



Marriage Act 1961

Act No. 12 of 1961 as amended

This compilation was prepared on 1 July 2006
taking into account amendments up to Act No. 46 of 2006

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Contents

Part I—Preliminary	1
1 Short title [see Note 1].....	1
2 Commencement [see Note 1].....	1
5 Interpretation	1
5A Application of the <i>Criminal Code</i>	4
6 Act not to exclude operation of certain State and Territory laws	4
7 Validity of certain marriages not affected	4
8 Extension of Act to Territories etc.....	5
9 Arrangements with State	5
9A Persons who may exercise certain powers may be restricted by Proclamation.....	6
Part IA—Marriage education	7
9B Grants to approved organizations	7
9C Approval of voluntary organizations	7
9E Reports and financial statements of approved organizations	8
Part II—Marriageable age and marriages of minors	9
10 Application of Part	9
11 Marriageable age	9
12 Authorisation of marriage of person under age of 18 years in exceptional circumstances	9
13 Marriage of minor not to be solemnized without consent of parents etc.....	10
14 Persons whose consent is required.....	12
15 Prescribed authority may dispense with consent in certain cases	12
16 Consent by magistrate where parent etc. refuses consent etc.....	13
17 Re-hearing of applications by a Judge	15
18 Provisions applicable to inquiries by Judge or magistrate	15
19 Restriction on applications under sections 12, 15 and 16	16
20 Effect of consent of magistrate or Judge.....	16
21 Consent by magistrate or Judge and dispensation with consent to be ineffective after 3 months etc.....	16
Part III—Void marriages	18
Division 1—Marriages solemnized on or after 20 June 1977 and before the commencement of section 13 of the Marriage Amendment Act 1985	18
22 Division to be subject to application of private international law	18
23 Grounds on which marriages are void	18

Division 2—Marriages solemnized after the commencement of section 13 of the Marriage Amendment Act 1985	20
23A Application of Division	20
23B Grounds on which marriages are void	20
Part IV—Solemnization of marriages in Australia	22
Division 1—Authorized celebrants	22
Subdivision A—Ministers of religion	22
25 Interpretation	22
26 Recognised denominations	22
27 Registers of ministers of religion.....	22
28 Transfer of State registers.....	23
29 Qualifications for registration under this Subdivision	23
30 Registrar to register applicant.....	24
31 Applicant may be refused registration in certain circumstances	24
32 Effect of registration.....	24
33 Removal from register.....	24
34 Review of refusal to register or removal from register	26
35 Change of address etc. to be notified.....	26
36 Transfer to another State etc.	27
37 Furnishing of information by recognised denominations	27
38 Registrars to furnish information to Attorney-General.....	28
Subdivision B—State and Territory officers etc.	28
39 Authorisation of State and Territory officers etc.	28
Subdivision C—Marriage celebrants	28
39A Registrar of Marriage Celebrants.....	28
39B Register of marriage celebrants	29
39C Entitlement to be registered as a marriage celebrant	29
39D Registration as a marriage celebrant.....	30
39E Capping of number of marriage celebrants for 5 years.....	31
39F Effect of registration.....	32
39G Obligations of each marriage celebrant	32
39H Performance reviews	32
39I Disciplinary measures	33
39J Review of decisions.....	34
39K Additional functions of the Registrar.....	35
39L Registrar not liable for damages	36
39M Evidence of registration etc.	36
Division 2—Marriages by authorised celebrants	37
40 Application of Division	37
41 Marriages to be solemnized by authorised celebrant	37

42	Notice to be given and declaration made	37
42A	Commissioner of Australian Federal Police or approved authority may issue special notice	40
43	Marriage may be solemnized on any day etc.....	40
44	Witnesses.....	41
45	Form of ceremony	41
46	Certain authorised celebrants to explain nature of marriage relationship	41
47	Ministers of religion not bound to solemnize marriage etc.....	42
48	Certain marriages not solemnized in accordance with this Division to be invalid	42
49	Authorised celebrant to retain consents, statutory declarations etc.	43
50	Marriage certificates.....	43
51	Incorrect marriage certificates	45
Division 3—Marriages by foreign diplomatic or consular officers		46
52	Interpretation	46
53	Application of Division	46
54	Governor-General may declare countries to be proclaimed overseas countries.....	46
55	Solemnization of marriages in Australia by foreign diplomatic or consular officer.....	46
56	Recognition of marriages.....	47
57	Registrar and Deputy Registrar of Foreign Marriages	47
58	Register of Foreign Marriages Solemnized in Australia.....	48
59	Searches and certified copies.....	48
Part V—Marriages of members of the Defence Force overseas		49
Division 3—Marriages of members of the Defence Force overseas		49
71	Marriages of members of the Defence Force overseas	49
72	Form and ceremony of marriage.....	49
Division 4—General		50
73	Validity of marriages	50
74	Declaration to be made before chaplain.....	50
75	Chaplain to be satisfied of parties' identity	50
76	Additional consent to marriage of minor domiciled outside Australia	50
77	Restriction on solemnization of marriages under this Part	51
78	Solemnization of marriages where a party to the marriage is not an Australian citizen etc.	51
79	Chaplain to retain consents etc.	52
80	Marriage certificate and registration of marriages	52
81	Power to refuse to solemnize marriage.....	54

82	Marriages may be solemnized on any day and at any time.....	54
83	Validity of marriages under this Part.....	54
84	Registration of overseas marriages attended by a chaplain.....	55
85	Certificates of marriages solemnized in accordance with local law in an overseas country	55
86	Evidence	56
87	Validity of marriages otherwise than under this Part not affected.....	56
88	Imperial Foreign Marriage Acts	56
Part VA—Recognition of foreign marriages		57
88A	Object of Part.....	57
88B	Interpretation	57
88C	Application of Part	57
88D	Validity of marriages	58
88E	Validity of certain marriages not affected by this Part	59
88EA	Certain unions are not marriages	60
88F	Incidental determination of recognition of certain foreign marriages	60
88G	Evidence	60
Part VI—Legitimation		62
89	Legitimation by virtue of marriage of parents	62
90	Legitimacy of children of certain foreign marriages.....	63
91	Legitimacy of children of certain void marriages.....	64
92	Declarations of legitimacy etc.	64
93	Operation of certain State and Territory laws.....	66
Part VII—Offences		67
94	Bigamy	67
95	Marrying person not of marriageable age etc.	68
98	Contravention of subsection 13(3).....	70
99	Solemnizing marriage where notice or declaration not given or made etc.	70
100	Solemnizing marriage where reason to believe there is a legal impediment	70
101	Solemnization of marriage by unauthorised person.....	71
103	Going through ceremony of marriage before person not authorised to solemnize it.....	71
104	Giving defective notice etc.	71
105	Failure to comply with notice under section 51	71
106	Failure by interpreter to furnish certificate etc.....	72
Part VIII—Transitional provisions		73
107	Exercise of powers etc. before commencement of Act.....	73

108	Application of offence provisions to notices etc. given before commencement of this Act	73
109	Consents etc. given under State or Territory laws	74
Part IX—Miscellaneous		75
111	Certain marriages and legitimations to be valid in all the Territories	75
111A	Abolition of action for breach of promise.....	75
112	Interpreters at marriage ceremonies.....	75
113	Second marriage ceremonies	76
114	Correction of errors in marriage registries.....	78
115	Publication of lists of authorised celebrants	79
116	Judicial notice of signatures of Registrars, celebrants etc.....	80
117	Evidence of registration etc.	80
118	Right of ministers of religion to receive fees.....	81
120	Regulations.....	81
The Schedule—Persons whose consent is required to the marriage of a minor		83
Part I		83
Part III		85
Notes		87

An Act relating to Marriage

Part I—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Marriage Act 1961*.

2 Commencement [see Note 1]

- (1) Sections 1, 2 and 3, subsection 5(1), section 9, Parts III and VIII and section 120 shall come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall come into operation on a date to be fixed by Proclamation.

5 Interpretation

- (1) In this Act, unless the contrary intention appears:

Ambassador includes Minister, Head of Mission and *Chargé d’Affaires*.

approved organization means an organization approved or deemed to be approved under Part IA.

artificial conception procedure includes:

- (a) artificial insemination; and
- (b) the implantation of an embryo in the body of a woman.

Australia includes Norfolk Island.

Australian Consular Officer and *Australian Diplomatic Officer* have the same respective meanings as in the *Consular Fees Act 1955*.

authorized celebrant means:

- (a) a minister of religion registered under Subdivision A of Division 1 of Part IV; or
- (b) a person authorized to solemnize marriages by virtue of Subdivision B of Division 1 of Part IV; or

Section 5

(c) a marriage celebrant.

chaplain means a chaplain in the Defence Force.

Consul includes Consul-General, Vice-Consul, Pro-Consul and Consular Agent.

Family Court of a State means a Family Court of a State that has jurisdiction under the *Family Law Act 1975* by virtue of a Proclamation under section 41 of that Act.

Judge, in relation to the performance of a function under this Act in a State or Territory, means a person who is:

- (a) a Judge of the Family Court of Australia, or a Federal Magistrate of the Federal Magistrates Court, who is appointed by the Minister to be a person authorized to perform that function;
- (b) a Judge of a court of that State in respect of whom an appropriate arrangement in force under section 9 is applicable; or
- (c) a Judge of the Supreme Court of that Territory.

magistrate means:

- (a) in relation to a State—a person who holds office as a Chief, Police, Stipendiary, Resident or Special Magistrate of the State and in respect of whom an appropriate arrangement in force under section 9 is applicable; and
- (b) in relation to a Territory—a person who holds office as a Chief, Police, Stipendiary, Resident or Special Magistrate of the Territory.

marriage means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

marriage celebrant means a person registered under Subdivision C of Division 1 of Part IV.

minister of religion means:

- (a) a person recognized by a religious body or a religious organization as having authority to solemnize marriages in accordance with the rites or customs of the body or organization; or

- (b) in relation to a religious body or a religious organization in respect of which paragraph (a) is not applicable, a person nominated by:
- (i) the head, or the governing authority, in a State or Territory, of that body or organization; or
 - (ii) such other person or authority acting on behalf of that body or organization as is prescribed;
- to be an authorized celebrant for the purposes of this Act.

minor means a person who has not attained the age of 18 years.

overseas country means a country or place other than a part of the Queen's dominions, and, in Part V, includes a vessel which is for the time being in the territorial waters of such a country or place.

prescribed authority means:

- (a) in relation to a marriage proposed to be solemnized in Australia—a person, being an officer or employee of the Commonwealth, a State or a Territory, appointed by the Minister to be a prescribed authority;
- (c) in relation to a marriage proposed to be solemnized in accordance with Division 3 of Part V—a chaplain.

recognized denomination means a religious body or a religious organization in respect of which a Proclamation under section 26 is in force.

Territory means:

- (a) the Australian Capital Territory; or
- (b) the Northern Territory; or
- (c) Norfolk Island; or
- (d) the Territory of Christmas Island; or
- (e) the Territory of Cocos (Keeling) Islands.

the commencement of this Act means the time of commencement of the provisions other than the provisions referred to in subsection 2(1).

the Queen's dominions includes a British protectorate and a British protected State.

Section 5A

- (2) Where:
- (a) a marriage is solemnized in the presence of a person, being a person in whose presence a marriage may, in accordance with this Act, be lawfully solemnized; and
 - (b) that person consents to the marriage being solemnized in his or her presence;
- that person shall, for the purposes of this Act, be deemed to solemnize the marriage.
- (3) Any appointment or authorization under this Act may be an appointment or authorization of:
- (a) a named person only; or
 - (b) every person from time to time holding or acting in a specified office of the Commonwealth or of a State or Territory.

5A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

6 Act not to exclude operation of certain State and Territory laws

This Act shall not be taken to exclude the operation of a law of a State or of a Territory, in so far as that law relates to the registration of marriages, but a marriage solemnized after the commencement of this Act is not invalid by reason of a failure to comply with the requirements of such a law.

7 Validity of certain marriages not affected

Subject to subsection 4(2) of this Act and to the operation of the Part repealed by the *Marriage Amendment Act 1976* before the date fixed under subsection 2(2) of this Act, this Act does not affect the validity or invalidity of a marriage that took place before the date so fixed.

8 Extension of Act to Territories etc.

- (1) The whole of this Act extends to the following Territories:
 - (a) Norfolk Island;
 - (b) the Territory of Christmas Island;
 - (c) the Territory of Cocos (Keeling) Islands.
- (2) Part V applies both within and without Australia.
- (3) Part VII applies to and in relation to:
 - (a) marriages solemnized, or intended or purporting to be solemnized, in Australia; and
 - (b) marriages solemnized, or intended or purporting to be solemnized, under Part V;and, in relation to such marriages, applies both within and without Australia.
- (4) Section 73, Part VA and section 111 extend to all the external Territories.

9 Arrangements with State

- (1) The Governor-General may make arrangements with the Governor of a State:
 - (b) for the performance by all or any of the persons who from time to time hold office as Judges of any Court of that State of the functions of a Judge under sections 12, 16 and 17;
 - (c) for the performance by all or any of the persons who from time to time hold office as Chief, Police, Stipendiary, Resident or Special Magistrates in that State of all or any of the functions of a magistrate under this Act;
 - (d) for the performance by officers of that State of the function of solemnizing marriages in accordance with Division 2 of Part IV;
 - (e) for enabling officers of that State to be appointed as prescribed authorities;
 - (f) for enabling officers of that State to be appointed as Registrar and Deputy Registrar of Ministers of Religion for that State under Subdivision A of Division 1 of Part IV; and
 - (g) for enabling officers of that State to be appointed as authorized officers for the purposes of section 51.

Section 9A

- (2) A copy of each arrangement made under this section shall be published in the *Gazette*.

9A Persons who may exercise certain powers may be restricted by Proclamation

- (1) The Governor-General may, by Proclamation, declare that, on and after a date fixed by the Proclamation, a power or function under this Act that is specified in the Proclamation, being a power or function expressed by this Act to be exercisable by a Judge, or by a Judge or magistrate, is not to be exercised, or is not to be exercised in a specified part of Australia, otherwise than by a Judge who is a Judge of the Family Court of Australia or of the Family Court of a State or a Federal Magistrate of the Federal Magistrates Court.
- (2) Proclamations under this Part in respect of different parts of Australia may be made from time to time.

Part IA—Marriage education

9B Grants to approved organizations

The Minister may, from time to time, out of moneys appropriated by the Parliament for the purposes of this Part, grant to an approved organization, upon such conditions as the Minister thinks fit, such sums by way of financial assistance as the Minister determines for the conduct of programs of marriage education.

9C Approval of voluntary organizations

- (1) A voluntary organization may apply to the Minister for approval under this Part as an organization conducting programs of marriage education.
- (2) The Minister may approve the organization if the Minister is satisfied that the organization is willing and able to conduct programs of marriage education.
- (3) The approval of an organization under this section may be given subject to such conditions as the Minister determines.
- (4) Where the approval of an organization is subject to conditions, the Minister may, from time to time, revoke or vary all or any of those conditions or add further conditions.
- (5) The Minister may, at any time, revoke the approval of an approved organization where:
 - (a) the organization has not complied with a condition to which the approval of the organization is subject;
 - (b) the organization has not furnished, in accordance with section 9E, a statement or report that the organization was required by that section to furnish; or
 - (c) the Minister is satisfied that the organization is not adequately carrying out programs of marriage education.
- (6) Notice of the approval of an organization under this section, and notice of the revocation of the approval of an approved

Section 9E

organization, shall be published in such manner as the Minister considers appropriate.

9E Reports and financial statements of approved organizations

- (1) An approved organization that has received a grant under this Act in the period of 12 months that ended on 30 June in any year shall, not later than 30 September in that year, furnish to the Minister, in respect of that period of 12 months:
 - (a) an audited financial statement of the receipts and payments of the organization, in which receipts and payments in respect of its marriage education activities are shown separately from other receipts and payments; and
 - (b) a report on its marriage education activities, including information as to the programs conducted by the organization during the period and the number of participants in those programs.
- (2) Where the Minister is satisfied that it would be impracticable for an organization to comply with the requirements of subsection (1) or that the application of those requirements to an organization would be unduly onerous, the Minister may, by writing signed by the Minister, exempt the organization, wholly or in part, from those requirements.

Part II—Marriageable age and marriages of minors

10 Application of Part

- (1) The whole of this Part applies, notwithstanding any common law rule of private international law, in relation to:
 - (a) marriages to which Division 2 of Part IV applies; and
 - (b) marriages under Part V.
- (2) Sections 11 and 12 and, so far as they have application in relation to those sections, sections 18 and 19 apply in relation to:
 - (a) marriages to which Division 3 of Part IV applies; and
 - (b) the marriage of a person domiciled in Australia, wherever that marriage takes place.

11 Marriageable age

Subject to section 12, a person is of marriageable age if the person has attained the age of 18 years.

