



**The Coalition of Celebrant Associations (CoCA) Incorporated**  
*The Attorney-General's Peak Advisory Body for Commonwealth Celebrants*

Submission to

**Senate Legal and Constitutional Affairs Committee**

PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

25<sup>th</sup> April 2013

***Re: Marriage Amendment (Celebrant Administration and Fees) Bill  
and  
the Marriage (Celebrant Registration Charge) Bill 2013***

## **INDEX**

### **PART O Executive Summary**

### **PART I Preamble**

### **PART II Summary of The Coalition of Celebrant Associations (CoCA) Inc Position**

### **PART III Summary of Recommended Amendments**

### **PART IV Rationale**

### **PART V Marriage Amendment (Celebrant Administration and Fees) Bill 2013**

- PART V-A Schedule 1—Amendments relating to fees and charges  
Part 1—Amendments relating to annual celebrant registration charge
- PART V-B Schedule 1—Amendments relating to fees and charges  
Part 2—Amendments relating to fee for applying to be a marriage celebrant
- PART V-C Schedule 1—Amendments relating to fees and charges  
Part 3—Amendments relating to fee for applying for exemption from professional development requirements, etc.
- PART V-D Schedule 2—Other amendments Part 1—Amendments 1  
Section 39E - Repeal the section, etc.
- PART V-E Schedule 2—Other amendments Part 1—Amendments 2  
Subsections 39H(1) and (2) Repeal the subsections, etc.
- PART V-F Schedule 2—Other amendments Part 2—Transitional provisions
- PART V-G Schedule 2—Other amendments Part 1—Amendments re Australian passport, showing the date and place of birth of the party; and
- PART V-H Schedule 2—Other amendments Part 1—Amendments 7 Subsection 115
- PART V-I 39FA Celebrant registration charge: liability to pay charge  
39FB Celebrant registration charge: consequence of non-payment

### **PART VI RE: Marriage (Celebrant Registration Charge) Bill 2013**

- PART VI-A Statutory limit

### **PART VII CoCA Senate Submission Appendices**

- Appendix No 1 Second Legal Opinion of the renowned constitutional lawyer
- Appendix No 2 'Parity' for Category C celebrants with the two other Categories of Marriage Celebrant.
- Appendix No 3 Celebrant Related Information from Freedom of Information Request 2011
- Appendix No 4 Review of 15 years of Court Records related to Validity of Marriage Performed by a Marriage Celebrant
- Appendix No 5 Marriage Related Statistics from Australian Bureau of Statistics
- Appendix No 6 Overall Effect on Access to Work and Remuneration of the 2003 Changes from 1999 to 2011
- Appendix No 7 Celebrante 2012 Celebrant Survey
- Appendix No 8 CoCA Submission on Cost Recovery and Increased Professionalism
- Appendix No 9 Cost Recovery Estimates from the Marriage Celebrant Section Oct 2012.
- Appendix No10 Assessment of Costs to set up and Maintain an Independent Celebrancy Practice
- Appendix No 11 COCA Recommendations with respect to Ongoing Professional Development (OPD) Submission February 2012
- Appendix No 12 Ongoing Professional Development CoCA August 2012
- Appendix No 13 Letter to Attorney-General re "Officers of the Commonwealth"
- Appendix No 14 Letter to Department of Finance and Deregulation re: Review of Cost Recovery Guidelines
- Appendix No 14 24,000 Exempted Marriage Celebrants

### **PART VIII Terminology**

## **PART O Executive Summary**

The Coalition of Celebrant Associations (CoCA) Inc, in this submission, provides ample grounds for the Senate to reconsider the entire approach of the Government's handling of the Australian Marriage Act 1961 and, in particular, the systemic injustice these Marriage Bills will further embed in the delivery of marriage services to this nation.

Australian families deserve better as do their celebrants.

This approach to the regulation of Category C Marriage Celebrants is discriminatory, as it does not apply to all celebrants and fundamentally flawed in that these changes will not result in better delivery of marriage services to the public.

70% of all marriages, including 95% of all civil marriages, will be subsidizing the legal guidance the Attorney-General's Department should be providing to all marriage celebrants under this Act - a situation that is unfair.

The Coalition of Celebrant Associations (CoCA) Inc:

- commends successive governments for their commitment to professional high quality civil celebrants who now perform over 70% of all ceremonies;
- commends the Government's recognition of the role of training and ongoing professional development in raising standards;
- does not support discrimination in the management of the Marriage Act, in placing different requirements upon civil celebrants to those of religious and registry celebrants;
- suggests consistent criteria for appointment and compliance requirements be applied to all categories of celebrants, and that this be enshrined in legislation;
- does not support the levy of a fee at the level proposed of \$250 pa (rising to \$600 pa plus cpi adjustments) on civil celebrants alone;
- asserts the average number of marriages at present per independent Commonwealth celebrant (an average of 7 pa or \$3,500 gross annual income) demonstrates the open-market approach does not work effectively when clients are only likely to use the service once or twice in a lifetime;
- recommends regional capping numbers of Commonwealth celebrants on a 5 year cycle with new appointments based upon the best applicants as determined by independent assessment;
- suggests that legal guidance is the main role for the Federal Department in conjunction with the State and Territory Registry Offices and celebrant associations;
- recommends that peak body and professional associations have a role similar to that carried out in other professions as the best way to assist in regulation and improving standards of the civil celebrancy profession;
- recommends other fairer and more effective methods of regulating civil celebrants and raising standards;
- recommends fairer and more equitable ways of raising revenue with respect to cost recovery in relation to services provided under the Marriage Act 1961.

The Coalition of Celebrant Associations (CoCA) Inc. trusts the Senate Committee will appreciate, by the depth and detail of this submission, the consistent effort CoCA associations have made since 2008 to bring evidence based recommendations to the Government.

The civil celebrancy profession does not need what appears to be a "quick-fix" that will create more problems than it solves.

The Coalition of Celebrant Associations (CoCA) Inc. requests the Senate Committee look at the bigger picture with an open mind and accept the recommendations of the celebrancy profession's peak body as the best way to address cost recovery issues for the ultimate good of the Australian public.



Secretary  
Rona Goold  
P.O. Box 3113  
Robertson N.S.W 2577  
Phone: 02 48852393  
e-mail: [secretary@coca.org.au](mailto:secretary@coca.org.au)  
w: [www.coalitionofcelebrantsassociations.org.au](http://www.coalitionofcelebrantsassociations.org.au)

Chairperson Robyn L. Caine  
Ph: 0412 29 537  
Vice-Chair Dorothy Harrison

TO: Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

25<sup>th</sup> April 2013

*Re: Marriage Amendment (Celebrant Administration and Fees) Bill and the Marriage  
(Celebrant Registration Charge) Bill 2013*

### **Part I. Preamble**

At this time in our nation's development, our parliament is called upon to give its wisdom and concentrated attention to the way in which the Commonwealth Marriage Act 1961 delivers its legislative responsibilities of marriage services to its citizens and others who use the Marriage Act to formalize their relationship both legally and socially.

It would be naïve in the extreme to simply assume these Bills will improve marriage services by 'cost recovering' government services. These Bills allow expanded government services to unfairly cut Commonwealth marriage celebrants numbers.

The Bills will thwart the intentions of the Liberal-National Parties 2003 changes to modernise the Commonwealth Marriage Celebrant program by strengthening the civil celebrant profession towards self-governance. With then Labor Opposition support, the 2003 changes brought in training standards for Commonwealth celebrant appointments, ongoing professional development responsibilities and a simple system of 5 yearly reviews by a newly created section of the Attorney-General's Department – one that had been unnecessary for three decades.

More importantly, these Bills will increase the unintended systemic injustice between Category C (predominantly civil) and Category A & B (predominantly religious) marriage celebrants which resulted from the administration of the 2003 changes over the last decade.

The consequences of these Bills will be to increase the costs of marriage to 95% of couples who choose a civil marriage ceremony, decrease the likelihood that their preferred celebrant will be able to conduct their marriage and create a unstable workforce of casual annual 'contractors'.

The other two categories of celebrants under the Act are employees of the Registry Offices or members of Recognised Religions either on stipends and/ or with accommodation, vehicle and other financial and organizational support. Independent celebrants must cover all the costs of delivering professional marriage services to the public, before an hourly rate can be made. Even under this proposed amended system, making a net hourly rate is beyond the reach of the majority. Thus without a taxable level of income, any assumption that most celebrants will be able to claim this fee back is erroneous.

These annual fees are not being collected by a professional body as in other professions to maintain and increase professional standards and to reduce government red-tape and over-regulation. Rather the \$ 2.4 million raised annually will fund a government section that has no experience in delivering marriage services to the public and that so far has not demonstrated its ability to meet its current simple regulatory responsibilities, let alone expanding into areas beyond their expertise.

Another unresolved issue is the question of whether Commonwealth celebrants are Officers of the Commonwealth when involved in any activity related to their role as an independent marriage celebrant. See Appendix 13. Creating a charge to continue one's duties as an Officer of the Commonwealth could create a precedent or have ramifications for other types Commonwealth officers.

These amendments change the conditions under which all existing independent celebrants are appointed, namely ongoing life-time appointments whilst ever the celebrant remains a "Fit & Proper Person". However the natural justice issues of these changes have not been addressed. In fact, the Coalition of Celebrant Associations (CoCA) Inc. asserts the issues related to human rights, fair and equitable working conditions expected to apply to all celebrants who provide the public with the same government service (*i.e. valid marriage under law*) and the "public interest" policy test have not been given due depth of consideration and erroneous conclusions asserted by the government.

The 2003 changes were intended to mirror the basic regulatory components that are assumed to be in place for the Recognised Religious Celebrants and the Marriage Officers of the State & Territory Registries of Births, Deaths and Marriages. An independent review in 2008 was planned to ensure that these changes ran smoothly. Such an independent review, despite the numerous requests by celebrant associations and the government's own peak advisory body the Coalition of Celebrant Associations (CoCA) Inc. has never eventuated.

These Bills attempt to correct basic flaws in the administration of this aspect of the Marriage Act that came after the 2003 changes. These are the government's

- failure to accept professional celebrant associations advice in 2002 of an eleven unit training course as a minimum standard for appointment, instead choosing a single TAFE unit equivalent, thus enabling a greater than expected number of appointments.
- outdated paper based filing system - each celebrant's records being held in three different storage sections - compounding the subsequent increased workload in providing five yearly reviews of this unexpected increased number of celebrants.
- failure to conduct consultations in line with the Department of Finance Cost Recovery Guidelines and recommended Best Practice which require that 'Cost Recovery' be for the public good, efficient, not create unnecessary services nor raise revenue beyond that required to provide the government function (*i.e. not make a "profit"*). Appendix 14
- failure to adopt almost all of the recommendations of the peak body Coalition of Celebrant Associations (CoCA) Inc. to make better use of the existing systems that support the Program and that add minimal cost to the end-user, that being the marrying couple.

These systems are the Vocational Education & Training VET system; the Registries of Birth Deaths and Marriages that continue to provide all marriage celebrants with legal guidance as they had between 1973 and 2003 prior to the newly created Commonwealth Marriage Section; the celebrant professional associations that provide online and face to face advice and support to marriage celebrants in all aspects of the professional conduct of the celebrant as now required of Commonwealth Celebrants under the Code of Conduct in the Marriage Act.

As Senators, we understand your role of seeing the "big picture", to look for the flaws in the management of government services to the public to ensure those services are delivered efficiently and effectively and to correct systemic problems rather than assist to entrench those problems further.

The 2003 changes were designed to "increase the professionalism" of this sector. At a gross level, that meant converting what was a 'community service' into a self-regulatory system delivering professional services.

In many other ways, that process has been successful. Training standards have been increased and are set to be raised again. All but one of the celebrant professional associations are working together to advise different parts of government on the needs of the profession, at no cost to government or the taxpayer. These associations are strengthening the availability of online forums and other web-based information and support, professional indemnity and public liability insurance, copyright cover and other ceremonial resources to members.

In turn couples married by these celebrants, together with their families, will experience more meaningful and well delivered wedding ceremonies as the result of associations' support and expertise.

