the ceremony, the minister of religion who is the authorised marriage celebrant should ensure that they play **at least** the following minimum role;

- 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;
- be responsible for ensuring that the marriage ceremony is carried out according to law;
- make their presence as the authorised celebrant known to the congregation;
- be available to intervene in a meaningful way if events demonstrate the need for it elsewhere in the ceremony; and
- sign the papers required by the Act.

If someone other than an authorised marriage celebrant is taking a role in a marriage ceremony being conducted by an authorised marriage celebrant who is **not** a minister of religion, the authorised celebrant should ensure that they do **at least** the following:

- consent to be present at the ceremony as the responsible authorised celebrant;
- take a public role in the ceremony;
- 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 section 46 in the presence of the parties, the formal witnesses and the guests before the marriage is solemnised;
- be in close proximity to the ceremonial group or part of it and see and hear the vows required by section 45(2) exchanged;
- be available to intervene (and exercise the responsibility to intervene) if events demonstrate the need for it elsewhere in the ceremony; and
- sign the papers required by the Act.

Please note that an authorised religious marriage celebrant who is not a minister of religion of a recognised denomination (in other words one who has been authorised by the Commonwealth) must say the words required by section 46 of the Act.

In any marriage ceremony the identity of the authorised marriage celebrant must be clear to everyone.

Other obligations of the authorised marriage celebrant when an unauthorised person is taking part in the ceremony.

The authorised marriage celebrant is not only the one who has to receive the Notice but is also legally responsible for the validity of the marriage. Therefore the authorised marriage celebrant must see the documents required to be produced themselves. This includes the:

- evidence of date and place of birth
- evidence of the divorce from, or death of, the previous spouse of a party to the proposed marriage, and
- establishing the identity of the parties.

The authorised marriage celebrant must also sign the three marriage certificates required to be completed under the Marriage Act.

It must be the authorised marriage celebrant who keeps the records of the use of the Form 15 (couples) certificate and also the Marriage Register or second marriage certificate for the six years required by the Marriage Act

The authorised celebrant must comply with all the requirements of the Code of Practice and will be the person against whom a couple may lodge a complaint about the solemnisation of the marriage.

The involvement of people other than the authorised marriage celebrant in marriage ceremonies is entirely a decision for couples and their families. Ceremonies are not to be used as learning experiences for students unless the couple requests the student's involvement in the ceremony.

Witnesses

Under section 44, a marriage may not be solemnised unless there are present as witnesses at least two persons who are, or appear to the person solemnising the marriage to be, over the age of 18 years.

The object of requiring the attendance of witnesses is that their evidence will be available, should the occasion arise, to establish the identity of the parties or to testify as to the circumstances in which the ceremony was performed.

It is, therefore, most desirable that the witnesses should be persons who know the parties to the marriage. This is the responsibility of the parties to the marriage. A request that the celebrant should provide witnesses might arouse suspicion as to the propriety of the marriage, and should not ordinarily be acceded to.

Interpreters at marriage ceremonies

Section 112 of the Act provides that where a celebrant considers it desirable to do so, they may use the services of an interpreter in or in connection with a marriage ceremony. The interpreter must be a person other than a party to the marriage.

It is the responsibility of the celebrant to make the decision as to whether an interpreter is necessary.

The celebrant must not solemnise a marriage at which the services of an interpreter are to be used unless the celebrant has already received a statutory declaration by the interpreter stating that he or she understands, and is able to converse in, the languages in respect of which he or she is to act as interpreter.

Immediately after the ceremony, the interpreter must furnish to the celebrant a certificate of the faithful performance of his or her services as interpreter. The certificate must be in the prescribed form. The statutory declaration and certificate

must be forwarded to the appropriate registering authority with the registration copy of the marriage certificate.

Form of Ceremony

Section 45 of the Act describes the form and ceremony which shall be used by celebrants performing a marriage. Section 45(1) refers to religious ceremonies and section 45(2) refers to marriages solemnised by, or in the presence of, an authorised celebrant, not being a minister of religion.

Ministers of religion may use any form and ceremony recognised as sufficient for the purpose by their religious organisation.

Section 45(2) sets out the minimum words which must be used by the parties for a non-religious ceremony to be a marriage ceremony. Each party must say to the other, in the presence of the 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.

It is permissible to add words to this minimum requirement in order to personalise the vows so long as any material added does not contradict the vows. The marriage celebrant must be sure that the minimum words or words to the same effect are included. Acceptable changes to the words provided in the Act which would be “to same effect” are discussed below.

Section 48 of the Act states that in certain circumstances a marriage not solemnised in accordance with Part IV Division 2 of the Act will be invalid. Section 48(2) of the Act sets out a number of exceptions to section 48, but section 45(2) is not included in the list of exceptions. This means that if the celebrant is not a minister of religion and if the ceremony does not satisfy the minimum requirements of section 45(2), namely the exchange of vows, the marriage will probably be void.

It is therefore very important that celebrants comply with the minimum requirements of section 45 in relation to the ceremony.

