

Amendments to the Marriage Act

DATE: 18 July 2024

ATTENTION: Ministers registered as Marriage Celebrants

CONTACT: Catherine Rich, Diocesan Registrar
02 9265 1526 | registry@sydney.anglican.asn.au

Key Points

1. The following changes to the *Marriage Act 1961* became law on 12 June 2024. The changes can be found in the updated [Marriage Act 1961](#) (the Act), section references have been provided below.
 - a. Registered celebrants are required to meet separately and in person with each party to the marriage before the marriage is solemnised (section [42B](#)) to confirm consent.
 - b. The temporary provision to provide couples with the option to have their Notice of Intended Marriage (NOIM) witnessed remotely, via audio-visual link, as well as in person has now been made permanent (section [42\(2\)\(c\)](#)).
 - c. The requirement has been clarified that the registered celebrant be physically present to solemnise a marriage, together with the parties and two witnesses (section [41](#) and [44](#)).
2. A number of minor matters were also enacted relating to the order of the acceptable evidence of date and place of birth (section [42\(1\)\(b\)](#)), and the circumstances for when a NOIM can be transferred to another authorised celebrant (section [42\(6\)](#)).
3. Notes taken during the Separate Meetings should be kept securely with the records of the marriage, usually within the Parish.

Details

The Diocesan Registry received the following information via two separate emails on 12 June 2024 and 13 June 2024 from the Attorney-General's Office regarding amendments to the *Marriage Act 1961*. I apologise that I did not convey this information to you as promptly as I would have hoped.

The first email was a summary of the changes to the Act, an extract of which has been included as [Appendix 1](#); the second was general guidance material related to the conduct of separate meetings, included below as [Appendix 2](#). The text of the [Act](#) has been updated, but the [Guidelines on the Marriage Act 1961 for authorised celebrants](#) referenced below in Appendix 2 has not been updated since 2021.

Appendix 2 makes the recommendation that when holding separate meetings with the parties, notes of the meeting should be taken. In our diocesan context notes should be stored securely with the records of the Marriage, which are usually kept within the Parish in case they are needed in the future.

If you have any questions about the changes, please direct these to the Marriage Celebrants Section of the Attorney-General's Office as provided in Appendix 1.

If you have any concerns about a marriage you have solemnised between 12 June 2024 and now, please contact the Diocesan Registry.

CATHERINE RICH
Diocesan Registrar

Notice of amendments to the Marriage Act: Attorney-General's Portfolio Miscellaneous Measures Act 2024

Extract from email received on 12 June 2024 from the Marriage Law and Celebrants Section, Attorney-General's Department.

Remote witnessing of the NOIM

The Marriage Act will be amended to permanently provide couples with the option to have their Notice of Intended Marriage (NOIM) witnessed remotely, via audio-visual link, as well as in person.

NOTE: The requirements for authorised witnesses will remain unchanged and location-dependent. If the couple is in Australia then the person remotely witnessing the NOIM (which can include an authorised celebrant) must also be in Australia. If the couple is outside Australia, the authorised witness (which cannot be a celebrant) must also be outside Australia. To be clear, you cannot witness online a NOIM for a person or couple outside Australia.

Separate Meetings

The Marriage Act will require an authorised celebrant to meet separately and in person with each party to the marriage before the marriage is solemnised. The purpose of the meeting is to ensure that each party is freely and voluntarily consenting to the marriage.

A separate meeting needs to occur in the absence of the other party to the marriage and in a culturally safe environment – but this does not mean you need to meet alone with a party. Other persons can attend with the party's permission.

The timing of the separate meetings is at the discretion of the celebrant and the couple. It can occur at any time up to and including the day of the marriage, providing it occurs before the marriage is solemnised. Additional guidance material will be provided to assist you to meet these requirements.

Evidence of date and place of birth

The amendments re-order the acceptable evidence of date and place of birth under paragraph 42(1)(b) of the Marriage Act. They clarify that where it is impracticable (practically impossible) for the party to the marriage to obtain a certificate or official extract of an entry in an official register and they do not have a passport, only then should they rely on a statutory declaration to declare to the best of their knowledge, their date and place of birth.