There is no evidence to support any assumption these changes are needed to ensure the validity of couple's marriages as conducted by Commonwealth celebrants rather than State regulated marriage celebrants.

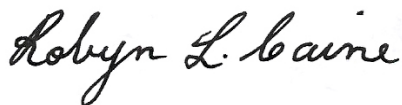
Where there are any such concerns, revenue raised needs to be apportioned to both the Commonwealth and State & Territory Regulators so that the Marriage Act legal requirements apply to all marriages.

Marrying couples expect to be charged a Marriage Licence or Marriage Registration fee. There are a number of ways such revenue could be efficiently raised using existing systems, rather than increasing cost unnecessarily.

The Coalition of Celebrant Associations (CoCA) Inc. makes a number of recommendations in this submission based upon our four decade history and experience in delivering quality marriage ceremonies to the Australian community.

Our celebrants have consistently put the needs of the marrying public before their own as is required of any profession.

In this spirit, we ask that the Australian Senate not fall for the "quick fix" as proposed in these Bills. Rather The Coalition of Celebrant Associations (CoCA) Inc. asks that the Senate recommend amendments to these Bills to minimize bureaucratic over-regulation, restore parity between Commonwealth and State/ Territory celebrants that original thrust of the 2003 changes did not intend to remove and to outsource to the professional associations and their peak body those functions that rightly match their expertise and responsibilities.



Robyn L Caine

Chairperson

Coalition of Celebrant Associations – CoCA

CoCA Inc Member Associations:

- Alliance of Celebrants Queensland Inc - ACQ
- Association Civil Marriage Celebrants NSW & ACT - ACMC NSW/ACT
- Association Civil Marriage Celebrant SA - ACMSA
- Association of Civil Marriage Celebrants of Victoria Inc - ACMCV
- Australian Marriage Celebrants Inc - AMC
- Celebrants Australia Inc CAI
- Civil Celebrants Graduate Association (Monash) - CCGA
- Civil Celebrations Network Incorporated - CCN
- International College of Celebrancy Alumni and Friends Association - ICCA
- Humanist Celebrant Network - HCN
- Marriage Celebrants Australia Inc (WA) - MCA (WA)
- Professional Celebrants Association Incorporated - PCA
- South East Australia Civil Marriage Celebrant Association - SEACMCA

## **PART II. Summary of Coalition of Celebrant Association (CoCA) Inc Position.**

The Coalition of Celebrant Association (CoCA) Incorporated:

1. Supports the Amendment to *add an Australian passport as evident of the date and place of birth of the party seeking to marry*. See PART V-G.
2. Supports an Application Fee for all new marriage celebrants. See PART V-B.
3. Opposes a "Celebrant Registration Fee" as this is unnecessary and affects 95% of civil marriages and 5% of religious marriages. See PART V-A.
4. Supports 'cost recovery' provided the revenue is raised equitably on ALL marriage services or ALL marriage celebrants. There are existing systems that could do this. See PART V-A.
5. Opposes the unfair removal of 5 year reviews of ongoing lifetime appointments (unless proved unfit) for Commonwealth celebrants with a "one-strike then out" annual "registration" fee, not applicable to ALL marriage celebrants. See PART V-E.
6. Asserts that the role of the Commonwealth is not to provide direct services – rather to provide over-sight and guidance for all celebrants on marriage law. See PART VI .
7. Disputes the claims that the Commonwealth is only responsible to regulate Category C marriage celebrants implying that these Bills are enforcing standard mechanisms that are being applied by Category A and B Regulators to the other two classes of marriage celebrants. See PART V-A.
8. Asserts that the Commonwealth is responsible to ensure that the Marriage Act's legal aspects are applied fairly and uniformly to all types of marriage ceremony (civil or religious) regardless of the type of celebrant appointment (Category A, B or C)). See PART VI.
9. Recommends forcing efficiencies in the Department by removing 'Cost Recovery' as it is not in the interests of the public and instituting other fairer methods of cost recovery that ensures all end-users, the marrying public, contribute to the costs of administering the Marriage Act for all Australians now and in the future.  
  
This means using existing staffing resources of the Marriage Law and Celebrant Section as this now has a computerised database and online portal system. This would require the Department to make the maximum use of the advice and support of the peak body Coalition of Celebrant Association Position (CoCA) Inc., professional celebrant associations and the State & Territory Registry Offices. See PART V-A.
10. Calls for introducing a flexible regional based capping system of appointments based upon five yearly appointments of the independently assessed best applicants for the available vacancies, rather than continuing to appoint 1000 new celebrants every two years as is currently the case. See Appendix No 14 and PART V-D.
11. Calls for Ongoing Professional Development to be managed predominantly by the professional associations and peak body, with Departmental input, rather than wholly controlled by the Department as currently the case. This would free staffing resources for regulatory reviews and legal guidance functions. See Appendix No 11 and 12 and PART V-C.
12. Calls for the establishment of an online Marriage Law Expert Advisory Panel of representatives from State and Territory Registry Offices, celebrant associations, the peak body Coalition of Celebrant Associations and Attorney-General's Departmental Legal Officers as recommended of its February 2012 comprehensive Submission on Cost Recovery & Increasing Professionalism. See Appendix No 8 and PART V-A.

13. Calls for strengthening the Commonwealth Marriage Registrars powers to refuse and/or terminate appointments of marriage celebrants based upon 'actual or potential conflicts of interests' as is granted Registrars of State and Territory marriage celebrants.
14. Proposes that all Commonwealth Civil Marriage Celebrants be required to belong to a professional celebrant association as applies in other professions.



### **PART III Rationale**

The basis for The Coalition of Celebrant Associations (CoCA) Inc submission is as follows

#### **1. The grounds for "Cost Recovery" to minimize or prevent "invalidity of marriage" caused by the marriage celebrants are not supported by empirical evidence.**

This Commonwealth Marriage Celebrants program

- has less than an average 0.5 % Statutory Complaints in an annual number of over 72,000 weddings. – *See Appendix 3*
- has 0.00005% error rate affecting the validity of marriage in last 15 years (1998-2012) conducted by all marriage celebrants i.e. including State appointed – *See Appendix 4*

Marrying couples are protected by

- the Australian Marriage Act which covers all marrying couples, who are free to marry, from any mistakes their celebrant may make, whether in a civil or religious marriage ceremony
- Fair Trading laws and have access to a Complaints Process, both to the Attorney-General's Department and to State Departments implementing Fair Trading laws.

#### **2. These Bills in effect remove ongoing life-time appointments, with 5-year reviews to ensure the celebrant is fit to continue, replacing these with 'one year licences to practice' for Category celebrants, and as such will harm 95% of marrying couples choosing civil marriage, whilst affecting only 5% of couples choosing religious ceremonies.**

This annual "Celebrant Registration" fee will increase costs on 95% of all civil marriages and over 70% of all marriages in Australia.

Marrying couples will have no guarantee that the celebrant of their choice, and with whom they have booked their wedding ceremony, will be still registered at the time of their ceremony.

- Couples choice of a celebrant is based on many individual factors, including the experience, reputation, personality and style of the celebrant, not just the fact that the celebrant has a licence to do the legal paperwork.
- 7 days to transfer a Notice of Intended Marriage gives couples no time to choose another celebrant, nor any guarantee that another celebrant with the same qualities will be able to be found in time.
- Many couples book their wedding in the first half of the year for a wedding in the spring to early summer season. This could affect one half of all civil weddings i.e. 35% of all marriages given 70% of marriages are done by Commonwealth Celebrants.
- A wedding celebration is a complex and difficult task in event planning, in balancing family and friendship relationships, in meeting expectations and desires, balancing financial and other pressures, so is rated as one of life's most stressful events.
- Having to find another celebrant at the last minute adds not only extra stress, but also can affect the couple's confidence and thus enjoyment of what they hope will be one of the happiest days of their lives.
- This is hard enough when serious illness or injury may strike their particular celebrant, but the possibility will be greatly increased by an annual fee system tied to the grounds for dismissal

The quality of the wedding services will decrease as structuring the Commonwealth Marriage Celebrant Program on an annual cycle of 'casual contractors' exacerbate an increasingly unstable and inexperienced workforce.

- Independent civil celebrants primary point of difference with State appointed marriage celebrants is the provision of a personalized ceremony tailored to the needs and desires of the couple. Unlike State appointed celebrants in registry offices and churches, independent celebrants do not have a standard set script for the ceremony.
- In 90% of civil weddings independent marriage celebrants do not work at the same venue, because the marrying couple book or provide the venue, in many cases in outdoor spaces. Thus the need for equipment and experience in delivering ceremony under a variety of more challenging situations.
- Professional standards depend upon continuity of work experience over a variety of work situations and improve over time as newer professionals are mentored by more experienced ones.
- Celebrants' motivation to invest in extra training, professional association support, clothing, computer, PA and other equipment depends upon the expectation that there will be time to recoup set-up expenses and achieve the ability to make a decent hourly rate for one's work.
- Even small businesses take 4 to 5 years to become established so annual appointments will create a high turn-over of newer celebrants lowering the overall experience and stability of the profession.

**3. The grounds for Cost Recovery to "increase professionalism" of Commonwealth Marriage Celebrants and deal with most complaints is the role of the Professional Celebrant Associations and their education and training systems.**

- The Marriage Law & Celebrant Section does not conduct marriage ceremonies as do State and Territory Registry Offices, thus lacks experience in ongoing delivery of marriage services.
- Marriage Law & Celebrant Section are neither marriage celebrants, nor celebrant trainers or assessors yet have failed to implement the advice of the Departments' own peak advisory body, the Coalition of Celebrant Associations Inc.

**4. These Bills do NOT create efficient or effective regulation of marriage celebrants under the Australian Marriage Act 1961**

Please note that this Commonwealth Marriage Celebrants program

- operated for 30 years with 1 or 2 staff in Canberra in a smooth and efficient manner.
- is part of the Australian Marriage Act with protects all couples, who are free to marry, from any mistakes their celebrant may make, whether in a civil or religious marriage ceremony.

The Government argued in its Regulation Impact Statement that it needed to increase its staffing from 7 to 12 full-time staff to manage the Commonwealth Marriage Celebrants program and to meet their regulatory responsibilities of 5 yearly reviews of all its celebrants.

However these amendments now remove that requirement altogether. With computerization it can be argued that the need for increased staffing is negated.

Increased staffing is not efficient, as it will be duplicating

- telephone advice services already provided by Registry Offices to all marriage celebrants, and
- other support services provided by professional celebrant associations.

## **5. The Cost Recovery Consultation process was flawed and biased by the interpretation of results obtained**

The Coalition of Celebrant Associations (CoCA) Inc. argued that these changes do not meet the principles outlined in the Department of Finances Cost Recovery Guidelines. See *Appendix 14*

The consultations were conducted under a directive that there would be "no negotiation about whether there would be a fee, only the amount of the fee was negotiable".

Even with this proviso, 70% of independent celebrants opposed the fee. See *Appendix No 7*.

These amendments allow for the fee to be increased to the level originally announced in 2011. Thus the consultation process was a waste of government and celebrant's time, resources and finances.

CoCA argued the single most important structural reform required was the implementation of a system where

- the best applicants for celebrant work would be appointed
- the number of independent celebrants appointed allowed the marrying public access to a range of choice of celebrant
- the number of new celebrants balanced the ones retiring out
- the average number of weddings per celebrant allowed access to sufficient work to
  - retain and improve marriage celebrancy knowledge and skills
  - cover all the expenses in delivering marriage services *i.e. not subsidising these with income or funds from other sources*
  - earn a fair hourly rate for the government service they provide
- the number of celebrants allowed the marrying public a reasonable degree of choice of celebrant

Marriage is the fundamental building block of the structure of society. It is the legal contract that in our nation, adults can use to protect the resources created by their union to support their daily living and to use primarily in times of sickness, disability and old age.

Marriage also aims to support the marriage partners' commitment to nurture the physical, spiritual and social health to adulthood any children of the partnership as well as their partner and themselves. Marriage also strengthens the family and community support of this social unit by redefining the relationships between the two extended families from which the parties to the marriage belong as well as redefining the kinship relationships.

