



WESTERN AUSTRALIA.

ANNO DECIMO

VICTORIÆ REGINÆ.

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No. XVIII.

**An Ordinance to repeal the existing Laws respecting the Solemnization of Matrimony; and to make other regulations respecting the same.**

**W**HEREAS an Act was passed in the fourth and fifth years of Preamble.  
the reign of Her present Majesty, entitled "an Act to regulate the solemnization of Matrimony in the colony of Western

Australia:" and whereas it is expedient to repeal the same, and to make other regulations in lieu thereof;—Be it therefore enacted, by his His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, that the said Act shall be and the same is hereby repealed, save and except so far as relates to any act, matter, or thing heretofore done under the provisions of the said Act, or to any penalty or forfeiture which shall have been incurred under the said Act.

4th & 5th Vict. No. 10 repealed.

Alteration of titles.

II. AND be it enacted, that the word Registrar and Registrar-General shall throughout this Ordinance be deemed and taken to mean the Registrar and Registrar-General respectively of Births, Deaths, and Marriages.

Exception of marriages according to the Church of England.

Proviso, certificate may be used for banns, and presence of Registrar required.

III. AND be it enacted, that notwithstanding any thing in this Ordinance contained, marriage may be solemnized by persons in holy orders of the Church of England according to the rites and rubric of that Church;—Provided always that the Registrar's certificate if tendered shall be used and stand instead of publication of banns; and that marriages may be solemnized in any place employed for public devotion according to the forms of the Church of England; Provided also, that every such marriage be solemnized in the presence of a Registrar or his Deputy, and of two Witnesses.

License may be issued by Ordinary, or Governor, or person authorised.

Proviso, declaration required.

IV. AND be it enacted, that licenses or dispensations for marriages according to the rights of the church of England without banns, may be issued by any person having episcopal authority or the jurisdiction of Ordinary within this colony, or in the absence of of such jurisdiction or authority, by the Governor or any other person appointed for that purpose under the hand of the Governor, and of whose appointment notice shall be given in the Government Gazette; and for every such licence it shall be lawful to demand and receive the sum of two pounds, to be appropriated in like manner as fees for the like license in England; Provided always, that before any such license shall be issued, the like declaration shall be made and subscribed before the person issuing the same as is hereinafter required in the case of a registrar's license; and that in all proceedings at law or otherwise having relation to any marriage under any such license, proof of any such marriage shall be deemed proof of such declaration having been made, unless evidence of the contrary be adduced.

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V. AND be it enacted, that in every case of marriage to be solemnized in this colony after the passing of this Ordinance (unless by such license as aforesaid, or by a Registrar's license, or after publication of banns by a Minister of the Church of England, or in pursuance of some proceeding heretofore taken under the provisions of the said Act hereby repealed) one of the parties shall give notice under his or her hand, in the form of schedule A to this Ordinance annexed, or to the like effect, to the Registrar of the district within which the parties shall have dwelt for not less than seven days then next preceding, or, if the parties dwell in the districts of different Registrars, shall give the like notice to the Registrar of each district; provided that if either party shall have dwelt in the place stated in the notice during more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards.

Notice necessary, unless for marriage by license or banns.

VI. AND be it enacted, that the Registrar shall file all such notices and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice fairly in a book to be for that purpose furnished to him at the public expence by the Colonial Secretary, to be called the Marriage Notice Book; and the marriage notice book shall be open at all reasonable times without fee to all persons desirous of inspecting the same; and every such notice, or a true and exact copy thereof under the hand of the Registrar, shall be suspended in some conspicuous place in his office during twenty-one successive days before any marriage shall be solemnized in pursuance of such notice.

Notice to be filed, and a copy suspended in office for 21 days.

VII. AND be it enacted, that after the expiration of twenty-one days from such entry, the Registrar, upon being requested so to do by or on behalf of the party by whom the notice was given, shall issue under his hand a certificate in the form of schedule B to this Ordinance annexed, or to the like effect, provided that no lawful impediment be shewn to the satisfaction of the Registrar why such certificate should not issue, and provided that the issue of such certificate shall not have been sooner forbidden in manner hereinafter mentioned.