The term impracticable does not mean inconvenient. For example, it is not impracticable for a person born in Australia to apply to the state or territory Registries of Births, Deaths and Marriages for a copy of their birth certificate, or except in special circumstances, for overseas born persons to apply to the appropriate authorities in their country of birth.

Transfer of the NOIM

The amendments also clarify the circumstances when a NOIM can be transferred to another authorised celebrant include at the request of the marrying couple. This is in addition to transfers due to the death, absence or illness of the celebrant or where it is otherwise impracticable for a celebrant to solemnise the marriage.

Other measures

Other amendments include:

- the introduction of deputy registrars for the Marriage Celebrants Program
- extending the timeframes for considering an application for registration as an authorised celebrant

- providing for the refund of the application fee only if an applicant does not have the requisite qualification or skills referred to in the Marriage Act
- clarifying that a celebrant must be physically present to solemnise a marriage, together with the parties and 2 witnesses and
- confirming that a celebrant can only be registered or authorised under one subdivision of the Marriage Act at a time (this applies only if the person's application is received after the commencement of Schedule 3, Part 7 ie, 28 days after the Act receives Royal Assent).

Should you have any questions, please do not hesitate to email marriagecelebrantssection@ag.gov.au with the subject name 'MARRIAGE ACT ENQUIRY'.

Appendix 2 (additional guidance material)

Separate Meetings – Your obligations under the Marriage Act 1961

Extract from email received on 12 June 2024 from the Marriage Law and Celebrants Section, Attorney-General's Department.

- From **12 June 2024** all authorised marriage celebrants are required under the *Marriage Act 1961* (the Marriage Act) to meet with each party to the marriage **separately** and **in person** before they solemnise the marriage.
- This applies to **all legal marriages** and **all authorised celebrants**, including Commonwealth-registered marriage celebrants, ministers of religion of a recognised denomination and State and Territory officials authorised to solemnise marriage.

Why?

- Real consent is the cornerstone of the Marriage Act.
- As has always been the case, you – as an authorised marriage celebrant – must be satisfied that each party to the marriage is providing real consent before the marriage is solemnised. This obligation has not changed.
- A court may find a marriage to be void where the consent of either of the parties is not real consent.
- Under the *Marriage Act 1961*, a person's consent to a marriage is not real consent if:
 - it was obtained by duress or fraud
 - a party is mistaken as to the identity of the other party or the nature of the ceremony performed, or
 - a party does not have mental capacity to understand the nature and effect of the marriage ceremony.
- 'Duress' may include coercion or threats including psychological or emotional pressure.
- A separate meeting with a party to establish real consent is not new, and has been a long-standing principle in *The Guidelines on the Marriage Act 1961 for authorised celebrants* where any concerns existed about consent.^[1]
- A separate meeting in person with each party to the marriage before the marriage is solemnised is intended to maintain safeguards for establishing real consent.
- Celebrants should be aware that it is an offence to cause another person to enter into a forced marriage.^[2]

When?

- A separate meeting with each party must take place before a marriage is solemnised, regardless of when the NOIM was received (unless you have already met separately with each party to establish real consent).
- If the NOIM has been transferred to a new celebrant, the new celebrant must also meet separately with each party. This is necessary because the celebrant who solemnises the marriage must comply personally with all legal requirements.

^[1] See *Guidelines* at paragraphs 8.6.1 and 11.1.2.

^[2] It is an offence under section 270.7B of the *Criminal Code Act 1995* to engage in conduct that causes another person to enter into a forced marriage – penalty 7 years imprisonment or 9 years if an aggravated offence.

- The timing and duration of a separate meeting with each party is at the discretion of the celebrant and the marrying couple, provided it takes place before the marriage is solemnised. Suggested opportunities may include:
 - a convenient time after receiving the NOIM
 - when signing the Declaration of No Legal Impediment, or
 - on the day of the wedding.
- If you have any concerns about consent at any stage you should meet with the parties separately and at the earliest opportunity. Meeting in advance of the wedding day will assist the celebrant to manage any concerns about real consent appropriately.
- Real consent may change over time and celebrants should exercise sound judgement about whether or not to solemnise a marriage.
- Circumstances may arise on the day of the wedding that may impact on real consent. For example, if either of the parties appear intoxicated or otherwise unable to provide real consent at that time, or for any other reason including medical issues.