The CoCA argues that the government is responsible to ensure that

- such fundamental services are delivered in best possible way for the public good
- the conditions under which these services are delivered are fair and equitable for all categories of celebrants and
- must protect the public from conflicts of interest in all parts of the system.

## **6. These Bills will entrench systemic discrimination of civil marriage celebrants under the Australian Marriage Act 1961 (not intended by the 2003 changes) and do NOT meet Australia's human rights nor rights in work. See Appendix No 2.**

- The 2003 changes were not intended to penalise independent marriage celebrants, rather to modernise the Commonwealth Marriage Celebrant Program by acknowledging the growing profession of civil celebrancy and incorporating some general principles that applied to the other two categories of marriage celebrants.

- Example of general principles are that most Recognised Religious Celebrants and Registry Staff would require some pre-employment training, be required to do ongoing professional development and have their employment reviewed on a regular basis.
- However the 2003 changes now create mandatory requirements for independent marriage celebrants to gain and maintain marriage appointments that do not apply to the other two categories of celebrants.
- Applying a not-competency based termination of the right to continue to work as a marriage celebrant (i.e. ongoing life-time appointments unless proved unfit) further embeds this systemic inequality of the conditions under which this category of celebrants provides marriage services on behalf of the government to the community.
- Natural justice issues of extinguishing current rights of ongoing lifetime appointments (*unless proved unfit*) have not been addressed in these Bills.

**7. The Senate is reminded to assess this annual fee in the context of the set-up and ongoing costs to independent marriage celebrants (Marriage Act Part IV, Division 1, Subdivision C) that do not apply to the other two categories of celebrant (Subdivisions A and B). See Appendix 10.**

Unlike Category A celebrants, independent marriage celebrants (Subdivision C) are responsible for

- the financial, time and other costs of training to be a celebrant
- all the set-up costs for their celebrancy practice (office space and equipment, vehicle, clothing etc)
- all the ongoing expenses associated with delivering marriage services in a variety of community based settings to a very broad range of couples and their guests (*most common size 50 to 100 people – See Appendix 7*)

This means most celebrants struggle to make an hourly rate commensurate with the responsibilities they hold in relation to the Marriage Act.

The set-up costs, training and ongoing expenses two other categories of celebrants are covered by their Recognised Religion or by the Registry Office. Both also have financial remuneration for their time.

Therefore it is not good enough to assume this group of celebrants are “just a small business” when their responsibilities under the Marriage Act are equal to the other two Categories of marriage celebrants.

**8. There are more efficient, effective, professional, fairer and less costly measures for Cost Recovery that would ensure user pays i.e. all end-users contribute to the regulation of one of the important laws affecting our whole Australian society.**

- CoCA outlines other options for cost recovery, if this were the ONLY aim of these Bills. *See Appendix No 8*
- The Coalition of Celebrant Associations Inc proposed 12 Recommendations to the Department in its Cost Recovery and Increased Professionalism. *See Appendix No 8*

**PART IV. Summary of Coalition of Celebrant Associations (CoCA) Inc  
Recommendations to the Senate.**

Marriage Amendment (Celebrant Administration and Fees) Bill 2013

**CoCA Inc– Senate Recommendation 1**

*That the following amendments to the Marriage Act 1961 NOT be approved:*

- Subsection 5(1) Insert: celebrant registration charge: see subsection 39FA(1).
- Subsection 5(1) Insert: charge payment day: see subsection 39FA(2).
- After section 39F Insert:
- 39FA Celebrant registration charge: liability to pay charge
- 39FB Celebrant registration charge: consequence of non-payment
- At the end of paragraph 39J(1)(c) Add "(including under subsection 39FB(3))".

**CoCA Inc– Senate Recommendation 2**

*That the following amendment Marriage Act 1961 be approved:*

After "Part IV Solemnisation of marriages in Australia, Division 2 Marriages by authorised celebrants, 50 Marriage certificates"

Add

(8) The regulations may make provision for a celebrant registration and regulation fee to be collected upon the sale of the government authorised and numbered Form 15 Marriage Certificate with the revenue so collected being apportioned to fund the Commonwealth Marriage Law and Celebrant Section national responsibilities as well as its regulation responsibilities for Part IV, Division 1, Subdivision C celebrants with the residue of the funds collected being distributed to the state and territories Regulators according to the location of the marriage solemnization" for the regulation responsibilities for Part IV, Division 1, Subdivisions A and B celebrants.

**CoCA Inc– Senate Recommendation 3**

*That the following amendment Marriage Act 1961 be approved:*

After Part 1A Marriage Education, insert

**Part 1B Marriage Registration and Regulation**

(1) The regulations may make provision for a marriage registration fee to be collected from marrying couples through the sale of a government authorised Marriage Registration Stamp via Australia Post or other so nominated accessible source with the revenue so collected being apportioned to fund its distribution costs (e.g. Australia Post), Commonwealth Marriage Law and Celebrant Section national responsibilities as well as its regulation responsibilities for Part IV, Division 1, Subdivision C celebrants with the residue of the funds collected being distributed to the state and territories Regulators according to the location of the marriage solemnization for the regulation responsibilities for Part IV, Division 1, Subdivisions A and B celebrants.

**CoCA Inc– Senate Recommendation 4**

*That the following amendment Marriage Act 1961 SECTION 39E (1) to remain as is and SECTION 39E (2) to be changed to read:*

Regulations to be amended to

- establish 30 regions of 5 electorates each of roughly equal population size.

- each region open for appointments once every 5 years on a rotational basis such that 6 regions a year will be available for appointment to the best applicants.
- appointments only made when the average number of weddings per region is above 25 weddings pa
- appointments to be made on the basis of the applicant having the best scores as ranked by an independent assessment process.

#### **CoCA Inc– Senate Recommendation 5**

*That the following amendment to the Marriage Act 1961 Section 39C changed to read as follows*

(2) The 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, the applicant is not a fit and proper person or does not meet other requirements as below. In determining whether the Registrar is satisfied that the person is a fit and proper person to be a marriage celebrant, the Registrar must be satisfied the person:

- (a) has sufficient knowledge of the law relating to the solemnisation of marriages by marriage celebrants; and
- (b) is committed to advising couples of the availability of relationship support services; and
- (c) is of good standing in the community; and
- (d) has not 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) does not have 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) would not be likely gain a benefit in respect of another business that the person owns, controls or carries out if they were appointed; and
- (g) will fulfill the obligations under section 39G; and
- (h) is a fit and proper person to be a marriage celebrant in relation to any other matter the Registrar considers relevant.

#### **CoCA Inc– Senate Recommendation 6**

That the Department implement a post-training pre-appointment independent knowledge and skills assessment to establish the order of ranking for those celebrants applying for the limited vacancies under the Capping System as proposed in CoCA Inc's Recommendation No 4 above.

#### **CoCA Inc– Senate Recommendation 7**

Add: (2) Without limiting subsection (1), the regulations may require a fee to be paid in respect of an application for an exemption from requirements prescribed by regulations made for the purpose of paragraph (1)(b); a fine to be paid for the failure to completed the Ongoing Professional Development obligations. The regulations may specify the fee and the fines to be determined by the Minister by legislative instrument.

#### **CoCA Inc– Senate Recommendation 8**

That the Department establish a Joint Attorney-General's Department and Coalition of Celebrant Associations Joint Standing Committee for Approval and Monitoring of Ongoing Professional Development Activities for Marriage Act Part IV, Division 1, Subdivision C celebrant, part of which's role would be to develop a simple and clear set of Guidelines for the approval of OPD activities and an Application and Monitoring Process that requires minimal support and supervision from the Marriage Law and Celebrant Section (i.e. one that allows the Marriage Law and Celebrant Section to concentrate on ensuring all marriage celebrants are up-to-date with their OPD obligations.)

#### **CoCA Inc– Senate Recommendation No 9**

That Section 39E, Paragraph 39J(1)(a) and Subsection 39J(3) NOT be repealed.

**CoCA Inc– Senate Recommendation No 10**

That Subsections 39H(1) and (2) should NOT be repelled, nor should Paragraph 39J(1)(a) “(unless a ground for the decision was that the Registrar would breach section 39E by registering the person)” nor Subsection 39J(3) “(even if doing so at the time the action is taken would cause a breach of a limit under section 39E)” be omitted.

**CoCA Inc– Senate Recommendation No 11**

That this amendment “Schedule 2—Other amendments Part 2—Transitional provisions” be adopted.

**CoCA Inc– Senate Recommendation No 12**

That amendment “42(1)(b) (iv) an Australian passport, showing the date and place of birth of the party; and” be adopted.

**CoCA Inc– Senate Recommendation No 13**

That amendment “**Subsection 115(1)** Omit “, as soon as practicable after each 14 March” be adopted

**CoCA Inc– Senate Recommendation No 14**

That the proposed amendment “39FA Celebrant registration charge: liability to pay charge” NOT be adopted, unless this applies to ALL Categories of marriage celebrants.

**CoCA Inc– Senate Recommendation No 15**

That the proposed amendment “39FB Celebrant registration charge: consequence of non-payment” NOT be adopted

**CoCA Inc– Senate Recommendation No 16**

That the Regulation fee be set at \$50 for 2013/2014.

**CoCA Inc– Senate Recommendation No 17**

That the Marriage (Celebrant Registration Charge) Bill 2013 section The statutory limit read as follows:

**The statutory limit**

(1) The **statutory limit** is: (a) for the financial year commencing on 1 July 2013—**\$250**; or (b) for a later financial year:

(i) unless subparagraph (ii) applies—the amount calculated by multiplying the statutory limit for the previous financial year by the indexation factor for the later financial year; or

(ii) if the indexation factor for the later financial year is 1 or less—the same amount as the statutory limit for the previous financial year.

## **PART V. Marriage Amendment (Celebrant Administration and Fees) Bill 2013**

### **PART V-A.**

<b>Schedule 1—Amendments relating to fees and charges</b> <b>Part 1—Amendments relating to annual celebrant registration charge</b>
--

#### **Summary of Proposed Changes of this section:**

1. Introduces annual registration charges to continue to be a Commonwealth registered Marriage Celebrant  
*Commonwealth-registered marriage celebrants who are authorised under the Marriage Celebrants Program to perform marriages. This group includes civil celebrants and celebrants who are ministers of religion whose denomination is not proclaimed under section 26 of the Act i.e. Marriage Act 1961 Part IV Div.1 Subdivision C Marriage celebrants*
2. Excludes annual registration charges to be continue to be a State or other registered Marriage Celebrant. i.e. Marriage Act 1961 Part IV Div. 1 Subdivision A Ministers of religion  
**See Appendix No 15– List of approx 24,000 Exempted Celebrants**  
Marriage Act 1961 Part IV Div.1 Subdivision B State and Territory officers etc.

#### **Explanatory Memorandum claims:**

*"In summary, these include ..... amendments to increase the efficiency and operation of the Marriage Celebrants Program."*

*The administration of the Program includes assessing and authorising new marriage celebrants for registration, reviewing celebrant performance, resolving complaints about celebrants, handling a large volume of enquiries from celebrants, producing information and guidance materials, managing ongoing professional development arrangements for celebrants and engaging with celebrants and their peak group. Many of these functions are carried out by the Registrar of Marriage Celebrants, a departmental officer with specific authority under the Marriage Act to carry out various functions in Subdivision C of Division 1 of Part IV of the Act.*

#### **Discussion:**

##### **1. Excluding marriage celebrants appointed under Marriage Act 1961 Part IV Div. 1 Subdivision A Ministers of religion and Subdivision B State and Territory officers**

These amendments by excluding the two other categories of marriage celebrants, further contributes to systemic injustice against civil marriage and civil marriage celebrants that was not intended when the Act was created in 1961 nor by the 2003 changes to the Marriage Act.

Some basic measures (training for appointment, ongoing professional development and 5 yearly reviews) were intended to bring Commonwealth celebrants in line with basic assumptions about the way the State & Territory celebrants were appointed and regulated.

Rather than support the professionalism of celebrancy, these Bills are now being used to impose unfair conditions upon which Commonwealth celebrants services can be terminated upon specific grounds not applicable to other categories of marriage celebrants even though all three categories provide the same government approved service of legal marriage to the Australian community, regardless of the style of ceremony.

