



Marriage Celebrants Program

For delivery in 2021

Ongoing professional development for marriage celebrants – 2018 compulsory activity – marriage equality

Introduction

This OPD activity was the 2018 compulsory activity. It covers the significant changes to the *Marriage Act 1961* for marriage equality in December 2017.

This activity is listed in the Marriage (Celebrant Professional Development) Statement 2021. Information provided in this activity is also available in the *Guidelines on the Marriage Act 1961 for authorised celebrants* on the Attorney-General's Department's website page, [Your responsibilities as a marriage celebrant](#).

Marriage equality: key messages

Summary of the activity

The compulsory activity for 2018 covers an area of significant change to the Program. The compulsory activity for 2018 is two hours in duration. This activity concludes with a 10 minute key learnings section. This activity must be delivered by a provider of ongoing professional development (OPD) approved by the Attorney-General's Department (the department). The 2018 compulsory activity will ensure that marriage celebrants are up to date with the changes to the legislation, policy and guidelines following the legislative reforms to provide for marriage equality in Australia.

General update from AGD

The last quarter of 2017 saw a number of significant changes to the Marriage Celebrants Program (the Program). Perhaps the most significant were amendments made to the *Marriage Act 1961* to provide for marriage equality in Australia. Under Australian law, the right to marry is no longer determined by sex or gender.

Marriage equality was the compulsory activity for 2018.

In addition, there are two new policies which directly impact marriage celebrants.

Ongoing Professional Development

Current information about OPD for marriage celebrants is available on the [OPD page](#) of the Attorney-General's Department's website.

Conflict of Interest / Benefit to Business Guidelines

There is also a new policy on Conflict of Interest and Benefit to Business. New '[Conflict of Interest/Benefit to Business Guidelines](#)' were published in September 2017. These Guidelines were also the subject of extensive consultation and revision.

The Guidelines provide guidance to Commonwealth-registered celebrants about how to manage potential conflicts of interest. In summary, the new policy is a relaxation of the previous rules, and enables Commonwealth-registered celebrants to sell additional goods and services to the couples they are marrying. In this regard, the Guidelines provide examples of the kinds of benefits to business that the Registrar considers would not raise concerns.

The Registrar is satisfied that celebrants can appropriately self-manage most potential conflicts of interest. In this regard, the Guidelines provide assistance to celebrants by outlining some of the steps that celebrants can take to manage potential conflicts of interest, such as:

- providing couples with a choice about whether to purchase additional services
- declaring their business and other interests to couples (this may include declaring any commissions celebrants are receiving for referring couples to other businesses)
- agreeing 'up front' with couples the arrangements to be followed if a legal impediment means the marriage cannot be solemnised on the planned wedding day, and
- clearly indicating in any quote or contract that the ceremony cannot proceed, and the couple's fees may be forfeited (including fees for additional services), if legal obligations are not satisfied. For example, this could include offering to perform a commitment ceremony on the day, and the legal marriage could be solemnised at a later date, perhaps at additional cost.

If celebrants wish to work as an in-house celebrant for a venue, they should discuss this with the Registrar of Marriage Celebrants first. The Registrar will need to be satisfied that appropriate arrangements are in place between the celebrant and the employer to manage any potential conflict of interest.

Marriage equality: key messages

On 9 December 2017, the *Marriage Act 1961* (Marriage Act) was amended to provide for marriage equality in Australia.

Overview of the changes

Legal definition of marriage

The right to marry under Australian law is no longer determined by sex or gender.

The legal definition of marriage has been amended and no longer includes a reference to the gender or sex of the parties to the marriage. The new legal definition of marriage is: 'the union of 2 people to the exclusion of all others, voluntarily entered into for life' (section 5 of the Marriage Act).

Foreign marriages

From 9 December 2017, the Marriage Act recognises existing and future same-sex marriages solemnised overseas under the law of a foreign country.

From 9 December 2017, same-sex marriages solemnised in a foreign country, and valid in that foreign country, are now recognised in Australia. This includes foreign marriages that were solemnised before 9 December 2017; as well as marriages that occur in the future.