Meaning of “or words to that effect”

The phrase “or words to that effect” in section 45(2) must be narrowly interpreted as the requirements of section 45(2) are minimum requirements and the meaning of the vows exchanged by the parties must not be diluted or changed.

For example it would be permissible to change the minimum words in the following ways:

- “call upon” to “ask”,
- “persons” to “people”;
- “thee” to “you”, or

- “husband” or “wife” to “spouse”.

Any other changes would change the meaning of the vows. For example, it would not be permissible to change “husband” or “wife” to “partner” because “partner” does not signify marriage. The parties must not be in a position to make a mistake as to the meaning of the vows and all celebrants who are not ministers of religion must be sure that couples always comply with the requirements outlined concerning section 45(2).

As noted above it is permissible to lengthen the vows and personalise them according to the couples’ wishes, but these minimum words must be included. Many couples have constructed vows that include these words and add others.

Meaning of the terms “A.B.” and “C.D.”

Another issue arising from section 45(2) of the Act is what is meant by the terms “A.B.” and “C.D.”. Some celebrants have sought clarification as to whether the parties’ full names should be used.

It is important to remember that the words in section 45(2) are vows made by the parties to a marriage to each other, and there are minimum words which must be used, to ensure that the parties fully understand the nature of the ceremony and that they are marrying each other. It may be appropriate, if the parties feel strongly about it, to use their first and middle names in the vows rather than including their surnames. Many couples believe the vows spoken to each other are very personal and would prefer their surnames not be used at this stage in the ceremony.

It is recommended that full names be used at some stage during the ceremony, preferably early in the ceremony, for the purpose of legal identification of the parties. This does not need to be in the vows made by the parties to each other.

Nicknames cannot be used for the vows but shortened names or nicknames may be added to the vows following the full names, for example “I Elizabeth Jane (Liz) take you Peter John (Buddy)”. Nicknames may be used elsewhere in the ceremony, with the proviso that full legal names are used at some time in the ceremony.

Section 46 of the Act

Under section 46 of the Act, a marriage that is to be solemnised by or in the presence of an authorised celebrant who is not a minister of religion of a recognised denomination (this refers to all celebrants authorised by the Commonwealth), 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.

Marriage celebrants registered by the Commonwealth should note that any exemption from saying the words in section 46 (including those granted before 1997) no longer operates.

Can someone else participating in the ceremony say the words?

Only the registered celebrant can say the words required by section 46 (or words to the same effect). No other person can say them.

The statements contained in section 46(1) set out your authority to solemnise any marriage and what marriage is under the law of Australia. It is absolutely central to the obligations of any Commonwealth marriage celebrant under the Act and one of the few central legal requirements of marriage ceremonies.

What does ‘words to that effect’ mean?

You cannot dilute the words or substitute words that alter the meaning of the words in section 46(1).

Some additions or adaptations of the wording can have the effect of watering down the meaning. You are not able to do this. The safest course is to use the wording in the Act. That way you run no risk of not complying with your obligations under the Act.

What changes could be ‘words to the same effect’?

First Sentence

Some changes to the **first sentence** that would not alter the meaning include:

- 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

Some changes to the **second sentence** that would not alter the meaning include:

- 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’.

Third Sentence

- The words in the **third sentence** have been in the Act since it was passed in 1961 and were included in the definitions section of the Act (section 5) in 2004 as the definition of marriage
- This means that options for changing this sentence but ensuring that it is still to the same effect are very limited
- The order of the words ‘man’ and ‘woman’ could be reversed
- The words ‘people’ or ‘persons’ in place of ‘man’ or ‘woman’ definitely cannot be used as this could signify two people of the same sex and that is specifically excluded by the definition
- It is also **not** permissible to change the first part of the sentence to read ‘Marriage as most of us understand it, is..’. This is because ‘marriage’ is defined by law
- It is also not permissible to change ‘for life’ to ‘with the intention, the hope/desire that it will last for life’ for the same reason.

When must the words in section 46 be said?

The words in section 46 must form part of the marriage ceremony and you must say them before the couple exchange their vows.

MARRIAGE CERTIFICATES

Section 45(3) of the Act provides that a certificate of the marriage (including a Form 15 marriage certificate) prepared and signed in accordance with section 50 of the Act is conclusive evidence that the marriage was solemnised in accordance with the Act.

Under section 50 of the Act, the celebrant must prepare for each marriage he or she solemnises:

(a) an official certificate for registration purposes. This is to be sent to the Registry of Births Deaths and Marriages. This is the certificate known as Form 16 that has the declarations of the parties (Form 14) on the back. It should be detached from the butt and it should be written or printed as legibly as possible. The particulars on the certificate must agree 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; and

(b) a second official certificate. Ministers of religion will normally be issued with church marriage registers. Authorised celebrants should purchase a marriage register. An entry in a register will comprise the second certificate. Where a register is not used, celebrants may use loose copies of the official marriage certificate, which must be completed to comprise the second official certificate. Celebrants who use loose certificates must ensure that they are bound or kept together and must ensure they are not mislaid or damaged. The particulars on the second certificate must agree exactly with the particulars on the registration copy (Form 16). Certain celebrants who are members of the staff of registering authorities in the States and Territories have been exempted from preparing second official marriage certificates; and

(c) a certificate to give to the couple (Form 15). Celebrants are required to use a specified Form 15 certificate. This took effect on 1 September 2005.