##### **2. In summary, these include ..... amendments to increase the efficiency and operation of the Marriage Celebrants Program. (Explanatory Memorandum)**

Coalition of Celebrant Associations (CoCA) Inc. considers that these changes are neither an efficient nor effective way to regulate the Commonwealth Marriage Celebrant Program



because the Department does not have the expertise nor experience to be increasing its services into areas that are traditionally the province of the professional celebrant associations and the Registries of Births Deaths and Marriages.

Rather the Department is creating and expanding services to justify the collection of this revenue.

There may be some submissions in favour of the proposed annual registration fee simply to remove competition by pricing them out. However, this competitive "open market" strategy is specifically legislated against for Category A Religious celebrants (Section 33 d(ii) and Section 31 (1) a of the Act.)

Besides the wider implications of applying an annual registration fee are far more concerning. Knee-jerk reactions do not consider flow-on matters of discrimination, reduction of service to the public, heartache and worry for the marrying couple, loss of celebrant experience and expertise, lowering of service standards in the marriage celebrant program and doubts about future adequate cost recovery for the Department and the Marriage Law and Celebrant Section

There are also concerns in approving unlimited expenditure and staff for the Marriage Law and Celebrant Section without requirements for cost savings or costs reductions. This submission closely examines these and other matters of more importance than simply pricing celebrants out or introducing a 'cost recovery' fee, without any effort to examine better and fairer means of cost recovery from all users of the service, rather than Commonwealth marriage celebrants alone. For instance this could include a small charge for couples through a marriage licence process or a surcharge on purchase of marriage certificates.

As there is little change each year to the number of marriages this would ensure a foreseeable income for the Department. Celebrant numbers may rise or fall - making anticipated income from celebrants hard to gauge - or grossly unfair by passing on even greater cost recovery impositions on fewer celebrants and not on their State and Territory religious counterparts.

*RE "The administration of the Program includes assessing and authorising new marriage celebrants for registration."*

Appointing Commonwealth Marriage Celebrants every five years would reduce the workload of the Department to one fifth proposed under these Bills.

Given that the average number of weddings per celebrant has dropped from 35 pa (average income \$17,500 pa) to less than 7 pa (average gross income \$3,500 pa, it is wasteful of government resources and will continue to contribute to an unstable ever decreasing level of expertise across this marriage celebrant sector.

*RE "reviewing celebrant performance"*

See PART V-E of this submission

*RE "resolving complaints about celebrants"*

Normally professional bodies handle minor complaints about professionals. Even if all complaints continue to be directed to the Department, requiring marriage celebrants to prove themselves to be "Fit and Proper" professionals by their willingness to belong to a professional celebrant associations would be one way to minimize complaints.

Celebrant associations provide all types of advice to the members about the possible problems that certain behaviours and practice can cause in the relationship between the marrying couple and their celebrant and in the delivery of personalized ceremonies.

Strengthening the relationship between the celebrant peak body and the Department, with collection of relevant data on the types of complaints would assist both bodies to direct

efforts to reduce such complaints over time. Such methods could include Fact Sheets, Guidance Notes etc available via the Online Portal plus improved prior training and ongoing professional development.

*RE: handling a large volume of enquiries from celebrants.*

The government created this problem by choosing too low a training requirement for celebrant appointed, then duplicating registry office and celebrant associations services by providing telephone advice services in an attempt to address a training problem.

As the Department does not offer marriage services to the public, its staff has no expertise or experience in dealing with the majority of marriage related questions that celebrants may ask.

Firstly prior to 2003, celebrant made enquiries related to legal matters to the relevant Registry of Births Deaths and Marriages for the geographical area wherein the marriage would be held.

These support services continue to be available to all marriage celebrants as registries have the responsibility to register a valid marriage. In recent times, Registry offices are moving to wanting marriage celebrants to provide Online Marriage Registration. NSW and Victoria are now online and it is expected that in the next decade all jurisdictions will be online

Online registration by celebrants reduce costs to state and territory budgets with no recompense to these Commonwealth celebrants.

Celebrants may also access advice and support services via their professional associations. Recommending membership of such associations would also reduce the need for enquiries to either state or national government services.

Rather than continue to duplicate these advice services at extra cost to celebrants and thus to the marry public, it is recommended the Department confine its role to providing its expert legal advice via an online Expert Advisory Panel Forum of relevant bodies.

Queries from associations and registries as well as complaints reported would assist all stakeholders involved in supporting celebrants to direct efforts to reduce such inquiries and complaints over time. Such methods could include Fact Sheets, Guidance Notes etc available via the Online Portal plus improved prior training and ongoing professional development.

Another concern is that Commonwealth celebrants are not the only users of the Marriage Section of the Department. The general public and other types of celebrants are also likely to use these services. Currently the Department does not collect any statistics on the types of enquiries it receives from the public, State & Territory appointment celebrants versus Commonwealth celebrants.

It is not fair that independent celebrants be required to totally fund the marriage services they offer before being able to make a net hourly rate, and that celebrants should also be funding government services provided to other categories of celebrants and the public.

In fact, this is "making a profit" from one Category of celebrants to provide services to other Categories of celebrants and something we understood was not allowed under the Department of Finance Cost Recovery Guidelines.

*RE: producing information and guidance materials.*

Likewise it is not fair that independent celebrants be funding government information and guidance materials that are required by other categories of celebrants and the public.

*RE: managing ongoing professional development arrangements for celebrants and engaging with celebrants and their peak group.*

The Coalition of Celebrant Associations argues that the Department's involvement in setting the Ongoing Professional Development (OPD) program for the celebrancy profession is outside its regulatory responsibilities, and certainly outside its expertise and experience as they are not celebrants. Regulators of the other two categories of celebrants do not set the Ongoing Professional Development programs for either the Recognised Religions or the state or territory administrative systems. The Regulators role here is to check that 5 hours pa OPD is completed NOT determine what that those OPD activities will be.

The Coalition of Celebrant Associations has proposed a plan that involves establishing a Standing Committee for Ongoing Professional Development with the peak body, associations and the Department. This would mean minimal involvement of the Department in the approval of the OPD activities and using the Department's MARCEL database annual survey to assist in the monitoring of the quality of OPD services. That is the Department could provide a mechanism for independent feedback on the quality and suitability of OPD activities.

Once again the peak body and celebrant associations expertise and experience is offered at no cost to the government.

## **The Coalition of Celebrant Associations (CoCA) Inc RECOMMENDATIONS**

### **CoCA Recommendation 1**

*That the following amendments to the Marriage Act 1961 NOT be approved:*

- Subsection 5(1) Insert: celebrant registration charge: see subsection 39FA(1).

- Subsection 5(1) Insert: charge payment day: see subsection 39FA(2).
- After section 39F Insert:
- 39FA Celebrant registration charge: liability to pay charge
- 39FB Celebrant registration charge: consequence of non-payment
- At the end of paragraph 39J(1)(c) Add "(including under subsection 39FB(3))".

### **CoCA Inc Recommendation 2**

*That the following amendment Marriage Act 1961 be approved:*

After "Part IV Solemnisation of marriages in Australia, Division 2 Marriages by authorised celebrants, 50 Marriage certificates"

Add

(8) The regulations may make provision for a celebrant registration and regulation fee to be collected upon the sale of the government authorised and numbered Form 15 Marriage Certificate with the revenue so collected being apportioned to fund the Commonwealth Marriage Law and Celebrant Section national responsibilities as well as its regulation responsibilities for Part IV, Division 1, Subdivision C celebrants with the residue of the funds collected being distributed to the state and territories Regulators according to the location of the marriage solemnization" for the regulation responsibilities for Part IV, Division 1, Subdivisions A and B celebrants.

### **CoCA Inc Recommendation 3**

*That the following amendment Marriage Act 1961 be approved:*

After Part 1A Marriage Education, insert

#### **Part 1B Marriage Registration and Regulation**

(1) The regulations may make provision for a marriage registration fee to be collected from marrying couples through the sale of a government authorised Marriage Registration Stamp via Australia Post or other so nominated accessible source with the revenue so collected being apportioned to fund its distribution costs (e.g. Australia Post), Commonwealth Marriage Law and Celebrant Section national responsibilities as well as its regulation responsibilities for Part IV, Division 1, Subdivision C celebrants with the residue of the funds collected being distributed to the state and territories Regulators according to the location of the marriage solemnization for the regulation responsibilities for Part IV, Division 1, Subdivisions A and B celebrants.

### **CoCA Inc Recommendation 4**

*That the following amendment Marriage Act 1961 SECTION 39E (1) to remain as is and SECTION 39E (2) to be changed to read:*

Regulations to be amended to

- establish 30 regions of 5 electorates each of roughly equal population size.
- each region open for appointments once every 5 years on a rotational basis such that 6 regions a year will be available for appointment to the best applicants.
- appointments only made when the average number of weddings per region is above 25 weddings pa
- appointments to be made on the basis of the applicant having the best scores as ranked by an independent assessment process.

### **CoCA Inc Recommendation 5**

*That the following amendment to the Marriage Act 1961 Section 39C changed to read as follows*

(2) The 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, the applicant is not a fit and proper person or does not meet other requirements as below. In determining whether the Registrar is satisfied that the person is a fit and proper person to be a marriage celebrant, the Registrar must be satisfied the person:

- (a) has sufficient knowledge of the law relating to the solemnisation of marriages by marriage celebrants; and
- (b) is committed to advising couples of the availability of relationship support services; and
- (c) is of good standing in the community; and
- (d) has not 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) does not have 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) would not be likely gain a benefit in respect of another business that the person owns, controls or carries out if they were appointed; and
- (g) will fulfill the obligations under section 39G; and
- (h) is a fit and proper person to be a marriage celebrant in relation to any other matter the Registrar considers relevant.

**PART V-B.**

**Schedule 1—Amendments relating to fees and charges**  
**Part 2—Amendments relating to fee for applying to become a marriage celebrant**

***Summary of Proposed Changes of this section:***

*Introduces charges to apply to be a Commonwealth registered Marriage Celebrant*  
*Excludes charges to apply to be a State or other registered Marriage Celebrant*

**Discussion:**

As part of its Cost Recovery for Increased Professionalism Submission in February 2012 as part of the Consultation phase, CoCA's Recommendation 6 was that the Department implement a Post Training / Pre-Appointment Assessment Process to ensure

- a uniform high standard of entry for all independent civil marriage celebrants
- a qualitative baseline for trainer's qualifications to provide training with the VET system, and
- a measure for existing celebrants to bench mark themselves as part of their Ongoing Professional Development.

CoCA recommended that this be

- self-funded independent uniform assessment of knowledge and skills by interview
- conduct by a pool of experienced marriage celebrants who are also qualified workplace trainers and assessors of the VET celebrancy courses.

It is believed that some of the benefits of this process would be to:

- address problems with the variable outcomes of the knowledge and skills of graduates of the VET system.
- strengthen the perception that the Marriage Celebrants role is an important one requiring more than just passing a course.
- provide an opportunity for existing celebrants to become a CoCA accredited celebrant if the celebrant successfully passes this assessment

The Department's plan to strengthen prior assessment of applicants is a move in right direction.

However Coalition of Celebrant Associations Inc still remains concerned that whilst Departmental Staff may be knowledgeable in area related to marriage law, they are not qualified or experienced celebrants. Neither are Departmental staff experienced celebrant trainers nor assessors so that what is proposed falls short of an in-depth independent skilled assessment of a celebrant applicant as proposed by CoCA.

Coalition of Celebrant Associations Inc's Cost Recovery and Increased Professionalism Submission February 2012 Recommendation 6.0 was to "Implement a Pre-Appointment Assessment Process" See *Appendix No 8*

This strategy was estimated as a one-off cost of around \$20,000 to establish this process with its ongoing implementation and review being self-funded by celebrants wishing to be assessed in line with whatever is the current appointment training qualification to apply to be appointed.

Therefore The Coalition of Celebrant Associations (CoCA) Inc's considers that such an independent in-depth skilled assessment of celebrant applicants would then provide a mechanism whereby celebrant vacancies in the five year capped regional appointment system would be the measure to choose the best applicant for the vacant appointment.