12 Authorisation of marriage of person under age of 18 years in exceptional circumstances

- (1) A person who has attained the age of 16 years but has not attained the age of 18 years may apply to a Judge or magistrate in a State or Territory for an order authorising him or her to marry a particular person of marriageable age despite the fact that the applicant has not attained the age of 18 years.
- (2) The Judge or magistrate shall, subject to subsection (4), hold an inquiry into the relevant facts and circumstances and, if satisfied that:
 - (a) the applicant has attained the age of 16 years; and
 - (b) the circumstances of the case are so exceptional and unusual as to justify the making of the order;the Judge or magistrate may, in his or her discretion, make the order sought, but otherwise the Judge or magistrate shall refuse the application.

Section 13

- (3) Subject to subsection (5), where a Judge or a magistrate has made such an order, the person on whose application the order was made is, in relation to his or her marriage to the other person specified in the order, but not otherwise, of marriageable age.
- (4) Where a Judge or a magistrate to whom an application is made under this section is satisfied that the matter could more properly be dealt with by a Judge or a magistrate sitting at a place nearer the place where the applicant ordinarily resides, the Judge or magistrate may, in his or her discretion, refuse to proceed with the hearing of the application, but such a refusal shall not, for the purposes of section 19, be deemed to be a refusal of the application.
- (5) Where an order is made under this section and the marriage to which the order relates does not take place within 3 months after the date of the order, the order ceases to have effect.

13 Marriage of minor not to be solemnized without consent of parents etc.

- (1) Subject to this Part, where a party to an intended marriage, not having previously been married, is a minor, the marriage shall not be solemnized unless there is produced to the person by whom or in whose presence the marriage is solemnized:
 - (a) in respect of each person whose consent is required by this Act to the marriage of the minor, not being a person to whom paragraph (b) is applicable:
 - (i) the consent in writing of that person, duly witnessed and dated not earlier than 3 months before the date on which the marriage is solemnized or, in such cases as are prescribed, such other evidence that the consent of that person to the intended marriage has been given not earlier than that time as the regulations declare to be sufficient for the purposes of this section; or
 - (ii) an effective consent in writing of a magistrate or a Judge under this Part in place of the consent of that person; and
 - (b) in respect of any person whose consent to the marriage of the minor has been dispensed with by a prescribed authority—the dispensation in writing signed by the prescribed authority.

- (2) For the purposes of subsection (1), the consent of a person is only duly witnessed if the signature of that person was witnessed:
- (a) if the consent is signed in Australia—by one of the following persons:
 - (i) an authorized celebrant;
 - (ii) a Commissioner for Declarations under the *Statutory Declarations Act 1959*;
 - (iii) a justice of the peace;
 - (iv) a barrister or solicitor;
 - (v) a legally qualified medical practitioner;
 - (vi) a member of the Australian Federal Police or the police force of a State or Territory; or
 - (b) if the consent is signed in any other place—by one of the following persons:
 - (i) an Australian Diplomatic Officer;
 - (ii) an Australian Consular Officer;
 - (iii) a minister of religion of that place;
 - (iv) a judge of a court of that place;
 - (v) a magistrate or justice of the peace of or for that place;
 - (vi) a notary public;
 - (vii) an employee of the Commonwealth authorised under paragraph 3(c) of the *Consular Fees Act 1955*;
 - (viii) an employee of the Australian Trade Commission authorised under paragraph 3(d) of the *Consular Fees Act 1955*.
- (3) A person shall not subscribe his or her name as a witness to the signature of a person to a consent to a marriage unless:
- (a) the person is satisfied on reasonable grounds as to the identity of that person; and
 - (b) the consent bears the date on which the person subscribes his or her name as a witness.
- (4) A person shall not solemnize a marriage if the person has reason to believe that:
- (a) a person whose consent in writing to the marriage of one of the parties is or has been produced for the purposes of this section has revoked his or her consent;

Section 14

- (b) the signature of a person to a consent produced for the purposes of this section is forged or has been obtained by fraud;
- (c) a consent produced for the purposes of this section has been altered in a material particular without authority; or
- (d) a dispensation with the consent of a person that has been produced in relation to the marriage has ceased to have effect.

14 Persons whose consent is required

- (1) The person or persons whose consent is required by this Act to the marriage of a minor shall, subject to this section, be ascertained by reference to the Schedule according to the facts and circumstances existing in relation to the minor.
- (2) For the purposes of the Schedule, a minor is an adopted child if the minor was adopted under the law of a State or Territory or under the law of any other place.
- (3) Where an Act, a State Act or an Ordinance of any Territory of the Commonwealth provides that a person specified in the Act, State Act or Ordinance is to be the guardian of a minor, or requires that a specified person is to be deemed to be the guardian of a minor, to the exclusion of any parent or other guardian of the minor, that person is the person whose consent is required by this Act to the marriage of the minor.
- (4) Where, under a State Act or an Ordinance of any Territory of the Commonwealth, a person specified in the State Act or Ordinance is to be, or is to be deemed to be, a guardian of a minor in addition to the parents or other guardian of the minor, the consent of that person is required to the marriage of the minor in addition to the consent of the person or persons ascertained in accordance with the Schedule.

15 Prescribed authority may dispense with consent in certain cases

- (1) Subject to this section, a prescribed authority may, upon application in writing by a minor, dispense with the consent of a person to a proposed marriage of the minor where the prescribed authority:

- (a) is satisfied that it is impracticable, or that it is impracticable without delay that would, in all the circumstances of the case, be unreasonable, to ascertain the views of that person with respect to the proposed marriage;
 - (b) has no reason to believe that that person would refuse his or her consent to the proposed marriage; and
 - (c) has no reason to believe that facts may exist by reason of which it could reasonably be considered improper that the consent should be dispensed with.
- (2) An application under this section shall be supported by a statutory declaration by the applicant setting out the facts and circumstances on which the application is based and may be supported by the statutory declaration of some other person.
- (3) The applicant shall state in his or her statutory declaration whether he or she has made any previous applications under this section that have been refused and the date on which each such application was refused.
- (4) This section does not authorize a prescribed authority to dispense with the consent of a person to a marriage of a minor where any other person whose consent to the marriage is required by this Act has refused to give consent, unless a magistrate or a Judge has, in pursuance of this Part, given consent in place of the consent of that other person.
- (5) For the purposes of this section, the fact that a person does not reside in, or is absent from, Australia shall not of itself be deemed to make it impracticable to ascertain the views of that person.

16 Consent by magistrate where parent etc. refuses consent etc.

- (1) Where, in relation to a proposed marriage of a minor:
- (a) a person whose consent to the marriage is required by this Act refuses to consent to the marriage; or
 - (b) an application by the minor under section 15 to dispense with the consent of a person to the marriage is refused;
- the minor may apply to a Judge or magistrate for the consent of a Judge or the magistrate to the marriage in place of the consent of that person.

Section 16

- (2) The Judge or magistrate shall, subject to subsections (2A) and (3), hold an inquiry into the relevant facts and circumstances and, if satisfied:
- (a) in a case to which paragraph (1)(a) applies—that the person who has refused to consent to the marriage has refused consent unreasonably; or
 - (b) in a case to which paragraph (1)(b) applies—that, having proper regard for the welfare of the minor, it would be unreasonable for the Judge or magistrate to refuse consent to the proposed marriage;
- may give consent to the marriage in place of the consent of the person in relation to whose consent the application is made.
- (2A) A Judge or magistrate shall not proceed with an inquiry in accordance with subsection (2) unless:
- (a) there has been produced to the Judge or magistrate a certificate in the prescribed form signed by a family counsellor certifying that the applicant has received counselling from the family counsellor in relation to the proposed marriage; or
 - (b) the Judge or magistrate is satisfied that counselling by a family counsellor is not reasonably available to the applicant.
- (3) Where a magistrate to whom an application is made under this section is satisfied that the matter could more properly be dealt with by a magistrate sitting at a place nearer the place where the applicant ordinarily resides, the magistrate may, in his or her discretion, refuse to proceed with the hearing of the application, but such a refusal shall not, for the purposes of sections 17 and 19, be deemed to be a refusal of the application.
- (4) Where a magistrate grants an application under subsection (1), the magistrate shall not issue consent in writing to the marriage before the expiration of the time prescribed for the purposes of section 17 and if, within that time, a request for a re-hearing is made under that section, the magistrate shall not issue consent unless that request is withdrawn.
- (5) Where a Judge or magistrate gives consent to the marriage of a minor in place of the consent of a person who has refused to consent to the marriage, the Judge or magistrate may also, upon application by the minor, give consent in place of the consent of

any other person if the Judge or magistrate is satisfied that it is impracticable, or that it is impracticable without delay that would, in all the circumstances of the case, be unreasonable, to ascertain the views of that person with respect to the proposed marriage.

- (6) For the purposes of subsection (5), the fact that a person does not reside in, or is absent from, Australia shall not of itself be deemed to make it impracticable to ascertain the views of that person.
- (7) In this section *family counsellor* has the same meaning as in the *Family Law Act 1975*.

17 Re-hearing of applications by a Judge

- (1) Where:
 - (a) an application to a magistrate under subsection 16(1) or (5) is refused; or
 - (b) an application to a magistrate under subsection 16(1) is granted;the applicant or the person in relation to whose consent the application was made, as the case requires, may, in the prescribed manner and within the prescribed time, request that the application be re-heard by a Judge in the State or Territory in which it was heard, and a Judge may re-hear the application accordingly.
- (2) The provisions of subsections 16(2), (5) and (6) apply, so far as they are applicable, in relation to the re-hearing of an application made under section 16 and, for the purpose of such a re-hearing, references in those provisions to the magistrate dealing with an application shall be read as references to the Judge re-hearing the application.

18 Provisions applicable to inquiries by Judge or magistrate

- (1) In conducting an inquiry under this Part, a Judge or a magistrate:
 - (a) is not bound by the rules of evidence; and
 - (b) shall give to the applicant and, so far as is reasonably practicable, any person whose consent to the marriage of the applicant is required by this Act, an opportunity of being heard.
- (2) An inquiry by a Judge or a magistrate under this Part shall be held in private.

Section 19

- (3) An applicant or other person who is given an opportunity of being heard at an inquiry under this Part may be represented by a barrister or solicitor.

19 Restriction on applications under sections 12, 15 and 16

- (1) Where, in relation to a proposed marriage of a minor to a particular person:
- (a) an application under section 15 has been refused by a prescribed authority;
 - (b) an application under section 16 has been refused by a magistrate or a Judge; or
 - (c) an application under section 12 has been refused by a magistrate or a Judge;
- a further application under the same section by the same person in relation to the proposed marriage shall not be considered by any prescribed authority, magistrate or Judge within 6 months after the refusal of the application, unless the applicant satisfies the prescribed authority, magistrate or Judge to whom the further application is made that there has been a substantial change in the relevant facts or circumstances since the refusal of the former application.
- (2) The fact that an application is heard or dealt with in contravention of subsection (1) does not affect the validity of an order made, or the effectiveness of a consent given, upon the application or the re-hearing of the application or make ineffective any dispensation with a consent granted on the application.

20 Effect of consent of magistrate or Judge

Subject to section 21, where a magistrate or a Judge gives his or her consent to the marriage of a minor in place of the consent of another person, his or her consent operates, for the purposes of this Act, as the consent of that other person.

21 Consent by magistrate or Judge and dispensation with consent to be ineffective after 3 months etc.

- (1) A consent to a marriage given by a magistrate or a Judge in place of the consent of another person ceases to have effect if the

marriage does not take place within 3 months after the date of the consent.

- (2) A dispensation with the consent of a person to a marriage ceases to have effect if:
 - (a) the marriage does not take place within 3 months after the date of the dispensation; or
 - (b) before the marriage takes place, the person whose consent has been dispensed with notifies, by writing signed by the person or in any other prescribed manner, the person to whom notice of the intended marriage has been given under this Act or, in the case of an intended marriage under Division 3 of Part V, the chaplain by whom or in whose presence the marriage is intended to be solemnized, that the first-mentioned person does not consent to the marriage.
- (3) Where a consent by a magistrate or a Judge or a dispensation with the consent of a person by a prescribed authority has ceased to have effect, the provisions of this Act apply as if the consent had not been given or dispensed with, as the case may be.

Part III Void marriages

Division 1 Marriages solemnized on or after 20 June 1977 and before the commencement of section 13 of the Marriage Amendment Act 1985

Section 22

Part III—Void marriages

Division 1—Marriages solemnized on or after 20 June 1977 and before the commencement of section 13 of the Marriage Amendment Act 1985

22 Division to be subject to application of private international law

Subject to section 10, Part V, section 56 and any regulations made in accordance with paragraph 120(f), this Division has effect subject to the common law rules of private international law.

23 Grounds on which marriages are void

- (1) A marriage that took place on or after 20 June 1977 and before the commencement of section 13 of the *Marriage Amendment Act 1985* is void where:
 - (a) either of the parties was, at the time of the marriage, lawfully married to some other person;
 - (b) the parties are within a prohibited relationship;
 - (c) by reason of section 48 the marriage is not a valid marriage;
 - (d) the consent of either of the parties was not a real consent because:
 - (i) it was obtained by duress or fraud;
 - (ii) that party was mistaken as to the identity of the other party or as to the nature of the ceremony performed; or
 - (iii) that party was mentally incapable of understanding the nature and effect of the marriage ceremony; or
 - (e) either of the parties was not of marriageable age; and not otherwise.
- (2) Marriages of parties within a prohibited relationship are marriages:
 - (a) between a person and an ancestor or descendant of the person; or
 - (b) between a brother and a sister (whether of the whole blood or the half-blood).

Section 23

- (3) Any relationship specified in subsection (2) includes a relationship traced through, or to, a person who is or was an adopted child, and, for that purpose, the relationship between an adopted child and the adoptive parent, or each of the adoptive parents, of the child, shall be deemed to be or to have been the natural relationship of child and parent.
- (4) Nothing in subsection (3) makes it lawful for a person to marry a person whom the first-mentioned person could not lawfully have married if that subsection had not been enacted.
- (5) For the purposes of this section:
- (a) a person who has at any time been adopted by another person shall be deemed to remain the adopted child of that other person notwithstanding that any order by which the adoption was effected has been annulled, cancelled or discharged or that the adoption has for any other reason ceased to be effective; and
 - (b) a person who has been adopted on more than one occasion shall be deemed to be the adopted child of each person by whom he or she has been adopted.
- (6) For the purposes of this section:

adopted, in relation to a child, means adopted under the law of any place (whether in or out of Australia) relating to the adoption of children.

ancestor, in relation to a person, means any person from whom the first-mentioned person is descended including a parent of the first-mentioned person.

Part III Void marriages

Division 2 Marriages solemnized after the commencement of section 13 of the Marriage Amendment Act 1985

Section 23A

Division 2—Marriages solemnized after the commencement of section 13 of the Marriage Amendment Act 1985

23A Application of Division

- (1) Notwithstanding subsection 42(2) of the *Family Law Act 1975*, but subject to subsection (2) of this section, this Division applies in relation to:
 - (a) all marriages solemnized in Australia; and
 - (b) all marriages under Part V.
- (2) This Division does not apply in relation to marriages to which Division 3 of Part IV applies.

23B Grounds on which marriages are void

- (1) A marriage to which this Division applies that takes place after the commencement of section 13 of the *Marriage Amendment Act 1985* is void where:
 - (a) either of the parties is, at the time of the marriage, lawfully married to some other person;
 - (b) the parties are within a prohibited relationship;
 - (c) by reason of section 48 the marriage is not a valid marriage;
 - (d) the consent of either of the parties is not a real consent because:
 - (i) it was obtained by duress or fraud;
 - (ii) that party is mistaken as to the identity of the other party or as to the nature of the ceremony performed; or
 - (iii) that party is mentally incapable of understanding the nature and effect of the marriage ceremony; or
 - (e) either of the parties is not of marriageable age; and not otherwise.
- (2) Marriages of parties within a prohibited relationship are marriages:
 - (a) between a person and an ancestor or descendant of the person; or

Section 23B

- (b) between a brother and a sister (whether of the whole blood or the half-blood).
- (3) Any relationship specified in subsection (2) includes a relationship traced through, or to, a person who is or was an adopted child, and, for that purpose, the relationship between an adopted child and the adoptive parent, or each of the adoptive parents, of the child shall be deemed to be or to have been the natural relationship of child and parent.
- (4) Nothing in subsection (3) makes it lawful for a person to marry a person whom the first-mentioned person could not lawfully have married if that subsection had not been enacted.
- (5) For the purposes of this section:
 - (a) a person who has at any time been adopted by another person shall be deemed to remain the adopted child of that other person notwithstanding that any order by which the adoption was effected has been annulled, cancelled or discharged or that the adoption has for any other reason ceased to be effective; and
 - (b) a person who has been adopted on more than one occasion shall be deemed to be the adopted child of each person by whom the first-mentioned person has been adopted.
- (6) For the purposes of this section:

adopted, in relation to a child, means adopted under the law of any place (whether in or out of Australia) relating to the adoption of children.

ancestor, in relation to a person, means any person from whom the first-mentioned person is descended including a parent of the first-mentioned person.

