



Coalition of Celebrant Associations

Australia's peak body
for celebrants

Chairperson

Dorothy Harrison
Chairperson
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Member Associations

Alliance of Celebrants
Queensland Inc

Association of Civil Marriage
Celebrants NSW & ACT Inc

Association of Civil Marriage
Celebrants SA Inc

Association of Civil Marriage
Celebrants Victoria Inc

Australian Marriage
Celebrants Inc

Celebrants Australia Inc

Civil Celebrations Network Inc

International College of
Celebrancy Alumni & Friends

Marriage Celebrants
Australia Inc

Professional Celebrants
Association Inc

Riverina Marriage
Celebrants Association Inc

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Senator John Williams
Chair
Senate Regulations and Ordinances Committee
PO Box 6100 Parliament House Canberra ACT 2600
Email: regords.sen@aph.gov.au

20th March 2018

Re: Marriage Regulations 2017

Dear Senator Williams

I am writing to you on behalf of the Coalition of Celebrant Association (CoCA) Incorporated.

CoCA was established on 16 October 2008 and is recognised by the Commonwealth Attorney-General as the peak representative body for all Commonwealth-registered marriage celebrants. CoCA is comprised of 11 professional associations of marriage celebrants, and is the only association of celebrant associations in Australia.

CoCA notes that the Committee on Regulations and Ordinances has identified some issues in relation to the Marriage Regulations 2017 and has sought further information from the Attorney General. CoCA also has concerns about these Regulations that we would like to draw to your attention.

These concerns "affect a privilege or interest of a marriage celebrant", and can be summarised as follows:

- the power delegated to the Commonwealth Registrar; and
- the apparent reluctance of the Attorney-General's Department to act upon guidance provided by the peak body, CoCA.

The Commonwealth Registrar and the Marriage Law and Celebrants Section are administrators and lawyers who are neither experts or experienced in:

- delivering marriage ceremonies to the public
- the full extent and context of the work of professional civil celebrants
- adult education and the initial and ongoing training needs of professional civil celebrants.

CoCA has made numerous submissions¹ to government and the department² since 2012 about the nature of the celebrancy profession; professional development priorities and other celebrant obligations³, needs and policy; conflict of interest and benefit to business policy; the marriage guidelines; marriage forms; and the Marriage Regulations, including the Code of Practice.

CoCA's specific concerns relate to:

a. The department not consulting adequately with CoCA on the draft Regulations.

CoCA made a detailed Submission in 2015 related to the Marriage Regulations sun setting this year. The consultation in 2017 did not eventuate as expected, with the result that CoCA associations and CoCA itself did not provide input into significant changes to the Code of Practice and the Regulations. See Appendix A

b. The department micro-managing professional development for marriage celebrants.

Contrary to CoCA's advice, the Marriage Celebrant and Law Section continues to micro-manage professional development. Professional associations, either via CoCA or separately, have no role in the approval of professional development activities, or in the development of the Compulsory legal activity designed by the department. As noted above, the Marriage Celebrant and Law Section's staff is administrators and lawyers, who lack expertise and experience in delivering marriage ceremonies to the public, or education and staff training.

Furthermore the department is known to not accept the advice of the contracted registered training organisations that deliver the compulsory to over eight thousand (8,000) celebrants around the country. These registered training organisations have the Certificate IV in Celebrancy on their scope and are professional educators/ trainers and practicing marriage celebrants.

As a result, the compulsory professional development activity, which the department requires to be delivered without deviation from what they provide, on occasions, results in more confusion about what is required of authorised celebrants, whilst at the same time, notes that the department's guidance is "*provided on the understanding that the Attorney-General's Department is not providing professional legal advice on any particular matter*".⁴

This wastes marriage celebrants' time and money as well as impacting upon professional associations that support celebrants, and contributes to the average 20,000 contacts the department has each year, primarily from celebrants trying to clarify the "guidance" that the department provides. The 2018 Compulsory activity is an example of these concerns. See Appendix B

c. The department's implementation of the Marriage Act and Regulations means that parity between the different subdivisions of celebrants has been reduced since 2002.

Independent marriage celebrants (Subdivisions C and D) regulated by the Commonwealth Registrar are subject to far higher levels of regulation – mandated initial training, annual professional development activities and annual cost recovery fees – than Subdivisions A and B authorised marriage celebrants. See Appendix C.