**CoCA Inc Recommendation 6**

That the Department implement a post-training pre-appointment independent knowledge and skills assessment to establish the order of ranking for those celebrants applying for the limited vacancies under the Capping System as proposed in CoCA Inc Submission Recommendation No 4 Appendix 8

## **PART V-C.**

### **Schedule 1—Amendments relating to fees and charges**

#### **Part 3—Amendments relating to fee for applying for exemption from professional development requirements**

At the end of section 39G

Add: (2) Without limiting subsection (1), the regulations may require a fee to be paid in respect of an application for an exemption from requirements prescribed by regulations made for the purpose of paragraph (1)(b). The regulations may specify the fee, or provide for the fee to be determined by the Minister by legislative instrument.

#### **Summary of Proposed Changes of this section:**

*Adds the ability to charge a fee for exempting a Part IV, Division 1, Subdivision C Marriage Celebrant from doing annual Ongoing Professional Development required hours.*

**Note:** *Part IV, Division 1, Subdivision A and B Marriage Celebrants are not required to do any specific number of annual Ongoing Professional Development hours.*

#### **Discussion:**

The Coalition of Celebrant Associations (CoCA) Inc supports the principle that those celebrants, who require an exemption from Ongoing Professional Development in a particular year, be required to pay a fee to apply.

However as Ongoing Professional Development options are available online and by distance it is unlikely this option is needed.

Therefore the celebrant should be required to make up the 5 hours Ongoing Professional Development in the following year or receive a Fine for Non-OPD Compliance in the order of \$500.

As argued elsewhere because of the discriminatory nature of applying criteria to Category C celebrants that does not apply to Category A and B, a single failure to do Ongoing Professional Development should not be grounds for loss of celebrant appointment. Alternatives such as fines should be options available to the Registrar of Celebrants.

## **COCA INC RECOMMENDATIONS**

### **CoCA Inc Recommendation 7**

Add: (2) Without limiting subsection (1), the regulations may require a fee to be paid in respect of an application for an exemption from requirements prescribed by regulations made for the purpose of paragraph (1)(b); a fine to be paid for the failure to completed the Ongoing Professional Development obligations. The regulations may specify the fee and the fines to be determined by the Minister by legislative instrument.

### **CoCA Inc Recommendation 8**

That the Department establish a Joint Attorney-General's Department and Coalition of Celebrant Associations Joint Standing Committee for Approval and Monitoring of Ongoing Professional Development Activities for Marriage Act Part IV, Division 1, Subdivision C celebrant, part of which's role would be to develop a simple and clear set of Guidelines for the approval of OPD activities and an Application and Monitoring Process that requires minimal support and supervision from the Marriage Law and Celebrant Section (i.e. one that allows the Marriage Law and Celebrant Section to concentrate on ensuring all marriage celebrants are up-to-date with their OPD obligations.)



**PART V-D.**

**Schedule 2—Other amendments**

**Part 1—Amendments**

**1 Section 39E** - Repeal the section.

**3 Paragraph 39J(1)(a)**

Omit "(unless a ground for the decision was that the Registrar would breach section 39E by registering the person)".

**4 Subsection 39J(3)**

Omit "(even if doing so at the time the action is taken would cause a breach of a limit under section 39E)".

**Summary of Proposed Changes of this section:**

*Removes section relating to the Capping of Marriage Act Part IV, Division 1, Subdivision C Celebrant Numbers*

*NB Registrars of Marriage Act Part IV, Division 1, Subdivision A and B celebrant have the ability to cap their numbers. See Appendix 2*

**Discussion:**

It is the responsibility of government to ensure that government services such as marriage under law are delivered in a fair and equitable way to ensure that a consistent quality of those professional services are available to the public.

A simplest view of this Legislation is to think that the fee will remove those doing few weddings. Not so. The vast majority (98%) of celebrants are currently either subsidizing the costs of providing a professional civil marriage services from other income or personal financial resources or at best making a poor hourly rate for their part-time work. See *Appendix 6*

Those celebrants who have other employment or private resources, but do few ceremonies will be able to afford the fee.

However those more likely to not be able to afford these fees are:

- longer-term celebrants who mentor newer celebrants
- more experienced celebrants who have caring responsibilities for partners, parents or grand-children,
- full-time civil celebrants who like religious celebrants provide a range of other ceremonies, particularly civil funeral ceremonies

The standard of the profession over-all will be diminished by the loss of this knowledge and expertise, simply on the basis of a crude cutting numbers measure by the government.

It must also be pointed out that 23,500 recognised religious celebrants only average 1.48 weddings pa. Thus if it is reasonable to apply such crude measures to Part IV, Division 1, Subdivision C celebrants to increase their opportunities for work, then one could argue that this applies even more so to Part IV, Division 1, Subdivision A and B celebrants

Number of ceremonies done is NOT a measure of the quality of those ceremonies.

There are many examples where government restricts the numbers of people delivering a service to ensure that the service remains in the best interest of the public. The Marriage Act does so for the other two categories of celebrant. See

**The Coalition of Celebrant Associations (CoCA) Inc has advised the government that the single most important strategy to increase professionalism is to balance the number of celebrants entering the profession with those leaving, whilst still ensuring that the marrying public has plenty of access to a choice of celebrant.**

An ongoing yet flexible capping measure would ensure that a sufficient number of celebrants are able to maintain and improve not only their legal knowledge, but also their ceremonial skills. The latter, since 2003, is required under the Act in the Code of Practice and is the single most important concern of couples i.e. that their wedding ceremony is delivered according to their wishes in a competent and professional manner.

Most professions are regulated by

- high entry standards and training qualifications
- sufficient work to gain a sustainable weekly wage
- oversight by the profession bodies.

These natural forces manage a profession's numbers and thereby deliver a reasonably stable workforce without interference by government.

However this principle was not followed through with the 2003 changes. Instead of a course of 11 units, only one unit of a TAFE equivalent / Vocational Education & Training (VET) unit was set as the appointment criteria. To this low training level were added with some "Conflict of Interest" provisions in the Act (*that unlike State Registrars does not give the Commonwealth Registrar the ability to refuse appointment*) and some simple other "Fit & Proper" person's criteria.

Since 2003 unsustainable numbers of new appointments are continuing to be made, with over 10,000 celebrants appointed in less than a decade and the resultant dropping of the average number of weddings per celebrant to 7 per year (five times lower than 1999).

Given Marriage Act Part IV, Division 1, Subdivision C celebrants are self-employed professionals-in-private practice need to average 100 weddings pa to make a sustainable weekly wage from wedding work, the effect of the 2003 Changes have halved work and income and been disastrous.

Adding other ceremony work in 1999 may have allowed 35 % celebrants with over 25 wedding per to make a part-time to full-time income from work as a civil celebrant. This opportunity also has shrunk by one half.

And the number doing 10 weddings or less increased from 36.3% to 63.8%

At \$500 per wedding to compare AVERAGE GROSS incomes of independent celebrants, these tables show a massive drop in earnings from \$17,500 pa (1999) to \$3,500 pa (2010).

Civil celebrants, like recognised religious celebrants, need fair recompense for their work, but remuneration is not the prime or only reason they offer their services to the community.

**Table 1 - CIVIL MARRIAGES 1999 Dept AG's Statistics**  
**Average weddings per celebrant per year = 35**

Number Of Weddings Per Annum	Celebrants %	Celebrants Number
Nil	6.78 %	113
1 - 10	29.53 %	493
11 - 25	26.20 %	438
26 - 50	21.70 %	362
51 - 100	12.08 %	202
101 - 150	2.53 %	42
151 - 200	0.95 %	16
200 plus	0.25 %	4

*Handwritten annotations: 33.8% (spanning 26-50 and 51-100), 3.73% (spanning 101-150 and 151-200)*

**Celebrante and AFCC Association Survey (2012)**  
**Average weddings per celebrant per year = 7**

HOW MANY CEREMONIES DID YOU PERFORM IN 2011?

RESPONSE	%	COUNT
None	6.4%	94
<b>Between 1 and 5</b>	<b>32.8%</b>	<b>52.3%</b> 480
Between 5 and 10	20.5%	300
Between 10 and 20	17.8%	21.95% 261
Between 20 and 30	8.3%	122
Between 30 and 40	4.2%	61
Between 40 and 50	2.7%	16.35% 69
Between 50 and 75	4.1%	60
Between 75 and 100	1.2%	17
More than 100	2.1%	31
<b>TOTAL</b>	<b>100%</b>	<b>1465</b>

*Handwritten annotations: 52.3% (next to 32.8%), 21.95% (next to 17.8%), 16.35% (next to 2.7%)*

#### Putting a flexible capping regime in place

- would still allow new celebrants to enter the system based upon the "best person" for the role
- would not remove the opportunity for potential independent marriage celebrants to conduct other ceremonies for their community, as is the case for Division 1, Subdivision A and B celebrants
- would reduce the amount of wasted personal family income in applicants setting up an independent celebrancy practice, only to find that unsustainable. This is due to the over-supply of independent celebrants, still being increased by 1000 new celebrants every two years, and the relatively slow growth in the availability of wedding work, despite the growing market share
- Would reduce the 'cost recovery' burden on existing celebrants who are being required to subsidise a system that is not matched to either their needs or the community's needs.

The independent marriage celebrant workforce would be stabilised by making appointments per region, with vacancies being open every 5 years, with appointments going to the best applicants available by independent assessment, and only when the ratio of weddings per celebrant per year rises about 25 weddings for that region

The "appointment selection" method then is

- not dependent on population changes or celebrant relocations
- would balance the intake rate with retirement, de- registration rates and regionally based community needs
- provide adequate access to work to improve and maintain skills.
- based upon similar principles for appointment and registration being applied to civil as currently apply to Recognized religious (refer Division 1 – Subdivision A section 31 of the Marriage Act 1961)

With the regional ratio of weddings per celebrant per year set by regulation, there would be an opportunity for different regions to make submissions based upon special regional circumstances.

#### **COCA RECOMMENDATIONS**

##### **CoCA Inc Recommendation No 9**

That Section 39E, Paragraph 39J(1)(a) and Subsection 39J(3) NOT be repealed.

See CoCA Inc Recommendation No 4.

## **PART V-E.**

### **Schedule 2—Other amendments**

#### **Part 1—Amendments**

#### **2 Subsections 39H(1) and (2) Repeal the subsections,**

substitute: (1) The Registrar of Marriage Celebrants may, from time to time, review the performance of a marriage celebrant in respect of a period to determine whether the Registrar considers that the celebrant's performance in the period is satisfactory. Note: The period to which a review relates is at the discretion of the Registrar.

#### **9 Transitional provisions relating to amendment made by item 2**

#### **Summary of Proposed Changes of this section:**

*Removes the requirement to review each marriage celebrant every 5 years*

#### **Explanatory Memorandum claims:**

#### **Discussion:**

*NB The Regulation Impact Statement (RIS) put forward by the AG Department argues the increased funding required is to enable the Department to conduct these 5 yearly reviews, yet this section removes that need. See Appendix 14.*

*RE "reviewing celebrant performance"*

The Department has recently moved from paper-based to computerized management of its administrative systems for monitoring the performance of Commonwealth celebrants, including an online portal to enable Commonwealth celebrants to be able to pay fees with the additional needed benefit of being able to reinstate annual surveys to collect statistics upon which to make informed decisions for The Program.

It must be noted the government argued that Cost Recovery was necessary to enable it to meet its regulatory responsibilities for checking that celebrants had met all requirements during a minimum of a 5-year period.

So it can seem rather contradictory then that these Bills in effect will increase the number of reviews five fold via an annual survey. On the other hand, it can be assumed the recent computerization of Commonwealth celebrants records is more than sufficient to handle 5 yearly reviews, if "*performance reviews can be conducted on a more selective and targeted basis*" as proposed in the Explanatory Materials.

Either way it must be concluded that the level of funding required to meet its Regulatory functions as required by the Act has been excessively inflated.

The "*allocation of the necessary resources to those cases where there are grounds for concern about the conduct or professional standards of marriage celebrants*" means that all those celebrants who are meeting their regulatory responsibilities are subsidising those who are not.

This is an example of "making a profit" from one Category of celebrant to provide services to other Categories and something we understood that was not allowed under the Department of Finance Cost Recovery principles.