Part IV—Solemnization of marriages in Australia

Division 1—Authorized celebrants

Subdivision A—Ministers of religion

25 Interpretation

- (1) In this Subdivision:
 - (a) a reference to a Registrar shall be read as a reference to a Registrar of Ministers of Religion; and
 - (b) a reference to a register shall be read as a reference to a register kept for the purposes of this Subdivision.
- (2) For the purposes of this Subdivision, a person who is serving outside Australia as a member of the Defence Force and was, immediately before the person became a member of the Defence Force, ordinarily resident in a State or Territory shall be deemed, while the person is so serving, to be ordinarily resident in that State or Territory.

26 Recognised denominations

The Governor-General may, by Proclamation, declare a religious body or a religious organization to be a recognized denomination for the purposes of this Act.

27 Registers of ministers of religion

- (1) For the purposes of this Subdivision, there shall be, for each State and Territory, a Registrar of Ministers of Religion and a Deputy Registrar of Ministers of Religion, who shall be appointed by the Minister.
- (2) In the event of the absence, through illness or otherwise, of the Registrar, or of a vacancy in the office of the Registrar, the Deputy Registrar has all the powers, and shall perform all the duties and functions, of the Registrar during the absence or vacancy.

- (3) Unless and until another person is appointed to be the Registrar of Ministers of Religion for a particular Territory, the person having, under the law of that Territory, the function of maintaining a register of all marriages solemnized in that Territory shall be the Registrar for that Territory.
- (4) The Registrar for a State or Territory shall keep a register, in such form as the Minister determines, of ministers of religion ordinarily resident in the State or Territory who are entitled to registration under this Subdivision.

28 Transfer of State registers

- (1) The Governor-General may make arrangements with the Governor of a State for the transfer to the Commonwealth of any register of persons authorized to solemnize marriages in that State kept by an officer of that State immediately before the commencement of this Act.
- (2) A copy of each arrangement made under this section shall be published in the *Gazette*.
- (3) A register of a State transferred to the Commonwealth in pursuance of an arrangement made under this section, and a register of persons authorized to solemnize marriages kept in relation to a Territory immediately before the commencement of this Act, shall be deemed to form part of the register kept for that State or that Territory, as the case may be, for the purposes of this Subdivision.
- (4) A person registered in a register so transferred or kept who is, immediately after the commencement of this Act, a minister of religion of a recognized denomination shall be deemed to be so registered in pursuance of this Subdivision, and the Registrar by whom the register is kept shall remove from that register the name of any other person.

29 Qualifications for registration under this Subdivision

Subject to this Subdivision, a person is entitled to registration under this Subdivision if:

- (a) the person is a minister of religion of a recognized denomination;

Section 30

- (b) the person is nominated for registration under this Subdivision by that denomination;
- (c) the person is ordinarily resident in Australia; and
- (d) the person has attained the age of 21 years.

30 Registrar to register applicant

- (1) Subject to this Subdivision, the Registrar for a State or Territory shall, on application in accordance with the regulations, by a person ordinarily resident in that State or Territory who is entitled to registration under this Subdivision, register that person in the register kept by that Registrar.
- (2) The particulars set out in an application for registration under this Subdivision shall be verified by the applicant by statutory declaration.

31 Applicant may be refused registration in certain circumstances

- (1) A Registrar to whom an application for registration under this Subdivision is made may refuse to register the applicant if, in the opinion of the Registrar:
 - (a) there are already registered under this Subdivision sufficient ministers of religion of the denomination to which the applicant belongs to meet the needs of the denomination in the locality in which the applicant resides;
 - (b) the applicant is not a fit and proper person to solemnize marriages; or
 - (c) the applicant is unlikely to devote a substantial part of his or her time to the performance of functions generally performed by a minister of religion.

32 Effect of registration

A minister of religion who is registered under this Subdivision in any register may solemnize marriages at any place in Australia.

33 Removal from register

- (1) Subject to this section, a Registrar shall remove the name of a person from the register kept by that Registrar if he or she is satisfied that:

- (a) that person has requested that his or her name be so removed;
 - (b) that person has died;
 - (c) the denomination by which that person was nominated for registration, or in respect of which that person is registered, no longer desires that that person be registered under this Subdivision or has ceased to be a recognized denomination;
 - (d) that person:
 - (i) has been guilty of such contraventions of this Act or the regulations as to show him or her not to be a fit and proper person to be registered under this Subdivision;
 - (ii) has been making a business of solemnizing marriages for the purpose of profit or gain; or
 - (iii) is not a fit and proper person to solemnize marriages; or
 - (e) that person is, for any other reason, not entitled to registration under this Subdivision.
- (2) A Registrar shall not remove the name of a person from a register under this section on a ground specified in paragraph (1)(d) or (e) unless:
- (a) the Registrar has, in accordance with the regulations, served on the person a notice in writing:
 - (i) stating the Registrar's intention to do so on that ground unless, not later than a date specified in the notice and being not less than 21 days from the date of service of the notice, the person satisfies the Registrar that the person's name should not be removed from the register; and
 - (ii) informing the person that any representations made to the Registrar before that date will be considered by the Registrar;
 - (b) the Registrar has considered any representations made by the person before the date specified in the notice; and
 - (c) the removal takes place within 14 days after the date specified in the notice.
- (3) Where notice is served on a person under subsection (2), that person shall not solemnize a marriage unless and until:
- (a) the person is notified by the Registrar that the Registrar has decided not to remove the person's name from the register;

Section 34

- (b) a period of 14 days has elapsed from the date specified in the notice under subsection (2) and the person's name has not been removed from the register; or
- (c) the person's name, having been removed from the register, is restored to the register.

34 Review of refusal to register or removal from register

- (1) An application may be made to the Administrative Appeals Tribunal for a review of a decision of a Registrar made on or after 1 July 1976:
 - (a) refusing to register a person who has applied for registration under this Subdivision; or
 - (b) removing the name of a person from a register in pursuance of section 33.
- (3) The reference in subsection (1) to a decision of a Registrar includes a reference to a decision of a Deputy Registrar of Ministers of Religion given in pursuance of subsection 27(2).
- (4) Where the Tribunal sets aside a decision refusing to register a person or a decision under section 33 removing the name of a person from a register, the appropriate Registrar shall forthwith register the person, or restore the name of the person to the register, as the case requires.
- (5) For the purposes of the making of an application under subsection (1) and for the purposes of the operation of the *Administrative Appeals Tribunal Act 1975* in relation to such an application, where a person has made application under subsection 30(1) for registration under this Subdivision and, at the expiration of a period of 3 months from the day on which the application was made, the person has not been registered and has not been notified by the Registrar that that person's application has been refused, the Registrar shall be deemed to have decided, on the last day of that period, not to register that person.

35 Change of address etc. to be notified

- (1) Where a person registered under this Subdivision:
 - (a) changes his or her name, address or designation; or

- (b) ceases to exercise, or ceases to be entitled to exercise, the functions of a minister of religion of the denomination by which he or she was nominated for registration or in respect of which he or she is registered;
- the person shall, within 30 days thereafter, notify the Registrar by whom the register in which the person is registered is kept of that fact in accordance with the regulations.
- (2) The Registrar may, upon receiving notification of a change of name, address or designation under subsection (1) or if the Registrar is otherwise satisfied that the particulars shown in the register in respect of a person are not correct, amend the register accordingly.

36 Transfer to another State etc.

- (1) Where a person whose name is included in the register for a particular State or Territory is ordinarily resident in another State or Territory, the Registrar by whom the register is kept shall, subject to this section, remove the name of that person from that register.
- (2) Where the name of a person referred to in subsection (1) is not included in the register for the State or Territory in which the person is ordinarily resident, the Registrar for that State or Territory may enter the name of that person in the register kept by that Registrar, and the name of that person shall not be removed from a register by virtue of subsection (1) unless and until it has been so entered.

37 Furnishing of information by recognised denominations

The regulations may make provision for, and in relation to, the furnishing to Registrars by each recognized denomination of:

- (a) information as to matters affecting the right to registration under this Subdivision of persons who are so registered as ministers of religion of that denomination; and
- (b) an annual list of persons registered under this Subdivision as ministers of religion of that denomination who are exercising the functions of a minister of religion of that denomination.

Section 38

38 Registrars to furnish information to Attorney-General

Each Registrar shall, if the Secretary to the Department so requests, furnish to the Secretary:

- (a) a list of ministers of religion registered by that Registrar under this Subdivision during the period specified in the request, showing the full name, designation, residential or postal address and religious denomination of each minister; and
- (b) particulars of any other alterations to the register kept by that Registrar under this Subdivision made during that period.

Subdivision B—State and Territory officers etc.

39 Authorisation of State and Territory officers etc.

- (1) A person who, under the law of a State or Territory, has the function of registering marriages solemnized in the State or Territory or a part of the State or Territory may solemnize marriages in that State or Territory or in that part of the State or Territory, as the case may be.
- (2) The Minister may, by instrument in writing, authorize other officers of a State or Territory to solemnize marriages.
- (3) An authorization under subsection (2):
 - (a) may authorize a person to solemnize marriages at any place in Australia or only in the part or parts of Australia specified in the instrument of authorization; and
 - (b) is subject to such conditions (if any) as are specified in the instrument.

Subdivision C—Marriage celebrants

39A Registrar of Marriage Celebrants

- (1) There is to be a position occupied (on an acting, permanent, full-time or part-time basis) by an APS employee in the Department, the duties of which are expressed to consist of, or include, the performance of the functions given to the Registrar of Marriage Celebrants by or under this Act.

- (2) The APS employee occupying the position from time to time is the *Registrar of Marriage Celebrants*.
- (3) The Registrar of Marriage Celebrants is to perform those functions and has power to do all things necessary or convenient to be done for or in connection with the performance of those functions.

39B Register of marriage celebrants

- (1) The Registrar of Marriage Celebrants is to maintain a register of marriage celebrants.
- (2) The register may be kept in any way the Registrar thinks appropriate, including by electronic means.
- (3) The register may be made available for inspection in any way the Registrar thinks appropriate.
- (4) All information contained in the register must be made available on the Internet.
- (5) Any or all of the information contained in the register may also be disseminated in any other way the Registrar thinks appropriate, including by electronic means.

39C Entitlement to be registered as a marriage celebrant

- (1) A person is only entitled to be registered as a marriage celebrant if the person is an individual and the Registrar of Marriage Celebrants is satisfied that the person:
 - (a) is aged 18 years or over; and
 - (b) has all the qualifications, and/or skills, determined in writing to be necessary by the Registrar in accordance with regulations made for the purposes of this paragraph; and
 - (c) is a fit and proper person to be a marriage celebrant.
- (2) In determining whether the Registrar is satisfied that the person is a fit and proper person to be a marriage celebrant, the Registrar must take into account:
 - (a) whether the person has sufficient knowledge of the law relating to the solemnization of marriages by marriage celebrants; and

Section 39D

- (b) whether the person is committed to advising couples of the availability of relationship support services; and
 - (c) whether the person is of good standing in the community; and
 - (d) whether the person has been convicted of an offence, punishable by imprisonment for one year or longer, against a law of the Commonwealth, a State or a Territory; and
 - (e) whether the person has an actual or potential conflict of interest between his or her practice, or proposed practice, as a marriage celebrant and his or her business interests or other interests; and
 - (f) whether the person's registration as a marriage celebrant would be likely to result in the person gaining a benefit in respect of another business that the person owns, controls or carries out; and
 - (g) whether the person will fulfil the obligations under section 39G; and
 - (h) any other matter the Registrar considers relevant to whether the person is a fit and proper person to be a marriage celebrant.
- (3) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

39D Registration as a marriage celebrant

- (1) A person may apply to be registered as a marriage celebrant by giving the Registrar of Marriage Celebrants:
 - (a) a completed application in the form specified by regulations made for the purposes of this paragraph; and
 - (b) any statutory declarations required by the form.
- (2) The Registrar must deal with applications in the order in which they are received.
- (3) In dealing with an application, the Registrar:
 - (a) must have regard to the information in the application; and

- (b) may have regard to any other information in his or her possession; and
 - (c) is not required to seek any further information.
- (4) The Registrar must register a person as a marriage celebrant if:
- (a) the person has applied in accordance with subsection (1); and
 - (b) the Registrar is satisfied that the person is entitled to be registered as a marriage celebrant.
- The Registrar must not register a person as a marriage celebrant in any other circumstances.
- (5) The Registrar registers a person as a marriage celebrant by entering in the register of marriage celebrants all details relating to the person that are required by regulations made for the purposes of this subsection.
- (6) If the Registrar registers a person as a marriage celebrant, the Registrar must notify the person in accordance with regulations made for the purposes of this subsection.
- (7) If the Registrar decides not to register a person as a marriage celebrant after dealing with the person's application, the Registrar must inform the applicant in writing of:
- (a) the decision; and
 - (b) the reasons for it; and
 - (c) the person's right under section 39J (if any) to apply for review of the decision.

39E Capping of number of marriage celebrants for 5 years

- (1) Despite subsection 39D(4), the Registrar of Marriage Celebrants must not register a person as a marriage celebrant if doing so would cause the breach of any applicable limit on the number of marriage celebrants determined in accordance with regulations made for the purposes of this subsection.

Note: A person who, because of this section, is not registered is entitled to written notice under subsection 39D(7).

- (2) Subsection (1) ceases to have effect at the end of the period of 5 years after this section commences.

Section 39F

39F Effect of registration

A person who is registered as a marriage celebrant may solemnize marriages at any place in Australia.

39G Obligations of each marriage celebrant

A marriage celebrant must:

- (a) conduct himself or herself in accordance with the Code of Practice for marriage celebrants prescribed by regulations made for the purposes of this paragraph; and
- (b) undertake all professional development activities required by the Registrar of Marriage Celebrants in accordance with regulations made for the purposes of this paragraph; and
- (c) notify the Registrar, in writing, within 30 days of:
 - (i) a change that results in the details entered in the register in relation to the person no longer being correct; or
 - (ii) the occurrence of an event that might have caused the Registrar not to register the person as a marriage celebrant if the event had occurred before the person was registered.

Note: If a marriage celebrant fails to comply with these obligations, the Registrar may take disciplinary measures under section 39I.

39H Performance reviews

- (1) The Registrar of Marriage Celebrants must regularly review each marriage celebrant's performance to determine whether the Registrar considers that the marriage celebrant's performance is satisfactory.
- (2) The first review must be completed within 5 years of the marriage celebrant being registered and must cover the period between registration and the end of the review. Each later review must be completed within 5 years of the previous review and must cover the period since the previous review.
- (3) In reviewing the performance of a marriage celebrant, the Registrar:
 - (a) must consider the matters prescribed by regulations made for the purposes of this paragraph; and

- (b) may have regard to any information in his or her possession, but is not required to seek any further information.
- (4) The Registrar must not determine that a marriage celebrant's performance in respect of a period was not satisfactory unless:
 - (a) the Registrar has, in accordance with regulations made for the purposes of this paragraph, given the marriage celebrant a written notice:
 - (i) stating the Registrar's intention to make the determination unless, before the date specified in the notice (which must be at least 21 days after the date on which the notice was given), the marriage celebrant satisfies the Registrar that the marriage celebrant's performance in respect of the period was satisfactory; and
 - (ii) informing the marriage celebrant that any representations made to the Registrar before that date will be considered by the Registrar; and
 - (b) the Registrar has considered any representations made by the marriage celebrant before the date specified in the notice; and
 - (c) the determination is made in writing within 14 days after the date specified in the notice.

39I Disciplinary measures

- (1) The Registrar of Marriage Celebrants may only take disciplinary measures against a marriage celebrant if the Registrar:
 - (a) is satisfied that the marriage celebrant is no longer entitled to be registered as a marriage celebrant; or
 - (b) is satisfied that the marriage celebrant has not complied with an obligation under section 39G; or
 - (c) has determined in writing under section 39H that the marriage celebrant's performance in respect of a period was not satisfactory; or
 - (d) is satisfied that it is appropriate to take disciplinary measures against the marriage celebrant after considering a complaint in accordance with the complaints resolution procedures established under paragraph 39K(c); or
 - (e) is satisfied that the marriage celebrant's application for registration was known by the marriage celebrant to be false or misleading in a material particular.

Section 39J

- (2) The only disciplinary measures that the Registrar may take against a marriage celebrant are to:
- (a) caution the marriage celebrant in writing; or
 - (b) in accordance with regulations made for the purposes of this paragraph, require the marriage celebrant to undertake professional development activities determined in writing by the Registrar; or
 - (c) suspend the marriage celebrant's registration for a period (the *suspension period*) of up to 6 months by annotating the register of marriage celebrants to include:
 - (i) a statement that the registration is suspended; and
 - (ii) the dates of the start and end of the suspension period;or
 - (d) deregister the marriage celebrant by removing his or her details from the register of marriage celebrants.

