Coalition of Celebrant Associations

Australia's peak body for celebrants

Chairperson

Yvonne Werner
Chairperson
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Member Associations

Alliance of Celebrants Queensland Inc

Association of Civil Marriage Celebrants NSW & ACT Inc

Association of Civil Marriage Celebrants SA Inc

Association of Civil Marriage Celebrants Victoria Inc

Australian Marriage Celebrants Inc

Celebrants Australia Inc

Civil Celebrations Network Inc

International College of Celebrancy Alumni & Friends

Marriage Celebrants Australia Inc

Professional Celebrants Association Inc

Riverina Marriage Celebrants Association Inc

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Bridget Quayle
Registrar of Marriage Celebrants
Marriage Law and Celebrants Section
Attorney-General's Department
3-5 National Circuit Barton ACT 2600

1 June 2018

Dear Bridget,

RE: Review of Guidelines on the Marriage Act, 1961

Thank you for the opportunity to provide feedback on the reviewed Guidelines on the Marriage Act.

The Coalition of Celebrant Associations' committee members have consulted with their respective associations, and have collectively provided feedback on the reviewed Guidelines, which has been collated and attached below.

The relevant sections of the Guidelines have been provided, to give context to the feedback. There are also some general requests at the end of the document.

We look forward to working with the Marriage Law and Celebrants Section to ensure that the Guidelines are a comprehensive resource for celebrants, which can be easily navigated and understood by the end users.

Again, we thank you for the opportunity to provide this feedback and look forward to our continued consultation.

Yours Sincerely,

Karen Rose
Treasurer

For Yvonne Werner
Chairperson

GENERAL RECOMMENDATIONS

1. That each Section or sub-section reference the relevant section of the Marriage Act or Regulations in full, and to specifically include "or words to that effect" where relevant.

2. That the Guidelines acknowledge where the Act and or Regulations are silent on an issue, and:

   i. State that the Act/ Regulations does not specify how this is to be done.
   ii Explain the crucial points for a celebrant to consider in any variation not given in the Guidelines.
   iii Suggest that 'best practice' would be to ….
   iv.Advise that if the party or parties to the marriage is/ are unwilling to comply with the celebrant's recommendations, then the celebrant has the responsibility to decide how best to apply the Act or Regulation.

3. The checklist that was previously included (4.2 – Checklist for completing marriage documents) was very valuable to new celebrants. Can that be re-instated (perhaps as an appendix?)

4. Include some direction (assurance) that celebrants have the right to refuse to perform a ceremony where there are safety concerns.

5. Use of the word 'should' indicates that it is a recommendation only. If any actions described in this document are mandatory, please use the word 'must', so that users can have some assurance of what are the 'must do' and where the actions in the Guidelines are suggested best practice then 'should' be replaced 'it is recommended that'.

6. There have been several issues raised and addressed through OPD that could also be included in the Guidelines. For example:
   - extra material on consent in the 2016 compulsory
   - procedures for transferring a NOIM in the event of a weather disaster as per the newsletter article.
   - the preference that a witness not also be an interpreter

4.4 THE ONE MONTH NOTICE PERIOD

4.4.1 What does giving the notice 'not later than one month before the date of the marriage' mean?

Section 2G of the *Acts Interpretation Act 1901* provides that in any Act, ***month*** means a period starting at the start of any day of one of the calendar months; and ending immediately before the start of the corresponding day of the next calendar month, or if there is no such day – at the end of the next calendar month.

The relevant parts of section 2G are set out below, followed by examples.

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

(1) In any Act, month means a period:
   (a) starting at the start of any day of one of the calendar months; and
   (b) ending:

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

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

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

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

Further examples:

if a NOIM is given to the celebrant on 15 November, the first day the marriage can be solemnised is 15 December;

the notice period for a NOIM given on 29, 30 **or** 31 January ends at the end of February in that year. This is because February is the calendar month coming after January and does not have 31 days. Therefore, for a NOIM given to the celebrant on 29, 30 **or** 31 January, the first day the marriage can be solemnised is 1 March of that year. This applies regardless of whether it is a leap year.