After 21 days from entry certificate may be issued if not forbidden.

VIII. AND be it enacted, that any person authorised in that behalf may forbid the issue of the Registrar's certificate by writing at any time before the issue thereof the word "forbidden" opposite to the entry of the notice of such intended marriage in the marriage notice book,

Certificate may be forbidden.

and by subscribing thereto his or her name, and his or her place of abode, and his or her character in respect of either of the parties, by reason of which he or she is so authorised; and in case the issue of any such certificate shall have been so forbidden, the notice and all proceedings thereon shall be utterly void; and every person whose consent to a marriage by certificate is hereinafter required, is hereby authorised to forbid the issue of the Registrar's certificate.

Consent of Parent or  
Guardian.

IX. AND be enacted, that the father, if living, of any party under twenty-one years of age (such party not being a widower or widow), or, if the father shall be dead, the guardian or guardians of the person of the party so under age lawfully appointed, or one of them, and in case there shall be no such guardian then the mother, if unmarried, of such party, shall have authority to give consent to the marriage of such party; and such consent is hereby required for the marriage of such party so under age, whether by license, by whomsoever issued, or by certificate.

In certain cases, Civil  
Court may give official  
consent.

X AND be it enacted, that the father or mother, guardian or guardians of any party desirous to be married and under age as aforesaid, shall be "non compos mentis," or shall be absent from the colony, or if any such guardian or guardians shall from undue motive refuse his, her, or their consent to a proper marriage, it shall be lawful for such party so desirous of being married to apply by petition to the Civil Court of this colony, which is hereby empowered to proceed upon such petition in a summary way, and in case the marriage proposed shall upon examination appear to be proper, the said Court shall judicially declare the same to be so; and such judicial declaration shall be deemed to be as good and effectual to all intents and purposes as if the guardian or guardians of the person so petitioning had consented to such marriage.

Registrar may grant li-  
censes, but not for marri-  
age in Church of England  
building.

XI. AND be it enacted, that every Registrar shall have authority to grant licenses for marriage in any place of worship (save as hereinafter excepted) or other public building within his district, or in his office, in the form of schedule C to this Ordinance annexed;— Provided that nothing herein contained shall authorise any Registrar to grant any license for any marriage according to the rites of the Church of England, or for any marriage to be solemnized in any building usually employed for public devotion according to such rites.

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XII. AND be it enacted, that before any license or certificate <sup>Declaration.</sup> for marriage shall be granted by any such Registrar, one of the parties intending marriage shall appear personally before such Registrar, and in case the notice of such intended marriage shall not have been given to such Registrar, shall deliver to him the certificate of the Registrar or Registrars to whom such notice shall have been given, and such party shall make and subscribe a solemn affirmation or declaration that he or she believeth that there is not any impediment of kindred or alliance, or other lawful hindrance to the said marriage, and that one of the said parties hath for the space of fifteen days immediately before the day of the grant of such license had his or her usual place of abode within the district within which such marriage is to be solemnized, and where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, that the consent of the person or persons, whose consent to such marriage is required by law, has been obtained thereto, or in lieu thereof a judicial approval as hereinbefore provided.

XIII. AND be it enacted, that any person may enter a caveat <sup>Caveat.</sup> with the Registrar against the grant of a license or certificate for the marriage of any person named therein; and if any caveat be so entered and be duly signed by or on behalf of the person entering the same, together with his or her place of residence, and the ground of objection, on which such caveat is founded, no license or certificate shall be granted until the Registrar shall have examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of a license or certificate for the said marriage, or until the caveat be withdrawn by the party who entered the same; provided that in cases of doubt it shall be lawful for the Registrar to refer the matter of any such caveat to the Registrar-General, who shall decide upon the same; provided likewise, that in case of the Registrar refusing the grant of the license or certificate, the person applying for the same shall have the right of appeal to the Registrar-General, who shall thereupon either confirm the refusal or direct the grant of the license or certificate.