Certificate for the parties (Form 15)

The Form 15 certificate is an official certificate of marriage. It is not a document of identity (such as a passport or a driver's licence) but it is evidence of a person's legal status. Just as an Australian citizenship certificate provides evidence that a person became an Australian citizen on a particular date so a marriage certificate provides evidence that a couple is married and hence that their legal status has changed.

The Form 15 certificate has:

- security features built in the printing stage; and
- a unique identifying number on the back,

The marriage certificates must be purchased from CanPrint Communications and cannot be obtained from anywhere else. Celebrants will be required to provide their authorisation or registration number to purchase the certificates.

Record keeping obligations for marriage celebrants

Each celebrant must record the number of each Form 15 certificate they are issued with, what happens to the certificate and the date on which it is used. There is a record keeping form supplied with each set of Form 15 marriage certificates. The following details must be recorded on the form:

- the celebrant's name and registration number,
- the serial number on the certificate,
- the date the certificate was used, and
- how the certificate was used.

The date to be recorded is the date the certificate was used in any way. This includes giving the certificate to a marrying couple, destroying the certificate because it is damaged or providing the certificate to another celebrant. If the certificate was completed and given to a marrying couple at a wedding the celebrant must record the names of the parties to the wedding. If the certificate was spoiled and had to be destroyed, record that it was destroyed and why. If the certificate was provided to another celebrant, record the celebrant's name and registration number. If certificates are lost or stolen record how many were lost or stolen on the record keeping form. If records or certificates are lost or stolen marriage celebrants should advise the Marriage Celebrants Section in the Attorney-General's Department immediately.

The record sheets must be kept with other marriage documents in a secure place for at least six (6) years. A celebrant can be required to provide a copy of the record relating to a particular certificate if requested by the Attorney-General's Department or someone authorised by the Attorney-General's Department. If a celebrant is required to provide a copy of their record 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 1963* (the Regulations) if a celebrant does not, or cannot, provide the record when requested in writing to do so.

CanPrint Communications will keep a record of which certificate numbers are supplied to each celebrant and provide these records to the Attorney-General's Department. This will enable the Department to know which marriage celebrant to contact for records of what happened to each certificate.

The Regulations provide that the certificate is not a prescribed certificate unless it fulfils the requirements set out. Failure to use the new marriage certificate would not impact on the validity of the marriage but failure to comply with the record keeping obligations is an offence under the Regulations.

Marriage celebrants should advise marrying couples that the certificate given to them is a secure document and should be kept in a safe place with other official documents. They should also be advised that the certificate will not replace the need to obtain an official marriage certificate from the Registry of Births, Deaths and Marriages for

some purposes. This is stated on the back of the certificate and attention should be drawn to those words.

No other certificates can be issued nor can any souvenir be provided to marrying couples that include the words ‘marriage certificate’ or contain the Commonwealth Coat of Arms. A replacement certificate cannot be issued in case of damage or loss. Other souvenirs that do not purport to be a marriage certificate (such as a framed copy of vows or words spoken or a copy of the ceremony) are acceptable.

It will be necessary to prepare all three certificates before the ceremony. If the ceremony does not take place, the certificate for the parties should be recorded on the record keeping sheet and it and the registration copy should be destroyed, the butt of the registration copy should be marked “cancelled”, and the entry in the register should also be marked “cancelled”.

Signing the marriage certificates

Both parties, the two witnesses and the celebrant must all sign each of the 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. The celebrant should write his or her registration number on the Form 15 certificate and the second official certificate.

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

“John X Brown
his mark
Witness to the mark”.

Any of the persons present may witness the mark.

Care should be taken to see that the signatures of the parties accord 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.

For more information please see the section entitled “Names To Be Used On The NOIM And On Marriage Certificates” commencing on page 49 of these materials.

Certificate to be handed to the parties

Immediately after the certificates have been signed, the authorised celebrant should hand the certificate for the parties to one of the parties to the marriage on behalf of the parties. The details of the use of this certificate should previously have been recorded on the record keeping sheet. Any spoilt couples certificates must also be recorded.

Registration copy

Under section 50 of the Act, the authorised celebrant must forward the Form 16 certificate for registration to the appropriate registering authority in the State or Territory where the marriage was solemnised within 14 days of the ceremony. The celebrant should send with the certificate, the NOIM, any order under section 12 of the Act and any statutory declarations, consents and dispensations with consents relating to the marriage that are in his or her possession.

Celebrant's copy (second official certificate)

As stated above, the second official marriage certificate, so far as marriages solemnised by ministers of religion are concerned, will form part of the church marriage register. As has also been stated above, it is necessary that the parties, the witnesses and the celebrant should each sign their names in the church register.

An authorised celebrant who is authorised to solemnise marriages by the Commonwealth may destroy the second official certificate after the expiration of six years, though the celebrant is not required to do so.