FEEDBACK

If the definition of 'a month' is the corresponding day in the next calendar month, why can't a marriage take place 29 February in a leap year if the NOIM was lodged 29 January? The notice period in this instance has been satisfied (as per the definition under the *Acts Interpretation Act 1901*).

4.5.8 When can a person use a different name in the NOIM to the name on their birth certificate?

BDM-issued change of name certificate

If a person has changed their name from the name on their birth certificate by way of a BDM-issued change of name certificate they should write this name in the NOIM. The person's name should be recorded on the NOIM **exactly** as it appears on the change of name certificate. Once a person has changed their name in this way they cannot choose to revert to their birth name for the purposes of the marriage documents. Some BDMs will amend a person's name on their birth record in certain circumstances instead of issuing a change of name certificate. In this situation the person should record the name on their amended birth certificate.

Change of name by deed poll

Prior to BDMs granting change of name certificates (commencing in about the late 1990s), a person could change their name by deed poll. A person who changed their name by deed poll may write this name on the NOIM. The person's name should be recorded in the NOIM exactly as it appears on their deed poll documentation. A celebrant with concerns about the validity of deed poll documentation provided to them by a person should contact the relevant BDM for guidance.

Error in spelling of name on birth or change of name certificate

A person who believes there is an error in the spelling of their name on their birth certificate, or on their change of name certificate, should contact the BDM in the state or territory where they live, or were born, to enquire about having the certificate corrected. If the birth certificate or change of name certificate has been amended, the celebrant should record that name on the NOIM.

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

Change of name by marriage

A party who has changed their name by marriage, and retained their previous spouse's surname, must record that surname on the NOIM. The surname recorded should be exactly as it appears on the BDM-issued official marriage certificate, or court-issued divorce certificate, for the party's previous marriage. See Part 4.18 for two case studies on the correct use of documents, and Part 4.7 of these Guidelines (Frequently asked questions – names on notices of intended marriage and on marriage certificates) for further assistance in such situations.

FEEDBACK

This section does not clearly explain what the Act requires and how the celebrant is to manage the issue of names on the Notice.

There is a degree of inconsistency around recommended evidence for the use of names for a party who has previously been married. The use of the word '**or'** here suggests that the party to the marriage can use **either** the marriage certificate (from the first marriage), **or** the divorce certificate (as does FAQ Q1) whilst Section 4.18 states that all the documents (previous marriage certificate and divorce certificate) are required to establish the correct name.

Spelling errors also may come under the heading of names by common usage.

FAQ Q12 states that if a person insists on using a name that isn't supported by any documentation, they may list their preferred name on the NOIM, as long as the celebrant advises them that they may have problems in the future. This option appears to undermine all the previous advice.

Additionally, it should be noted that the bride changing her name after marriage is a matter of custom, not law, and there are occasions where a groom has changed his name to that of his wife. With SSM, these examples need to be non-gender specific.

Recommended wording:

4.5.8 When can a person use a different name in the NOIM to the name on their birth certificate?
Sections revised to state recommendations / rather than "should"

BDM-issued change of name certificate
Change of name by deed poll
Error in spelling of name on birth or change of name certificate
Change of name by marriage
Add a section on *Names by Common usages*

For example:

Names by common usage
Names by common usage or changing one's name under common law are not illegal in Australia. To do so one would need to use the new name exclusively for twelve months without the intent to defraud. The new name is the person's legal name.

Celebrants need to appreciate that there are many valid reasons why a person may have changed their name, or had their name changed for them by a parent, and that a person's name is directly linked to their sense of identity.

Reference: Marriage Act 42 (8) **Add before** *BDM-issued change of name certificate*

An authorised celebrant shall not solemnise a marriage:
(a) unless the authorised celebrant has satisfied himself or herself that the parties are the parties referred to in the notice given under this section in relation to the marriage; or
(b) if the authorised celebrant has reason to believe that:
(i) a notice given under this section; or
(ii) a declaration made and subscribed under this section, or a statutory declaration made for the purposes of this section;
in relation to the marriage, contains a false statement or an error or is defective.

