



Marriage Celebrants Programme

June 2019

Authorised celebrant obligations in an online environment

As more state and territory registries of births, deaths and marriages (BDMs) introduce online registration systems that enable (and require) authorised celebrants to submit documents online, it raises a number of related questions about how celebrants can continue to meet their record-keeping and related obligations under the *Marriage Act 1961* (Marriage Act) and Marriage Regulations 2017 (Regulations).

This fact sheet provides information about an authorised celebrant's obligations in relation to receiving, sighting, lodging and retaining electronic copies of marriage documents. Celebrants should check with the relevant BDM as to whether they are able to submit documents electronically as some do not have facilities to accept lodgement of documents by email or online, and may continue to require lodgement by post or over the counter.

This fact sheet provides greater detail on the information contained in the 'Guidelines on the *Marriage Act 1961* for authorised celebrants' (the [Guidelines](#)). A quick reference guide to this fact sheet is available from the [Your responsibilities as a marriage celebrant](#) page.

The Guidelines will be revised to incorporate this information as part of the next update.

Can I receive documents electronically?

Yes. Marriage documents including the Notice of Intended Marriage (the Notice) and original supporting documents, such as passports (scanned original *not* certified copies), birth certificates (scanned original *not* certified copies) and divorce certificates (scanned original *or* certified copies), can be provided to a celebrant in electronic form.

A scanned copy of an original Commonwealth statutory declaration can also be provided to a celebrant.

Electronic form' includes an email (scanned), text messaging a photo of the document, or facsimile; but does not include videoconferencing such as Skype (see below for more detail).

Electronically submitting documents may change the way that celebrants will interact with marrying couples. However, it does not impact on the application of section 42 of the Marriage Act, which requires that:

- notice of the intended marriage be given in writing to the authorised celebrant who will solemnise the marriage
- parties must provide the notice to the authorised celebrant at least one month before the marriage is solemnised, and no earlier than 18 months before the date of the marriage
- the notice must be appropriately signed and witnessed, and
- the authorised celebrant must be satisfied that the parties to be married are the parties in the notice.

Ultimately, it is up to the authorised celebrant to comply with all of the applicable requirements of the Marriage Act.

Can documents be signed electronically?

Generally yes. The Commonwealth *Electronic Transaction Act 1999* (ETA) applies to the Marriage Act, subject to any specific Marriage Act requirements for hard copies of documents to be used. For example, the Marriage Act requires the Form 15 ceremonial certificate to be physically ‘handed’ to the marrying parties immediately following solemnisation of a marriage. As such, a physical copy of the Form 15 would be necessary to comply with Marriage Act requirements.

Electronic signatures are a visible representation of a person’s usual signature that is equivalent to a hand-written signature. An electronic signature may be typed, scanned or digitised. Like a hand-written signature, an electronic signature represents that (1) the person signing has identified themselves, (2) the person to whom the signature is given has consented to the receive it in an electronic form, and (3) it is reliable in the circumstances. Subject to requirements of the BDM, an electronic signature could include a mark on a document, a PIN or a declaration (in the form of a tick box) where these three requirements have been met.

Marriage documents including the Notice, official certificates of marriage (civil and religious) and Declaration of No Legal Impediment (DNLI) may be signed electronically. Where parties to a marriage sign these marriage documents with a hand-written or electronic signature, both parties are required to ‘sign’ in the presence of an authorised celebrant or authorised witness.

In accordance with the *Statutory Declarations Act 1959*, a Commonwealth declaration must be signed ‘in pen’, which requires an original paper copy. As the Certificate of Faithful Performance by an Interpreter form is made up of two parts – a statutory declaration (signed prior to the solemnisation of a marriage) and ‘Certificate of Faithful Performance by Interpreter’ (signed following the solemnisation of a marriage) – only the Certificate of Faithful Performance by Interpreter can be signed electronically.

Can I receive marriage documents via videoconferencing?

No. It is not acceptable for an authorised celebrant to accept a Notice and/or supporting documents via videoconferencing services such as Skype.

The following requirements prevent the acceptance of the Notice via video conferencing:

- The Notice must be given in writing, and signed in the presence of the witnesses (as set out in section 42 of the [Marriage Act](#) and section 70 of the [Regulations](#)).
- The authorised celebrant must write certain information on the Notice.