Where the authorised celebrant is authorised to solemnise marriages by virtue of section 39(1) (ie members of recognised denominations) the celebrant must, if the law of the State or Territory in which the marriage is solemnised provides for dealing with the second official certificate in some specific manner, deal with that certificate in that manner. In any other case, the celebrant must forward the certificate to, or otherwise deal with the certificate in accordance with the directions of, the Registrar-General or other officer in charge of the registration of marriages in his or her State or Territory.

Correction of errors in certificates

From time to time it will be necessary to correct errors that have been made in the marriage certificates themselves, either before or after the marriage ceremony has taken place.

If the error is discovered after the certificates have been prepared and before the ceremony takes place, the notice 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 spoilt certificate.

Where the errors are not discovered until after the ceremony, corrections may be made whilst the parties and witnesses are still present. 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 sent to the registering authority with the registration copy.

Where the registration copy has already been sent to the appropriate registering authority, the celebrant should bring any errors to the notice of that authority, but

should not make corrections to his or her copy. Power has been given to registering authorities (as officers authorised by the Attorney-General for the purpose) to correct the parties' certificate or the celebrant's copy. For this purpose an officer may give notice in writing to either party to the marriage or to the authorised celebrant requiring the party or the celebrant, as the case may be, to produce or forward the certificate to the officer within the period specified in the notice.

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 initialled in the margin opposite the correction.

Lost certificates

Where the registration certificate of marriage is lost or destroyed, the registering authority may require the celebrant or any other person believed to have the celebrant's copy to prepare a certified copy and send it to the registering authority.

Registration of marriages

Marriages are 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.

OTHER MATTERS

Fees for solemnising marriages

All marriage celebrants authorised by the Commonwealth, are free to charge each couple a fee that they consider appropriate. This is a matter between the marriage celebrant and the couple. There are no prescribed fees in relation to Registry officials who perform marriages.

The 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.

However, a minister of religion of a recognised denomination may have his or her name removed from the register if a Registrar of Ministers of Religion is satisfied that the minister has been making a business of solemnising marriages for the purpose of profit or gain.

Celebrant not available

Although in nearly every case the marriage will be solemnised by the authorised celebrant to whom the Notice of Intended Marriage was originally given, the marriage may be solemnised by any authorised celebrant who has possession of the notice where the original proposed celebrant has died, is absent from the place of the intended marriage or is ill or where, for any other reason, it is impracticable for that person to solemnise the marriage.

It is the responsibility of the first celebrant to ensure that the notice is transferred, safely, by hand or registered post. 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 2nd celebrant.

A celebrant who performs a marriage in place of another celebrant to whom a notice of intended marriage was given originally, should comply personally with all the requirements of section 42 of the Act, save that a new Notice of Intended Marriage need not be given by the parties.

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 registering authority, who will refer it to the Attorney-General. The Attorney-General (or his or her delegate) has power to prepare and sign certificates of the marriage, (with appropriate modifications) if satisfied that the marriage was duly solemnised. A certificate so prepared and signed by the Attorney-General has the same force and effect as if it had been prepared and signed by the authorised celebrant.

A certificate under s.50(5) may also be prepared where the Attorney-General is satisfied that the marriage was duly solemnised if, by reason of other special circumstances, the Attorney-General thinks it necessary to do so.

Statutory Declarations

In addition to the declaration as to conjugal status required to be made by the parties to the intended marriage, the Act in a number of cases requires or permits a statutory declaration to be made. There is a new statutory declaration form that must be used for any Commonwealth statutory declarations. You are only able to use this form for statutory declarations relating to marriage.

From 1 July 2006 any statutory declaration not completed on the correct form is not valid.

You need to discard any old blank statutory declaration forms you purchased before November 2004 as you can no longer use them. Commonwealth statutory declaration forms are available from CanPrint Communications or can be downloaded from the Attorney-General Department's website at www.ag.gov.au/statdec.

Any statutory declaration that must be completed in relation to a marriage must be provided on this form only or it is not a valid statutory declaration. A statutory declaration form issued under State and Territory legislation or any other type of statutory declaration form is not acceptable for use under the *Marriage Act 1961*.

If a person has supplied you with a statutory declaration in relation to a marriage on a different form you must get another statutory declaration from them on the correct form.

A person who wilfully 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.

Surprise Weddings

What is a ‘Surprise’ Wedding?

Such weddings usually involve 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. Such ceremonies have been reported in local media.

It would appear from information reaching the Marriage Celebrants Section that more marriage celebrants are being approached to be involved in such ceremonies by one member of a couple who believes that they are legally possible.

Marriage celebrants must not participate in such ceremonies. The reasons for this are outlined below.

The legal issues that such ceremonies raise are the following:

- There has been 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 Act – that is that the person’s consent to the marriage was not a real consent because it was obtained by duress or fraud.
- The minimum notice period has not been satisfied – the notice period requires that both parties give notice of the intended marriage, not one.

The capacity for a registered marriage celebrant to accept a Notice of Intended Marriage with the signature of only one party (section 42(3)) relates to the **signing** of the Notice of Intended Marriage **not the giving of the notice** itself. Both parties must give at least one month’s notice of their intention to marry (see pages 9 & 11).