Responsibility of marriage celebrants in relation to names

The Marriage Act 1961 Section 42 (8) requires the celebrant to the satisfied that the parties to the marriage are who they say they are – regardless whether they have only ever used one name (their birth name) or have had several names (changed by marriage, deed poll, change of name lodgement with a BDM or by common usage. Names by common usage is not illegal. (**See section:** 4.5.8 When can a person use a different name in the NOIM to the name on their birth certificate)

That is, a party to the marriage can use whatever name they wish provided they can give some evidence to satisfy the celebrant that this is a name they are using or have used.

The Guidelines need to include a statement that demonstrates that it is perfectly legal to use a name by common usage and that if the person has no evidence of the use of that name, then it is up to them to decide whether or not they want to use it. Section 42 (1a) of the Act says 'Notice in writing is given in accordance with this section'. It is the couple's responsibility to complete the notice according to the information in their possession and as laid out on the notice.

Should one party to the marriage be using a name by common usage, we should be able to accept that without concern. The parties to a marriage are signing a legal document, and the onus is on them to be correct. Using your name by common usage CANNOT have any impact on the validity of the marriage.

Whilst celebrants need to be sensitive to underlying issues when discussing the names to be recorded on the NOIM, especially where a party to the marriage is using a name by common usage, it is recommended that the marriage celebrant make it very clear that "any discrepancy between their name as it appears on their birth certificate and their name as it appears on the marriage documents (including spelling errors) may mean that they may encounter problems if they wish to obtain an Australian passport in their married name".

It is the celebrant's professional responsibility
1. to be satisfied that the names supplied on the NOIM are names the person is using or has used (usually with a paper trail or a range of documents to demonstrate the names are being or have been used), and

2. to refuse to marry a party to the marriage if they are **not satisfied** that they are in fact this person who has given Notice to be married.

Questions 1 to 12 below outlines the steps it is recommended that a marriage celebrant take to explain this in detail. If the party to the marriage ultimately refuses, then it is recommended that the celebrant give their advice in writing to the parties to the marriage.

Then questions 1 to 12.

4.10.2 What to do when a birth certificate does not have a registration number

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

FEEDBACK

It should be enough that we can be trusted to tick a box to say we have sighted the relevant document. BDM only have access to cross check documents issued in their own state and would not be checking numbers from birth certificates issued in other countries, so it seems pointless to go to great lengths to find an identifying number. As an authorised representative of the Attorney-General's department, it should be enough that the celebrant confirm that they have sighted an original document.

If the birth certificate has absolutely no identifying numbers, there is nothing that can be recorded.

4.11.3 Receiving the NOIM if a divorce is pending

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

FEEDBACK

In this case, should fields 19 and 20 (How last marriage terminated and date of termination) be completed after the divorce is finalised, or be left blank, as it wasn't finalised at the time of signing the document.

Recommendation: Change this field to 'The date upon which the divorce was finalised or is expected to be finalised'.

4.11.6 Annulment

The term 'never validly married' may be used on item seven of the NOIM in which a court issued decree of nullity, or an annulment, exists in relation to a party's previous marriage. A decree of

nullity is an order from the court stating that there is no legal marriage between the parties, even though a marriage ceremony may have taken place.
An annulment granted by a church is not the same as a court issued annulment and does not demonstrate that a person is free to marry.

FEEDBACK

If the only previous marriage was annulled, do they complete fields 15-20 in the NOIM?

Please clarify.

4.12 ESTABLISHING THE IDENTITIES OF THE PARTIES TO THE MARRIAGE

A celebrant shall not solemnise a marriage unless satisfied that the parties are the parties referred to in the NOIM. This requirement is separate from, and additional to, the requirement that each party to a marriage must give their celebrant evidence of their date and place of birth before a marriage is solemnised.
A celebrant should require each party to a marriage to provide at least one of the following documents with photo identification as evidence of their identity:

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

FEEDBACK

Section 42 (8) of the *Marriage Act 1961* states simply that the celebrant must be satisfied as to the identity of the parties. **The Act does not require photo ID**.