Where and How?

- A separate meeting provides you with an opportunity to check in with each party to establish if they are entering into the marriage **voluntarily and freely**, and with an understanding of the binding legal nature of marriage. This involves the type of discussions you would already be familiar with in your role as an authorised celebrant.
- There is no specific set of questions or words you need to use to satisfy yourself about real consent. Open-ended questions often allow the party to express how they feel about their upcoming wedding.
- A separate meeting needs to take place in the absence of the other party to the marriage. You need to speak in person and separately with each party – but this does not mean you have to meet alone with the party. The party may choose to bring a trusted person.
- For privacy and safety reasons, do not contact third parties such as family members, interpreters etc, without the express consent of the party.
- Separate meetings are to take place in a culturally appropriate context and in line with the preferences of the party, including as to the location of the meeting. It can be a public setting provided the privacy of the conversation can be maintained. This could be a public space agreed to by the party, such as a coffee shop or similar venue.
- If another person attends the meeting with a party, the celebrant should have regard to whether their presence appears to be coercive and take this into account in their decision whether or not to solemnise the marriage. You should not say anything that may expose the party to risk. Instead, consider following-up with the party by telephone if you have concerns.
- Remember other people may read your emails, text messages or written communications, or may listen to your voice messages. If you need assistance about how to proceed you should contact the expert support services listed below.
- It is recommended the celebrant should keep a record of the meetings, who was present, the factors you considered and the conclusion you reached on the question of real consent. This means if any questions arise at a later date you have a record of your decision-making process. This is important because celebrants may be called upon to give evidence in court as to the consent of the parties.
- As has always been the case, if you have any concerns whatsoever about real consent and consequent validity of a marriage, either before or on the day, you should not solemnise the marriage. You may consider offering a non-binding commitment ceremony and later solemnisation, depending on circumstances.

- **Please note:** It is important that you always act in the best interests of a party who may be at risk, by being mindful of their safety as well as your own.
- The following additional resources are available to support authorised celebrants and vulnerable parties.

Resources

What are the signs of a forced marriage?

- The crime of forced marriage not only applies to legally recognised marriages but to cultural or religious ceremonies and registered relationships.
- If someone is in, or at risk of a forced marriage, they may find it hard to tell someone about their situation.
- A combination of the following signs may indicate that a person is in a forced marriage, or at risk of being made to enter into a forced marriage. Some of these signs may not be immediately obvious to an authorised celebrant but could provide a guide about the kinds of questions to ask the couple (or the person).
 - Have a family history of elder siblings leaving education early, marrying early or indicating concerns of an early marriage
 - Exhibit signs of depression, self-harm, attempted suicide, panic attacks, social isolation or substance abuse
 - Have high level of control and restrictions exercised by family / community members over all aspects of life in and outside of the home e.g. surveillance, always accompanied, limited or no control of finances, limited or no control over life decisions, education and career choices
 - Have communications monitored or restricted
 - Show evidence of family or domestic violence within the family unit
 - Show evidence of running away from home or isolation from the community
 - Express concern regarding an upcoming family holiday or overseas travel
 - Make a sudden announcement they are engaged
 - Express feelings of shame or dishonour on the family if family / community expectations are not met
 - Show evidence of economic or dowry abuse including:
 - Family members or others seeking to gain financially from a proposed marriage or engagement
 - Ongoing demands for cash or material goods
 - Threats made when financial obligations or arrangements are not met
 - Demonstrate feelings of conflict or concern for the ramifications if they do not go ahead with an agreed marriage / engagement
 - Have intergenerational and cultural conflict within the home
 - Express concern of physical or psychological violence for not fulfilling family / community expectations.

Arranged marriages are different to forced marriages. While an arranged marriage involves the spouse being introduced by a third party or family member, it requires the consent of both parties, who can agree or refuse to marry. The Marriage Act does not prevent a person from consenting to marry another person that they have not met prior to the marriage ceremony.

How can I help a person at risk of forced marriage to stay safe?

It is important that you always act in the best interests of a person at risk of a forced marriage, by being mindful of their safety as well as your own.