Same-sex marriages solemnised in Australia by a diplomatic or consular officer under the law of a foreign country before 9 December 2017 are also recognised.

Marriage Forms

The marriage forms—including the Notice of Intended Marriage, Official Certificate of Marriage and Certificate of Faithful Performance by an interpreter—have been updated so they are appropriate for use by all marrying couples. These forms must be used from 9 December 2017 onwards. An ongoing review of the marriage forms is being finalised, with new forms anticipated in 2021. All forms are available for free download from the Attorney-General’s Department’s website with the exception of the Form 15 Certificate of marriage which must be purchased from CanPrint.

‘Religious marriage celebrants’

There is a new sub-category of Commonwealth-registered marriage celebrant under the Marriage Act—‘religious marriage celebrants’. A person is entitled to be identified as a ‘religious marriage celebrant’ on the Register of marriage celebrants if the person is a registered marriage celebrant and is also a minister of religion (section 39DA of the Marriage Act). Transitional arrangements were also in place until 9 March 2018, which enabled marriage celebrants whose registration was current as at 9 December 2017 to nominate to be recognised as a religious marriage celebrant (section 39DD of the Marriage Act).

Religious protections

Sections 47, 47A and 47B of the Marriage Act provide religious protections in connection with decisions related to the solemnisation of a marriage. Sections 47A and 47B are new provisions.

Section 47 of the Marriage Act provides religious protections for ministers of religion to act in accordance with the doctrines, tenets and beliefs of their religion in relation to marriage.

Under section 47A of the Marriage Act, religious marriage celebrants are also afforded religious protections. A religious marriage celebrant can lawfully refuse to solemnise a marriage, if that refusal is on the basis of the celebrant’s religious beliefs. This means, for example, that if a religious marriage celebrant’s religious beliefs do not recognise same-sex marriage, that celebrant may lawfully refuse to conduct a marriage ceremony for a same-sex couple on that basis.

Section 47B of the Marriage Act provides religious protections for bodies established for religious purposes. A body established for religious purposes can refuse to make a facility available, or refuse to provide goods or services, for the purposes of the solemnisation of a marriage if the refusal conforms to the doctrines, tenets or beliefs of the religion, or is necessary to avoid injury to the religious susceptibilities of adherents of the religion.

Other provisions that regulate marriage remain unchanged

The requirements for solemnising a legally valid marriage otherwise remain the same under the Marriage Act. That is, to be legally married in Australia, a couple must wait one month after giving an authorised celebrant a completed Notice of Intended Marriage form (unless a prescribed authority has granted a shortening of time) and a person must:

- not be married to someone else
- not be marrying a parent, grandparent, child, grandchild, brother or sister
- be at least 18 years old (unless a court has approved a marriage where one party is aged between 16 and 18 years old), and
- understand what marriage means and freely consent to the marriage.

Key Messages

New subcategory of Authorised Celebrant

See [Fact Sheet](#): New subcategory of ‘religious marriage celebrant’

The Marriage Act protects religious freedoms in relation to marriage by providing protections for:

- ministers of religion (section 47 of the Marriage Act),
- ‘religious marriage celebrants’ (section 47A of the Marriage Act), and
- religious bodies, in relation to the provision of facilities, goods and services for or incidental to the solemnisation of a marriage (section 47B of the Marriage Act).

Religious marriage celebrants are identified as such on the register of marriage celebrants. This is required by section 39DC of the Marriage Act.

The identification of religious marriage celebrants on the register of marriage celebrants is to:

- assist couples to identify those celebrants who solemnise marriages in accordance with their religious beliefs—religious marriage celebrants are identified on the register of marriage celebrants. ‘Religious marriage celebrants’ are also required to clearly identify themselves as a ‘religious marriage celebrant’ in any document relating to the performance of services as a marriage celebrant, including any advertisements for their services (section 39G of the Marriage Act), and
- provide clarity for the application of anti-discrimination law—religious marriage celebrants are not required to solemnise marriages that do not accord with their religious beliefs (section 47A of the Marriage Act).