The requirement for photo ID is so that the celebrant can be satisfied that the parties are who they say they are. In the case of a celebrant solemnising the marriage of a person known to them (for example a family member), there should not be a requirement to sight photo ID.

Also consider re-wording to state (explicitly) that where a couple produce a passport as proof of place and date of birth, and the photo is acceptable, there is no need to produce any further photo ID.

Suggested re-wording:
Where the party to the marriage is not known to the celebrant, and the proof of place and date of birth does not include photo ID (as in the case of passports), it is recommended that the party to a marriage provide at least one of the following documents with photo identification as evidence of their identity:

- *a driver's licence*
- *a proof of age/photo card, or*
- *a Certificate of Australian Citizenship along with another form of photographic evidence (such as a student card or other photo identification not listed above).*

If the above-mentioned photographic evidence is not possible, the party to the marriage may produce a number of documents which, when used jointly is sufficient for the marriage celebrant

to be satisfied that the person is who they say they are, for example Medicare cards, pensions cards, credit cards, bank statements or utility records.

4.13 MARRIAGE EQUALITY

On 9 December 2017, the Marriage Act was amended to redefine marriage as the 'union of **2** people to the exclusion of all others, voluntarily entered into for life'.

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

The amendments to the Marriage Act also created a new sub-category of Commonwealth registered marriage celebrant, religious marriage celebrants.

Commented [KR1]: Insert space

FEEDBACK

Single digit numerals should be written as text (rather than as numbers). Other single digit numerical references throughout this document are written as text ('***three*** *certificates*', '***two*** *witnesses*' etc).

Insert space as indicated.

4.14 DECLARATION OF NO LEGAL IMPEDIMENT

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

The declaration must be in accordance with the approved form, which is available on the department's website, or in hardcopy from CanPrint Communications. Two forms of declaration for this purpose are printed on the back of the registration certificate of marriage (official certificate of marriage).

FEEDBACK

Suggested stronger wording, or more emphasis that where a celebrant prints the Declaration of no legal impediment on their own printer, it must be printed on the reverse side of the Official Marriage Certificate.

Suggested wording:

The declarations for this purpose are printed on the back of the registration certificate of marriage (official certificate of marriage).

Where the stationery is downloaded from the Attorney-General's website and printed by the celebrant, the Declaration of no legal impediment must be printed on the reverse side of the Official Marriage Certificate and forwarded to BDM on a single sheet of paper.

Add Reference:

Section 50 Marriage certificates
(3) One of the official certificates or the official certificate, as the case may be, shall be on the reverse side of the paper bearing the declarations made by the parties under section 42.

Further recommendation regarding the Marriage Act, 1961
That the AGD recommend the deletion of this section of the Act which has been in the Act since 1961. With the availability of home printers, online registration in several states and to electronic signing of documents, this requirement of the Act is redundant.

4.16 OBTAINING A TRANSLATOR OR INTERPRETER

The need to obtain a translator or interpreter will arise in a number of contexts in preparing to solemnise a marriage. The National Accreditation Authority for Translators and Interpreters Ltd (NAATI) is the national standards and accreditation body for translators and interpreters in Australia.

The NAATI website provides a searchable online directory of translators and interpreters. If the services of a translator or interpreter are required, the department recommends that they are found through the NAATI website and that the translator or interpreter is accredited at Level 3 or higher.

The Marriage Regulations do not require translations to be provided by an accredited translator, except where a person consenting to a minor's marriage gives a consent that is not in English . However, it is important to understand that not all bilingual or multilingual celebrants will be able to authoritatively translate documents.

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

When a party to a marriage produces a document in a language other than English, the celebrant (even if they can read and write in that language) must ask the couple to seek an official NAATI certified translation of the document.

FEEDBACK

This section needs to focus on translation **only – that is,** remove "or Interpreter" from the heading and reference to "interpreters/ interpreter" be removed from the section. Likewise, section 4.16 OBTAINING A TRANSLATOR OR INTERPRETER needs to focus on interpreting – so it is clear that one is dealing with written documents and the other with verbal communications.

Also, Section 42 (8) applies here. A bilingual or multilingual celebrant who is able to authoritatively translate documents should not be required to ask parties for additional translations.