Note: A decision to suspend a marriage celebrant's registration, or to deregister a marriage celebrant, is reviewable under section 39J.

- (3) If the Registrar suspends a marriage celebrant's registration for a particular period, section 39F does not apply in respect of the marriage celebrant during the period.
- (4) If the Registrar decides to take disciplinary measures against a marriage celebrant, the Registrar:
- (a) must give the marriage celebrant written notice of:
 - (i) the decision; and
 - (ii) the reasons for it; and
 - (iii) the disciplinary measure that is being taken; and
 - (iv) the marriage celebrant's right under section 39J to apply for review of the decision; and
 - (b) may inform the community, in any way the Registrar thinks appropriate, including by electronic means, that the disciplinary measure is being taken against the marriage celebrant.

39J Review of decisions

- (1) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Registrar of Marriage Celebrants:

- (a) not to register a person as a marriage celebrant (unless a ground for the decision was that the Registrar would breach section 39E by registering the person); or
 - (b) to suspend a person's registration as a marriage celebrant; or
 - (c) to deregister a marriage celebrant.
- (2) For the purposes of both the making of an application under subsection (1) and the operation of the *Administrative Appeals Tribunal Act 1975* in relation to such an application, if:
- (a) a person has made application for registration as a marriage celebrant under section 39D; and
 - (b) at the end of 3 months after the day on which the application was made, the person has not been:
 - (i) registered; or
 - (ii) notified by the Registrar that that person's application has been refused;
- the Registrar is taken to have decided, on the last day of the 3 month period, not to register that person as a marriage celebrant.
- (3) The Registrar must take such action as is necessary to give effect to the Tribunal's decision (even if doing so at the time the action is taken would cause a breach of a limit under section 39E).

39K Additional functions of the Registrar

The Registrar of Marriage Celebrants must:

- (a) amend the register of marriage celebrants in accordance with regulations made for the purposes of this paragraph; and
- (b) keep records relating to marriage celebrants, and the register of marriage celebrants, in accordance with regulations made for the purposes of this paragraph; and
- (c) establish complaints resolution procedures, in accordance with regulations made for the purposes of this paragraph, to resolve complaints about the solemnization of marriages by marriage celebrants; and
- (d) perform any additional functions specified in regulations made for the purposes of this paragraph.

Section 39L

39L Registrar not liable for damages

The Registrar of Marriage Celebrants is not liable to an action or other proceeding for damages in respect of anything done, or omitted to be done, in good faith in:

- (a) the exercise or performance; or
 - (b) the purported exercise or performance;
- of powers or functions under this Act.

39M Evidence of registration etc.

A certificate, signed by the Registrar of Marriage Celebrants, stating that, at a specified time, or during a specified period:

- (a) a person was registered as a marriage celebrant; or
 - (b) a person's registration as a marriage celebrant was suspended; or
 - (c) a person was not registered as a marriage celebrant;
- is prima facie evidence of that fact.

Division 2—Marriages by authorised celebrants

40 Application of Division

- (1) Subject to subsection (2), this Division applies to and in relation to all marriages solemnized, or intended to be solemnized, in Australia.
- (2) This Division does not apply to or in relation to marriages to which Division 3 of this Part applies.

41 Marriages to be solemnized by authorised celebrant

A marriage shall be solemnized by or in the presence of an authorized celebrant who is authorized to solemnize marriages at the place where the marriage takes place.

42 Notice to be given and declaration made

- (1) Subject to this section, a marriage shall not be solemnized unless:
 - (a) notice in writing of the intended marriage has been given in accordance with this section and has been received by the authorized celebrant solemnizing the marriage not earlier than 18 months before the date of the marriage and not later than 1 month before the date of the marriage;
 - (b) there has been produced to that authorized celebrant, in respect of each of the parties:
 - (i) an official certificate, or an official extract of an entry in an official register, showing the date and place of birth of the party; or
 - (ii) a statutory declaration made by the party or a parent of the party stating that, for reasons specified in the declaration, it is impracticable to obtain such a certificate or extract and stating, to the best of the declarant's knowledge and belief and as accurately as the declarant has been able to ascertain, when and where the party was born; or
 - (iii) a passport issued by a government of an overseas country, showing the date and place of birth of the party; and

Section 42

- (c) each of the parties has made and subscribed before that authorized celebrant a declaration, in accordance with the prescribed form, as to:
 - (i) the party's conjugal status;
 - (ii) the party's belief that there is no legal impediment to the marriage; and
 - (iii) such other matters as are prescribed.
- (2) A notice under subsection (1):
 - (a) shall be in accordance with the prescribed form and contain such particulars in relation to the parties as are indicated in the prescribed form; and
 - (b) must be signed by each of the parties; and
 - (c) if a party signs the notice in Australia—must be signed in the presence of:
 - (i) an authorised celebrant; or
 - (ii) a Commissioner for Declarations under the *Statutory Declarations Act 1959*; or
 - (iii) a justice of the peace; or
 - (iv) a barrister or solicitor; or
 - (v) a legally qualified medical practitioner; or
 - (vi) a member of the Australian Federal Police or the police force of a State or Territory; and
 - (d) if a party signs the notice outside Australia—must be signed in the presence of:
 - (i) an Australian Diplomatic Officer; or
 - (ii) an Australian Consular Officer; or
 - (iii) a notary public; or
 - (iv) an employee of the Commonwealth authorised under paragraph 3(c) of the *Consular Fees Act 1955*; or
 - (v) an employee of the Australian Trade Commission authorised under paragraph 3(d) of the *Consular Fees Act 1955*.
- (3) However, if the signature of a party to an intended marriage cannot conveniently be obtained at the time when it is desired to give notice under this section, a notice duly signed by the other party and otherwise complying with the provisions of this section shall, if it is signed by the first-mentioned party in the presence of an

authorized celebrant before the marriage is solemnized, be deemed to have been a sufficient notice.

- (4) Where a party to an intended marriage is unable, after reasonable inquiry, to ascertain all of the particulars in relation to that party required to be contained in a notice under this section, the failure to include in the notice such of those particulars as the party is unable to ascertain does not make the notice ineffective for the purposes of this section if, at any time before the marriage is solemnized, that party furnishes to the authorized celebrant solemnizing the marriage a statutory declaration as to that party's inability to ascertain the particulars not included in the notice and the reason for that inability.
- (5) Despite a notice required by subsection (1) having been received later than 1 month before the date of the marriage, a prescribed authority may authorise an authorized celebrant to solemnize a marriage if the authority is satisfied that one or more of the circumstances prescribed in the regulations have been met.
- (5A) An authorized celebrant shall, as soon as practicable after receiving the notice referred to in subsection (1), give to the parties a document in the prescribed form outlining the obligations and consequences of marriage and indicating the availability of marriage education and counselling.
- (6) Where, by reason of the death, absence or illness of an authorized celebrant to whom a notice of intention to marry has been given, or for any other reason, it is impracticable for that person to solemnize the marriage, the marriage may be solemnized by any authorized celebrant who has possession of the notice.
- (7) The declarations of the parties required by subsection (1) shall both be written on the one paper and on the same side of that paper.
- (8) An authorized celebrant shall not solemnize a marriage:
 - (a) unless the authorized 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 authorized celebrant has reason to believe that:
 - (i) a notice given under this section; or

Section 42A

- (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.
- (9) An authorized celebrant may permit an error in a notice under this section to be corrected in his or her presence by either of the parties at any time before the marriage to which it relates has been solemnized and may treat the corrected notice as having been originally given in its corrected form.
- (10) Where the declaration made by a party under subsection (1) states that that party is a divorced person or a widow or widower, an authorized celebrant shall not solemnize the marriage unless there is produced to him or her evidence of that party's divorce, or of the death of that party's spouse, as the case requires.

42A Commissioner of Australian Federal Police or approved authority may issue special notice

- (1) If the Commissioner of the Australian Federal Police or a person who is an approved authority for the purposes of the *Witness Protection Act 1994* gives to a Registrar a certificate under section 14 of that Act stating that the person has received the evidence referred to in paragraphs (b) and (c) of that section and the statutory declaration referred to in paragraph (d) of that section, the Registrar:
 - (a) if he or she is to solemnise the marriage himself or herself—is to treat the certificate as satisfying the requirements of section 42; or
 - (b) in any other case—is to give to the celebrant a notice in the prescribed form stating that the celebrant should treat the requirements of section 42 of this Act as having been met.
- (2) The names specified in the certificate are to be used in the marriage certificate.

43 Marriage may be solemnized on any day etc.

A marriage may be solemnized on any day, at any time and at any place.

44 Witnesses

A marriage shall not be solemnized unless at least 2 persons who are, or appear to the person solemnizing the marriage to be, over the age of 18 years are present as witnesses.

45 Form of ceremony

- (1) Where a marriage is solemnized by or in the presence of an authorized celebrant, being a minister of religion, it may be solemnized according to any form and ceremony recognized as sufficient for the purpose by the religious body or organization of which he or she is a minister.
- (2) Where a marriage is solemnized by or in the presence of an authorized celebrant, not being a minister of religion, it is sufficient if each of the parties says to the other, in the presence of the authorized celebrant and the witnesses, the words:
“I call upon the persons here present to witness that I, A.B. (*or* C.D.), take thee, C.D. (*or* A.B.), to be my lawful wedded wife (*or* husband)”;
or words to that effect.
- (3) Where a marriage has been solemnized by or in the presence of an authorized celebrant, a certificate of the marriage prepared and signed in accordance with section 50 is conclusive evidence that the marriage was solemnized 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.

46 Certain authorised celebrants to explain nature of marriage relationship

- (1) Subject to subsection (2), before a marriage is solemnized by or in the presence of an authorized celebrant, not being a minister of religion of a recognized denomination, the authorized celebrant shall say to the parties, in the presence of the witnesses, the words:

Section 47

“I am duly authorized by law to solemnize marriages according to law.

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

“Marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.”;

or words to that effect.

- (2) Where, in the case of a person authorized under subsection 39(2) to solemnize marriages, the Minister is satisfied that the form of ceremony to be used by that person sufficiently states the nature and obligations of marriage, the Minister may, either by the instrument by which that person is so authorized or by a subsequent instrument, exempt that person from compliance with subsection (1) of this section.

47 Ministers of religion not bound to solemnize marriage etc.

Nothing in this Part:

- (a) imposes an obligation on an authorized celebrant, being a minister of religion, to solemnize any marriage; or
- (b) prevents such an authorized celebrant from making it a condition of his or her solemnizing a marriage that:
 - (i) longer notice of intention to marry than that required by this Act is given; or
 - (ii) requirements additional to those provided by this Act are observed.

48 Certain marriages not solemnized in accordance with this Division to be invalid

- (1) Subject to this section, a marriage solemnized otherwise than in accordance with the preceding provisions of this Division is not a valid marriage.
- (2) A marriage is not invalid by reason of all or any of the following:
 - (a) failure to give the notice required by section 42, or a false statement, defect or error in such a notice;

- (b) failure of the parties, or either of them, to make or subscribe a declaration as required by section 42, or a false statement, defect or error in such a declaration;
 - (c) failure to produce to the authorized celebrant a certificate or extract of an entry or a statutory declaration as required by section 42, or a false statement, defect or error in such a statutory declaration;
 - (d) failure to comply with any other requirement of section 42, or any contravention of that section;
 - (e) failure to comply with the requirements of section 44 or 46;
 - (f) failure to comply with the requirements of section 13.
- (3) A marriage is not invalid by reason that the person solemnizing it was not authorized by this Act to do so, if either party to the marriage, at the time the marriage was solemnized, believed that that person was lawfully authorized to solemnize it, and in such a case the form and ceremony of the marriage shall be deemed to have been sufficient if they were such as to show an intention on the part of each of the parties to become thereby the lawfully wedded spouse of the other.

49 Authorised celebrant to retain consents, statutory declarations etc.

An authorized celebrant to whom a consent, dispensation with consent or statutory declaration is produced under this Act shall retain it in his or her possession until he or she deals with it in accordance with section 50.

50 Marriage certificates

- (1) Where an authorized celebrant solemnizes a marriage, the authorized celebrant shall:
 - (a) prepare a certificate of the marriage, in accordance with the prescribed form, for the purpose of issue to the parties to the marriage; and
 - (b) prepare 2 official certificates of the marriage in accordance with the prescribed form.
- (1A) Notwithstanding paragraph (1)(b), the regulations may provide that the person for the time being holding or acting in a specified office

Section 50

of a specified State or Territory shall prepare only 1 official certificate under that paragraph.

- (2) Immediately after the solemnization of the marriage, the authorized celebrant, each of the parties to the marriage and 2 witnesses of the marriage who are, or appear to the authorized celebrant to be, over the age of 18 years shall sign each of the certificates so prepared.
- (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.
- (4) The authorized celebrant shall hand the certificate referred to in paragraph (1)(a) to one of the parties to the marriage on behalf of the parties, and:
 - (a) where 2 official certificates have been prepared:
 - (i) within 14 days after the solemnization of the marriage, forward the official certificate to which subsection (3) applies, together with the notice under section 42, the order (if any) under section 12 and any statutory declarations, consents and dispensations with consents relating to the marriage that are in his or her possession, to the appropriate registering authority of a State or Territory ascertained in accordance with the regulations; and
 - (ii) retain the other official certificate and deal with it in accordance with the regulations; or
 - (b) where only 1 official certificate has been prepared—retain that certificate and deal with it in accordance with the regulations.
- (5) Where the authorized celebrant dies without having prepared and signed the certificates of the marriage, or where by reason of other special circumstances the Minister thinks it necessary to do so, the Minister may, if satisfied that the marriage was duly solemnized, prepare and sign the certificates with such modifications as are appropriate.
- (6) A certificate prepared and signed by the Minister under subsection (5) has the same force and effect as if it had been prepared and signed, in accordance with this section, by the authorized celebrant.

- (7) The regulations may make provision for and in relation to the furnishing of a substitute certificate in the event of the loss or destruction of a certificate of a marriage previously forwarded in pursuance of this section.

51 Incorrect marriage certificates

- (1) Where an authorized officer is satisfied, by statutory declaration or otherwise, that any particular in a certificate of marriage prepared and signed under section 50 is incorrect, the authorized officer may:
- (a) in the case of a certificate that has been handed to a party to the marriage or retained by the authorized celebrant—correct the certificate; and
 - (b) in the case of a certificate that has been forwarded to a registering authority—certify to that authority that a specified correction is necessary.
- (2) For the purposes of exercising his or her powers under paragraph (1)(a) in relation to a certificate, an authorized officer may, by notice in writing served on a party to the marriage, or the authorized celebrant, as the case requires, require the party or the authorized celebrant to produce or forward the certificate to the authorized officer within a period (not being less than 7 days from the date of service of the notice) specified in the notice.
- (2A) Where a marriage has been solemnized, or purports to have been solemnized, under this Part, and the marriage is void, an authorized officer may, by notice in writing served on a party to the marriage, require the party to deliver or forward to the authorized officer, within a period (not being less than 7 days from the date of service of the notice) specified in the notice, the certificate required, by subsection 50(4), to be handed to a party to the marriage.
- (3) A notice referred to in subsection (2) or (2A) may be served by post.
- (4) In this section, *authorized officer* means a person authorized by the Minister to perform the functions of an authorized officer under this section.

Division 3—Marriages by foreign diplomatic or consular officers

52 Interpretation

In this Division, unless the contrary intention appears:

diplomatic or consular officer, in relation to an overseas country, means a person recognized by the Government of the Commonwealth as a diplomatic or consular representative of that overseas country in Australia.

proclaimed overseas country means an overseas country in respect of which a Proclamation under section 54 is in force.

the Registrar means the Registrar of Foreign Marriages.

53 Application of Division

This Division applies to marriages, in accordance with the law or custom of a proclaimed overseas country, between parties of whom one at least possesses the nationality of that country.

54 Governor-General may declare countries to be proclaimed overseas countries

The Governor-General may declare by Proclamation that a country is a proclaimed overseas country for the purposes of this Division if he or she is satisfied that the country's law or custom authorizes the solemnization, by or in the presence of either or both diplomatic or consular officers of that country, of marriages outside that country.

55 Solemnization of marriages in Australia by foreign diplomatic or consular officer

Nothing in this Act prevents the solemnization in Australia of a marriage to which this Division applies by or in the presence of a diplomatic or consular officer of a proclaimed overseas country if:

- (a) neither of the parties is an Australian citizen; and

- (b) the marriage, were it a marriage to and in relation to which Division 2 of this Part applied, would not be void by reason of a circumstance set out in paragraph 23B(1)(a), (b) or (e).