Section 42(3) enables a marriage celebrant to accept a Notice of Intended Marriage 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 but for one party to sign the notice if the other is overseas or interstate. There is no impediment to the signatures of both parties being obtained in the context of a so-called ‘surprise’ wedding. The signature of the other party can ‘conveniently’ be obtained (see page 9).

If a person approaches a marriage celebrant with the request for a ‘surprise’ wedding, the following steps should be taken:

- the person should be advised that such an arrangement is not legally possible;

- advise the Marriage Celebrants Section of the approach, and
- advise the Registry of Births, Deaths and Marriages in the relevant State or Territory in case marriage documents are submitted.

Ceremonies as prizes

If a marriage 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. Among the most important of these is a minimum of one month's notice. A marriage in such circumstances is unlikely to fall within the legislative requirements for granting a shortening of time.

The following steps should be taken in the event of such an approach:

- advise the person of the minimum requirements for a marriage and ensure that the proposal meets the legal requirements
- advise the Marriage Celebrants Section of the approach, and
- advise the Registry of Births, Deaths and Marriages in the relevant State or Territory as they may be approached for a shortening of time.

OFFENCES

The Act contains a number of offences.

Offences relevant to celebrants

Marriage celebrants should particularly note that section 99 of the Act provides that it is an offence for an authorised marriage celebrant to solemnise a marriage in contravention of the following sections:

- Section 42 provides that the celebrant must not solemnise the 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
- section 42 – 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 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 44 – the presence at the wedding of 2 persons over the age of 18 as witnesses
- section 13 – consents required for the marriage of an underage person
- section 112 – requirements relating to the use of interpreters
- section 113(1) – performing a marriage ceremony between persons who inform the celebrant that they are already legally married to each other or whom the celebrant knows or has reason to believe are already legally married to each other.

Section 100 provides that it is an offence for a person to solemnise a marriage, or purport to solemnise a marriage, if the person has 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.

Under section 100 it would an offence for a celebrant to solemnise a marriage if they believed that either of the parties was already married to some other person, the parties are within a prohibited relationship, either of the parties was not of marriageable age (and judicial orders and required consents had not been given) or if the consent of either of the parties to the marriage was not a real consent.

Section 101 of the 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 Act to solemnise marriages.

It is an offence under section 106 for an interpreter not to furnish the certificate required under section 112 of the Act or to make a false statement in that certificate.

Sections 74-78 create a number of offences which relate only to Defence Force chaplains in solemnising marriages overseas.

Offences possibly relevant to couples

Marriage celebrants should also advise couples of the following offences that may be applicable to them:

- 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.
- Bigamy is an offence under section 94
- 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).
- 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 solemnizing 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.

It is also important to note the penalties attached to wilfully making a false statement in a statutory declaration. This is discussed above.

OVERSEAS MARRIAGES

OVERSEAS UNDER AUSTRALIAN LAW

Marriages may still be performed overseas by or in the presence of a Defence Force chaplain in limited circumstances.

Marriages performed overseas by Defence Force chaplains

Defence Force chaplains are authorised, under Part V of the Act, to solemnise marriages in overseas countries where at least one party is a member of the Defence Force. 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.

A registered minister of religion or other authorised celebrant is not authorised to solemnise marriages outside Australia under the Act unless he or she is also a chaplain in the Defence Force. Conversely, a Defence Force chaplain is not authorised to solemnise marriages in Australia unless he or she is also a registered minister of religion or an authorised celebrant.

Formalities

No notice is required for a marriage by a chaplain but of course one party must be a member of the Defence Force. The form of declaration as to conjugal status to be made by the parties is the same as that prescribed for marriages in Australia. The forms of marriage certificates are the same as those used for marriages in Australia. Marriages by chaplains are to be registered in Canberra by the Registrar of Overseas Marriages – The ACT Registrar of Births, Deaths and Marriages.

The provisions of Part II (marriageable age and marriage of minors) of the Act apply to marriages overseas by chaplains. Part IV of the Regulations deals with the solemnisation of marriages overseas and, among other things, prescribes the forms to be used.

MARRIAGES SOLEMNISED UNDER FOREIGN LAW

In 1986 new rules came into force in Australia for the legal recognition of marriages which have taken place overseas. The Commonwealth Parliament enacted the *Marriage Amendment Act 1985* in order to implement the rules contained in the Hague Convention on the Celebration and Recognition of Marriages for Australia. Although these amendments came into operation on 7 April 1986, they apply to all marriages solemnised outside Australia regardless of date.

For detailed advice on these matters, members of the public should consult a private solicitor or legal aid body. Celebrants and officers of State or Commonwealth Governments should consult the Marriage Celebrants Section of the Commonwealth Attorney-General's Department.

Marriages under local law

An Australian citizen can be married in an overseas country in accordance with the law of that country. Before permitting a citizen of another country to be married in their country, some countries require the person to produce a certificate of no impediment. Where a citizen of Australia or a person domiciled in Australia proposes going overseas to be married in a country which requires a certificate of no impediment, the Department of Foreign Affairs and Trade should be consulted.