If an authorised celebrant forms a view that one of the parties may be under duress or otherwise not freely and fully consenting, they should attempt to discuss the matter with the party concerned in the absence of the other party or any family members to determine whether they consent to the marriage.

When seeking assistance, you can help protect a person at risk of a forced marriage, and yourself, by:

- dialling Triple Zero (000) if you have immediate concerns for your safety, the safety of another person, or there is an emergency
- contacting the AFP or a specialist community organisation
- ensuring you do not attempt to set up a meeting with the person and their family or community members to discuss the situation, or contact family or community members, if you do not have the express permission of the person
- remembering that other people may read your emails, text messages or other written communications
- providing the party with information about forced marriage and services that can help them
- meeting in a safe and private place, and
- if using an interpreter to communicate with a person suspected to be at risk of forced marriage, consider that the interpreter may know the person, their family or their community.

For more information on forced marriage see the '[People smuggling and human trafficking](#)' page of the Attorney-General's Department website.

Seek assistance

The [Forced Marriage Community Pack](#), available on the Attorney-General's Department website at: [Forced marriage | Attorney-General's Department](#) provides information and resources on forced marriage and is available in a range of languages.

Marriage celebrants may wish to download fact sheets or the small fold away booklets so that they can be provided to the person suspected to be at risk of forced marriage, if **it is safe to do so**. It is important to refer the person to the right place where they can get appropriate advice and assistance.

Care should be taken to ensure that the person suspected to be at risk is not put in danger.

If you have immediate concerns for your safety, the safety of another person, or there is an emergency call Triple Zero (000). If there is no immediate risk of harm and indicators of forced marriage are present, call 131 AFP (131 237) or complete the online report a crime form on the human trafficking page of the AFP website at [Human trafficking, slavery and slavery-like practices \(including forced marriage\) information report - AFP](#)

The Australian Federal Police (AFP) can provide initial advice to people who are in, or at risk of a forced marriage, including where a person needs help to make sure he or she won't be taken overseas. The AFP can also refer victims for support, including safe accommodation, financial support, legal advice and counselling.

Initial support is available for victims even where they don't want to assist with an investigation or prosecution. In cases where the victim is a child, the AFP will always act in their best interests.

You can also provide anonymous information about criminal activity to Crime Stoppers on 1800 333 000 or www.crimestoppers.com.au.

[My Blue Sky](http://mybluesky.org.au) is an easy to use, non-government website dedicated to preventing and addressing forced marriage in Australia. The website provides people in, or at risk of, forced marriage with important information and links to support services, as well as useful resources for frontline responders, service providers and the general community.

For free, confidential legal advice about forced marriage, you can call My Blue Sky's national forced marriage helpline on (02) 9514 8115. The My Blue Sky helpline operates Monday to Friday between 9am and 5pm AEST, with an out of hours recorded message. You can also get help by emailing help@mybluesky.org.au or sending an SMS to 0481 070 844.

The National Sexual Assault, Domestic and Family Violence Counselling Service is a free 24/7 confidential telephone and online counselling service, staffed by professional counsellors to assist any person who has experienced, or is at risk of family and domestic violence and/or sexual assault. You can call 1800 RESPECT (1800 737 732) or visit the [National Sexual Assault, Family and Domestic Violence Counselling Service](http://www.nsv.gov.au) website.

The following specialist community organisations may also be able to provide help and advice:

- [Anti-Slavery Australia](http://www.antislavery.org.au), Tel: 02 9514 9662 Email: antislavery@uts.edu.au
- [Australian Muslim Women's Centre for Human Rights](http://www.aumwc.org.au), Tel: 03 9481 3000
- [The Freedom Partnership—Salvation Army](http://www.endslavery@ae.salvationarmy.org.au), Tel: 02 9211 5794 Email: endslavery@ae.salvationarmy.org.au

You may also wish to seek advice from the [Federal Circuit and Family Court of Australia](http://www.fcfcoa.gov.au): see [Family violence: Overview | Federal Circuit and Family Court of Australia \(fcfcoa.gov.au\)](http://www.fcfcoa.gov.au), or a family solicitor at your closest Legal Aid office.

The [Translating and Interpreting Service](http://www.tis.gov.au) (TIS National) can be contacted on 131 450.