This means that independent marriage celebrants, who service 75% of the marrying public, carry a considerable extra financial and time burden that is not the minimal regulation envisaged in 2002 and is not conducive to the continued development of the celebrancy profession's workforce.

The 2002 Marriage Act Amendments created of a new authorisation system, with a Commonwealth Registrar supported by a small team, originally titled the Marriage Celebrant Section. It was not expected to dramatically increase the number of independent marriage celebrants, would only cost approximately \$320,000 per annum and not include provision for celebrants to pay an annual fee for authorisation, as “the cost to authorised celebrants and the resulting cost to marrying couples of such a fee as well as the administrative cost to collect the fee outweigh any advantages of a fee.”⁵

The cost for regulatory work done by the Department has now escalated to over \$2 million per annum. Since 2014, Subdivision C & D marriage celebrants have paid over \$6 million dollars for the Department to regulate an average of 25 complaints per annum – of which only 5 are of a statutory nature⁶. That is a complaint rate of 0.3 % per celebrant and 0.03% on the number of marriages they performed. To CoCA’s knowledge only a handful of marriages (less than 5) have been invalid as the result of Subdivision C marriage celebrants’ actions since the 2002.

The regulatory charge for Commonwealth celebrants was justified on the assumption that Subdivision C celebrants were simply small businesses, because that it how the Australian Taxation Department will deal with celebrants should they make a taxable income. In fact, 78% of marriage celebrants make less than \$20,000 gross from all their celebrancy work⁷. The Human rights scrutiny report⁸, by Parliamentary Joint Committee on Human Rights when examining the Marriage Amendment Bill 2015 stated:

“1.513 It should be noted in the Australian context that civil celebrants, acting under the Marriage Act, **are performing the role of the state in solemnising marriages**. It is **irrelevant to this analysis that civil celebrants are not directly employed by the state.**”

Most other professions regulate their own professionals, and where government is involved in their regulation, the role of the regulatory body is to simply do the minimum necessary for public safety. CoCA has argued that if public safety requires government regulation, then this should apply to all those authorised under the Marriage Act who act on behalf of the Commonwealth in providing services to the public.

This is achieved by the regulatory body respecting the professional expertise of those in the profession, and not increasing the regulatory burden by duplicating or doing work that can be done by the profession.

Summary

CoCA would like the members of the Committee on Regulations and Ordinances’ to support the following recommendation, which was one of those CoCA submitted to the Religious Freedoms Panel⁹:

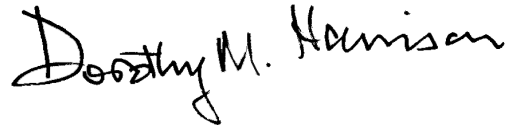
- That there be a review of the regulation of all authorised marriage celebrants to improve efficiency, ensure parity across the different groups providing professional marriage services and provide a consistent and measured approach to regulation appropriate to the level of risk to the public.

and any advice the Committee on Regulations and Ordinances may have to assist our profession in the matters raised here.

Your assistance in bringing these matters to the attention of the Attorney-General would also be appreciated.

Please contact us, if you require any further information.

Yours sincerely

A handwritten signature in black ink that reads "Dorothy M. Harrison". The signature is written in a cursive style with a large initial 'D'.

Dorothy Harrison

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Coalition of Celebrants Association (CoCA) Inc.

<http://www.coalitionofcelebrantassociations.org.au>

c.c Senator Gavin Marshall (Deputy Chair) Victoria, ALP

Senator Anthony Chisholm Queensland, ALP

Senator Jane Hume Victoria, LP

Senator Linda Reynolds Western Australia, LP

Senator the Hon Lisa Singh Tasmania, ALP

Secretariat

Ms Anita Coles, Secretary

Ms Shennia Spillane, Principal Research Officer

Mr Andrew McIntyre, Senior Research Officer

Ms Morana Kavgic, Legislative Research Officer

Committee legal adviser

Mr Stephen Argument

Appendix A – The department not consulting adequately with CoCA on the draft Regulations.

In 2015, CoCA made a number of recommendations¹⁰ for the 2017 Marriage Regulations, including two important inclusions for the Code of Practice:

(j) “address the health and safety implications of proceeding with agreed arrangements. If the marriage celebrant considers it unsafe to proceed with the ceremony arrangements or use of equipment as previously agreed, the celebrant should discuss alternative options with the parties to the marriage prior to declining to proceed.”