Marriages outside Australia under foreign law

Part VA of the Act contains the rules for recognition 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. There are certain exceptions to this. These are outlined below.

Exceptions to recognition of foreign marriages

While designed to remove all technical barriers to recognition of marriages celebrated elsewhere, the Hague Convention acknowledges the strong interest many countries have in refusing to recognise certain marriages. Australia, in adopting the Convention rules, has also set out certain exceptions to recognition based on its policy. The following marriages will not be recognised under these rules:

- (a) where one of the parties was already married to someone else;
- (b) where one of the parties was under age (see below);
- (c) where the parties are too closely related, under Australian law - that is, either 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
- (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.

In 2004, the Act was amended to provide that marriages of same sex couples conducted under the laws of an overseas jurisdiction are not recognised as valid in Australia.

Age

If one or both of the parties lived in Australia at the time of the marriage, both the husband and the wife must have been 18 years old. A marriage will not be recognised at any time while either party is under the age of 16 years. In many overseas countries it is usual for persons to marry under the age of 16 years. If neither of the parties to such a marriage were domiciled in Australia at the time of the marriage ceremony and the parties are now over the age of 16 the marriage would now be recognised as valid if there were no other circumstances that would invalidate the marriage.

Marriages by Australian officials overseas

The above rules are not applicable in the case of marriages celebrated overseas under Australian law by chaplains in the Australian Defence Force. These marriages are governed by Part V of the Act.

Evidence of overseas marriage

The 1985 amendments to the Act include a provision which makes it easier to prove that an overseas marriage has taken place. The provision ensures that a marriage certificate issued by a competent authority in a foreign country is, until some contrary evidence is produced, evidence of the occurrence and of the validity of the marriage. 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 are not 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.

MISCELLANEOUS

Second marriage ceremonies

Generally speaking, persons who are already legally married to each other cannot go through a further form or ceremony of marriage to each other, and it is an offence for an authorised celebrant to purport to solemnise such a marriage. Section 113 of the Act covers second marriage ceremonies.

The first exception to the above rule concerns the case of persons already married to each other desiring to go through a religious ceremony of marriage, 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.

The celebrant must not prepare or issue in respect of the second ceremony any certificate of marriage under or referring to the Act, and 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.

In relation to such a religious ceremony for parties already married, the procedure for the solemnisation of marriages under the Act does not apply. The NOIM, declarations as to conjugal status, and so on, are not to be given. Before any such ceremony, the parties must produce to the proposed celebrant a certificate of their marriage together with a statement in writing, signed by them and witnessed by the proposed celebrant, that they have previously gone through a form or ceremony of marriage with each other, that they are the parties mentioned in the marriage certificate, and that they have no reason to believe it would not be recognised as valid in Australia.

The other 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.

The parties must furnish to the proposed celebrant a joint statutory declaration stating that they have previously gone through a form or ceremony of marriage with each other and specifying the date on which, the place at which and the circumstances in which they went through that form of ceremony.

The statutory declaration must have endorsed on it 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. The ordinary provisions of the Act apply to this latter class of 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 in the ordinary way, except that each copy of the certificate must bear the following endorsement, signed by the celebrant:

“The form or ceremony of marriage between the abovementioned parties took place or was performed in pursuance of sub-section 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

20at

Dated the day of 20

(Signature of celebrant)”

Same Sex Couples

Australian law specifies that marriage must be between a man and a woman. This means that same sex couples cannot marry under Australian law. There is nothing preventing marriage celebrants conducting a ceremony, such as a commitment ceremony, to publicly celebrate the same sex relationship. This must not purport to be a marriage. Where such ceremonies are conducted celebrants must ensure that the nature of the ceremony is made clear and no documents are prepared in relation to the ceremony for the purposes of the Marriage Act.

NAMES ON NOTICES OF INTENDED MARRIAGE AND ON MARRIAGE CERTIFICATES

Accuracy in recording all information concerning every marriage has always been a major concern. 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. One of the obligations of the authorised marriage celebrant under section 42(8) of the Marriage Act is to establish the identities of the parties to a marriage.

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*, Passports Australia 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 Questions and Answers should provide you with the information that you need to advise couples about the completion of the names section in the NOIM.

It will also assist you in telling couples how you will be writing their names on the three certificates of marriage.

This advice should make matters easier for couples and is in accordance with the Act.

Glossary of terms used Questions and Answers

The following terms are used in the Questions and Answers:

NOIM	Notice of Intended Marriage
Form 14	Declaration made by parties before the marriage
Form 15	Marriage Certificate that is presented to the couple (unique number on reverse)
BDM	State or Territory Registry of Births, Deaths and Marriages
The Act	<i>Marriage Act 1961</i>
Party	One of the people intending to marry

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 appropriate circumstances when a party has a name which is different from their birth name. **These terms must no longer be used.**

NOIM forms and marriage certificates will now only 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 NOTICE OF INTENDED MARRIAGE FORM

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. You should ensure that they write their name **exactly** as it appears on their birth certificate. 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 change of name certificate they should write this name on the NOIM.