56 Recognition of marriages

- (1) Subject to subsection (2), a marriage solemnized in Australia by or in the presence of a diplomatic or consular officer of a proclaimed overseas country, being a marriage to which section 55 was applicable, shall be recognized as valid in Australia if:
 - (a) the marriage is recognized as a valid marriage by the law or custom of the overseas country; and
 - (b) the marriage has been registered under this Division.
- (2) Subsection (1) does not apply in relation to a marriage where, if the marriage were a marriage to and in relation to which Division 2 of this Part applied, the marriage would be void by reason of a circumstance set out in paragraph 23B(1)(d).

57 Registrar and Deputy Registrar of Foreign Marriages

- (1) For the purposes of this Division, there shall be a Registrar of Foreign Marriages, who shall be appointed by the Minister.
- (2) The Registrar shall have a seal, which shall be in such form as the Minister determines.
- (3) The Minister may appoint a person to be Deputy Registrar of Foreign Marriages and, in the event of the absence, through illness or otherwise, of the Registrar, or of a vacancy in the office of Registrar, the Deputy Registrar has all the powers, and shall perform all the duties and functions, of the Registrar during the absence or vacancy.
- (4) The Deputy Registrar appointed under this section may, during any such absence, or vacancy in the office, of the Registrar, certify copies of entries, or extracts of entries, in the Register of Foreign Marriages Solemnized in Australia under his or her signature and the seal of the Registrar, and a copy or extract so certified has the same force and effect as if it had been certified by the Registrar under his or her signature and seal.

Section 58

58 Register of Foreign Marriages Solemnized in Australia

- (1) The Registrar shall keep a register, to be called the Register of Foreign Marriages Solemnized in Australia, in such form as the Minister directs.
- (2) The Registrar shall register in the Register every marriage notified to the Registrar that he or she is satisfied:
 - (a) is a marriage to which section 55 was applicable; and
 - (b) has been solemnized in Australia by or in the presence of a diplomatic or consular officer of a proclaimed overseas country who was competent to solemnize the marriage.
- (3) The Registrar shall keep an index of the entries in the Register.

59 Searches and certified copies

- (1) Subject to payment of the prescribed fee, a person may, upon satisfying the Registrar that the person has good reason for so doing, cause a search to be made for an entry in the Register of Foreign Marriages Solemnized in Australia and receive a copy of the entry, or an extract of the entry, certified by the Registrar under his or her signature and seal to be a copy of the entry or an extract of the entry, as the case may be.
- (2) A copy of an entry in the Register certified in accordance with subsection (1) is, for all purposes, evidence of the marriage recorded in the entry.

Part V—Marriages of members of the Defence Force overseas

Division 3—Marriages of members of the Defence Force overseas

71 Marriages of members of the Defence Force overseas

- (1) Subject to this Part, a marriage between parties of whom one at least is a member of the Defence Force may be solemnized in an overseas country by or in the presence of a chaplain.
- (2) The Governor-General may, by Proclamation, declare that a part of the Queen's dominions that has been occupied by a state at war with the Commonwealth and in which facilities for marriage in accordance with the local law have not, in the opinion of the Governor-General, been adequately restored shall be deemed to be an overseas country for the purposes of this section.

72 Form and ceremony of marriage

- (1) A marriage under this Division shall be solemnized:
 - (a) at such place as the chaplain thinks fit, in the presence of at least 2 witnesses who are, or appear to the chaplain to be, over the age of 18; and
 - (b) according to such form and ceremony as the chaplain thinks proper.
- (2) Unless, having regard to the form and ceremony of the marriage, the chaplain considers it unnecessary for the parties to the marriage to do so, each of the parties shall, in some part of the ceremony and in the presence of the chaplain and the witnesses, say to each other the words:

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

or words to that effect.

Division 4—General

73 Validity of marriages

A marriage solemnized under this Part, being a marriage which, if it had been solemnized in Australia in accordance with Division 2 of Part IV would have been a valid marriage, is valid throughout Australia and the external Territories.

74 Declaration to be made before chaplain

- (1) A marriage shall not be solemnized under this Part unless each of the parties to the marriage has made and subscribed before the chaplain solemnizing the marriage a declaration, in accordance with the prescribed form, as to:
 - (a) the party's conjugal status;
 - (b) the party's belief that there is no legal impediment to the marriage; and
 - (c) such other matters as are prescribed.
- (2) The declarations of the parties required by subsection (1) shall both be written on the one paper and on the same side of that paper.
- (3) A chaplain shall not solemnize a marriage under this Part if he or she has reason to believe that a declaration made and subscribed under this section in relation to the marriage contains a false statement or an error or is defective.

75 Chaplain to be satisfied of parties' identity

A chaplain shall not solemnize a marriage under this Part unless the chaplain has satisfied himself or herself as to the identity of the parties.

76 Additional consent to marriage of minor domiciled outside Australia

- (1) Where:
 - (a) a party to an intended marriage under this Part, not being an Australian citizen, has not attained the age of 18 years and is domiciled in a place outside Australia; and

- (b) the law of that place requires the consent of a person, other than a person whose consent is required under Part II, to the marriage of that party;
the marriage shall not be solemnized unless the chaplain is satisfied that consent to the marriage has been given by that person.
- (2) The requirement of subsection (1) is in addition to the requirements of Part II with respect to consents to the marriages of minors.

77 Restriction on solemnization of marriages under this Part

- (1) A marriage shall not be solemnized in an overseas country under this Part unless the chaplain is satisfied:
 - (a) that each of the parties to the intended marriage is an Australian citizen or a member of the Defence Force;
 - (b) where 1 party to the intended marriage is not an Australian citizen or a member of the Defence Force:
 - (i) that that party is not a subject or citizen of the overseas country; or
 - (ii) that sufficient facilities do not exist for the solemnization of the marriage in the overseas country in accordance with the law of that country;
 - (c) where 1 party to the intended marriage is a subject or citizen of the overseas country, that objection will not be taken by the authorities of that country to the solemnization of the intended marriage under this Part; or
 - (d) that a marriage in the overseas country between the parties in accordance with the law of that country would not be recognized throughout Australia.
- (2) In this section, *overseas country* includes a country that is deemed to be an overseas country for the purposes of section 71.

78 Solemnization of marriages where a party to the marriage is not an Australian citizen etc.

- (1) Subject to subsection (2), a marriage shall not be solemnized under this Part if 1 party to the intended marriage (in this section called the *non-Australian*) is not an Australian citizen or a member of the Defence Force.

Section 79

- (2) Subsection (1) does not apply where the chaplain is satisfied:
- (a) that the marriage will be recognized by the law of the country to which the non-Australian belongs;
 - (b) that some other marriage ceremony, in addition to the ceremony under this Part, has taken place, or is about to take place, between the parties and that the other ceremony is, or, when it has taken place, will be, recognized by the law of the country to which the non-Australian belongs; or
 - (c) that the Minister has approved of the solemnization of the marriage under this Part.

79 Chaplain to retain consents etc.

A chaplain to whom a consent, dispensation with consent or statutory declaration is produced under this Act shall retain it in the possession of the chaplain until he or she deals with it in accordance with section 80.

80 Marriage certificate and registration of marriages

- (1) Where a chaplain solemnizes a marriage under this Part, the chaplain shall:
- (a) prepare a certificate of the marriage, in accordance with the prescribed form, for the purpose of issue to the parties to the marriage; and
 - (b) prepare 2 official certificates of the marriage in accordance with the prescribed form.
- (2) Immediately after the solemnization of the marriage:
- (a) the chaplain; and
 - (b) each of the parties to the marriage; and
 - (c) 2 witnesses of the marriage who are, or appear to the chaplain to be, over the age of 18 years;
- shall sign each of the certificates so prepared.
- (3) One of the official certificates shall be on the reverse side of the paper bearing the declarations made by the parties under section 74.

- (4) The chaplain shall:
- (a) hand the certificate referred to in paragraph (1)(a) to one of the parties to the marriage on behalf of the parties;
 - (b) forward the official certificate referred to in subsection (3), together with any statutory declarations, consents or dispensations with consents relating to the marriage that are in his or her possession, to the Registrar; and
 - (c) retain the other copy of the certificate in his or her possession for the prescribed period and, upon the expiration of that period, deal with the copy in accordance with the regulations.
- (5) Where the chaplain dies without having prepared and signed the certificates of the marriage, or where by reason of other special circumstances the Minister thinks it necessary to do so, the Minister may, if satisfied that the marriage was duly solemnized, prepare and sign the certificates with such modifications as are appropriate.
- (6) A certificate prepared and signed by the Minister under subsection (5) has the same force and effect as if it had been prepared and signed, in accordance with this section, by the chaplain.
- (7) Upon the receipt by the Registrar of the official certificate required to be forwarded to the Registrar in respect of a marriage, the Registrar shall register the marriage.
- (8) In the month of January in each year, a chaplain by whom, or in whose presence, a marriage has been, or marriages have been, solemnized in the preceding year shall forward to the Registrar, in accordance with the prescribed form, particulars of that marriage or those marriages.
- (9) If the certificate of a marriage is not received by the Registrar, the chaplain by whom it was issued shall, at the request of the Registrar:
- (a) prepare a copy of the certificate;
 - (b) certify, by writing signed by the chaplain, that the copy is a true copy of the certificate; and
 - (c) forward the copy to the Registrar.

Section 81

- (10) A certified copy of a certificate prepared by a chaplain under subsection (9) has, for all purposes, the same force and effect as the certificate of which it is a copy.

81 Power to refuse to solemnize marriage

A chaplain may refuse to solemnize a marriage under this Part on any grounds which appear to the chaplain to be sufficient and, in particular, on the ground that, in the opinion of the chaplain, the solemnization of the marriage would be inconsistent with international law or the comity of nations.

82 Marriages may be solemnized on any day and at any time

A marriage under this Part may be solemnized on any day and at any time.

83 Validity of marriages under this Part

- (1) A marriage under this Part is not invalid by reason of all or any of the following:
- (d) failure of the parties, or either of them, to make or subscribe a declaration required by section 74, or a false statement, defect or error in such a declaration;
 - (e) the fact that the marriage was solemnized in contravention of any provision of section 72, 74, 75, 76, 77 or 78;
 - (f) failure to comply with the requirements of section 13.
- (2) A marriage under this Part is not invalid by reason that the person solemnizing it was not a chaplain if either party to the marriage, at the time the marriage was solemnized, believed that that person was lawfully authorized to solemnize it, and in such a case the form and ceremony of the marriage shall be deemed to have been sufficient if they were such as to show an intention on the part of each of the parties to become thereby the lawfully wedded spouse of the other.

84 Registration of overseas marriages attended by a chaplain

- (1) Where:
- (a) a chaplain has attended a marriage in an overseas country between parties of whom at least one was an Australian citizen or a member of the Defence Force; and
 - (b) the chaplain is satisfied that the marriage has taken place in accordance with the law of that country; and
 - (c) a party to the marriage informs the chaplain, in writing, that he or she desires the marriage to be registered under this section;
- the chaplain shall forward to the Registrar a certificate, in accordance with the prescribed form, in respect of the marriage.
- (2) Upon receipt by the Registrar of a certificate under subsection (1) in respect of a marriage, the Registrar shall, subject to the regulations, register the marriage.

85 Certificates of marriages solemnized in accordance with local law in an overseas country

- (1) Where:
- (a) a marriage takes place in a prescribed overseas country in accordance with the law of that country between parties of whom one at least is an Australian citizen or a member of the Defence Force;
 - (b) a party to the marriage who is an Australian citizen or a member of the Defence Force produces to a chaplain in the country in which the marriage was solemnized:
 - (i) a copy of the entry in respect of the marriage in the marriage register of that country certified by the appropriate authority in that country to be a true copy of that entry; and
 - (ii) if the copy of that entry is not in the English language—a translation into the English language of that copy; and
 - (c) the chaplain is satisfied that the copy of the entry in the marriage register is a true copy and that the translation, if any, is a true translation;
- the chaplain shall certify, upon the copy, that he or she is satisfied that the copy is a true copy of the entry in the marriage register and, upon the translation, that he or she is satisfied that the

Section 86

translation is a true translation of the copy and shall transmit the copy and the translation to the Registrar.

- (2) The Registrar shall, upon payment of the prescribed fee, issue to a person who so desires a copy of any document received by the Registrar under subsection (1) certified by the Registrar, under his or her signature and seal, to be a true copy of that document.
- (3) A document relating to a marriage in an overseas country transmitted in pursuance of section 26 of the *Marriage (Overseas) Act 1955* and received by the Registrar of Overseas Marriages appointed under that Act shall, for the purposes of this section, be deemed to have been, in pursuance of this section, transmitted to, and received by, the Registrar of Overseas Marriages appointed, or deemed to have been appointed, under this Act.
- (4) A document relating to a marriage in an overseas country issued under subsection (2) is admissible in evidence in any proceedings as if it were a certificate duly issued by the authorities of that country.

86 Evidence

A notice, certificate or other document kept in pursuance of this Part by any person, or in the records of the office of any person, is admissible in evidence on its mere production from the custody of that person or from the custody of an officer of the Department.

87 Validity of marriages otherwise than under this Part not affected

Nothing in this Part in any way affects the validity of a marriage solemnized in an overseas country otherwise than under this Part.

88 Imperial Foreign Marriage Acts

This Act shall not be taken to repeal or amend the Imperial Acts known as the Foreign Marriage Acts, 1892 and 1934, in so far as those Acts are part of the law of the Commonwealth.

Part VA—Recognition of foreign marriages

88A Object of Part

The object of this Part is to give effect to Chapter II of the Convention on Celebration and Recognition of the Validity of Marriages signed at The Hague on 14 March 1978.

88B Interpretation

- (1) In this Part, unless the contrary intention appears:

Australia includes the external Territories.

local law, in relation to a marriage solemnized in a foreign country, means the law in force in the foreign country or in that part of the foreign country in which the marriage was solemnized.

- (2) A marriage shall be taken, for the purposes of this Part, to have been solemnized in a foreign country by or in the presence of a diplomatic or consular officer of another foreign country if the marriage was solemnized in the first-mentioned foreign country by or in the presence of a person who was recognized by the government of that country as a diplomatic or consular representative of the other foreign country.
- (3) In this Part, a reference to a marriage includes a reference to a purported marriage that is void or voidable but does not include a reference to a marriage solemnized under Part V.
- (4) To avoid doubt, in this Part (including section 88E) *marriage* has the meaning given by subsection 5(1).

88C Application of Part

- (1) This Part applies to and in relation to every marriage solemnized, whether before or after the commencement of this Part, in a foreign country where:
- (a) under the local law, the marriage was, at the time when it was solemnized, recognized as valid; or

Section 88D

- (b) if the marriage was solemnized by or in the presence of a diplomatic or consular officer of another foreign country:
 - (i) under the law of that other foreign country, the marriage was, at the time when it was solemnized, recognized as valid; and
 - (ii) at the time when it was solemnized, the solemnization of the marriage was not prohibited by the local law.
- (2) Where a marriage (not being a marriage referred to in subsection (1)) that was solemnized, whether before or after the commencement of this Part, in a foreign country:
 - (a) is, at any time in relation to which the validity of the marriage falls to be determined, recognized as valid under the local law; or
 - (b) if the marriage was solemnized by or in the presence of a diplomatic or consular officer of another foreign country and, at the time when it was solemnized, the solemnization of the marriage was not prohibited by the local law—is, at any time in relation to which the validity of the marriage falls to be determined, recognized as valid under the law of that other foreign country; this Part applies to and in relation to the marriage from and including that time.

88D Validity of marriages

- (1) Subject to this section, a marriage to which this Part applies shall be recognized in Australia as valid.
- (2) A marriage to which this Part applies shall not be recognized as valid in accordance with subsection (1) if:
 - (a) either of the parties was, at the time of the marriage, a party to a marriage with some other person and the last-mentioned marriage was, at that time, recognized in Australia as valid;
 - (b) where one of the parties was, at the time of the marriage, domiciled in Australia—either of the parties was not of marriageable age within the meaning of Part II;
 - (c) the parties are within a prohibited relationship within the meaning of section 23B; or
 - (d) the consent of either of the parties was not a real consent for a reason set out in subparagraph 23B(1)(d)(i), (ii) or (iii).

- (3) Where neither of the parties to a marriage to which this Part applies was, at the time of the marriage, domiciled in Australia, the marriage shall not be recognized as valid in accordance with subsection (1) at any time while either party is under the age of 16 years.
- (4) A marriage solemnized in a foreign country, being a marriage to which this Part applies, shall not be recognized as valid in accordance with subsection (1) at any time while the marriage is voidable:
- (a) except in a case to which paragraph (b) applies—under the local law; or
 - (b) if the marriage was solemnized in a foreign country by or in the presence of a diplomatic or consular officer of another foreign country—under the law of that other foreign country.
- (5) Notwithstanding any other provision of this Part, where:
- (a) a marriage (in this subsection referred to as the *initial marriage*) has, whether before or after the commencement of this Part, been solemnized in a foreign country;
 - (b) at the time of the solemnization of the initial marriage, that marriage was not recognized in Australia as valid;
 - (c) after the solemnization of the initial marriage, and whether before or after the commencement of this Part, either party to that marriage entered into another marriage (in this subsection referred to as the *subsequent marriage*); and
 - (d) at the time when the subsequent marriage was solemnized:
 - (i) the subsequent marriage was recognized in Australia as valid; and
 - (ii) the initial marriage was not recognized in Australia as valid;
- the initial marriage shall not be recognized at any time in Australia as valid.