XIV. AND be it enacted, that no marriage after such notice as <sup>Marriage not to be solemnized until 21 days after notice.</sup> aforesaid, unless by virtue of a license, shall be solemnized or registered until after the expiration of twenty-one days after the day of the entry of such notice as aforesaid.

License and certificate  
to be void after 3 months.

XV. AND be it enacted, that whenever a marriage shall not be had within three calendar months after the date of a Registrar's licence issued therefor, or within three calendar months after the notice shall have been so entered as aforesaid, such licence, and such notice and any certificate granted thereupon, shall be utterly void; and no person shall proceed to solemnize the marriage, nor shall any Registrar register the same, until a new license shall have been issued, or a new notice given and certificate granted in manner aforesaid.

Certificate to be exhib-  
ited to Minister, and deli-  
vered to Registrar.

XVI. AND be it enacted, that the Registrar's certificate, or in case the parties shall have given notice to the Registrars of different districts, the certificate of each Registrar, shall be exhibited to the officiating Minister, and shall be delivered to the Registrar present at the marriage.

Solemnization of mar-  
riage.

XVII. AND be it enacted, that immediately after the issue of a Registrar's license, or after the expiration of the said period of twenty-one days, if the marriage is to be by certificate, marriages may be solemnized in the Church, Registrar's office, or other public building stated in the Registrar's license or notice of such marriage between and by the parties described in the license, or notice and certificate according to such form or ceremony as they may see fit to adopt; Provided that every such marriage shall be solemnized with open doors, between the hours of eight in the forenoon and four in the afternoon, in the presence of the Registrar of the district within which such Church, office, or other building is situate, or of his deputy, and of two or more credible witnesses;— Provided also that in some part of the ceremony, and in the presence of such Registrar, or his deputy, and of such witnesses, each of the parties shall declare.—

I do solemnly declare that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D.—  
and each of the parties shall say to the other—

I call upon these persons here present to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife (or husband)—  
Provided also, that there be no lawful impediment to the marriage of such parties.

Proof of consent or resi-  
dence not requisite to vali-  
dity of marriage.

XVIII. AND be it enacted, that after any marriage shall have been solemnized, it shall not be necessary in support of such marriage to give any proof of the actual residence of either of the parties

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previous to the marriage within the district wherein such marriage was solemnized for the time required by this Ordinance;—or of the consent of any person whose consent thereunto is required by law; nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage.

XIX. AND be it enacted, that every marriage under this Ordinance shall be good and cognizable in like manner as marriages before the passing of this Ordinance, according to the rites of the Church of England. Marriages cognizable.

XX. AND be it enacted, that it shall be lawful for the Registrar before whom any marriage is solemnized according to the provisions of this Ordinance, to ask of the parties to be married the several particulars required to be registered touching such marriage. Registrar may examine parties.

XXI. AND be it enacted, that all marriages celebrated in this colony before the passing of the said Act hereby repealed, in whatsoever form and place, and by whomsoever the same were solemnized, shall be as valid to all intents and purposes as if the same had been solemnized, under the provisions of the said repealed Act, or of this Ordinance;—Provided that no lawful impediment to the same shall have existed at the time of such marriage. Former marriages declared valid.

XXII. AND be it enacted, that every person who shall enter a caveat with the Registrar against the grant of any license, or issue of any certificate, on grounds which the Registrar-General shall declare to be frivolous, and that they ought not to obstruct the grant of the license, or issue of the certificate, shall be liable for the cost of the proceedings, and for damages to be recovered in a special action upon the case by the party against whose marriage such caveat shall have been entered; and that a copy of the declaration of the Registrar-General, purporting to be sealed with the seal of his office, shall be evidence that the Registrar-General has declared such caveat to have been entered on frivolous grounds as aforesaid. Party entering frivolous caveat liable to costs and damages.

XXIII. AND be it enacted, that every person who shall knowingly and wilfully make any false declaration, or sign any false notice or certificate required by this Ordinance for the purpose of procuring any marriage, and every person who shall forbid the False declaration, &c., punished as perjury.

issue of any Registrar's certificate by representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false, shall suffer the penalty of perjury.

Solemnization of Marriage contrary to Ordinance to be felony.

