



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

GUIDELINES FOR CATHOLIC CIVIL CELEBRANTS OF MARRIAGE

The Commonwealth of Australia recognises marriages celebrated within Australia, provided they are celebrated by a celebrant authorised by the Commonwealth. All such celebrants belong to one of three categories:

- State officers in registry offices and magistrates courts appointed to officiate at marriages;
- Commonwealth registered marriage celebrants who perform civil (nonreligious) marriage ceremonies;
- Commonwealth registered marriage celebrants, presented by ecclesiastical authorities, who perform religious marriage ceremonies.

Each of these celebrants is performing a public civic office for the Commonwealth. The religious marriage celebrants act in the dual capacity of performing the public civic office as well as the religious office of the religious body that has presented them.

As regards the religious marriage celebrants presented by the Catholic Church to officiate at marriages celebrated according to the rites of the Catholic Church: provided the Commonwealth appoints the person presented by a competent Catholic authority, and provided that person observes Catholic canon law and ritual, the celebrant is acting licitly as regards Catholic theology.

All other marriage celebrants are essentially identical in so far as they are performing a public office on behalf of the Commonwealth of Australia, and are not agents or officials of any religious group.

Catholic canon law and moral theology have never restricted Catholic laypersons from exercising public civic office within their own nation, state or municipality. The only restrictions have been on clerics; and at present clerics, but not laypersons, are forbidden to assume public office whenever it means sharing in the exercise of civil power (can. 285 §3).¹

The Catholic position over the last century has been consistent and firm. Civil authority claims the right to solemnise civilly marriage and to dissolve civilly marriage by divorce. The civil effects of marriage are not necessarily identical with its ecclesial recognition, whether by Catholic authority or by the authority of any other religious body. The judge or civil authority is merely declaring what the civil law is, and how it affects the external relations of the citizens, without any reference to the religion or conscience of individuals. At any event, there are occasions when the Catholic Church advises individual Catholics to seek civil divorce² or marry civilly.³ Consequently, seeking these merely civil effects or results is quite licit. The comparatively modern civic office of civil marriage celebrant is not essentially different from the traditional civil registrar of marriages, and the Holy See has never issued a prohibition against Catholics holding such an office.

¹ However, can. 288 releases permanent deacons from this prohibition.

² For example, in conjunction with ecclesiastical cases of nullity of marriage, or Papal dissolutions *in favorem fidei*.

³ For example, to couples whose marriage is ecclesiastically valid but civilly invalid or non-existent.

This has been discussed at length and repeatedly by approved canonical authors⁴ and in canonical writing.⁵ The earlier writings were motivated by whether a Catholic judge could preside over civil divorce cases, or deal with other issues where the civil laws were inimical to Catholic moral theology. The discussions soon widened to embrace Catholics occupying any office that administers or executes the civil legislation. In 1949, Pope Pius XII taught that Catholic judges can pronounce a divorce in countries where divorce is recognised by law, as long as he/she judges only concerning the civil effects.⁶

Naturally, a Catholic authorised to officiate at civil marriage ceremonies, may not preside over a ceremony that is religious or quasi-religious, as this could be perceived as a form of simulation of a Catholic wedding. Such a Catholic celebrant should refuse to pray prayers, read Scripture readings or invoke a blessing; on the contrary, he/she must ensure he/she is in reality only a civil celebrant and not perceived as an agent of the Church. Moreover, diocesan bishops, parish priests, and the canonical administrators of other ecclesiastical property should ensure that ecclesiastical property is not normally used for merely civil celebrations.

A Catholic civil celebrant officiating at a marriage of which one or both of the parties are bound to the canonical form of marriage is not cooperating in an immoral or sacrilegious act for two reasons: 1. Australia's privacy legislation does not permit a celebrant to ask questions about an individual's religious affiliation; and 2. the celebrant is merely witnessing the exchange of vows (emitted by the parties) according to civil law.

⁴ For example, T. Bouscaren, A. Ellis & F. Korth, *Canon Law: A Text and Commentary*, Bruce, Milwaukee: 1966, pp. 638-9; F. Capello, *Tractatus Canonico-Moralis de Sacramentis, Vol. V - De Matrimonio*, Marietti, Taurini: 1950, pp. 834-44; H. Davis, *Moral and Pastoral Theology*, Sheed & Ward, London: 1935, vol. 4, pp. 233-5; E. Genicot, *Institutiones Theologiae Moralis*, Collegium Louvaniense, Bruxellis: 1951, vol. 2, pp. 486-91; B. Häring, *The Law of Christ*, Mercier, Cork: 1963, vol. 2, pp. 510-12; A. Lehmkuhl, *Compendium Theologiae Moralis*, Herder, Friburgi Brisgoviae: 1887, pp. 502-03; D. Prümmer, *Handbook of Moral Theology*, Mercier, Cork: 1956, p. 463; M. Zalba, *Theologiae Moralis Compendium*, Biblioteca de Auctores Christianos, Matriti: 1958, vol. 2, pp. 147-8.

⁵ For example, E. Burke, *The Legal Profession in Regard to Separation and Divorce Cases (The Jurist*, 15[1955], pp. 422-33); J. Madden, *Members of the Legal Profession and Civil Divorce (Australasian Catholic Record [=ACR]*, 27[1950], pp. 142-9); C. Roberts, *The Catholic Lawyer in Petitions for Divorce (ACR*, 4[1927], pp. 128-30).

⁶ Pius XII, *Allocution to Italian Catholic Jurists*, 6 Nov. 1949 (*Acta Apostolicae Sedis*, 41 [1949], pp. 597-604).