Often a person who is negotiating visas will have their documents officially translated already – not necessarily by a NAATI translator, but by an official translator in their own country.

Can we accept official translations from another country? If so, this needs to be noted in the Guidelines. Similarly, if this is not acceptable, this also must be stipulated in the Guidelines.

4.18 CASE STUDIES IN THE CORRECT USE OF DOCUMENTS

CASE STUDY ONE – JANE

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

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

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

Proof of date and place of birth (subparagraph 42(1)(b)) – the celebrant must use the BDM issued birth certificate. Proof of identity (subsection 42(8)) – the celebrant needs to use the full chain of documents listed above.

The BDM issued birth certificate, the BDM issued marriage certificate and the Court issued divorce certificate taken together establish the clear link in the name change from Jane Smith to Jane Brown.

This chain of documents allows the celebrant to record the name Jane Brown instead of Jane Smith (as recorded on the birth certificate) on the NOIM. The driver's licence, which has a photograph of Jane, establishes that Jane Brown is the same person as the person referred to in the documents.

Together all these documents establish her identity. Evidence of the end of the previous marriage (subsection 42(10)) – the Court issued divorce certificate establishes conclusively the end of the previous marriage and so fulfils the requirement under subsection 42(10).

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

CASE STUDY TWO – JOHN

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

- a driver's licence in the name 'John Antony' containing a signature in that name. The photograph shows the same man as the one who provided the licence to the celebrant
- a Medicare card in the name 'John Antony'
- a credit card in the name 'John Antony' containing a signature in that name
- a document that the prospective groom tells the celebrant is a birth certificate but which is not in English. When the celebrant asks about the document the prospective groom explains that he was born in Russia and his parents migrated to Australia when he was a young boy. The birth certificate was issued in Russia and is in Cyrillic script. He never had a passport issued by Russia as he travelled on his parents' passports and he has never left Australia so has had no need to obtain an Australian passport, and
- a Certificate of Australian Citizenship in the name 'Dimitry Alexandrovich Antonov'.

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

When the prospective groom returns with the translation, the certificate gives the name as 'Dimitry Alexandrovich Antonov'. The prospective groom explains that while he used that name at school, he anglicised his name when he left school as it was easier. He has never officially changed his name.
The celebrant advises the prospective groom that the translated birth certificate satisfies the requirement under paragraph 42(1)(b) concerning evidence of date and place of birth. The celebrant can copy the date and place of birth from the translated certificate on to the NOIM.
The celebrant also advises that the name that will have to be used on the NOIM would be 'Dimitry Alexandrovich Antonov'. The prospective groom is not happy about that and wants the name 'John Antony' to be used as that is how everyone now knows him.
The celebrant needs to advise the prospective groom that the name 'John Antony' cannot be used as there is an inconsistency between the name on the birth certificate and the name attached to the photo of the same man on the drivers licence. The Medicare card, credit card and the Certificate of Australian Citizenship are not relevant to the matter as they do not have a photo.
The celebrant should advise the prospective groom that he has the following options:

- continue to use the name 'Dimitry Alexandrovich Antonov' on all the marriage documents, or
- apply to the BDM for a change of name to 'John Antony'. If he were to do that and bring the BDM issued change of name certificate to the celebrant, the NOIM could be corrected and the name on the change of name certificate - 'John Antony' – could be used on all the marriage documents.

FEEDBACK

The word 'cannot' (highlighted in yellow) should be changed because ultimately he can use the name John Antony if he chooses to.

Recommend changing this to 'The celebrant should tell the prospective groom that it is not advisable to use the name John Antony, as it may result in problems with other government bodies.

These two examples illustrate the use of name on the NOIM – they would be more effective if they were moved up to 4.6, or as part of the FAQs in 4.7

5.2.1 Celebrant not available

Although in most cases a marriage will be solemnised by the celebrant to whom the NOIM was originally given, the marriage may be solemnised by any marriage celebrant who has possession of the NOIM in circumstances in which the original proposed celebrant has died, is absent from the place of the intended marriage, is ill, or it is impracticable for that person to solemnise the marriage.