XXIV. AND be it enacted, that if any person shall knowingly and wilfully solemnize any marriage (except marriages by license or banns by a Minister of the Church of England) in any other place than the Church, office or building specified in the notice and certificate, or Registrar's license as aforesaid, or in the absence of a Registrar of the district in which such Church, office or building is situated, or of his deputy, shall be guilty of Felony; and any person who shall knowingly and wilfully solemnize any marriage (except marriage by license or banns by Ministers of the Church of England) within twenty-one days after the entry of the notice to the Registrar as aforesaid, or after the expiration of three calendar months after the date of such entry, if the marriage is by certificate, or if the marriage is by a Registrar's license, after the expiration of three calendar months after the date of such license, shall be guilty of Felony.

Registrar improperly issuing certificate or solemnizing marriage guilty of felony.

XXV. AND be it enacted, that every Registrar, who shall knowingly and wilfully issue any certificate for marriage after the expiration of three calendar months after the notice shall have been entered as aforesaid, or before the expiration of twenty-one days after the entry of the notice, or any certificate, the issue of which is forbidden as aforesaid by any person authorised to forbid the issue of the Registrar's certificate, or who shall knowingly and wilfully solemnize in his office any marriage herein declared to be null and void, shall be guilty of Felony.

Limitation of prosecutions, two years.

XXVI. AND be it enacted, that every prosecution under this Ordinance shall be commenced within the space of two years after the offence committed.

Marriage void in certain cases of illegality.

XXVII. AND be it enacted, that if any persons shall knowingly and wilfully intermarry contrary to the provisions of this Ordinance in any place other than the Church, office or building specified in the notice and certificate, or Registrar's license as aforesaid, or (such intermarriage not being by license or banns by a Minister of the Church of England) without either certificate or Registrar's license,



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or shall knowingly and wilfully intermarry in any case in the absence of a Registrar, or his deputy, the marriage of such persons shall be null and void.

XXVIII. AND be it enacted, that if any valid marriage shall be had between parties, one of whom is a minor under the provisions of this Ordinance by means of any wilfully false notice, certificate, or declaration made by either party to such marriage, as to any matter to which a notice, certificate, or declaration is herein required, it shall be lawful for Her Majesty's Advocate-General to sue for a forfeiture of all estate and interest in any property accruing to the offending party by such marriage; and the proceedings thereupon and consequences thereof shall be the same as are provided in the like case by the twenty-third, twenty-fourth and twenty-fifth sections of an Act of Parliament passed in the fourth year of the reign of His late Majesty King George the Fourth, intituled "an Act for amending the Laws respecting the solemnization of Marriages in England."

In certain cases Advocate General may sue for forfeiture of interest of offending party.

XXIX. AND be it enacted, that if any Minister, Registrar, or other person shall knowingly and wilfully solemnize, or if any witness shall knowingly and wilfully attest, any marriage without consent of parents or guardians, where such consent is hereby required, between parties one or both of whom has not or have not attained the age of twenty-one years, every person so offending shall forfeit and pay for every such offence, such sum, not exceeding five hundred pounds, as any superior Court of Record shall in its discretion award in that behalf; and that every such forfeiture shall be recoverable in any such Court at the suit of Her Majesty's Advocate-General by information or action of debt at any time within two years after the offence committed; and shall be appropriated to the use of Her Majesty, Her Heirs and Successors, for the public uses of this colony.

Penalty for illegal Marriage of minors £500.

XXX. AND be it enacted, that every Registrar shall be entitled to demand and receive for his own use and benefit the several fees mentioned in Schedule D to this Ordinance annexed.

Registrar's Fees.

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XXXI. AND be it enacted, that this Ordinance shall commence and take effect on the first day of November next.

FREDERICK CHIDLEY IRWIN,  
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Council }  
9th Nov., 1847. }*

WALKINSHAW COWAN,  
Clerk of the Councils.

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SCHEDULES TO WHICH THE 10<sup>TH</sup> VICT. No. 18 REFERS.



SCHEDULE A.