(o) “disclose any potential or actual conflict of interest to the Commonwealth Registrar of Marriage Celebrants and ensure any business or for-profit activities owned or operated by the celebrant are kept and advertised separately to the celebrant’s celebrancy services.”

Re: Item (j)

Extreme weather conditions (bushfires and floods) particularly affect independent celebrants who work out doors in a range of locations, and as such, is of increasing concern to celebrants as this not only increases the risk of litigation by marrying couples, but can also risk the celebrant’s car and other equipment, well-being and life.

Re: Item (o)

This item is important given the September 2017 changes to the department’s Conflict of Interest and Benefit to Business Policy that CoCA is on record as not supporting¹¹ because of the flawed consultation process, and the further loss of parity with other authorised marriage celebrants.

CoCA did not receive any feedback from the department on this 2015 submission on changes to the Regulations from the department.

Due to personal circumstances during a number of weeks at the end of June/early July, the CoCA secretary, missed sighting a number of emails the department sent to on the Exposure Draft Marriage Regulations 2017. CoCA has a history of responding in a considered and detailed manner to any request the department makes, and to any government reviews that impact upon our profession. The CoCA’s 2015 submission on the Regulations is one relevant example. So it is disappointing that the department did not follow-up with phone calls or emails to the other CoCA office bearers to alert our peak body of this final stage or to contact any of the eleven CoCA associations about the Regulations consultation. The latter was expected due to information provided by the department at the May 2017 Stakeholders Meeting.¹²

What is of more concern in relation to the above recommended additions to the Code Of Practice, is that:

- the department was at this time finalising major changes to its Conflict of Interest/ Benefit to Business Policy, about which CoCA had provided a detailed submission earlier in 2017¹³, and making significant changes to the Code of Practice which would have made CoCA’s recommendation as regards Item (j) even more relevant than in 2015.
- in relation to item (o), CoCA has raised concerns about extreme weather conditions with the department over a number of years. Initially in relation to the Black Saturday Victoria bushfires in 2009 but as recently as the May 2017 Stakeholders Meeting with the department in relation to the Queensland floods.¹⁴

Neither of these recommended additions were followed up to be included in the revised Code of Practice.

Appendix B. The department micro-managing professional development for marriage celebrants

This year the Department has developed a two-hour Compulsory activity primarily on the Marriage Act amendments in relation to Marriage Equality. Despite the department undertaking to provide a copy of the draft compulsory activity to associations for comment¹⁵, this undertaking has not been met.

CoCA has a number of concerns about this Compulsory activity;

- **Focus on Sex Identity and Gender Identity in the Forms (along with Proof of Gender Identity) and the Ceremony**

CoCA is concerned that the department's 2-hour compulsory activity is very likely to lead to more confusion about the celebrant's role and responsibilities in relation to marriage equality because the Act is not fully transparent as regards Subdivision C and D and the Marriage Celebrant and Law Section preference to focus on the letter, rather than the spirit, of the law.

Note: New forms still include gender bias.

The department has revised the marriage forms currently used, without consultation with CoCA, which now requires asking couple to define themselves by gender identity as **Husband/ Wife/Partner** as well as by biological sex as **Male/ Female/X** on the new Notice of Intended Marriage as well as requiring the couple to define themselves in a tick-box according to their gender identity as **Husband/ Wife/Partner** on the Official Certificate of Marriage rather than leaving this as an open field of the couples' choice.

The department is yet to complete its consultation on the revision of the Marriage forms that commenced in July 2014. CoCA provided input in December 2014¹⁶ and again more extensively in June 2017¹⁷. This consultation work does not appear to have affected the format and content of this work, with the current forms with all their flaws being modified for marriage equality. This means there will be another change of forms when the consultation is finalised, with another lot of expense for celebrants to update their marriage forms. CoCA considers the December Marriage Act amendments should have removed issues of sex and gender from celebrants work with couples, provided it is two people of marriageable age and status approaching the celebrant with free and informed consent to be married.

- **Confusion about Commonwealth marriage celebrants' advertising obligations.**

The compulsory activity implies that the terminology "marriage celebrant" must be on celebrant's business cards and that the Registrar may impose a disciplinary measure on a celebrant, if these two words are not joined as a phrase. Writing that one is a civil celebrant providing marriage ceremonies appears not to be considered sufficient by the Registrar. Confusion in relation to this issue will mean an increased financial burden on marriage celebrants in relation to advertising.