It is the responsibility of the first celebrant to ensure that the notice is transferred, safely, by hand or registered post, to the second celebrant. It is the responsibility of the couple to pay any fees charged by the first celebrant for services up to and including the cost of transferring the notice to the second celebrant.

A celebrant who performs a marriage in place of another celebrant to whom the NOIM was given originally, must comply personally with all the requirements of section 42 of the Marriage Act, save that a new NOIM need not be given by the parties. That is, the celebrant who solemnises the a

marriage is required under the Marriage Act to check the parties' evidence of date and place of birth and evidence of identity and evidence of dissolution of previous marriage (if applicable).
Where a celebrant who has solemnised a marriage dies without having signed the certificates of the marriage, the matter should be reported to the appropriate state or territory registering authority.

FEEDBACK

The processes for transferring to another celebrant in an emergency situation needs to be reviewed. Whilst every endeavour should be made for the new celebrant to sight all documentation, this may not be possible in emergency circumstances, for example, original celebrant falling ill at short notice, flooding or other extreme weather implications. Particularly if the couple have travelled a long way (interstate, for example) to be at the ceremony location.

The couple should not have to be content with a commitment ceremony when it is through no fault of their own that the wedding can't go ahead.

A new Declaration of no legal Impediment to Marriage Form and if necessary, a Statutory Declaration from other parties should be sufficient, particularly as the NOIM can be matched up at a later stage.

Please note typo in second last sentence – "the a celebrant" (highlighted in yellow)

5.6.5 Can the wording in subsection 46(1) of the Marriage Act be changed or varied in any way?
Subsection 46(1) of the Marriage Act includes the words 'or words to that effect'. Provided a Commonwealth-registered marriage celebrant or State or Territory Officer does not dilute the words or substitute words that alter the meaning of the words in subsection 46(1), there is some capacity to change certain words.
Noting that the safest course of action is to always follow the wording in the Marriage Act, it is possible that couples may seek to change the words. The changes set out below will not dilute or vary the meaning of the words in subsection 46(1) of the Marriage Act and may be used.

First sentence
The first sentence reads: 'I am duly authorised by law to solemnise marriages according to law'.
Variations that keep the legal meaning are:

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

FEEDBACK

Section 46 (1) Certain authorised celebrants to explain nature of marriage relationship
(1) Subject to subsection (2), before a marriage is solemnised by or in the presence of an authorised celebrant, not being a minister of religion of a recognised denomination, the authorised celebrant shall say to the parties, in the presence of the witnesses, the words:
"I am duly authorised by law to solemnise marriages according to law……etc"

or words to that effect.

All suggested alternatives include the word “solemnise”. This word has been confused with the word “sodomise” therefore statements such as “I am authorised to perform this official marriage ceremony according to law.” Or “I am authorised to legally celebrate this marriage” should be equally acceptable.

Second sentence

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

Variations that keep the legal meaning are:

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

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

FEEDBACK

Regarding the direction “*The words ‘these witnesses’ should not be changed to ‘family and friends’ because that may not include everyone present*.”

Where the people present at the marriage are in fact only “family and friends” then the phrase ‘family and friends’ should be sufficient and should be an allowable phrase to satisfy ‘words to that effect’.

5.6.6 Couples express their disagreement with the definition of marriage and request that it be changed

The definition of marriage in the Marriage Act is the law in Australia. While everyone is entitled to their individual view about such matters, Commonwealth-registered celebrants and State and Territory Officers are authorised to solemnise marriages in accordance with the law.

Such celebrants will need to explain carefully to the couple that, despite their view, they are not authorised to change the definition and have a legal obligation to state it during the ceremony. This means the celebrant is not able to agree to such a request.

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

It is possible to separate the first sentence from the second and third sentences and say them at a different part of the ceremony. However, the safest course of action is to keep them together. All three sentences are required to be said, before witnesses, in every marriage ceremony solemnised by a Commonwealth-registered celebrant or State and Territory Officer. All three sentences are required to be said before the vows are exchanged.