To the Registrar of the District of

I hereby give you notice that a Marriage is intended to be had within three calendar months from the date hereof between me and the other party herein named and described (that is to say)—

Name.	Condition.	Rank or Profession.	Age.	Dwelling place.	Length of residence.	Church, public building or office in which marriage is to be solemnized.	District in which either party resides, when the parties dwell in different places.
<i>*James Smith</i>	<i>Widower</i>	<i>Carpenter.</i>	<i>of full age.</i>		<i>more than a month.</i>		
<i>*Martha Green</i>	<i>Spinster</i>		<i>Minor.</i>				

Witness my hand this

day of

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(Signed)

*\*JAMES SMITH.*

\*(The Italics and Blanks in this Schedule to be altered and filled up according to fact.)

SCHEDULES TO WHICH THE 10<sup>TH</sup> VICT. No. 18 REFERS.



SCHEDULE B.

I \_\_\_\_\_, Registrar of the District of \_\_\_\_\_, do hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, notice was duly entered in the Marriage Notice book of the said District of a Marriage intended between the parties therein named and described, delivered under the hand of James Smith, one of the parties (that is to say)—

Name.	Condition.	Rank or Profession.	Age.	Dwelling place.	Length of residence.	Church, public building or office in which marriage is to be solemnized.	District in which either party resides, when the parties dwell in different places.
*James Smith	Widower	Carpenter.	of full age.		more than a month.		
*Martha Green	Spinster		Minor.				

*Date of Notice entered* } *The issue of this Certificate has not been*  
*6th August, 1847.* } *forbidden by any person authorised, to*  
*Date of Certificate given* } *forbid the issue thereof,*  
*27th August, 1847.*

Witness my hand this twenty-seventh day of August, 1847.

(Signed)

Registrar.

*This Certificate will be void unless the Marriage is solemnized on or before the sixth day of November, 1847.*

\*(The Italics and Blanks in this Schedule to be altered and filled up according to fact,)

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SCHEDULE C.

—♦♦♦—

A. B., Registrar, of \_\_\_\_\_, to C. D., of \_\_\_\_\_  
and E. F., of \_\_\_\_\_, sendeth, greeting:—

Whereas ye are minded, as it is said, to enter into a contract of Marriage under the provisions of an Ordinance passed in the Tenth year of the reign of Her Majesty Queen Victoria, intituled "an Ordinance to repeal the existing Laws respecting the Solemnization of Matrimony, and to make other regulations respecting the same;" and are desirous that the same may be speedily and publicly Solemnized; and whereas you, C. D. (or E. F.) have made and subscribed a declaration under your hand that you believe there is no impediment of kindred or alliance, or other lawful hindrance to the said Marriage, and that you C. D. (or E. F.) have (or "has") had your (or "his," or "her") usual place of abode for the space of Fifteen days last past within the District of \_\_\_\_\_, and that you C. D. (or E. F.) not being a Widower (or "Widow") are (or "is") under the age of Twenty-one years, and that the consent of G. H., whose consent to your (or "his," or "her") Marriage is requested by law has been obtained thereto (or "that there has been a Judicial approval thereof"); I do hereby grant unto you full license by the authority in that behalf given to me by the said Ordinance, to proceed to solemnize such Marriage in the aforesaid District of \_\_\_\_\_; provided that the said Marriage be publicly solemnized in the presence of the Registrar of the said district and of two Witnesses within three calendar months from the date hereof in the (here describe the Building in which the Marriage is to be solemnized), between the hours of eight in the forenoon, and four in the afternoon.

Given under my hand

day of

(Signed) A. B.  
Registrar.

## SCHEDULE D.

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	£.	s.	d.
For every Declaration and entry thereof .....	0	2	0
For every Notice and entry thereof,.....	0	2	0
For every Certificate.....	0	2	6
License .....	2	0	0
Marriage by Registrar at his Office .....	1	0	0
Attendance at Marriage, if by License .. .....	0	10	0
Do. if by Certificate or Banns.....	0	5	0
Travelling expenses, 1s. 6d. per mile for not exceeding six miles, and 1s. a mile beyond that ; distance reckoned one way only.			
For receiving a Caveat.....	0	5	0

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