#### **CoCA Recommendations**

#### **CoCA Recommendation No 10**

That Subsections 39H(1) and (2) should NOT be repealed, nor should Paragraph 39J(1)(a) "(unless a ground for the decision was that the Registrar would breach section 39E by registering the person)" nor Subsection 39J(3) "(even if doing so at the time the action is taken would cause a breach of a limit under section 39E)" be omitted.

**PART V-F.**

<b>Schedule 2—Other amendments Part 2—Transitional provisions</b>
---

**Summary of Proposed Changes of this section:**

*Refers to online applications that may not be completed at the time of commencing application*

**Discussion:**

This is a minor adjustment due to the way most applications will be made now that the Department has an online facility for lodging applications for appointment as an independent marriage celebrant.

Having computer and IT based skills is an essential requirement for modern professional independent marriage celebrants. This is important for researching information and especially for doing online registration of marriage that is currently available for NSW and Victorian marriage celebrants and within a decade could be available in all States and Territories.

**CoCA Recommendation No 11**

That this amendment "**Schedule 2—Other amendments Part 2—Transitional provisions**" be **adopted**

**PART V-G**

**Schedule 2—Other amendments**

**Part 1—Amendments**

**6 At the end of paragraph 42(1)(b)** Add: (iv) an Australian passport, showing the date and place of birth of the party; and

***Summary of Proposed Changes of this section:***

*Removes discrimination against all Australian citizens and especially those who are not Australian born, as overseas born people are able to use overseas passports as evidence of age (date-of-birth) and place of birth;*

**Discussion:**

CoCA supports this amendment.

However such changes will require supporting information and guidance for ALL marriage celebrants.

Thus the need for a Cost Recovery mechanism that is fairly applied to all marriage celebrants, or the Commonwealth needs to retain more funds in the Departments budget to ensure that Commonwealth celebrants are not indirectly subsidizing the work of the Department for all celebrants.

**COCA RECOMMENDATIONS**

**CoCA Recommendation No 12**

That amendment "42(1)(b) (iv) an Australian passport, showing the date and place of birth of the party; and" be adopted.

Also see *CoCA-Senate Recommendation No 2 and 3*

**PART V-H.**

**Schedule 2—Other amendments**

**Part 1—Amendments**

**7 Subsection 115(1)** Omit “, as soon as practicable after each 14 March”.

**Summary of Proposed Changes of this section:**

As the Register of all Marriage Celebrants – State and Commonwealth – are published on the Attorney-General’s website on a continuous basis, the need for printing lists is redundant.

**Discussion:**

CoCA agrees with this amendment given the changing nature of information distribution.

However, it must be noted that the MARCEL computer and web system that now carries the full Online Register of ALL Marriage Celebrants should be funded by all marriage celebrants not just Commonwealth Celebrants as proposed under Cost Recovery.

**COCA RECOMMENDATIONS**

**CoCA Recommendation No 13**

That amendment “**Subsection 115(1)** Omit “, as soon as practicable after each 14 March” be adopted

*Also see CoCA-Senate Recommendations No 2 and 3*

**PART V-I.**

**39FA Celebrant registration charge: liability to pay charge**

**39FB Celebrant registration charge: consequence of non-payment**

***Summary of Proposed Changes of this section:***

*Sixty days to pay an annual registration fee, not applicable to Division 1, Subdivision A and B celebrants. Failure to pay in 60 days results in automatic extinguishing of the celebrant's ongoing lifetime appointment provided the celebrant continues to be a Fit & Proper person. Provides an ability to see an exemption from the payment of the fee, but not an ability to apply for an extension to the time within which to pay.*

**Discussion**

There is no evidence to support the assumption that this annual level of regulation is required to ensure marriages are valid under law.

So there is absolutely no justification for the government to remove the right to continue to practice as a marriage celebrant if one continues to be a Fit and Proper Person simply on the basis of the non-payment of an annual fee.

Removing ongoing lifetime appointments (by removing *5 yearly reviews of performance*) with annual appointment based upon ability to pay a fee (*rather than poor performance*):

- has serious and unnecessary consequences for the marrying public.
- is a disproportionately harsh consequence for the non-payment of fee
- is discriminatory in its being only applicable to one Category of Marriage Celebrants under law.

Therefore payment of Cost Recovery Fees should not remove the Celebrant 5 yearly Performance Reviews nor the right to continue to practice as a marriage celebrant if the celebrant continues to be a Fit and Proper Person.

Non-payment of annual fees should attract fines not an automatic expiration of appointment.

**COCA RECOMMENDATIONS**

**CoCA Recommendation No 14**

That the proposed amendment "39FA Celebrant registration charge: liability to pay charge" NOT be adopted, unless this applies to ALL Categories of marriage celebrants.

**CoCA Recommendation No 15**

That the proposed amendment "39FB Celebrant registration charge: consequence of non-payment" NOT be adopted



**PART VI RE: Marriage (Celebrant Registration Charge) Bill 2013**  
**A Bill for an Act to impose celebrant registration charge, and for related purposes**

**PART VI - A. The statutory limit**

**The statutory limit**

(1) The **statutory limit** is: (a) for the financial year commencing on 1 July 2013—\$600; or  
(b) for a later financial year:

(i) unless subparagraph (ii) applies—the amount calculated by multiplying the statutory limit for the previous financial year by the indexation factor for the later financial year; or

(ii) if the indexation factor for the later financial year is 1 or less—the same amount as the statutory limit for the previous financial year.

**Discussion:**

The Department provided the Coalition of Celebrant Associations (CoCA) Inc with an estimation that approx. 10% of its current annual budget of \$2 million is applied to its national marriage responsibilities with the remainder being tied up in its management of the Commonwealth Marriage Celebrant Program.

One queries why small a small budget item is ear-marked for “cost recovery” given the importance of marriage to our social structure, and especially when the other two categories of celebrants should be subject to the same regulatory measures under the same Act, if marriage services are to be delivered without favour to all?

Coalition of Celebrant Associations (CoCA) Inc considers the major part of the federal government’s work on marriage should relate to all categories of celebrants.

### 13.0 Summary of the effects of Recommendations on Cost Recovery

Name of Fee	MLCS work	
Annual Marriage Law Education & Confirmation of Continuing Registration Fee or Annual Marriage Law & Celebrant Section Website Listing and Access Fee.	Marriage Law and Policy Development	Either collected as a fee directly from celebrants and paid once each year via Canprint.  Or by purchasing of vouchers/ stamps from Canprint per marriage
	Marriage Stationery, Publications and Canprint	
	Data collection & analysis	
	Website Listing	
	Coordination of Resource Development and support for all marriage celebrants (BDMs and Celebrant Associations)	
	Reimburse BDM work	
	Reimburse CoCA work	
	Explanatory Material	
	Access to Marriage Law Information	
	Public Information about Marriage	
Public Seminars on Marriage		
Application Fee	Inquiries	Paid for by applicant
	Fit & Proper Person Assessment	
Appointment Assessment Fee	Knowledge and Skills Assessment	Paid for by applicant
	Servicing Regional Advisory Committees	
Compliance Fee	One hour each 5 years	Paid once each five years purchased from Canprint. Or a proportion added to the annual Website Fee
	Fines for non-compliance	

**NOTE: CoCA advises against duplicating a mechanism for collecting fees when there is already a system in place via Canprint. Celebrants should not be required to bear the cost of such duplication were the MLCS to set up its own collection system.**

Appendix 9 outlines The Department's cost recovery estimates.

In relation to the Departments regulation of Category C celebrants, their figures

- estimate costs of maintaining the MARCEL Data base for managing Commonwealth celebrants records, doing annual surveys and reviewing performance at \$ 1 million over 3 years. This translates to around \$30 per celebrant.

However, this database also manages the online Directory of ALL Marriage Celebrants (*i.e. including the two categories of celebrants excluded from the payment of these fees.*) So cost recovery should come from these celebrants as well.

This amount could be then be guessed as around \$20 per Category C celebrant.

- Estimated as \$300,000 over 3 years (or \$10 per celebrant) the costs for stakeholder engagement, unnecessary stationery costs for an annual registration and criminal checks for new celebrants. Given the latter is now to be collected as part of the fee to be applied to New Appointments, this figure can be conservatively halved i.e. \$5
- In total this represents approx \$25 per annum.

Add to this half hour per annum of clerical work to check the celebrant has completed each years Annual Survey and OPD obligations, Notified any contact information changes and not had any complaints, gives a fee of around \$50 pa not \$250.

Thus the Coalition of Celebrant Associations Inc. estimated on the Cost Recovery figures provided by the Department, that a maximum fee of \$50 pa or \$250 for a five year term would be more than sufficient to cover the costs of the Department in monitoring celebrants performance and completing 5 yearly reviews with the computerized system now in place.

Category C celebrants who have meet all their obligations should not be required to subsidise those who do not as is currently proposed by the Bills. Non-compliant celebrants need to be fine for their failure to meet their statutory requirements.

On this premise, the annual fee should be not more that \$50 indexed in 2013 with an upper limit of \$150. Allowing for a portion of celebrants to resign, this would mean the government could recover \$250,000 to \$500,000 pa in revenue, or an additional \$750,00 to \$1.5 million over 3 years.

This is provided that the government can sustain the argument that this aspect of cost recovery is specifically related to Category C celebrants, even though the other two Categories are not regulated in this way.

In its Cost Recovery and Increased Professionalism Submission, Coalition of Celebrant Associations Inc maintains that Cost Recovery must apply fairly to all end-users under the Marriage Act, not just those choosing independent celebrants, for all other aspects of the Marriage Law and Celebrant Section's work.

Setting training standards is the responsibility of the VET sector in conjunction predominantly with the professional associations and the peak body.

As argued elsewhere management of ongoing professional development should be predominantly the role of the peak body and celebrant associations with Department input, rather than the reverse.

## **Other Options**

### **Celebrant Regulation Fee**

The Commonwealth government could impose a Celebrant Register Fee on all celebrants via a \$10 or \$20 levy on all Marriage Certificates sold via Canprint Company that distributes government publications as well as marriage stationery to all marriage celebrants

This would mean that all celebrants would contribute to Cost Recovery of the Department's responsibility to maintain an up-to-date Register of Marriage Services for the public.

Commonwealth celebrants will be providing their own time free of charge to update their own contact details and thus be reducing department costs anyway.

The revenue raised can then be apportioned between the federal government and the state and territory registries for the services.

At 120,000 weddings per annum, the funds raised would be \$1.2 million (\$10 per wedding) to \$2.4 million (\$20 per wedding) regardless of category of Marriage Celebrant.

### **Marriage Services Fee**

That the Commonwealth government impose a Marriage Services Fee on all marriages through the simple purchase of a Registration Stamp from the Australia Post system.

The revenue raised then can be apportioned between the federal government and the state and territory registries for the services.

At 120,000 weddings per annum, the funds raised would be \$2.4 million (\$20 per wedding stamp) to \$3.6 million (\$30 per wedding stamp) regardless of category of celebrant conducting the services.

### **Recommendation No 16**

That the Regulation fee be set at \$50 for 2013/2014.

**Recommendation No 17**

That the Marriage (Celebrant Registration Charge) Bill 2013 section 8 The statutory limit read as follows:

**8 The statutory limit**

(1) The **statutory limit** is: (a) for the financial year commencing on 1 July 2013—**\$250**; or  
(b) for a later financial year:

(i) unless subparagraph (ii) applies—the amount calculated by multiplying the statutory limit for the previous financial year by the indexation factor for the later financial year; or

(ii) if the indexation factor for the later financial year is 1 or less—the same amount as the statutory limit for the previous financial year.



**PART VIII Appendices**

**CoCA Senate Submission Appendix 1  
Second Legal Opinion of the renowned constitutional lawyer**

**Professor Michael Pryles (Minter Ellison Morris Fletcher) May 13, 1992**  
REFERENCE: <http://www.collegeofcelebrancy.com.au/Pages3/Pryles2.html>

**Comment/Summary**

This is the actual submission put to the Attorney-General on or about the date mentioned above.

In softer terms than his first opinion, it still argues that constitutionally, rules and regulations, including fees and advertising, and indeed any other rules and regulations, cannot be loaded onto civil celebrants unless they are also loaded onto the clergy.