FEEDBACK

Reference: 46 Certain authorised celebrants to explain nature of marriage relationship
(1) Subject to subsection (2), before a marriage is solemnised by or in the presence of an authorised celebrant, not being a minister of religion of a recognised denomination, the authorised celebrant shall say to the parties, in the presence of the witnesses, the words:
"I am duly authorised by law to solemnise marriages according to law.
"Before you are joined in marriage in my presence and in the presence of these witnesses, I am to remind you of the solemn and binding nature of the relationship into which you are now about to enter.
"Marriage, according to law in Australia, is the union of two people to the exclusion of all others, voluntarily entered into for life.";
or words to that effect.

Consider specifying that sentences two and three must occur **in that order** (in addition to saying that they must be said in their entirety prior to the vows.

5.7.7 Can the couple personalise the vows

Give more examples than one (partner in marriage) to 'husband', or 'wife' or 'spouse'. For example, 'life companion in marriage' or "marriage partner"

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

NOTE: 5.7.8 is missing from the index

Commonwealth-registered celebrants (other than ministers of religion), and State and Territory Officers, should use the parties' full names at some stage during the ceremony, preferably early in the ceremony, for the purpose of legal identification of the parties. The full name of the parties will be the names recorded in the NOIM.
Where full names (as they appear in the NOIM) have been used earlier in the ceremony, it is not necessary for surnames to be used in the minimum vows. This is because the identity of the parties to the marriage has already been established. Couples may choose to use their first, or first and middle, names only.
Nicknames alone should not be used for the vows. However, shortened names or nicknames may be added to the names used in the vows. For example '…I, Elizabeth Jane (Liz), take you, Peter John (Buddy)…'. Nicknames may be used elsewhere in the ceremony, on the condition that full legal names have been used earlier in the ceremony.

FEEDBACK

RE: the purpose of legal identification of the parties.

The use of names (AB) and (CD) are not for the purpose of for the purpose of legal identification of the parties (unless a party to the marriage has no documentation to support their identity claim), as the marriage celebrant must have already been satisfied as that the parties to the marriage are who they say they are.

The major emphasis in the Guidelines needs to be for the celebrant to establish evidence to support the names on the Marriage documents rather than on the names used in the ceremony, especially as for Subdivision 'A' celebrants, names in ceremonies are not required by the Marriage Act.

Nothing in the Act talks about names in the ceremony in general, just names in the vow. Whilst there is an assumption that AB and CD refer to one personal name and one family name the Act is silent as to their definition. If a person has only one name, they use it, if they have five and want to use the whole lot, they can.

The major emphasis in the Guidelines should be on ensuring the marriage is valid, not on establishing trails of evidence for names on paperwork. It is the responsibility of the parties to the marriage to do that bit of the NOIM and our responsibility to ensure the validity of the marriage, which has nothing whatsoever so do with what name they choose to use.

Provided the celebrant has established evidence for the names on the marriage documents, the names used in the ceremony should be at the discretion of the parties to the marriage and their marriage celebrant.

RE: Names used in the ceremony

The Marriage Act does not specify that which names the person can use in the ceremony, if they have had previous names. This is a cultural issue as it is custom for women to change name after marriage. The major problem celebrants encounter are previously married women (this will go either way with Marriage Equality)

Many divorced women keep their previous married name - often for the sake of their children to still have a sense of family - but do not want the previous married name used in the ceremony at all. In fact, a woman's maiden name is often used for professional purposes and is able to be used after divorce by simply using the birth certificate and divorce papers without the requirement for a Change of Name form.

Because the Guidelines indicate that the names on the Notice must be used in the ceremony,

1. when the celebrant advises so, the person will use their birth name on the Notice, even though all their other identity papers are still in the previous married name
2. the celebrant then issues the Marriage Certificates in their birth (maiden) name.

Doing so solves the ceremony problem, but creates problems for the newly married person. Now they have a paper trail problem because to change all their current accounts *(medicare, banks accounts, pension cards, driver's licence)* the person will now be required to take at least:

1. Their birth certificate
2. The previous marriage certificate (the birth name is not on the divorce papers.

3. The previous divorce papers
4. The New Marriage Certificate

to show the paper trail to change into the new married name if that is what they want to do.