Subdivision A Ministers of Recognised Religions and Subdivision B State Officers are not required to do mandated hours of professional development.

Appendix C. The department's implementation of the Marriage Act and Regulations means that parity between the different subdivisions of celebrants has been reduced since 2003. Section C.

All marriage celebrants perform the same functions on behalf of the government, whether the ceremony is religious or civil, long or short. These functions are to:

- Accept a Notice of Intended Marriage from the couple
- assess whether the parties to the marriage are free to marry each other under Australian law
- be satisfied as to the identities of the parties to the marriage
- complete with the couple the required documentation prior to the ceremony
- conduct a marriage ceremony after which the couple sign the relevant documents
- complete the processing of the marriage documents and register the marriage with the relevant state or territory registry office.

Differences in administrative requirements for the different groups of celebrants.

- Subdivision A—Ministers of religion - requires Ministers of recognised Religions to be regulated by the State or Territory Registrar of Marriages
- Subdivision B—State and Territory officers etc. - requires State and Territory officers to be regulated by the State or Territory Registrar of Marriages
- Subdivision C—Marriage celebrants - requires Commonwealth independent marriage celebrants to be regulated by the Commonwealth Registrar of Marriages
- Subdivision D—Religious marriage celebrants - requires Commonwealth independent marriage celebrants to be regulated by the Commonwealth Registrar of Marriages

Section 39 requires independent civil and religious celebrants (Subdivision C) to:

- have training in marriage law before authorisation as a marriage celebrant
- complete 5 hours of mandatory professional development each year
- meet a Code of Practice, and other obligations under the Act, and
- pay an annual fee for their ongoing authorisation as a marriage celebrant. Failure to pay this fee by the Charge Date set by the Act results in automatic de-registration.

Subdivision A Ministers of Recognised Religions and Subdivision B State Officers **are not required by the Act to meet the above requirements**, because they are regulated by the State or Territory Registrars of the Offices of Births, Deaths & Marriages.

For this reason, CoCA continues to argue that since 2003 Marriage Act Amendments and departmental policy changes has created unfair differences between the sub-divisions for their celebrants' authorisation, registration, administrative and regulation which severely "affect a privilege or interest of a marriage celebrant".

References:

1. Submissions to government – See CoCA Website:
<http://www.coalitionofcelebrantassociations.org.au/issues/content/10-submissions>
2. Matters raised with the Department – See CoCA Website
<http://www.coalitionofcelebrantassociations.org.au/issues/content/119-raised-with-the-ag-department>
3. In 2002, the obligations under the Act (Section 39G) were that “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.”

In 2017 an additional obligation was added:

 - (d) disclose that the celebrant is a marriage celebrant, and whether or not the celebrant is a religious marriage celebrant, in any document relating to the performance of services as a marriage celebrant (including advertisements) by the celebrant.
4. Guidelines on the Marriage Act 1961 for marriage celebrants – July 2014. Page 16 Introduction.
<https://www.ag.gov.au/FamiliesAndMarriage/Marriage/Documents/Guidelines%20on%20the%20Marriage%20Act%201961%20for%20marriage%20celebrants.pdf>
5. The 2002 Explanatory Memorandum:
<http://www.coalitionofcelebrantassociations.org.au/issues/47-cost-recovery-of-agd-marriage-by-commonwealth-celebrants/488-2002-explanatory-memorandum-marriage-act-changes>

“The Bill does not include provision for celebrants to pay an annual fee for authorisation. After careful consideration it was concluded that the cost to authorised celebrants and the resulting cost to marrying couples of such a fee as well as the administrative cost to collect the fee outweigh any advantages of a fee.”

“The additional regulatory functions to be carried out by the Attorney---General’s Department will involve greater administrative costs. The additional cost is estimated at approximately \$320,000 per annum. There will be additional funding provided to the Attorney---General’s Department to meet these costs.”
6. Attorney-General’s Department Stakeholders Meeting 171011 - Statistics
<http://www.coalitionofcelebrantassociations.org.au/for-celebrants/113-commonwealth-celebrants-program-statistics/559-coca-agd-meeting-171011-statistics>

7. CoCA National Celebrant Survey 2016 income.
<http://www.coalitionofcelebrantassociations.org.au/for-celebrants/106-independent-celebrants-income/412-q15-for-the-last-calendar-year-what-would-be-your-approximate-gross-income-from-celebrancy>

TABLE 6

For the last calendar year, what would be your approximate GROSS income from celebrancy ?