In cases where parties have obtained a Change of Name certificate you should ensure that they have written their name **exactly** as it appears on the Change of Name certificate.

In cases where parties have changed their name by marriage and have retained a previous spouse's **surname** you should ensure that they have written their surname **exactly** as it appears on the previous marriage certificate.

Their given names should be written **exactly** as they appear on the parties' birth certificates or Change of Name certificates as appropriate.

Terms such as “ka”, “aka” and “nee” must **not** be used.

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: You should tell them that their name as it appears on their birth certificate and their name as it appears on the NOIM should be the same.

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

If the person believes there is an error in the spelling on their birth certificate they may apply to have the birth certificate corrected.

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. You should tell them that their name as it appears on their birth certificate and their name as it appears on the NOIM should be the same. You should also tell them any discrepancy between their name as it appears on their birth certificate and their name as it appears on the marriage documents will 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 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: This is slightly different in Queensland, which will only accept applications for change of name from people born in Queensland or born overseas.

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 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 Do they have to do this, i.e. a change of name, before they can lodge a NOIM?

A: No. They can lodge the NOIM using the name on their birth certificate and 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 me 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 where they live or were born for a Change of Name certificate to be issued to reflect the name changed by usage.

Passports Australia has advised us that they will not accept a driver's licence as evidence of a person's name.

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.

If, however, they want to easily establish their name in future, including applying for an Australian passport they will need to provide evidence of that change of name by usage. For example, the **only evidence** of change of name

by usage (other than in the case of marriage) accepted by Passports Australia is a Change of Name certificate issued by a BDM. Evidence of a change of name by marriage can be provided in the form of a marriage certificate obtained from the BDM in the State or Territory where the marriage took place.

Q.9 A party to a marriage changed their name by deed poll many years ago. Should they use this name on the NOIM?

A: No. The person should use the name on their birth certificate. If they do not wish to do this they should enquire at the BDM in the state where they were born or where they live to determine the procedures necessary to obtain a Change of Name certificate to reflect the name as it was changed by deed poll. (See note about Queensland under answer to Question 4).

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.

Marriage Celebrants should be aware that Change of Name certificate procedures differ from Deed Poll procedures and that both procedures vary from state to state. 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.

Passports Australia has advised us that they will not accept a Deed Poll as evidence of a change of name.

Q.11 I have 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 I tell this person?

A: You should advise this person to think carefully about whether they may ever need identity documents, including a passport, in the future. It is possible to

formally change their name after the marriage but the process may be more complicated for them.

Q.12 I have a party who does not wish to apply for a Change of Name certificate under any circumstances. What should I do in this case?

A: You should explain the possible future difficulties with obtaining a passport or possibly other identity documents. If they really believe this will never be an issue for them then you can put the name the party has changed by usage alone on the NOIM. You must advise them of the possible future issues for them.

It would be advisable to make a written record of your advice, give a copy of that advice to the person and keep a copy for yourself.

Party born overseas

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

A: If the person does not have, or is not able to obtain, a birth certificate you will need to see a passport issued by a government of an overseas country. If that is not possible, get 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 you may allow them to use the name on their overseas passport on the NOIM.

If their name or date and place of birth are written in another alphabet you should advise them to provide you with a formal translation (by a qualified translator) of the document so that you know how the name should be written in English.

If the person is an Australian citizen then the name as shown on their Certificate of Citizenship should be used on the NOIM.

Please note that in this case you would **only** be using the citizenship certificate to confirm the spelling of the person's name, and for no other purpose. The same care should be taken with copying the details of the spelling as with copying the details from a birth certificate.

Q.14 What if a person tells me there is an error in the name on their citizenship certificate?

A: You should advise them to approach the Department of Immigration and Citizenship about having the error corrected. If this is not possible they will need to apply to the BDM in the state 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 have continued using their birth name they may enter that name on the NOIM.

If they reverted to their birth name after the death or divorce they may enter their birth 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 marriage 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 have continued using their birth surname they may enter that name on the NOIM.

If they reverted to their birth surname after the death or divorce they may enter their birth 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 marriage celebrant will of course need to see evidence of the death of, or divorce from, the first spouse.

You need to advise the person that there may be consequences if they wish to obtain an Australian passport after the marriage. This is because Passports Australia will **not** accept an overseas marriage certificate as evidence of change of name. People who marry overseas must go through a formal change of name procedure if they wish to obtain an Australian passport using the married name.

Q.17 What if a party to a marriage has been married twice and has continued to use the surname of the first spouse, for example because she has children from that marriage?

A: This is perfectly acceptable. The person may use the surname of the first spouse on the NOIM.

The marriage celebrant will need to see evidence of the death of, or divorce from, the most recent spouse to satisfy the requirements under section 42 of the Act.

If a party is using a surname that is not their birth name and is not their most recent married name the celebrant should be sure to see some evidence of this name when they establish the person's identity for the purposes of section 42(8) of the Act. This may be a driver's licence or the relevant marriage or divorce documents.

If the person wishes to obtain a passport in either the old or the new married name they will need to be able to provide the relevant marriage certificates to Passports Australia.

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 agree exactly with the names on the NOIM.