The solution is for the Guidelines to indicate that the celebrant can use their professional judgement allow the use of a previous name (for example, maiden / birth name) in the ceremony whilst using the current name on the paperwork.

SUGGESTED WORDING.

Reference: Marriage Act 42 (8)
An authorised celebrant shall not solemnise a marriage:
(a) unless the authorised celebrant has satisfied himself or herself that the parties are the parties referred to in the notice given under this section in relation to the marriage; or
(b) if the authorised celebrant has reason to believe that:
(i) a notice given under this section; or
(ii) a declaration made and subscribed under this section, or a statutory declaration made for the purposes of this section;
in relation to the marriage, contains a false statement or an error or is defective.

Background Information
These sections of the Australian Marriage Act are based on the English Marriage Act 1753 (*full title "An Act for the Better Preventing of Clandestine Marriage", popularly known as Lord Hardwicke's Marriage Act (citation 26 Geo. II. c. 33*) and Act for Marriages in England 1836 (*an Act that legalised civil marriage in England and Wales from 1 January1837*).

In those centuries, people did not have portable birth certificates or marriage certificates as records of births, marriage and deaths existed in parish church records, and not all such events were recorded for every person.

So the terms (AB) and (CD) were the way people identified themselves in a marriage ceremony. Verbal identification and consent to the marriage was considered as valid given many people were not as well educated as today.

Whilst there is an assumption that AB and CD refer to one personal name and one family name the Act is silent as to their definition.

Responsibility of Marriage Celebrants in relation to names
See Section: 4.5.8 When can a person use a different name in the NOIM to the name on their birth certificate?

The Marriage Act require Commonwealth-registered celebrants (other than ministers of religion), and State and Territory Officers, use the parties' full names (AB or CD) in their vows. However, "words to that effect" means that where full names (AB or CD) have been used earlier in the ceremony, it is not necessary for full names to be used in the minimum vows. This is because the identity of the parties to the marriage has already been established by the marriage celebrant prior to the ceremony. Couples may choose to use one of their names - a first, a middle name a last name or any combination thereof.

It is recommended that nicknames alone not be used for the vows. However, shortened names or nicknames may be added to the names used in the vows. For example '...I, Elizabeth Jane (Liz), take you, Peter John (Buddy)...'. or '...I, Chris, Christine Smith , take you, Les, Lesley Brown'....

Nicknames may be used elsewhere in the ceremony, on the condition that full legal names have been used at least once earlier in the ceremony.

The marriage celebrant may use their professional judgment as to which name is the most appropriate for a previously married person or person who has used more than one name, to use in the ceremony.

5.7.10 What are the consequences if the requirements of section 45 are not satisfied?

Section 48 of the Marriage Act states that in certain circumstances a marriage not solemnised in accordance with Part IV Division 2 of the Act will be invalid. Subsection 48(2) of the Act sets out a number of exceptions to section 48, but section 45 is not included in the list of exceptions.

This means that if the celebrant is not a minister of religion, and the ceremony does not satisfy the minimum requirements of subsection 45(2), namely the exchange of vows as specified in the Marriage Act, the marriage may be void. Likewise, if the celebrant is a minister of religion the ceremony must be a form of ceremony recognised as sufficient by the religious body concerned or the marriage may be void.

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

This Section is not balanced by Section 45 (3) and (4) which state the circumstances under which the validity of the marriage is stated in the Act.

Section 45 (3) and (4) state:

(3) Where a marriage has been solemnised by or in the presence of an authorised celebrant, a certificate of the marriage prepared and signed in accordance with section 50 is conclusive evidence that the marriage was solemnised in accordance with this section.
(4) Nothing in subsection (3) makes a certificate conclusive:
(a) where the fact that the marriage ceremony took place is in issue—as to that fact; or
(b) where the identity of a party to the marriage is in issue—as to the identity of that party.

The Guidelines need to stress that for both types of ceremony – civil and religious – the crucial issue is that the marriage celebrant is confident that both parties to the marriage are consenting to be married.