A religious marriage celebrant may act in accordance with their personal religious beliefs, in deciding whether to solemnise a marriage. A religious marriage celebrant may refuse to solemnise a marriage because of a party’s sexual orientation, gender identity, intersex status, or marital or relationship status if that refusal is consistent with the religious marriage celebrant’s personal religious beliefs.

Ministers of religion who were registered as an authorised celebrant as at 9 December 2017 were automatically identified as a religious marriage celebrant on the Register of Marriage Celebrants (this was required by the new legislation – see section 39DD of the Marriage Act).

Commonwealth marriage celebrants who were registered as at 9 December 2017, and who were not also a minister of religion, had until 9 March 2018 to nominate to be identified as a religious marriage celebrant on the basis of their religious beliefs. Such nominations had to be made to the Registrar in writing and in the form specified by the Registrar. The Registrar provided advice about this process to all Commonwealth marriage celebrants whose registration was current as at 9 December 2017. Following receipt of a valid notice, a person was identified as a religious marriage celebrant on the Register of Marriage Celebrants (section 39DD of the Marriage Act).

Commonwealth marriage celebrants registered after 9 December 2017, and who are not also a minister of religion, are not able to be identified as a religious marriage celebrant. Newly registered celebrants can only be identified as a religious marriage celebrant if they are a minister of religion (as defined in section 5 of the Marriage Act).

A person who is identified as a religious marriage celebrant on the Register of Marriage Celebrants may, at any time, make a request to the Registrar in writing to remove that identification (and no longer be registered as a ‘religious marriage celebrant’).

It is unlawful for a marriage celebrant who is not identified as a ‘religious marriage celebrant’ and does not support marriage equality to refuse to marry a couple based on their sexual orientation, gender identity, intersex status or marital or relationship status. Only ministers of religion and religious marriage celebrants may refuse to solemnise a

marriage where this is consistent with their religious beliefs and be protected from proceedings being brought against them under the *Sex Discrimination Act 1984*.

Advertising

See [Guidelines: On Advertising for Commonwealth-registered marriage celebrants](#)

All Commonwealth marriage celebrants, including religious marriage celebrants, are required to accurately describe their designation in any document relating to the services they provide, including online and paper advertisements and information (section 39G of the Marriage Act). This ensures that couples seeking the services of a marriage celebrant are able to make informed decisions about whether to seek to engage the services of a celebrant, in the knowledge that a religious marriage celebrant may refuse to solemnise their marriage for religious reasons.

This legislative obligation means that a celebrant identified as religious marriage celebrant must disclose that they are a religious marriage celebrant, and a marriage celebrant who is not identified as a religious marriage celebrant on the register, must identify their status as a marriage celebrant in any document relating to the performance of their services as a marriage celebrant. This includes (but is not limited to) advertisements, web sites and business cards (section 39G(1)(d) of the Marriage Act). A failure to comply with these obligations is one of the grounds on which the Registrar may impose a disciplinary measure on a celebrant.

It is a legal requirement for celebrants to include the type of celebrant they are – that is, a ‘marriage celebrant’ or a ‘religious marriage celebrant’ – in their advertising. These specific terms must be used. Use of the general terms, ‘celebrant’ and ‘civil celebrant’ alone is not sufficient to meet this legal requirement. There is nothing to prevent an authorised marriage celebrant from listing other services they provide in their advertising if they wish to do so e.g. funeral services.

Change to the Vows

See [Fact Sheet: Changes to marriage Ceremony Requirements](#)

The Marriage Act sets out specific vows that must be used in **civil** marriage ceremonies.

The vows in the Marriage Act have changed to reflect marriage equality.

The civil marriage vows now have three options for a party to use to describe the person they are marrying: namely, ‘wife’, ‘husband’ or ‘spouse’ [subsection 45(2) of the Marriage Act]:

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

One alternative option is for couples to use ‘partner in marriage’.