(i.e. income before expenses and tax etc.)

Answer Choices	Responses		
A none	7.43%	106	
B less than \$1,000	14.10%	201	
C \$1,000 to \$4,999	27.98%	399	% under
D \$5,000 to \$9,999	17.88%	255	67.39%
E \$10,000 to \$19,999	10.52%	150	77.91%
F \$20,000 to \$29,999	6.52%	93	% over
G \$30,000 to \$39,999	3.58%	51	10.30%
H \$40,000 to \$49,999	2.66%	38	6.72%
I \$50,000 to \$74,999	2.66%	38	4.06%
J over \$ 75,000	1.40%	20	
K don't know	0.91%	13	
L Prefer not to answer	7.01%	100	
Total	1,426		

8. Parliamentary Joint Committee on Human Rights -- - Human rights scrutiny report. Thirtieth report of the 44th Parliament. 10 November 2015
https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2015/Thirtieth_Report_of_the_44th_Parliament
9. 2018 CoCA Submission to the Religious Freedoms Panel – See CoCA website:
<http://www.coalitionofcelebrantassociations.org.au/issues/content/134-expert-panel-on-religious-freedoms>
10. Recommendations for the 2017 Marriage Regulations:
<http://www.coalitionofcelebrantassociations.org.au/issues/119-raised-with-the-ag-department/486-recommendations-re-updating-regulations>
11. Conflict of Interest and Benefit to Business Concerns – See CoCA
<http://www.coalitionofcelebrantassociations.org.au/for-celebrants/120-ag-discussion-paper-on-opd-and-conflict-of-interest/554-coca-concerns-re-revised-coi-and-b2b-policy>
12. Extract from Attorney-General’s Department and Marriage Celebrant Associations Meeting Minutes Friday 5 May 2017
<https://www.ag.gov.au/FamiliesAndMarriage/Marriage/marriagecelebrants/Documents/CoCA-AGD-Meeting-5-May-2017.pdf>
- “AGD advised that work is progressing on the complete review of the Marriage Regulations. The Attorney-General’s approval will be sought shortly to undertake further consultation with celebrant associations on the draft regulations. An exposure draft paper will be provided alongside the draft regulations which explains the changes made to the current Marriage Regulations. AGD will advise associations once the proposal for consultation has been agreed by the Attorney”.
13. 2017 CoCA Submission on Conflict of Interest/ Benefit to Business Policy
<http://www.coalitionofcelebrantassociations.org.au/for-celebrants/content/123-2017-coca-submission-on-opd-coi-and-b2b>

- 14.** Extract from Attorney-General's Department and Marriage Celebrant Associations Meeting Minutes Friday 5 May 2017.

<https://www.ag.gov.au/FamiliesAndMarriage/Marriage/marriagecelebrants/Documents/CoCA-AGD-Meeting-5-May-2017.pdf>

"Associations noted that the recent storms in Queensland highlighted the need to have disaster management plans in place for when natural disasters occur. AGD noted that natural disasters can have a significant impact on performing marriage ceremonies and that while practical steps to facilitate the ceremony should be considered, celebrants must still comply with the Marriage Act (for example, the transfer of NOIMs).

Action Item: AGD advised that it will look at clarifying the use of electronic media in transferring of NOIMs and obtaining a shortening of time in a declared disaster situation".

- 15.** Extract from Attorney-General's Department and Marriage Celebrant Associations Meeting Minutes. Friday 5 May 2017.

<https://www.ag.gov.au/FamiliesAndMarriage/Marriage/marriagecelebrants/Documents/CoCA-AGD-Meeting-5-May-2017.pdf>

"AGD undertook to provide a copy of the draft compulsory activity to associations for comment on content before it is settled."

- 16.** CoCA Submission on Marriage Forms December 2014.

<http://www.coalitionofcelebrantassociations.org.au/issues/119-raised-with-the-ag-department/294-2014-marriage-forms-coca-submission>

- 17.** CoCA Submission on Marriage Forms July 2017

<http://www.coalitionofcelebrantassociations.org.au/issues/119-raised-with-the-ag-department/551-coca-submission-marriage-forms-2017>