

Marriage Act 1973

No. 35 of 1973

AN ACT

To amend the *Marriage Act* 1961-1966.

[Assented to 27 May 1973]

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

1. (1) This Act may be cited as the *Marriage Act* 1973.
- (2) The *Marriage Act* 1961-1966* is in this Act referred to as the Principal Act.
- (3) The Principal Act, as amended by this Act, may be cited as the *Marriage Act* 1961-1973.
2. This Act shall come into operation on a date to be fixed by Proclamation.
3. Section 5 of the Principal Act is amended by omitting from the definition of “minor” in sub-section (1) the word “twenty-one” and substituting the word “eighteen”.

Short title
and citation.

Commence-
ment.

Interpre-
tation.

* Act No. 12, 1961, as amended by No. 93, 1966.

Authoriza-
tion of
marriage of
person under
age of 18
or 16 years
in excep-
tional
circum-
stances.

4. Section 12 of the Principal Act is amended by omitting from sub-section (1) the words "to a Judge in a".

Marriage of
minor not
to be
solemnized
without
consent of
parents, &c.

5. Section 13 of the Principal Act is amended by inserting in paragraph (b) of sub-section (2), after the words "Consular Officer," the words "a minister of religion of that place,".

Applicant
may be
refused
registration
in certain
circum-
stances.

6. Section 31 of the Principal Act is amended by omitting sub-sections (2) and (3).

7. Section 38 of the Principal Act is repealed and the following section substituted:—

Registrars
to furnish
information
to Attorney-
General.

"38. Each Registrar shall, if the Secretary to the Attorney-General's Department so requests, furnish to the Secretary—

- (a) a list of ministers of religion registered by him under this Division 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 him under this Division made during that period."

Notice to be
given and
declaration
made.

8. (1) Section 42 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of sub-section (1) the words "the ninetieth day" and substituting the words "three months"; and
- (b) by omitting from paragraph (b) of sub-section (2) the words "or a justice of the peace" and substituting the words "a justice of the peace, a barrister or solicitor, a legally qualified medical practitioner or a member of the Police Force of the Commonwealth or of a State or Territory".

(2) A notice duly given under paragraph 42 (1) (a) of the Principal Act before the date of commencement of this Act shall be deemed to have been duly given under paragraph 42 (1) (a) of the Principal Act as amended by this Act.

9. Section 50 of the Principal Act is amended—

Marriage
certificates.

(a) by inserting after sub-section (1) the following sub-section:—

“(1A) Notwithstanding paragraph (b) of sub-section (1), the regulations may provide that the person for the time being holding or acting in a specified office of a specified State or Territory shall prepare only one official certificate under that paragraph.”;

(b) by inserting in sub-section (3), after the word “certificates”, the words “or the official certificate, as the case may be.”; and

(c) by omitting sub-section (4) and substituting the following sub-section:—

“(4) The authorized celebrant shall hand the certificate referred to in paragraph (a) of sub-section (1) to one of the parties to the marriage on behalf of the parties, and—

(a) where two official certificates have been prepared—

(i) within fourteen days after the solemnization of the marriage, forward the official certificate to which sub-section (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 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 one official certificate has been prepared – retain that certificate and deal with it in accordance with the regulations.”.

10. Section 51 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-sections:—

Incorrect
marriage
certificates.

“(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 him, within a period (not being less than seven days from the date of service of the notice) specified in the notice, the certificate required, by sub-section (4) of section 50, to be handed to a party to the marriage.

“(3) A notice referred to in sub-section (2) or (2A) may be served by post.”.

Bigamy

11. Section 94 of the Principal Act is amended by inserting after sub-section (7) the following sub-section:—

“(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.”.

**Marrying
person not of
marriageable
age, &c.**

12. (1) Section 95 of the Principal Act is amended by omitting from paragraph (a) of sub-section (4) the word “twenty-one” and substituting the word “eighteen”.

(2) The amendment made by sub-section (1) does not affect proceedings for an offence against sub-section 95 (2) of the Principal Act committed before the commencement of this Act.

**The
Schedule.**

13. The Schedule to the Principal Act is amended by omitting Parts I and II and substituting the following Part:—

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 (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 (ii) if the minor does not live with either parent and the parents have never been married to each other (c) if both parents have been deprived of the custody of the minor by the order of a court	Both parents The parent with whom the minor so lives The mother 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 (ii) if the surviving parent has been deprived of the custody of the minor by the order of a 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 (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 (iii) if the surviving parent is the father— (A) if the minor lives permanently with 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 (C) if the minor does not live permanently with the father and there is no guardian of the minor	The surviving parent The person or persons having the custody of the minor under the order of the court The mother The person or persons having the custody of the minor under the order of the court The father The guardian or guardians A prescribed authority
3. Where both parents of the minor are dead— (a) if there is or are a guardian or guardians of the minor (b) if there is no guardian of the minor	The guardian or guardians A prescribed authority