He also cogently argues, on many legal and political precedents, that the Government, while committed to non-discrimination in almost every context, is discriminating against civil celebrants and favouring religious celebrants by denying the former freedoms and granting them to the latter.

Daily Messenger  
\*\*\*\*\*

The Attorney General  
Commonwealth of Australia  
Parliament House  
CANBERRA ACT 2600

Dear Attorney General,

**Authorised Celebrants**

We write to you on behalf of our clients the **Australian Institute of Civil Celebrants** who comprise Authorised Celebrants registered under the Marriage Act 1961 (Commonwealth). We wish to raise important questions of policy and law concerning authorised celebrants. Specifically our clients are concerned about institutionalised discrimination and, more generally, the regulation of authorised celebrants.

**Discrimination**

1. Civil authorised celebrants ("civil celebrants") are subject to certain restrictions and limitations that do not apply to Ministers of Religion who are authorised to solemnise marriages under the Marriage Act. In particular,

(a) Civil celebrants are not permitted to charge a fee for officiating at a marriage beyond that prescribed in the regulations. No such restriction is imposed on celebrants who are Ministers of Religion.

(b) Ministers of Religion may solemnise marriages in any manner they see fit **but civil celebrants are required under sub-section 45(2) and section 46 of the Marriage Act to use certain words and phrases.**

Civil celebrants are actively discouraged from officiating at a marriage in a "church" or "chapel" by virtue of administrative guidelines set by the Attorney General's department. Of course no such prohibition applies to celebrants who are Ministers of Religion. While generally, a Minister of Religion will be the appropriate celebrant in respect of a marriage in a "church" or "chapel". We can see no reason why a civil celebrant should be prohibited from acting in such a venue if the owners give permission.

2. The Commonwealth of Australia has implemented a laudable policy of **prohibiting discrimination** in many spheres. The legislation embodying this policy includes;

**(a) The Human Rights and Equal Opportunities Commission Act 1986 (Commonwealth)** empowers the Commission set up under this Act to look into and report to the Attorney General any potential breaches of human rights in Commonwealth legislation and government action. The Act specifically refers to the **Convention Concerning Discrimination in respect of Employment and Occupation**, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child, the declaration on the Rights of Mentally Retarded Persons, and the Declaration on the Rights of Disabled Persons. The Commission is specifically required to refer to these international conventions when considering breaches of human rights;

(b) The Sex Discrimination Act 1984 (Commonwealth) prohibits discrimination on the basis of sex, marital status and pregnancy in the areas of employment, education, provision of goods and services, provision of accommodation, rights to acquire interest in land, and administration of any Commonwealth law. The Act gives effect to the Convention on the elimination of all forms of Discrimination against women;

(c) The Racial Discrimination Act 1975 (Commonwealth) prohibits discrimination on the basis of a race, colour, dissent or national or ethnic origin where it interferes with any human rights or fundamental freedom in public life. The Act covers areas of public life such as the right to access to places and facilities, rights to land, housing and other accommodation, provision of goods and services, the right to join trade unions, and employment. This Act is the implementation of Australia's obligations under the International Convention on the Elimination of all Forms of Racial Discrimination.

The Government's anti-discrimination policy as evidenced by this legislation is consistent with international trends and current notions of morality and fairness. **It is surprising, therefore, that civil celebrants are in an inferior position to Ministers of Religion in the instances outlined above. We believe that this constitutes an instance of discrimination which runs counter to the general policy of the Australian Government, has nothing to commend it, and is fundamentally unfair.**

**3. We also believe that the discrimination against civil celebrants is contrary to Section 116 of the Constitution.** This provides as follows: 'The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercising of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.'

In discriminating between civil and religious authorised celebrants, under the Marriage Act, **the Commonwealth is in fact 'imposing a religious observance' or prescribing a religious test " as a qualification for any office or public trust under the Commonwealth'**. There are two distinct categories of authorised celebrants under the Marriage Act , one Ministers of Religion and the other civil celebrants. **The former enjoy a privileged position as regards the fees they may charge and so on. In order to qualify for this privileged position, which exists pursuant to Commonwealth laws, it is necessary that the incumbent meet a religious qualification or test. This, we have advised our clients, is contrary to Section 116 of the Constitution.**

The words "religious test" were not defined or discussed during the constitutional debates. The phrase is taken directly from the United States of America's; Constitution, article VI. The meaning was so plain on the face of the words that no definition was discussed. the only case in which the words are discussed is the unreported decision of **Crittenden v.. Anderson, delivered by Fullagar J in August 1950 and noted in (1977) 51 ALJ 171.** In this case Fullagar J dismissed the argument that a person could not be elected to a seat in the House of Representatives because he was a Roman Catholic and as such had allegiances to the Papal State. The basis for dismissing this argument was that such an analysis would condone a 'religious test' for an office under the Commonwealth, contrary to s.116 of the Constitution. The definition to be derived from this case is that a religious test as a qualification for office involves consideration of a person's religious beliefs or affiliations.

Fullagar J. categorised a seat in the House of Representatives as an "office" or "public trust" under the Commonwealth in the above case. However, no definition of these words was given in the judgment.

There was no discussion in the constitutional debates about what was intended by these words. The Macquarie Dictionary (1982) at page 1203 provides a definition of "office"-

**"A position of duty, trust, or authority, esp in the Government or in some companies, Society, or the like."**

The Australian Concise Oxford Dictionary (1988) at page 751 gives a similar definition:

'A position with duties attached to it, place of authority or trust or service especially of a public kind ... tenure of official political Minister of State or party forming government.'

As a civil or religious authorised celebrant the person does hold a position of duty, trust and authority. A position which the government authorises and advertises to the public through the publication of 2 lists of names of authorised celebrants.

### **Regulation of Authorised celebrants**

**Civil celebrants are regulated by Commonwealth statutes, Commonwealth regulations and by a Government policy in the form of administrative guidelines. These guidelines prescribe a restriction on Civil Celebrants that go beyond the requirements of the legislation and defeat the original purpose of the civil celebrant scheme.**

The origin objective of the civil celebrant program was to offer a complete choice to couples in the type of marriage ceremony they could have. This was done by allowing civil celebrants to perform ceremonies anywhere and any way required by the couple. However, the administrative guidelines restrict civil celebrants from using churches or chapels, and restrict the type of words that may use in the service.

The guidelines also prevent civil celebrants from advertising the varied services that they offer, allowing them only to advertise their availability.

The programme was originally designed to promote a profession of civil celebrants with professional code of conduct. The guidelines promote the civil celebrant programme as a community service and not the profession it was originally intended to be.

### **We urge that the government**

- 1. Place civil celebrants on an equal footing with religious celebrants as far as their rights and emoluments** are concerned in connection with the celebration of marriages.
2. Remove the onerous restrictions on authorised celebrants as outlined above.

Yours faithfully

**(Signed) Michael Pryles**  
**MINTER ELLISON**



**CoCA Senate Submission Appendix No 2**

**'Parity' for Category C celebrants with the Two other Categories of Marriage Celebrant.**

Commonwealth Celebrants (Category C) are appointed to do marriages on behalf of the Federal Government are not appointed upon the same principles that apply to State & Territory Appointed Marriage Celebrants. (Category A and B)

Marriage Celebrants SECTION 1	Subdivision C 10,500 celebrants	Subdivision A Religious 23,500 celebrants
Historically		Ministry is recognized as one of the 3 original <b>professions</b> along with the Law and Medicine.
Post colonisation		Established of State Registries of Births, Deaths and Marriages – over 150 years – <b>civil service as a government public service or 'profession'</b>
<b>1961</b>	Commonwealth Marriage Act created by Sir Garfield Barwick.	
Relevant Section of the Act	Part IV Division 1 - Subdivision C Commonwealth	Part IV Division 1 - Subdivision A Religious - Subdivision B State & Territory Officers
1973	Originally a <u>community service model</u> (life time appointment criteria similar to State appointments) <b>Government set numbers and fees</b>	Retained Professional Model of Celebrancy for Recognised Religious & State/ Territory Officers
1993	<b>Evolving profession.</b> Celebrants set own fees	
1997 - 2002	Consultation and review of Marriage Commonwealth Celebrant Program	
<b>Marriage Act Changes 2003</b>	<b>Introduced "professional" Model</b> by Libs/Nat with Labor support – <b>Flawed as <u>Entry criteria</u> set as government set ONLY One VET(TAFE) Unit (against associations advice of 11 unit course)</b>	<b>Retained Professional Model of Celebrancy for Recognised Religious &amp; State/ Territory Officers</b>
<b>Why the 2003 changes?</b>	Program was a success - 6000 inquiries pa from people wanting to be celebrant. Erroneous public perception <u>all</u> marriage celebrants made 'heaps of money'. Unfair appointment on "first in – first appointed" not Competence for the work. Complaints about a minority: No way of removing poorly performing celebrants.	
<b>How changes Regulated Numbers</b>	Changed from Government (State) regulated numbers to <u>Open Market forces only</u> . NB Unlimited numbers is a flawed model for 'once (or twice) in a life time' services	Government (State) regulated numbers of BDM officers. Churches regulated numbers of Recognised Religious Celebrants. NB <u>number of celebrants are regulated</u> by the State Registrar and by the state/ territory or church body.
<b>And Quality</b>	<b>Mandated Training, 5 hours pa</b> Cont. Professional Ed. Plan >Self Governance	<b>None applied</b>
2003 Changes to be Reviewed in 2008	Promised but not delivered	Never reviewed

<b>Marriage Celebrants SECTION 2</b>	<b>Subdivision C 10,500 celebrants</b>	<b>Subdivision A Religious 23,500 celebrants</b>
In 2002 – Approx no of celebrants	1400 civil celebrants 1400 independent religious	NA
Av. No weddings per celebrant in 1999	35 per year	NA
<b>Average pa INCOME 1999</b>	@\$500 per wedding for comparison to today's figures <b>\$17,500 GROSS Annual INCOME</b>	Not relevant as celebrants paid by church organization or salary from BMD <b>Guaranteed income</b>
No of Weddings pa	In 1999 114,000 approx In 2011 121,752	In 2008 118,756
% Performed by Civil Marriage Celebrants	60% by Commonwealth Celebrants	( NB 35% were conducted by ministers of religion 5% Registries of BDMS)
– Approx no of celebrants	8500 civil celebrants 1500 independent religious	23,500 recognised religious 500 state/ territory officers
Av. No weddings per celebrant <b>2011</b>	7 per year	1.3 per year
<b>Average pa INCOME 2011</b>	@\$500 per wedding for comparison to today's figures <b>\$3,500 GROSS Annual INCOME</b>	Not relevant as celebrants paid by church organization or salary from BMD <b>Guaranteed income</b>

<b>Relevant Section of the Act SECTION 3</b>	<b>Part IV, Division 1, Subdivision C Independent Civil &amp; Religious</b>	<b>Part IV, Division 1, Subdivision A Religious</b>
<b>Registering Authority</b>	p39A. a position occupied (on an acting, permanent, full-time or part-time basis) by an APS employee in the Department,	p27. Registrar of Ministers of Religion, and a Deputy appointed by the Minister.
	p39A. (3) The Registrar of Marriage Celebrants <u>is to perform those functions and has power to do all things necessary or convenient to be done for or in connection</u> with the performance of those functions.	
(Protection of Registrar)	39L Registrar not liable to an action or other proceeding for damages in respect of anything done, or omitted to be done, in good faith in:	
<b>Qualifications to be appointed as a marriage celebrant</b>	<b>YES</b> p39C(1) A person is <u>only entitled</u> to be registered as a marriage celebrant if	<b>NONE</b> – though the religious or government body would normally have pre-appointment knowledge and skills/ or qualifications requirements but not guaranteed
General Knowledge & Skill to be a celebrant	<b>YES</b> p39C(1) (b) has all the qualifications, and/or skills, determined in writing to be necessary by the Registrar	<b>NO</b> qualifications required by the Act.
– Knowledge	<b>39C</b> (2) (a) whether the person has sufficient knowledge of the law relating to the solemnisation of marriages by marriage celebrants; and	<b>NONE</b>
– Age	P39C(1) (a) is <b>aged 18 years</b> or over;	p29d. the person has attained <b>the age of 21 years</b> .
- Residency		p29c. the person is ordinarily resident in Australia;
– Fit and Proper person	p39C(1) (c) is a <b>fit and proper person</b> to be a marriage celebrant.	p29a. <b>ASSUMES</b> All ministers of religion of a recognised denomination are "Fit & Proper persons"