It is up to the marrying couple to decide which options—wife, husband, spouse or partner in marriage—they want to use in their civil marriage vows to describe themselves

Changes to the monitum

See [Fact Sheet: Changes to marriage Ceremony Requirements](#)

The monitum – the statement of the meaning of marriage under Australian law and that a person is authorised to solemnise marriages – has been changed to reflect marriage equality.

All marriage celebrants are required to state the monitum, as part of the ceremony (section 46(1) of the Marriage Act):

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

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

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

All Commonwealth marriage celebrants, including 'religious marriage celebrants', must state the monitum as part of every marriage ceremony.

The only exception to the requirement to state the monitum is for ministers of religion who belong to a recognised denomination (proclaimed under the Act). These ministers would ordinarily not be undertaking OPD training with you.

Religious marriage celebrants, who are a minister of religion that is not aligned with a recognised denomination, may seek clarification or raise concerns that the monitum does not reflect their religion's understanding of marriage. The monitum must be stated by a religious marriage celebrant for every marriage they solemnise. However, in addition to stating the monitum, a religious marriage celebrant (if requested by the couple) could also include an explanation of what marriage means to the couple in their religion (during the ceremony).

Commitment ceremonies

From 9 December 2017, same-sex marriages that have been solemnised in a foreign country, and are considered to be valid in that foreign country, are recognised in Australia. If a couple were validly married in a foreign country, that marriage is now recognised in Australia, and the couple cannot marry each other again in Australia.

An authorised celebrant can conduct a commitment ceremony for such couples. However, celebrants need to ensure the couple and attendees are aware that commitment ceremonies are not marriages, and the ceremony must not purport to be a marriage. A celebrant must not prepare a certificate of marriage, or any other certificate referring to the Marriage Act or containing the word 'marriage', as part of or in connection with a commitment ceremony. In order to avoid doubt, celebrants should avoid using the words 'wedding' or 'marriage' during a commitment ceremony.

For more information about commitment ceremonies, refer to Part 11.6 of the *Guidelines on the Marriage Act 1961 for authorised celebrants*.

Changes to the Marriage Forms

See [Fact Sheet](#): **Changes to marriage forms and certificates**

Changes have been made to the Marriage Forms to reflect marriage equality and ensure all eligible marrying couples can use the same marriage forms. **From 9 December 2017 onwards, all couples and authorised celebrants must use the new marriage forms.** The marriage forms that have changed are the:

1. Notice of Intended Marriage
2. Official Certificate of Marriage (including the 'Register' or 'Red book'), and
3. Certificate of faithful performance by interpreter.

1. Notice of Intended Marriage (NOIM)

Two mandatory items have been added to the NOIM.

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

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

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

Marriage celebrants should accept a party's statement on what their sex and gender is for items 1 and 4 on the NOIM and gender on the Official Certificate of Marriage.

In May 2018, the department published a [fact sheet](#) titled 'Marriage equality: Questions and answers on sex and gender', in response to questions about sex and gender from celebrants, their representatives and training providers. The fact sheet is available on the department's website.

Item 7 of the NOIM requires a party to indicate their conjugal status to ensure each party is free to marry. Parties to a marriage should record the conjugal status that reflects their status on the day they give the NOIM to an authorised celebrant, such as:

- *married* – if their marriage has not yet ended (by death, divorce, or a decree of nullity)
- *married (divorce pending)* – if they have commenced divorce proceedings to end their marriage. The party will not be free to marry under Australian law until their existing marriage is ended
- *divorced* – a party whose domestic or foreign divorce is recognised under Australian law should record their conjugal status as 'divorced'
- *never validly married* – if their marriage has been annulled (or declared void) by a court. A party who has registered a relationship under a state or territory scheme (whether with the party they are marrying or another party) should record their conjugal status as 'never validly married', or
- *widowed* – if their spouse died after their marriage was recognised.