88E Validity of certain marriages not affected by this Part

- (1) Subject to subsection (2), a marriage solemnized in a foreign country that would be recognized as valid under the common law rules of private international law but is not required by the provisions of this Part apart from this subsection to be recognized as valid shall be recognized in Australia as valid, and the operation
-

Section 88EA

of this subsection shall not be limited by any implication arising from any other provision of this Part.

- (2) Notwithstanding subsection (1), a marriage of a person domiciled in Australia, being a marriage solemnized in a foreign country, shall not be recognized in Australia as valid if, at the time of the marriage, either party to the marriage was not of marriageable age within the meaning of Part II.
- (3) Where a marriage solemnized in a foreign country is not required by virtue of this Part to be recognized in Australia as valid, this Part shall not be taken to limit or exclude the operation of a provision of any other law of the Commonwealth, or of a law of a State or Territory, that provides, expressly or impliedly, for such a marriage to be recognized as a valid marriage for the purposes of the law in which the provision is included.
- (4) This Part shall not be taken to limit or exclude the operation of a provision of any other law of the Commonwealth, or of a law of a State or Territory, that deems a union in the nature of a marriage to be a marriage for the purposes of the law in which the provision is included.

88EA Certain unions are not marriages

A union solemnised in a foreign country between:

- (a) a man and another man; or
- (b) a woman and another woman;

must not be recognised as a marriage in Australia.

88F Incidental determination of recognition of certain foreign marriages

Notwithstanding any other law, the question whether a marriage solemnized in a foreign country is to be recognized in Australia as valid shall be determined in accordance with the provisions of this Part, whether or not the determination of the question is incidental to the determination of another question.

88G Evidence

- (1) A document purporting to be either the original or a certified copy of a certificate, entry or record of a marriage alleged to have been
-

solemnized in, or under the law of, a foreign country and purporting to have been issued by:

- (a) in the case of a marriage alleged to have been solemnized in a foreign country—an authority of that country or of that part of the country in which the marriage was allegedly solemnized; or
- (b) in the case of a marriage alleged to have been solemnized under the law of a foreign country—an authority of that country;

is, for all purposes, *prima facie* evidence of the facts stated in the document and of the validity of the marriage to which the document relates.

- (2) Subsection (1) does not apply to or in relation to a document if it is proved that the authority of the foreign country or of the part of a foreign country by which the document purports to have been issued was not, at the time of issue, a competent authority.
- (3) In subsection (2), ***competent authority*** means:
 - (a) in relation to a foreign country:
 - (i) any authority that is prescribed in relation to that country by regulations made for the purposes of this paragraph; or
 - (ii) any other authority that is competent, under the law in force in that country, to issue the original or a certified copy of a certificate, entry or record of a marriage solemnized in, or under the law of, that country; and
 - (b) in relation to a part of a foreign country:
 - (i) any authority that is prescribed in relation to that part of that country by regulations made for the purposes of this paragraph; or
 - (ii) any other authority that is competent, under the law in force in that part of that country, to issue the original or a certified copy of a certificate, entry or record of a marriage solemnized in that part of that country.

Part VI—Legitimation

89 Legitimation by virtue of marriage of parents

- (1) A child (whether born before or after the commencement of this Act) whose parents were not married to each other at the time of his or her birth but have subsequently married each other (whether before or after the commencement of this Act) is, by virtue of the marriage, for all purposes the legitimate child of his or her parents as from his or her birth or the commencement of this Act, whichever was the later.
- (2) Subsection (1) applies in relation to a child whether or not there was a legal impediment to the marriage of his or her parents at the time of his or her birth and whether or not the child was still living at the time of the marriage or, in the case of a child born before the commencement of this Act, at the commencement of this Act.
- (3) Subsection (1) does not apply in relation to a child unless:
 - (a) at the time of the marriage of the child's parents:
 - (i) where that marriage took place before the commencement of section 24 of the *Marriage Amendment Act 1985*—the child's father was domiciled in Australia; or
 - (ii) in any other case—one of the child's parents was domiciled in Australia; or
 - (b) the marriage of the child's parents took place in Australia, or outside Australia under Part V of this Act or under the *Marriage (Overseas) Act 1955*.
- (4) Nothing in this section renders ineffective any legitimation that took place before the commencement of this Act by or under a law of a State or Territory or shall be taken to exclude the continued operation of such a law in relation to such a legitimation.
- (5) This section does not apply in relation to a child so as to affect any estate, right or interest in real or personal property to which a person has become, or may become, entitled, either mediately or immediately, in possession or expectancy, by virtue of a disposition that took effect, or by devolution by law on the death of

a person who died, before the marriage of the parents of the child or the commencement of this Act, whichever was the later.

90 Legitimacy of children of certain foreign marriages

(1) Where:

- (a) the parents of a child born illegitimate have married each other or the parents of a child born in a place the law of which did not recognize the status of illegitimacy have married each other;
- (b) the marriage took place outside Australia;
- (c) neither parent of the child was domiciled in Australia at the time of the marriage; and
- (d) the law of the place where a parent of the child was then domiciled did not recognize the status of illegitimacy or, if the law of the place where a parent of the child was then domiciled did recognize that status, the child was, by that law, legitimated by virtue of the marriage;

the child is for all purposes the legitimate child of his or her parents as from the time of the marriage or the commencement of section 25 of the *Marriage Amendment Act 1985*, whichever was the later.

(2) Where the relationship of a child and his or her father and mother is, for the purposes of the law of a place, required by a law in force in that place to be determined irrespective of whether or not the father and mother are or have been married to each other, the law of that place shall, for the purposes of this section, be taken not to recognize the status of illegitimacy.

(3) Subsection (1) applies in relation to a child:

- (a) whether the child was born before or after the commencement of section 25 of the *Marriage Amendment Act 1985*, whether the marriage of the parents of the child took place before or after that commencement and whether or not the child was still living at the time of the marriage or, in the case of a child born before that commencement, at that commencement; and
- (b) in the case of a child born illegitimate who, by virtue of the marriage of the child's parents, was legitimated by the law of the place where a parent of the child was domiciled at the time of the marriage—whether or not the law of the place in

Section 91

which that parent or the other parent was domiciled at the time of the birth of the child permitted or recognized legitimation by subsequent marriage.

91 Legitimacy of children of certain void marriages

- (1) Subject to this section, a child of a marriage that is void shall be deemed for all purposes to be the legitimate child of his or her parents as from his or her birth or the commencement of this Act, whichever was the later, if, at the time of the intercourse that resulted in the birth of the child or the time when the ceremony of marriage took place, whichever was the later, either party to the marriage believed on reasonable grounds that the marriage was valid.
- (2) Subsection (1) does not apply unless one of the parents of the child was domiciled in Australia at the time of the birth of the child or, having died before that time, was domiciled in Australia immediately before his or her death.
- (3) Subsection (1) applies in relation to a child whether the child was born before or after the commencement of this Act, whether the ceremony of marriage took place before or after the commencement of this Act and whether the ceremony of marriage took place in or outside Australia.
- (4) This section does not apply in relation to a child so as to affect any estate, right or interest in real or personal property to which a person has become, or may become, entitled, either mediately or immediately, in possession or expectancy, by virtue of a disposition that took effect, or by devolution by law on the death of a person who died, before the birth of the child or the commencement of this Act, whichever was the later.

92 Declarations of legitimacy etc.

- (1) A person may apply to the Family Court of Australia, the Federal Magistrates Court, a Family Court of a State or the Supreme Court of a State or Territory for an order declaring:
 - (a) that the person is the legitimate child of his or her parents; or
 - (b) that the person or his or her parent or child or a remoter ancestor or descendant is or was a legitimated person;and the Court may, in its discretion, make the order.

- (2) The Supreme Courts of the States and any Family Court of a State are invested with federal jurisdiction and jurisdiction is conferred, to the extent that the Constitution permits, on the Supreme Courts of the Territories, to hear and determine applications under this section.
- (4) The Court to which an application under this section is made may:
- (a) direct that notice of the application be given to such persons (who may include the Attorney-General of the Commonwealth or of a State or the Northern Territory) as the Court thinks fit;
 - (b) direct that a person be made a party to the application; or
 - (c) permit a person having an interest in the matter to intervene in, and become a party to, the proceedings.
- (5) Where the Court makes an order upon the application, it may include in the order such particulars in relation to the legitimacy or legitimation of the person to whom it relates as the Court finds to be established.
- (6) An order made under this section binds the Crown in right of the Commonwealth or of a State or the Northern Territory or Norfolk Island, whether or not notice was given to the Attorney-General of the Commonwealth or of that State or Territory, but does not affect:
- (a) the rights of another person unless that other person was:
 - (i) a party to the proceedings for the order or a person claiming through such a party; or
 - (ii) a person to whom notice of the application for the order was given or a person claiming through such a person; or
 - (b) an earlier judgment, order or decree of a court of competent jurisdiction, whether in exercise of federal jurisdiction or not.
- (7) The Governor-General may, by Proclamation, fix a date as the date on and after which proceedings under this section may not be instituted in, or transferred to, the Supreme Court of a State or Territory specified in the Proclamation and that Supreme Court shall not hear and determine any such proceedings so instituted in, or transferred to, that Court on or after that date.

93 Operation of certain State and Territory laws

- (1) Nothing in this Part shall be taken to operate in relation to a child so as to affect the validity or effect of an adoption of the child, whether the adoption took place before, or takes place after, the commencement of this Act.
- (2) Nothing in this Part shall be taken to exclude the operation of a law of a State or Territory in so far as it provides for the making or altering of entries in a register, but a legitimation under this Part is not affected by any failure to comply with such a law.
- (3) Nothing in this Part shall be taken to affect the validity or effect of a law of a State or Territory (however expressed and whether enacted before or after the commencement of this subsection) that operates to require a child born to a woman as a result of the carrying out of a artificial conception procedure in relation to the woman:
 - (a) to be treated as the child of the woman;
 - (b) to be treated as the child of the woman and a particular man;
 - or
 - (c) to be treated as the child of a particular man.

Part VII—Offences

94 Bigamy

- (1) A person who is married shall not go through a form or ceremony of marriage with any person.

Penalty: Imprisonment for 5 years.

- (1A) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance, that the person was married when the form or ceremony took place.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that:

- (a) at the time of the alleged offence, the defendant believed that his or her spouse was dead; and
- (b) the defendant's spouse had been absent from the defendant for such time and in such circumstances as to provide, at the time of the alleged offence, reasonable grounds for presuming that the defendant's spouse was dead.

- (3) For the purposes of subsection (2), proof by a defendant that the defendant's spouse had been continually absent from the defendant for the period of 7 years immediately preceding the date of the alleged offence and that, at the time of the alleged offence, the defendant had no reason to believe that the defendant's spouse had been alive at any time within that period is sufficient proof of the matters referred to in paragraph (2)(b).

- (3A) To avoid doubt, section 9.2 of the *Criminal Code* (mistake of fact) does not apply in relation to the matters mentioned in subsections (2) and (3).

- (4) A person shall not go through a form or ceremony of marriage with a person who is married, knowing, or having reasonable grounds to believe, that the latter person is married.

Penalty: Imprisonment for 5 years.

Section 95

- (5) It is not an offence against this section for a person to go through a form or ceremony of marriage with that person's own spouse.
- (6) In a prosecution for an offence against this section, the spouse of the accused person is a competent and compellable witness for either the prosecution or the defence.
- (7) In a prosecution for an offence against this section, the fact that, at the time of the alleged offence, a person was married shall not be taken to have been proved if the only evidence of the fact is the evidence of the other party to the alleged marriage.
- (7A) In a prosecution for an offence against this section, the court may receive as evidence of the facts stated in it a document purporting to be either the original or a certified copy of a certificate, entry or record of a marriage alleged to have taken place whether in Australia or elsewhere.
- (8) This section operates to the exclusion of any law of a State or Territory making it an offence:
 - (a) for a person who is married to go through a form or ceremony of marriage with any person; or
 - (b) for a person to go through a form or ceremony of marriage with a person who is married;but does not affect the operation of such a law in relation to acts and things done before the commencement of this Act.

95 Marrying person not of marriageable age etc.

- (1) A person shall not go through a form or ceremony of marriage with a person who is not of marriageable age.

Penalty: Imprisonment for 5 years.
- (1A) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance, that the person is not of marriageable age.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (2) A person shall not go through a form or ceremony of marriage with a person (in this subsection referred to as *the other party to the marriage*) who is a minor unless:

- (a) the other party to the marriage has previously been married;
or
- (b) the written consent of the person, or of each of the persons, whose consent to the marriage of the other party to the marriage is required by this Act, has been given or dispensed with in accordance with this Act.

Penalty: \$500 or imprisonment for 6 months.

- (2A) For the purposes of an offence against subsection (2), strict liability applies to the physical element of circumstance, that the other party to the marriage is a minor.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that he or she believed on reasonable grounds that the person with whom he or she went through the form or ceremony of marriage was of marriageable age.
- (3A) To avoid doubt, section 9.2 of the *Criminal Code* (mistake of fact) does not apply in relation to the matters mentioned in subsection (3).
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that he or she believed on reasonable grounds:
- (a) that the person with whom he or she went through the form or ceremony of marriage had attained the age of 18 years or had previously been married; or
 - (b) that the consent of the person, or of each of the persons, referred to in paragraph (2)(b) had been given or dispensed with in accordance with this Act.
- (5) To avoid doubt, section 9.2 of the *Criminal Code* (mistake of fact) does not apply in relation to the matters mentioned in subsection (4).

Section 98

98 Contravention of subsection 13(3)

- (2) A person shall not subscribe his or her name as a witness to the signature of a person to a consent to the marriage of a minor in contravention of subsection 13(3).

Penalty: \$500 or imprisonment for 6 months.

99 Solemnizing marriage where notice or declaration not given or made etc.

- (1) An authorized celebrant shall not solemnize a marriage under Division 2 of Part IV in contravention of section 42 or 44.
- (3) A chaplain shall not solemnize a marriage under Division 3 of Part V in contravention of section 74, 75, 76, 77 or 78.
- (4) A person shall not solemnize a marriage in contravention of section 13 or 112.
- (5) A person shall not solemnize a marriage in contravention of subsection 33(3).
- (6) A person shall not, in contravention of subsection 113(1), purport to solemnize a marriage between persons who inform the first-mentioned person that they are already legally married to each other or whom the first-mentioned person knows or has reason to believe to be already legally married to each other.

Penalty: \$500 or imprisonment for 6 months.

100 Solemnizing marriage where reason to believe there is a legal impediment

A person shall not solemnize a marriage, or purport to solemnize a marriage, if the person has reason to believe that there is a legal impediment to the marriage or if the person has reason to believe the marriage would be void.

Penalty: \$500 or imprisonment for 6 months.

101 Solemnization of marriage by unauthorised person

A person shall not solemnize a marriage, or purport to solemnize a marriage, at a place in Australia or under Part V unless the person is authorized by or under this Act to solemnize marriages at that place or under that Part, as the case may be.

Penalty: \$500 or imprisonment for 6 months.

103 Going through ceremony of marriage before person not authorised to solemnize it

A person shall not go through a form or ceremony of marriage with another person knowing that the person solemnizing the marriage is not authorized to solemnize it and having reason to believe that the other party to the marriage believes that the person solemnizing the marriage is so authorized.

Penalty: \$500 or imprisonment for 6 months.

104 Giving defective notice etc.

- (1) A person shall not give a notice to an authorized celebrant under section 42, or sign a notice under section 42 after it has been given, if, to the knowledge of that person, the notice contains a false statement or an error or is defective.

Penalty: \$500 or imprisonment for 6 months.

105 Failure to comply with notice under section 51

- (1) A person on whom a notice under section 51 has been duly served shall not fail to comply with the notice.

Penalty: \$100.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Section 106

106 Failure by interpreter to furnish certificate etc.

A person who has acted as interpreter at the solemnization of a marriage shall not:

- (a) fail to comply with subsection 112(3); or
- (b) intentionally make a false statement in a certificate under that subsection.

Penalty: \$500 or imprisonment for 6 months.

Part VIII—Transitional provisions

107 Exercise of powers etc. before commencement of Act

- (1) Section 4 of the *Acts Interpretation Act 1901* applies in relation to the provisions that are to come into operation on a date to be fixed by Proclamation as if those provisions were an Act.
- (2) For the purpose of enabling marriages to be solemnized in Australia in accordance with Division 2 of Part IV from the commencement of this Act:
 - (a) a notice of intention to marry may be given, and a declaration may be made, under section 42;
 - (b) any consent to the marriage of a minor required by Part II may be given; and
 - (c) any power conferred on a prescribed authority may be exercised;at any time after the day on which the Proclamation under section 2 has been published in the *Gazette* and before the commencement of this Act, as if the provisions of this Act to which the Proclamation relates had come into operation on that day.