It is an offence under the Marriage Act to solemnise a marriage in contravention of section 42 of the Act.

Is this inconsistent with the Electronic Transactions Act 1999 (ETA)?

No. The Marriage Act requires that evidence of the place and date of birth of each party to a proposed marriage has ***been produced*** to the authorised celebrant.

One of the requirements of the ETA is that a document be readily accessible for subsequent use. As videoconferencing is not a physical transfer of information, like a scan, a photo by text message, facsimile or email, with the ability to store documents, it cannot be readily 'accessed' for future reference. While the ETA allows for the electronic form of a document to be produced, it must maintain the integrity of the document.

Where the Notice is submitted electronically to a marriage celebrant, this becomes the original (whether or not it is printed by the celebrant), and so the paper copy of the Notice is not required to be 'produced' prior to the solemnisation of the marriage. The celebrant must note the date of receipt on the Notice.

Can I sight evidence of identity electronically including by video conferencing?

Yes. The Marriage Act does not prescribe how a celebrant is to satisfy themselves that the parties signing the Notice are who they say they are. An authorised celebrant must not solemnise a marriage unless the celebrant is satisfied as to the identity of both parties to the marriage. If an authorised celebrant is satisfied as to a party's identity using video conferencing media, then this is consistent with the Marriage Act.

This might be achieved by a video conferencing call whereby the party presents a drivers licence to the celebrant by holding it up to the camera during the video conferencing call.

A celebrant should however, ensure that evidence provided to establish date and place of birth can be reconciled to the identity of a party prior to the solemnisation of the marriage. For example, if a party produces their birth certificate by email to the celebrant as evidence of their place and date of birth, the celebrant needs to reconcile that evidence against photographic or other identity documents to confirm their identity.

What are my obligations regarding record-keeping?

Celebrant copy of official certificate of marriage and Form 15 Certificate record of use form

Part of a marriage celebrant's record-keeping obligations is to retain their copy of the second official certificate of marriage for a period of six years from the date the marriage is solemnised. The Form 15 certificate record of use form must also be kept for a period of six years from the last entry on the form. If more convenient, these documents can be kept electronically.

Ministers of Religion

Celebrants, who are ministers of religion (as defined in section 5 of the Marriage Act), are not required to keep the second official certificate of marriage for six years for religious marriage ceremonies. However, the Regulations require ministers of religion to add the official certificate of marriage to: the records of the parish or district in which the marriage was solemnised; the records of the church in which the marriage was solemnised; or the records of the religious body or religious organisation.

It is a matter for the religious organisation or body as to whether the record is kept in hard copy or electronically.

Notice of Intended Marriage and Declaration of No Legal Impediment

There is *no requirement* under the marriage legislation for authorised celebrants to retain copies (either hard copy or electronically) of the Notice, the DNLI or any supporting documents such as statutory declarations. These marriage documents are to be forwarded (in hard copy or lodged online in some cases) to the relevant BDM within 14 days of solemnising the marriage.

Any other documents, such as divorce orders and parental consents, are not required to be kept once they have been lodged online.

Once the Notice and DNLI (and other documents as needed) have been forwarded to the BDM through their online systems, we recommend that the hard copy of the marriage paperwork be retained until the marriage has been registered. At that point, if an authorised celebrant wishes to dispose of the hard copy documents, then they should do so securely, ensuring that any personal information is adequately protected.

Do I still need to prepare two official certificates of marriage if registering a marriage online?

Yes. The Marriage Act requires that two official certificates of marriage be prepared (one for registration and one for the authorised celebrant's records). Authorised celebrants must continue to prepare two official certificates of marriage for signing immediately following the solemnisation of the marriage. One of the official certificates of marriage (with the DNLI on the reverse side) must be forwarded to the BDM (in hard copy or electronically) and the other certificate must be kept by the celebrant (in hard copy or electronically) for a period of six years from the date the marriage is solemnised (as noted above).

The online lodgement of the official certificate with the BDM does not change these legal requirements and an authorised celebrant is still required to prepare two official certificates of the marriage. While this will result in the celebrant having two official certificates in hardcopy, the celebrant can, once the certificate has been submitted to the BDM through the online marriage registration system, dispose of the BDM copy.

Authorised celebrants can also choose whether to retain their copy of the marriage certificate in hardcopy or electronically.

The official certificate can be downloaded from the department's [website](#).