– *If asked why 'partner' is used in the marriage forms instead of 'spouse'.*

The Notice of Intended Marriage and the Official Certificate of Marriage includes the term 'partner' as a descriptor of each party, in addition to 'groom' and 'bride'. The Department as a part of the form's review is looking at descriptors in both forms. The term 'partner' in the NOIM is used instead of 'spouse' because 'partner' is a gender-neutral term that can be used to describe one person's relationship to another person before marriage. 'Spouse' is a gender-neutral term that is used to describe a person's relationship to another person after marriage. As the NOIM is signed before a marriage, it would not be appropriate for parties to describe themselves as a 'spouse'. The Official Certificate of Marriage uses the term 'partner' so a celebrant can easily copy a party's chosen descriptor from the NOIM onto the Official Certificate.

– *If asked if 'partner' can replace 'spouse' in the marriage vows*

No. The marrying couple cannot replace the words 'husband', 'wife' or 'spouse' in the marriage vows with 'partner'. The *Guidelines on the Marriage Act 1961 for authorised celebrants* contains a list of acceptable and unacceptable changes to the vows. The Guidelines state that using 'partner' instead of 'husband', 'wife' or 'spouse' is not an acceptable change to the vows because 'partner' can include a de-

facto partner. However, it is possible to use the words ‘partner in marriage’ because this clarifies that the relationship being entered into is one of a legal marriage.

2. *Official Certificate of Marriage*

A new mandatory item has been added to the official certificate of marriage form for parties to indicate how they want to be described. As with item 1 of the NOIM, this question has been included to allow state and territory registries of births, deaths and marriages to register marriages and issue certificates that reflect how couples want to describe themselves. It is a matter for state and territory registries what information is included, and how it is described, on their register and the certificates they issue.

There are three options for a party’s description: ‘groom’, ‘bride’, and ‘partner’.

This item should be completed consistently with item 1 of the NOIM, unless the party’s gender has changed after the NOIM was given to the authorised celebrant.

The ‘marriage register’ or ‘red book’ issued prior to 9 December 2017 cannot be used as the official certificate of marriage is a form approved by the Attorney-General and has been revised so that it is suitable for all marrying couples. It is a legal requirement under subsection 119(1) of the Marriage Act that where there are approved forms, the approved form must be used. As the declaration of no legal impediment to marriage must be on the reverse side of the official certificate of marriage, a new declaration of no legal impediment to marriage should be completed and signed. The combined official certificate of marriage and the declaration is available for download for free from ‘Marriage stationery and forms’ page of the department’s website. Celebrants can [download the forms](#) and attach it to their red book or register if they wish.

3. *Certificate of faithful performance*

The Certificate of faithful performance by an interpreter has replaced reference to ‘bride’ and ‘groom’ with ‘Party 1’ and ‘Party 2’.

The descriptor ‘party’ was used as the Act defines parties to a marriage.

Other Forms

The Form 15 Certificate of Marriage has been amended to remove the terms ‘bride’ and ‘bridegroom’ under the party’s signatures. Celebrants are able to continue using their Form 15 Certificate of Marriage which refers to ‘bride’ and ‘bridegroom’ where it is appropriate to the particular marrying couple.

The Declaration of No Legal Impediment has not changed. However, it is a requirement under the Marriage Act that this form be completed on the reverse side of the official Certificate of Marriage (subsection 50(3)); the latter form has changed.

From 9 December 2017, all [updated forms](#) can be downloaded for free from the department’s website, with the exception of the Form 15 Certificate of Marriage, which can only be purchased by an authorised celebrant through CanPrint Communications.

Other Resources

The ‘Happily Ever Before and After’ brochure provides information about preparation for marriage and the legal process. This publication has not changed, and is available on the AGD website, along with translations into 30 different languages:

<https://www.ag.gov.au/FamiliesAndMarriage/Marriage/resources-for-marriage-celebrants/Pages/download-resources.aspx>

Further information, including fact sheets, about marriage equality can be found on the AGD website:

<https://www.ag.gov.au/FamiliesAndMarriage/Marriage/Pages/marriage-equality.aspx>

Further celebrant resources are also available on the department's website:

<https://www.ag.gov.au/FamiliesAndMarriage/Marriage/resources-for-marriage-celebrants/Pages/default.aspx>