You should make certain to look again at 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 you copy from the NOIM you may repeat an error from the NOIM.

If you find there is a mistake on the NOIM you should correct it. 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.

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

A: Yes. All three marriage certificates which the couple sign are official evidence that the marriage took place and have authority under the Act. As such they should be the same in all respects.

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

For the information of marrying couples, marriage celebrants should be aware that Passports Australia and many other agencies will only accept a registered copy of a marriage certificate issued by a BDM for their purposes. You should draw their attention to the wording on the back of the Form 15 certificate that explains this.

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 "Signature" commencing on page 12 of these materials 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 Form 14 declarations. The certificates should be signed in the pre-marriage names.

Please see the section entitled "Signing the marriage certificates" commencing on page 35 of these materials for more information on signing marriage certificates.



Australian Government
Attorney-General's Department

Civil Justice Division

CONTACT DETAILS
REGISTRIES OF BIRTHS, DEATHS AND MARRIAGES

State/Territory

Address

New South Wales

Tel: 1300 655 236
Celebrants Helpline: 1800 629 736
Fax: 02 9035 6048
Website: www.bdm.nsw.gov.au

The Registrar
Registry of Births, Deaths and Marriages
35 Regent Street
Chippendale NSW 2008

GPO Box 30
Sydney NSW 2001

Victoria

Tel: 1300 369 367
Fax: 03 9613 5807
Website: www.bdm.vic.gov.au

The Registrar
Registry of Births, Deaths and Marriages
595 Collins Street
Melbourne VIC 3000

PO Box 4332
Melbourne VIC 3001

Australian Capital Territory

Tel: 02 6207 0460
Fax: 02 6207 0895
Website: www.ors.act.gov.au

Office of Regulatory Services
Registry of Births, Deaths and Marriages
255 Canberra Avenue
Fyshwick ACT 2609

GPO Box 158
CANBERRA CITY ACT 2601

Western Australia

Tel: 1300 305 021
Fax: 08 9264 1599
Website: www.bdm.wa.gov.au

Registrar of Births, Deaths and Marriages
Registry of Births, Deaths and Marriages
Level 10
141 St George's Terrace
PERTH WA 6000

Western Australia cont'd

Postal address:

PO Box 7720
Cloisters Square
PERTH WA 6850

Northern Territory

Tel: 08 8999 6119

Fax: 08 8999 6324

Website: www.nt.gov.au/justice/bdm

The Registrar-General
Registry of Births, Deaths and Marriages
Nichols Place
Cnr Cavenagh and Bennett Streets
DARWIN NT 0800

PO Box 3021
DARWIN NT 0801

Tasmania

Tel: 03 6233 3786

Fax: 03 6233 6444

Website: www.justice.tas.gov.au/bdm

The Registrar-General
Registry of Births, Deaths and Marriages
Department of Justice
Executive Building
15 Murray Street
HOBART TAS 7000

GPO Box 198
HOBART TAS 7001

South Australia

Tel: 08 8204 9599

Fax: 08 8204 9605

Website: www.ocba.sa.gov.au

The Registrar
Births, Deaths and Marriages Registration Office
91-97 Grenfell Street
ADELAIDE SA 5000

GPO Box 1351
ADELAIDE SA 5001

Queensland

Tel: 07 3247 5732

Fax: 07 3247 5782

Website: www.justice.qld.gov.au/bdm

Registry of Births, Deaths and Marriages
110 George Street
BRISBANE QLD 4002

PO Box 15188
CITY EAST QLD 4002

N.B. Please check with individual Registries for the latest fees charged for a copy of a Marriage Certificate.

Marriage Celebrants – Documents Checklist

Celebrants should use this checklist to ensure all marriage documents are correctly completed to avoid omissions or errors before registration.

Marriageable Age	Both a Court order and parents' consent are required where one party is under 18 years. Under no circumstances can two persons under 18 years of age marry each other.
Notice of Intended Marriage	Celebrant details provided: <ul style="list-style-type: none">• Date of Lodgement of Notice noted• Each answer completed• Noting of Birth Certificates / Decrees (including dates)• Clear writing or printing• Celebrant's number included• Notation of Transfer where necessary• Rites of ceremony noted
Certificates of Marriage	All certificates signed by celebrant, parties & witnesses: <ul style="list-style-type: none">• Full name of witnesses in block letters• Declarations as to conjugal status completed & signed• Clear writing or printing on documents• Rites of ceremony noted• Use of Form 15 certificate noted on record keeping form
Abbreviations not used	All alterations / corrections initialled
Marriage brochures provided to couple	
Registration documents	Check documents before forwarding to the Registry of Births, Deaths and Marriages (in the State or Territory where the marriage took place) for registration within 14 days of date of marriage: <ul style="list-style-type: none">• Documents to be sent:<ul style="list-style-type: none">❖ Notice of Intended Marriage❖ Official Marriage Certificate❖ If applicable: Court Order Parents' consent Interpreter's certificate Other relevant documents

Where any problems arise not referred to in the above checklist contact should be made with the State or Territory Registry of Births, Deaths and Marriages.