- (3) For the purposes of the operation of subsection (2), any person who is authorized under a law of a State or Territory to solemnize marriages shall be deemed to be an authorized celebrant.

108 Application of offence provisions to notices etc. given before commencement of this Act

- (1) The provisions of section 98 and subsection 104(1) apply to and in relation to acts done, notices given and declarations made before the commencement of this Act in relation to marriages that take place in Australia after the commencement of this Act or that have not taken place but were intended to be solemnized in Australia in accordance with this Act.
- (2) For the purposes of the application of section 98 and subsection 104(1) to and in relation to an act done or a notice given at a time before the commencement of this Act in relation to such a marriage, a person who at that time was authorized under a law of

Section 109

a State or Territory to solemnize marriages shall be deemed to have been an authorized celebrant at that time.

109 Consents etc. given under State or Territory laws

- (1) A consent in writing to the marriage of a minor given by a person before the commencement of this Act in accordance with the law of a State or Territory shall, if the marriage in respect of which the consent was given takes place after the commencement of this Act in that State or Territory, be deemed to have been duly given and witnessed for the purposes of section 13.
- (2) Where the consent of a person to the marriage of a minor has, before the commencement of this Act, been dispensed with in pursuance of a law of a State or Territory, the consent of that person shall, if the marriage in respect of which it was dispensed with takes place after the commencement of this Act in that State or Territory, be deemed to have been dispensed with by a prescribed authority under Part II.
- (3) Where a person or authority has, before the commencement of this Act, in pursuance of a law of a State or Territory, given consent to the marriage of a minor in place of the consent of a person whose consent would otherwise be required, the consent so given shall, if the marriage in respect of which the consent was given takes place after the commencement of this Act in that State or Territory, be deemed to have been given by a magistrate under Part II.

Part IX—Miscellaneous

111 Certain marriages and legitimations to be valid in all the Territories

- (1) A marriage solemnized in accordance with Division 2 of Part IV that is a valid marriage in Australia is valid in the external Territories.
- (2) A person who is, or is deemed to be, as from a particular time, the legitimate child of that person's parents by virtue of section 89, 90 or 91 is, or shall be deemed to be, for all purposes the legitimate child of that person's parents as from that time in the external Territories.
- (3) The operation of subsection (2) in relation to a child to whom section 89 or 91 applies is subject to a like qualification to that provided by subsection 89(5) or 91(4), as the case requires.
- (4) Subsection (2) shall not be taken to operate in relation to a child so as to affect the validity or effect of an adoption of the child, whether the adoption took place before, or takes place after, the commencement of this Act.

111A Abolition of action for breach of promise

- (1) A person is not entitled to recover damages from another person by reason only of the fact that that other person has failed to perform a promise, undertaking or engagement to marry the first-mentioned person.
- (2) This section does not affect an action for the recovery of any gifts given in contemplation of marriage which could have been brought if this section had not been enacted.

112 Interpreters at marriage ceremonies

- (1) Subject to this section, where the person by whom or in whose presence a marriage is to be solemnized considers that it is desirable to do so, the person may use the services of an

Section 113

interpreter, not being a party to the marriage, in or in connexion with the ceremony.

- (2) A person shall not solemnize a marriage in or in connexion with the ceremony of which the services of an interpreter are used unless the person has received a statutory declaration by the interpreter stating that the interpreter understands, and is able to converse in, the languages in respect of which he or she is to act as interpreter.
- (3) A person who has acted as interpreter in or in connexion with a ceremony of marriage shall, forthwith after the ceremony has taken place, furnish to the person solemnizing the marriage a certificate signed by the first-mentioned person, in the prescribed form, of the faithful performance of the first-mentioned person's services as interpreter.
- (4) This section applies in relation to marriages to which Division 2 of Part IV applies and marriages under Part V.

113 Second marriage ceremonies

- (1) Except in accordance with this section:
 - (a) persons who are already legally married to each other shall not, in Australia or under Part V, go through a form or ceremony of marriage with each other; and
 - (b) a person who is authorized by this Act to solemnize marriages shall not purport to solemnize a marriage in Australia or under Part V between persons who inform the first-mentioned person that they are already legally married to each other or whom the first-mentioned person knows or has reason to believe to be already legally married to each other.
- (2) Where:
 - (a) 2 persons have gone through a form or ceremony of marriage with each other, whether before or after the commencement of this Act; and
 - (b) there is a doubt:
 - (i) whether those persons are legally married to each other;

- (ii) where the form or ceremony of marriage took place outside Australia, whether the marriage would be recognized as valid by a court in Australia; or
- (iii) whether their marriage could be proved in legal proceedings;

those persons may, subject to this section, go through a form or ceremony of marriage with each other in accordance with Division 2 of Part IV or under Part V as if they had not previously gone through a form or ceremony of marriage with each other.

- (3) Where 2 persons wish to go through a form or ceremony of marriage with each other in pursuance of subsection (2), they shall furnish to the person by whom, or in whose presence, the form or ceremony is to take place or be performed:
 - (a) a statutory declaration by them stating that they have previously gone through a form or ceremony of marriage with each other and specifying the date on which, the place at which and the circumstances in which they went through that form or ceremony; and
 - (b) a certificate by a barrister or solicitor, being a certificate endorsed on the statutory declaration, that, on the facts stated in the declaration, there is, in his or her opinion, a doubt as to one of the matters specified in paragraph (2)(b).
- (4) The person by whom or in whose presence a form or ceremony of marriage takes place or is performed in pursuance of subsection (2) shall make an endorsement in accordance with the regulations on each certificate issued in respect of it.
- (4A) A marriage which takes place after the commencement of this subsection in pursuance of subsection (2) is not invalid by reason of any failure to comply with the requirements of subsection (3) or (4).
- (5) Nothing in this Act shall be taken to prevent 2 persons who are already legally married to each other from going through a religious ceremony of marriage with each other in Australia where those persons have:
 - (a) produced to the person by whom or in whose presence the ceremony is to be performed a certificate of their existing marriage; and

Section 114

- (b) furnished to that person a statement in writing, signed by them and witnessed by that person, that:
 - (i) they have previously gone through a form or ceremony of marriage with each other;
 - (ii) they are the parties mentioned in the certificate of marriage produced with the statement; and
 - (iii) they have no reason to believe that they are not legally married to each other or, if their marriage took place outside Australia, they have no reason to believe that it would not be recognized as valid in Australia.
- (6) The provisions of sections 42, 44, 50 and 51 do not apply to or in relation to a religious ceremony of marriage in accordance with subsection (5) and the person by whom, or in whose presence, the ceremony is performed shall not:
 - (a) prepare or issue in respect of it any certificate of marriage under or referring to this Act; or
 - (b) issue any other document to the parties in respect of the ceremony unless the parties are described in the document as being already legally married to each other.
- (7) A person who is not an authorized celebrant does not commit an offence against section 101 by reason only of his or her having performed a religious ceremony of marriage between parties who have complied with the requirements of subsection (5) of this section.

114 Correction of errors in marriage registries

- (1) In this section, *the registrar* means the Registrar of Foreign Marriages or the Registrar of Overseas Marriages.
- (2) Where the registrar is satisfied that a register of marriages kept by the registrar contains an error or a mis-statement in, or an omission from, the particulars of a marriage entered in it, the registrar may correct the register by causing the true particulars of the marriage or the particulars omitted from the register, as the case may be, to be entered in the margin of the register opposite to the entry of the marriage.
- (3) Where the registrar causes particulars to be entered in the margin of a register under this section, the registrar shall sign his or her

name immediately under those particulars and write in the margin the date on which the particulars were so entered.

- (4) The registrar may, before correcting an error, mis-statement or omission under this section, require the true particulars of the marriage, or the particulars omitted from the register, as the case may be, to be verified by the statutory declaration of the parties to the marriage or a person who satisfies the registrar that that person has personal knowledge of those particulars.
- (5) Subject to subsection (6), where a copy of, or extract from, an entry in a register of marriages that has been corrected under this section is issued, the copy or extract shall contain the particulars that would be contained in the entry if the particulars in fact contained in the entry were corrected so as to accord with the particulars entered in the margin of the register.
- (6) A copy of, or extract from, an entry in a register shall contain the particulars contained in the entry and the particulars entered, in relation to the entry, in the margin of the register if the registrar is satisfied that the person requiring a copy or extract has proper reasons for requiring a copy or extract containing those particulars.

115 Publication of lists of authorised celebrants

- (1) The Minister shall cause to be published in such manner as the Minister considers appropriate, as soon as practicable after each 14 March:
 - (a) a list of the persons who are authorized celebrants; and
 - (b) a list of the persons who are prescribed authorities in relation to marriages in Australia.
- (2) The list referred to in paragraph (1)(a) shall show:
 - (a) in respect of each minister of religion registered under Subdivision A of Division 1 of Part IV—his or her full name, designation, address and religious denomination; and
 - (b) in respect of each other person—his or her full name, designation (if any) and address and, where appropriate, the religious body or religious organization to which he or she belongs.
- (3) The list referred to in paragraph (1)(b) shall show the full name, designation (if any) and address of each prescribed authority.

Section 116

- (4) The inclusion of the name of a person in the latest list published in pursuance of paragraph (1)(a) is evidence that that person is an authorized celebrant and inclusion of the name of a person in the latest list published in pursuance of paragraph (1)(b) is evidence that that person is a prescribed authority.

116 Judicial notice of signatures of Registrars, celebrants etc.

- (1) Judicial notice shall be taken of the signature of a person who holds or has held, or is acting or has acted in, the office of:
- (a) Registrar of Foreign Marriages;
 - (b) Deputy Registrar of Foreign Marriages;
 - (c) Registrar of Overseas Marriages; or
 - (d) Deputy Registrar of Overseas Marriages;
- appearing on a document under this Act and of the fact that, at the time the document was signed by the person, he or she held, or was acting in, that office.
- (2) Judicial notice shall be taken of the signature of a person who is, or has been, an authorized celebrant or chaplain appearing on a document under this Act and of the fact that, at the time the document was signed by the person, he or she was an authorized celebrant or chaplain, as the case may be.
- (3) Judicial notice shall be taken of the signature of a person who has, at any time:
- (a) performed the functions of a Judge or magistrate under Part II of this Act or of a Judge under the Part repealed by the *Marriage Amendment Act 1976*;
 - (b) performed the functions of a prescribed authority under this Act; or
 - (c) kept a register under Division 1 of Part IV of this Act;
- appearing on a document under this Act and of the fact that, at the time the document was signed, that person was duly authorized to perform those functions or to keep that register, as the case may be.

117 Evidence of registration etc.

- (1) A certificate under the hand of a person by whom a register under a Subdivision of Division 1 of Part IV (other than Subdivision C of that Division) is kept stating that a specified person was, at a date

specified in the certificate, registered under that Subdivision in the register kept by the first-mentioned person for the purposes of that Subdivision is evidence that the person specified in the certificate was registered under that Subdivision at the date so specified.

- (2) A certificate under the hand of the Minister stating that a person specified in the certificate was not, at a date specified in the certificate, registered under a Subdivision of Division 1 of Part IV (other than Subdivision C of that Division) is evidence that the person specified in the certificate was not registered under that Subdivision at the date so specified.
- (2A) A certificate under the hand of the Minister stating that a specified person was at a specified date:
- (a) a person authorized under section 39 to solemnize marriages at the place and subject to the conditions (if any) specified in the certificate; or
 - (b) an officer or employee of the Commonwealth, a State or a Territory, appointed by the Minister to be a prescribed authority;
- is *prima facie* evidence of the matters stated in the certificate.
- (3) In a prosecution for an offence against this Act, an averment by the prosecutor in the information or complaint that the defendant or any other person specified in the averment is identical with the person specified in a certificate under this section is evidence of that fact.

118 Right of ministers of religion to receive fees

Nothing in this Act affects the right of a minister of religion who is an authorized celebrant to require or receive a fee for or in respect of the solemnization of a marriage.

120 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular:

- (a) prescribing the forms to be used under this Act;

Section 120

- (b) prescribing the practice and procedure in relation to inquiries under Part II by a Judge or a magistrate, including the summoning of witnesses, the production of documents, the taking of evidence on oath or affirmation, the administering of oaths or affirmations and the payment to witnesses of fees and of allowances for expenses;
- (c) prescribing the manner of making application for registration under Division 1 of Part IV;
- (e) prescribing the conditions under which, and the manner in which, marriages solemnized in accordance with the law of an overseas country may be registered under section 84;
- (f) making provision for the recognition in Australia of marriages solemnized under a law in force in a place outside Australia, being a law which makes provision appearing to the Governor-General to be similar to any provision made by Part V;
- (g) requiring the furnishing, to the persons by whom registers of births are kept under a law of the Commonwealth or a State or of any Territory, of information with respect to:
 - (i) legitimations effected by sections 89, 90 and 91; and
 - (ii) orders made under section 92;
- (h) making provision for and in relation to:
 - (i) registration of legitimations effected by sections 89, 90 and 91 in cases where the births of the legitimated children are not registered in any register of births kept under a law of the Commonwealth or a State or of any Territory (including provision requiring the furnishing of information); and
 - (ii) the issue and effect of certificates in respect of any such registration; and
- (j) prescribing penalties not exceeding a fine of \$200 for offences against the regulations.

The Schedule—Persons whose consent is required to the marriage of a minor

Section 14

Part I

Where the Minor is not an Adopted Child

Circumstances in relation to the Minor	Person or persons whose consent is required
1. Where both parents of the minor are alive—	
(a) in any case other than a case to which paragraph (b) or (c) is applicable	Both parents
(b) if the parents live separately and apart—	
(i) if the minor lives permanently with one parent or lives more with one parent than with the other	The parent with whom the minor so lives
(ii) if the minor does not live with either parent and the parents have never been married to each other	The mother
(c) if both parents have been deprived of the custody of the minor by the order of a court	The person or persons having the custody of the minor under the order of the court
2. Where only one parent of the minor is alive—	
(a) if the parents had, at any time, been married to each other—	
(i) if the surviving parent has not been deprived of the custody of the minor by the order of a court	The surviving parent

The Schedule Persons whose consent is required to the marriage of a minor

Circumstances in relation to the Minor	Person or persons whose consent is required
(ii) if the surviving parent has been deprived of the custody of the minor by the order of a court	The person or persons having the custody of the minor under the order of the court
(b) if the parents had never been married to each other—	
(i) if the surviving parent is the mother and she has not been deprived of the custody of the minor by the order of a court	The mother
(ii) if the surviving parent is the mother and she has been deprived of the custody of the minor by the order of a court	The person or persons having the custody of the minor under the order of the court
(iii) if the surviving parent is the father—	
(A) if the minor lives permanently with the father	The father
(B) if the minor does not live permanently with the father and there is or are a guardian or guardians of the minor	The guardian or guardians
(C) if the minor does not live permanently with the father and there is no guardian of the minor	A prescribed authority

Circumstances in relation to the Minor	Person or persons whose consent is required
3. Where both parents of the minor are dead—	
(a) if there is or are a guardian or guardians of the minor	The guardian or guardians
(b) if there is no guardian of the minor	A prescribed authority

Part III

Where the Minor is an Adopted Child

Circumstances in relation to the Minor	Person or persons whose consent is required
1. Where the minor was adopted by a husband and wife jointly	The person or persons who would be the prescribed person or persons under Part I of this Schedule if the minor had been born in lawful wedlock to his or her adoptive parents
2. Where the minor was adopted by one person only—	
(a) if the adoptive parent is alive and has not been deprived of the custody of the minor by the order of a court	The adoptive parent
(b) if the adoptive parent is alive but has been deprived of the custody of the minor by the order of a court	The person who has the custody of the minor under the order of the court
(c) if the adoptive parent is dead—	
(i) if there is or are a guardian or guardians of the minor	The guardian or guardians
(ii) if there is no guardian of the minor	A prescribed authority

Table of Acts**Notes to the *Marriage Act 1961*****Note 1**

The *Marriage Act 1961* as shown in this compilation comprises Act No. 12, 1961 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 24 November 2000 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Marriage Act 1961</i>	12, 1961	6 May 1961	Ss. 1–3, 5(1) and 9, Part III (ss. 22–24), Part VIII (ss. 107–110) and s. 120: 6 May 1961 Remainder: 1 Sept 1963 (<i>see Gazette</i> 1963, p. 1977)	
<i>Statute Law Revision (Decimal Currency) Act 1966</i>	93, 1966	29 Oct 1966	1 Dec 1966	—
<i>Marriage Act 1973</i>	35, 1973	27 May 1973	1 July 1973 (<i>see Gazette</i> 1973, No. 70, p. 3)	Ss. 8(2) and 12(2)
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
<i>Marriage Amendment Act 1976</i>	209, 1976	20 Dec 1976	Ss. 1, 2 and 30: Royal Assent 1 July 1976 Remainder: 20 June 1977 (<i>see Gazette</i> 1977, No. S93)	Ss. 2(4), 14(2), 15(2), 23(2) and 30
<i>Domicile (Consequential Amendments) Act 1982</i>	2, 1982	4 Mar 1982	1 July 1982 (<i>see</i> s. 2 and <i>Gazette</i> 1982, No. G26, p. 2)	—
<i>Marriage Amendment Act 1985</i>	7, 1985	29 Mar 1985	Ss. 4, 10–13 and 23: 7 Apr 1986 (<i>see Gazette</i> 1986, No. S153) Remainder: 26 Apr 1985	Ss. 8(2), (3) and 25(2)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Statute Law (Miscellaneous Provisions) Act 1988</i>	38, 1988	3 June 1988	S. 3: Royal Assent (a)	—
<i>Law and Justice Legislation Amendment Act 1990</i>	115, 1990	21 Dec 1990	S. 49: Royal Assent (b)	—
<i>Sex Discrimination Amendment Act 1991</i>	71, 1991	25 June 1991	Part 3 (ss. 11–17): 1 Aug 1991 (c)	Ss. 3 and 17
<i>Territories Law Reform Act 1992</i>	104, 1992	30 June 1992	S. 24: 1 July 1992 (d)	—
<i>Witness Protection Act 1994</i>	124, 1994	18 Oct 1994	18 Apr 1995	—
<i>Family Law Reform (Consequential Amendments) Act 1995</i>	140, 1995	12 Dec 1995	Schedule 1 (Part 7): 11 June 1996 (see s. 2(4) and <i>Gazette</i> 1996, No. GN5) (e)	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 5 (item 79): Royal Assent (f)	—
<i>Law and Justice Legislation Amendment Act 1999</i>	125, 1999	13 Oct 1999	Schedule 13: Royal Assent (g)	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<i>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</i>	24, 2001	6 Apr 2001	S. 4(1), (2) and Schedule 34: (h)	S. 4(1) and (2) [see Table A]
<i>Marriage Amendment Act 2002</i>	77, 2002	8 Oct 2002	Schedule 2 (items 1–14, 16–56): 5 Nov 2002 Schedule 2 (item 15): 8 Apr 2003 Schedule 1: 1 Sept 2003 (see <i>Gazette</i> 2003, No. GN31) Remainder: Royal Assent	Sch. 1 (item 27) and Sch. 2 (items 5, 10, 17) [see Table A]
<i>Marriage Amendment Act 2004</i>	126, 2004	16 Aug 2004	16 Aug 2004	—
<i>Family Law Amendment (Shared Parental Responsibility) Act 2006</i>	46, 2006	22 May 2006	Schedule 4 (items 114–117): 1 July 2006	—

Act Notes

- (a) The *Marriage Act 1961* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1988*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (b) The *Marriage Act 1961* was amended by section 49 only of the *Law and Justice Legislation Amendment Act 1990*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (c) The *Marriage Act 1961* was amended by Part 3 (sections 11–17) only of the *Sex Discrimination Act 1991*, subsection 2(1) of which provides as follows:
- (1) Part 1, sections 4, 7 and 8, Parts 3 and 4 and the Schedule commence on 1 August 1991.
- (d) The *Marriage Act 1961* was amended by section 24 only of the *Territories Law Reform Act 1992*, subsection 2(3) of which provides as follows:
- (3) The remaining provisions of this Act commence on 1 July 1992.
- (e) The *Marriage Act 1961* was amended by Schedule 1 (Part 7) by the *Family Law Reform (Consequential Amendments) Act 1995*, subsection 2(4) of which provides as follows:
- (4) The amendments made by Part 7 of Schedule 1 commence on the commencement of section 5 of the *Family Law Reform Act 1995*.
- (f) The *Marriage Act 1961* was amended by Schedule 5 (item 79) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (g) The *Marriage Act 1961* was amended by Schedule 13 only of the *Law and Justice Legislation Amendment Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (h) The *Marriage Act 1961* was amended by Schedule 34 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
 - (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;

Item 15 commenced on 24 May 2001.

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part I	
S. 2.....	am. No. 209, 1976; No. 7, 1985
S. 3.....	rep. No. 216, 1973
S. 4.....	am. No. 209, 1976 rep. No. 38, 1988
S. 5.....	am. No. 35, 1973; No. 209, 1976; No. 2, 1982; No. 7, 1985; No. 38, 1988; No. 104, 1992; No. 77, 2002; No. 126, 2004
S. 5A.....	ad. No. 24, 2001
S. 6.....	rs. No. 209, 1976
S. 7.....	am. No. 209, 1976; No. 7, 1985
S. 8.....	am. No. 209, 1976; No. 7, 1985; No. 104, 1992
S. 9.....	am. No. 209, 1976; No. 77, 2002
S. 9A.....	ad. No. 209, 1976 am. No. 77, 2002
Part IA	
Heading to Part IA.....	am. No. 7, 1985
Part IA.....	ad. No. 209, 1976
S. 9B.....	ad. No. 209, 1976 am. No. 7, 1985; No. 38, 1988
S. 9C.....	ad. No. 209, 1976 am. No. 7, 1985; No. 38, 1988; No. 115, 1990
Heading to s. 9D.....	am. No. 140, 1995
S. 9D.....	ad. No. 209, 1976 am. No. 7, 1985; No. 38, 1988; No. 140, 1995 rep. No. 46, 2006
S. 9E.....	ad. No. 209, 1976 am. No. 7, 1985; No. 38, 1988
Part II	
S. 10.....	am. No. 209, 1976
S. 11.....	am. No. 209, 1976; No. 7, 1985 rs. No. 71, 1991
S. 12.....	am. No. 35, 1973; No. 209, 1976; No. 7, 1985; No. 71, 1991
S. 13.....	am. No. 35, 1973; No. 209, 1976; No. 7, 1985; No. 77, 2002
S. 14.....	am. No. 209, 1976; No. 7, 1985
S. 15.....	am. No. 7, 1985
S. 16.....	am. No. 209, 1976; No. 7, 1985; No. 140, 1995; No. 46, 2006
S. 17.....	am. No. 209, 1976; No. 7, 1985
S. 19.....	am. No. 209, 1976; No. 7, 1985
S. 20.....	am. No. 7, 1985
S. 21.....	am. No. 209, 1976; No. 7, 1985

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part III	
Part III.....	rs. No. 209, 1976
Division 1	
Heading to Div. 1 of Part III.....	ad. No. 7, 1985
Ss. 22, 23.....	rs. No. 209, 1976 am. No. 7, 1985
Division 2	
Div. 2 of Part III.....	ad. No. 7, 1985
Ss. 23A, 23B.....	ad. No. 7, 1985
S. 24.....	rep. No. 209, 1976
Part IV	
Division 1	
Heading to Div. 1 of Part IV.....	rs. No. 77, 2002
Subdivision A	
Heading to Subdiv. A of Div. 1 of Part IV.....	ad. No. 77, 2002
S. 25.....	am. No. 7, 1985; No. 77, 2002
S. 27.....	am. No. 38, 1988; No. 77, 2002
S. 28.....	am. No. 77, 2002
Heading to s. 29.....	am. No. 77, 2002
S. 29.....	am. No. 209, 1976; No. 7, 1985; No. 77, 2002
S. 30.....	am. No. 7, 1985; No. 77, 2002
S. 31.....	am. No. 35, 1973; No. 7, 1985; No. 77, 2002
S. 32.....	am. No. 77, 2002
S. 33.....	am. No. 209, 1976; No. 7, 1985; No. 77, 2002
S. 34.....	rs. No. 209, 1976 am. No. 7, 1985; No. 77, 2002
S. 35.....	am. No. 209, 1976; No. 7, 1985; No. 77, 2002
S. 36.....	am. No. 7, 1985
S. 37.....	am. No. 77, 2002
S. 38.....	rs. No. 35, 1973 am. No. 7, 1985; No. 38, 1988; No. 77, 2002
Subdivision B	
Heading to Subdiv. B of Div. 1 of Part IV.....	ad. No. 77, 2002
Heading to s. 39.....	am. No. 77, 2002
S. 39.....	am. No. 7, 1985; No. 38, 1988; No. 77, 2002
Subdivision C	
Subdiv. C of Div. 1 of Part IV....	ad. No. 77, 2002
Ss. 39A–39M.....	ad. No. 77, 2002
Division 2	
S. 40.....	am. No. 7, 1985

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 42.....	am. No. 35, 1973; No. 209, 1976; No. 7, 1985; No. 38, 1988; No. 77, 2002
S. 42A.....	ad. No. 124, 1994
S. 44.....	am. No. 209, 1976
S. 45.....	am. No. 209, 1976; No. 7, 1985
S. 46.....	am. No. 209, 1976; No. 7, 1985; No. 38, 1988
S. 47.....	am. No. 43, 1996
S. 48.....	am. No. 209, 1976
S. 49.....	am. No. 7, 1985
S. 50.....	am. No. 35, 1973; No. 209, 1976; No. 7, 1985; No. 38, 1988
S. 51.....	am. No. 35, 1973; No. 209, 1976; No. 7, 1985; No. 38, 1988; No. 43, 1996; No. 125, 1999
Division 3	
S. 52.....	am. No. 209, 1976
S. 54.....	am. No. 209, 1976 rs. No. 77, 2002
S. 55.....	am. No. 216, 1973; No. 209, 1976 rs. No. 7, 1985
S. 56.....	am. No. 7, 1985
S. 57.....	am. No. 7, 1985; No. 38, 1988
S. 58.....	am. No. 209, 1976; No. 7, 1985; No. 38, 1988
S. 59.....	am. No. 7, 1985
Part V	
Heading to Part V.....	rs. No. 77, 2002
Div. 1 of Part V.....	rep. No. 77, 2002
S. 60.....	rep. No. 77, 2002
S. 61.....	am. No. 209, 1976; No. 7, 1985; No. 38, 1988 rep. No. 77, 2002
S. 62.....	am. No. 7, 1985; No. 38, 1988 rep. No. 77, 2002
S. 63.....	am. No. 209, 1976; No. 7, 1985; No. 38, 1988 rep. No. 77, 2002
S. 64.....	am. No. 7, 1985 rep. No. 77, 2002
Div. 2 of Part V.....	rep. No. 77, 2002
S. 65.....	rep. No. 77, 2002
S. 66.....	am. No. 209, 1976; No. 7, 1985; No. 38, 1988 rep. No. 77, 2002
S. 67.....	am. No. 209, 1976; No. 7, 1985 rep. No. 77, 2002
S. 68.....	am. No. 209, 1976; No. 7, 1985; No. 38, 1988 rep. No. 77, 2002
S. 69.....	am. No. 209, 1976 rep. No. 77, 2002
S. 70.....	rep. No. 77, 2002

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 3	
Heading to Div. 3 of Part V.....	rs. No. 77, 2002
S. 72.....	am. No. 209, 1976
Division 4	
S. 73.....	am. No. 209, 1976; No. 7, 1985
Heading to s. 74.....	am. No. 77, 2002
S. 74.....	am. No. 7, 1985; No. 77, 2002
Heading to s. 75.....	am. No. 77, 2002
S. 75.....	am. No. 7, 1985; No. 77, 2002
S. 76.....	am. No. 209, 1976; No. 7, 1985; No. 77, 2002
S. 77.....	am. No. 209, 1976; No. 7, 1985; No. 71, 1991; No. 77, 2002
S. 78.....	am. No. 7, 1985; No. 38, 1988; No. 71, 1991; No. 77, 2002
Heading to s. 79.....	am. No. 77, 2002
S. 79.....	am. No. 7, 1985; No. 77, 2002
S. 80.....	am. No. 209, 1976; No. 7, 1985; No. 38, 1988; No. 77, 2002
S. 81.....	am. No. 77, 2002
S. 83.....	am. No. 209, 1976; No. 77, 2002
Heading to s. 84.....	am. No. 77, 2002
S. 84.....	am. No. 7, 1985; No. 77, 2002
S. 85.....	am. No. 209, 1976; No. 7, 1985; No. 38, 1988; No. 77, 2002
S. 86.....	am. No. 38, 1988
Part VA	
Part VA.....	ad. No. 7, 1985
S. 88A.....	ad. No. 7, 1985
S. 88B.....	ad. No. 7, 1985 am. No. 126, 2004
S. 88C.....	ad. No. 7, 1985
Ss. 88D, 88E.....	ad. No. 7, 1985 am. No. 71, 1991
S. 88EA.....	ad. No. 126, 2004
Ss. 88F, 88G.....	ad. No. 7, 1985 am. No. 71, 1991
Part VI	
S. 89.....	am. No. 209, 1976; No. 7, 1985
S. 90.....	rs. No. 7, 1985
S. 91.....	am. No. 209, 1976; No. 7, 1985
S. 92.....	am. No. 209, 1976; No. 7, 1985; No. 38, 1988; No. 77, 2002
S. 93.....	am. No. 7, 1985; No. 38, 1988
Part VII	
S. 94.....	am. No. 35, 1973; No. 209, 1976; No. 7, 1985; No. 24, 2001
S. 95.....	am. No. 93, 1966; No. 35, 1973; No. 209, 1976; No. 7, 1985; No. 24, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 96, 97	am. No. 93, 1966; No. 209, 1976; No. 7, 1985 rep. No. 137, 2000
Heading to s. 98	rs. No. 137, 2000
S. 98	am. No. 93, 1966; No. 209, 1976; No. 7, 1985; No. 137, 2000
S. 99	am. No. 93, 1966; No. 209, 1976; No. 7, 1985; No. 77, 2002
Ss. 100, 101	am. No. 93, 1966; No. 209, 1976; No. 7, 1985
S. 102	am. No. 93, 1966; No. 209, 1976; No. 7, 1985 rep. No. 137, 2000
S. 103	am. No. 93, 1966; No. 209, 1976
S. 104	am. No. 93, 1966; No. 209, 1976; No. 77, 2002
S. 105	am. No. 93, 1966; No. 209, 1976; No. 24, 2001
S. 106	am. No. 93, 1966; No. 209, 1976; No. 7, 1985; No. 24, 2001
Part VIII	
S. 107	am. No. 209, 1976; No. 7, 1985
S. 108	am. No. 209, 1976; No. 7, 1985; No. 137, 2000
S. 109	am. No. 209, 1976; No. 7, 1985
S. 110	am. No. 209, 1976; No. 7, 1985 rep. No. 77, 2002
Part IX	
S. 111	am. No. 209, 1976; No. 7, 1985
S. 111A	ad. No. 209, 1976
Ss. 112, 113	am. No. 209, 1976; No. 7, 1985
S. 114	am. No. 7, 1985
S. 115	am. No. 209, 1976; No. 7, 1985; No. 38, 1988; No. 77, 2002
S. 116	am. No. 209, 1976; No. 7, 1985; No. 77, 2002
S. 117	am. No. 209, 1976; No. 7, 1985; No. 38, 1988; No. 77, 2002
S. 119	am. No. 209, 1976 rep. No. 7, 1985
S. 120	am. No. 93, 1966; No. 209, 1976; No. 38, 1988; No. 77, 2002
The Schedule	
The Schedule	am. No. 35, 1973; No. 38, 1988

Table A

Table A

Application, saving or transitional provisions

Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 (No. 137, 2000)

Schedule 2

418 Transitional—pre-commencement offences

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
 - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
 - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

419 Transitional—pre-commencement notices

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
 - (b) any or all of those other provisions are repealed by this Schedule; and
 - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

Table A

Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001 (No. 24, 2001)

4 Application of amendments

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Marriage Amendment Act 2002 (No. 77, 2002)

Schedule 1**27 Registration of existing marriage celebrants**

- (1) In this item:

existing marriage celebrant means a person:

 - (a) in respect of whom an instrument made under subsection 39(2) of the *Marriage Act 1961* was in force immediately before the commencement of item 18 of this Schedule; and
 - (b) who was not authorized by that instrument to solemnize marriages as an officer of a State or Territory.
- (2) Each existing marriage celebrant is taken to have been registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961* as a marriage celebrant on the date of the commencement of item 18 of this Schedule.
- (3) As soon as practicable after the commencement of item 18 of this Schedule, the Registrar of Marriage Celebrants must enter in the register of marriage celebrants all details relating to the person that are required by regulations made for the purposes of subsection 39D(5) to be entered in the register in respect of a person who is registered as a marriage celebrant.

Table A

Schedule 2

5 Application of items 4 and 56

The amendments made by items 4 and 56 apply in relation to appointments of prescribed authorities made after those items commence.

10 Application of item 9

The amendment made by item 9 applies in relation to notices of intention to marry given after the item commences.

17 Application of item 16

The amendment made by item 16 applies in relation to Proclamations declared after the item commences.