Relevant Section of the Act SECTION 3 cont.	Part IV, Division 1, Subdivision C Independent Civil & Religious	Part IV, Division 1, Subdivision A Religious
	<b>(2) In determining (this) the Registrar <u>must take into account</u> whether the person:</b> <i>(no specific right to refuse)</i>	BUT p31 (1) A Registrar to whom an application for registration under this Subdivision is <b>made may refuse to register the applicant if, in the opinion of the Registrar</b> p31 (1) (b) the applicant is <u>not a fit and proper</u> person to solemnise marriages
	(b) is committed to advising couples relationship support services	ASSUMED
	(c) is of good standing in the community;	ASSUMED
	(d) has been convicted of an offence, etc	ASSUMED
	<b>(e) has an actual or potential conflict of interest between his or her practice, or proposed practice, ... and his or her business interests or other interests; and</b>	<b>More than ASSUMED.</b> Would be a contradiction if a religious celebrant were also wedding planner, florist, sex-worker, hire car driver, a reception function owner,
	<b>(f) 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</b>	More than ASSUMED. Would be a contradiction if a religious celebrant were also wedding planner, florist, sex-worker, hire car driver, a reception function owner,
	(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.	
<b>Applicant may be refused registration in certain circumstances</b>	NO	p31 (1) A Registrar to whom an application for registration under this Subdivision is <u>made may refuse to register the applicant if, in the opinion of the Registrar:</u>
<b>Number of celebrants related to level of need</b>	<b>NO CONTROLS since 2008</b> <b>Section 39E</b> provided for capping period after the change to the system of appointment	<b>CONTROLLED</b> (a) there are <u>already registered</u> under this Subdivision <u>sufficient ministers of religion</u> of the denomination to which the applicant belongs to meet the needs of the denomination in the locality in which the applicant resides
Professionalism?	NO – requirement to be part-time or full time civil celebrant equivalent to religious celebrant	(c) the applicant is unlikely to <u>devote a substantial part of his or her time</u> to the performance of functions generally performed by a minister of religion.

Marriage Celebrants SECTION 4	Subdivision C	Subdivision A Religious
<b>Obligations of each marriage celebrant</b>	39G A marriage celebrant must: (a) conduct himself or herself in accordance with the <b>Code of Practice</b> for marriage celebrants prescribed by regulations made for the purposes of this paragraph; and	Not specifically noted, though IMPLIED from the Requirements for Registration above. <b>NO Code of Practice applies</b> to State registered marriage celebrants
	(b) <b>undertake all professional development activities</b> required by the Registrar of Marriage Celebrants in accordance with regulations made for the purposes of this paragraph; and	<b>NONE required by the Act</b>  ASSUMED
	(c) notify the Registrar, in writing, within 30 days of: (i) <b>a change that results in the details entered in the register</b> in relation to the person no longer being correct; or	<b>NONE required by the Act</b>  ASSUMED
	(ii) <b>the occurrence of an event</b> 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.	<b>Can be dealt with under Removal from the Register – See p33 (1)</b>  ASSUMED
<b>Regular Performance reviews</b>	<b>-p39H (1) The Registrar of Marriage Celebrants must regularly review</b> - Compulsory OPD requirements - Complaints - Meet reporting obligations	<b>None equivalent NOT required of State celebrants</b> - Compulsory OPD requirements - Complaints - Meet reporting obligations <b>- NOT paying an annual fee</b>
	(2) The first review must be completed within 5 years of the marriage celebrant being registered ... <b>must be completed within 5 years of the previous review and must cover the period since the previous review.</b>	
	(3) In reviewing the performance of a marriage celebrant, the Registrar: (a) <b>must consider the matters prescribed by regulations made for the purposes of this paragraph;</b> 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 <u>must not determine a marriage celebrant's performance in respect of a period was not satisfactory unless:</u> (a) ... given the marriage celebrant a written notice: (i) ( statement of ) determination .... (which must be at least 21 days after the date on which the notice was given)(ii) the marriage celebrant (is informed) 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.	

Marriage Celebrants SECTION 5	Subdivision C	Subdivision A Religious
<b>Disciplinary measures</b>	<b>39 I</b> (1) The Registrar of Marriage Celebrants <u>may only</u> take disciplinary measures against a marriage celebrant if the <b>Registrar:</b> <b>(a) is satisfied that the marriage celebrant is no longer entitled to</b> be registered as a marriage celebrant; or	<b>Covered under part 33 Removal from the Register</b>
	(b) is satisfied that the marriage celebrant has <b>not complied with an obligation under section 39G;</b> or	None applicable
	(c) has determined in writing under section 39H that the marriage <b>celebrant's performance in respect of a period was not satisfactory;</b> or	None applicable
	(d) is satisfied that it is appropriate to take <b>disciplinary measures against the marriage celebrant after considering a complaint in</b> accordance with the complaints resolution procedures established under paragraph 39K(c);	None applicable
	or (e) is satisfied that the marriage celebrant's application for registration was known by the marriage celebrant <b>to be false or misleading in a material particular.</b>	<b>Covered under part 33 Removal from the Register</b>
	P39I (b) the Registrar has considered any representations made by the marriage celebrant before the date specified in the notice; and	
	(2) The only disciplinary measures that the Registrar may take against a marriage celebrant are to:	
	(a) caution the <b>marriage celebrant in writing;</b> or	
	(b) ..... require the marriage celebrant to <b>undertake professional development activities</b> determined in writing by the Registrar;	
	(c) <b>suspend the celebrant's registration for a period ( <i>suspension period</i> ) of up to 6 months</b> Note: a decision to suspend or deregister a marriage celebrant, <b>is reviewable under section 39J.</b>	
	(3) if suspended .. particular period, <b>section 39F does not apply in</b> 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 celebrants right under 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.	

Marriage Celebrants SECTION 6	Subdivision C	Subdivision A Religious
<b>Removal from register</b>	<b>39 I</b> (1) (d) deregister the marriage celebrant by removing his or her details from the register of marriage celebrants.	<b>p33</b> (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 <b>person has requested that his or her name be so removed;</b> (b) that person has died; (c) the <b>denomination</b> by which that person was nominated for registration, or in respect of which that person is registered, <b>no longer desires that that person be registered</b> under this Subdivision or has <b>ceased to be a recognised denomination;</b> (d) that person: (i) has been guilty of such contraventions of this Act or the regulations as to show him or her <b>not to be a fit and proper person</b> to be registered under this Subdivision; (ii) <b>has been making a business of solemnising marriages for the purpose of profit or gain; or</b> (iii) is <b>not a fit and proper person</b> to solemnise 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: ETC
<b>Review of decisions</b>	<b>39J</b> (1) An application may be made to the <b>Administrative Appeals Tribunal</b> 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>34</b> (1) An application may be made to the <b>Administrative Appeals Tribunal</b> 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.
	(b) <b>to suspend a person's registration as a marriage celebrant; or</b> (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 <i>Administrative Appeals Tribunal Act 1975</i> in relation to such an application, if: ETC	(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 ETC

Marriage Celebrants SECTION 7	Subdivision C	Subdivision A Religious
<b>Additional functions of the Registrar</b>	<p><b>39K</b> The Registrar of Marriage Celebrants must:</p> <p>(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</p> <p><b>(c) establish complaints resolution procedures, in accordance with regulations made for the purposes of this paragraph, to resolve complaints about the solemnisation of marriages by marriage celebrants;</b> and</p> <p>(d) perform any additional functions specified in regulations made for the purposes of this paragraph.</p>	<b>No formal complaints process.</b>
<b>Evidence of registration etc.</b>	<p><b>39M</b> A certificate, signed by the Registrar of Marriage Celebrants, stating that, at a specified time, or during a specified period:</p> <p>(a) a person was registered as a marriage celebrant; or (b) ??? nt was suspended; or (c) a person was not registered as a marriage celebrant; is prima facie evidence of that fact.</p>	

**CoCA Senate Submission Appendix No 3  
 Celebrant Related Information from Freedom of Information Request 2011**

**Table 2: Increase in number of Commonwealth registered celebrants over 4 years**

	31-Dec-06	31-Dec-07	31-Dec-08	31-Dec-09	31-Dec-10	2011
Commonwealth-registered Celebrants at 31/8/2011	3736	4620	6809	8546	10047	10274**
% change in Commonwealth-registered celebrants over previous year	n/a	24%	47%	26%	18%	n/a
<b>** As at 31 August 2011</b>						

**Table 3: Numbers of statutory complaints in each of the last four years**

Statutory complaints for calendar year ending: -	Statutory Complaints
31-Dec-07	11
31-Dec-08	7
31-Dec-09	20
31-Dec-10	14
*incomplete - Year to 30-Aug-11	14

**Table 5 Outcome of celebrant performance reviews in each of the last four years**

	2007	2008	2009	2010
Performance reviews completed	523	816	550	740
Satisfactory performance reviews	440	753	387	640
Celebrants issued with a disciplinary measures following a non-satisfactory performance review	83	63	163	100



**Table 1: All authorised marriage celebrants in each category over 4 year period**

	31-Dec-06	31-Dec-07	31-Dec-08	31-Dec-09	31-Dec-10	2011
*Authorised celebrants who are Ministers of religion of recognised denominations (subdivision A)	-	-	-	-	-	23567*
State Officers (subdivision B)	-	-	-	-	-	504
Commonwealth-registered Celebrants (subdivision C) at 31/8/2011	3736	4620	6809	8546	10047	10274
<b>Total number of authorised celebrants</b>						<b>34345</b>
*Data State and Territory Registries of Births, Deaths and Marriages at 20/9/2011						

Data in relation to Commonwealth-registered celebrants is from the Departmental database and numbers for previous years are set out in Table 2. We are unable to provide comparative annual numbers for subdivision A and subdivision B celebrants because of the design of the Section 115 List of all authorised celebrants which is a dynamic record on a particular date.

**CoCA Senate Submission Appendix No 4**

**Review of 15 years of Court Records related to Validity of Marriage Performed by a Marriage Celebrant**

<b>JUDICIAL APPEALS INTO THE VALIDITY OF A MARRIAGE PERFORMED BY A MARRIAGE CELEBRANT</b>				
<b>CASE</b>	<b>DATE</b>	<b>COURT</b>	<b>DECISION</b>	
CARROLL v SINCLAIR - BC201150537	24.11.2011	Family court of Australia	Appeal dismissed	FAMILY LAW — NULLITY — Where the wife was 18 years at the time of marriage — Where the wife was a minor at the time she signed the notice of intention to marry document — Where the wife alleges that the dates on the notice of intention to marry document were fraudulently changed to comply with the Marriage Act 1961 (Cth) — Where the wife alleges that the husband married her for immigration purposes — Marriage valid – appeal dismissed.
W and T, In Marriage of	7.5.1998	Family court of Australia	Appeal dismissed	Family law — Marriage — Grounds on which marriages are void — Marriage solemnised otherwise than in accordance with provisions Whether marriage solemnised by or in presence of an authorised celebrant pursuant to s 41 Marriage Act 1961 (Cth). Marriage valid – appeal dismissed
BERDA & KALIL - BC201250933	6.8.2012	Family court of Australia	Appeal dismissed	[1] By an application filed 2 February 2012, the applicant seeks an order that the marriage between her and the respondent be annulled. 6] The effect of the evidence on behalf of the applicant is that the Notice of Intended Marriage is false in the sense that it purports to indicate that notice was given when, in fact, it was not. The Notice also purports to indicate that it was signed so as to provide notice some three months prior to the marriage when in fact it was signed on the date of the marriage, namely in May 2011. – appeal dismissed.
MEARS & MEARS - BC201250167	6.9.2011	Family court of Australia	Appeal dismissed	FAMILY LAW — APPEAL — DECLARATION — Validity of marriage — where the trial Judge made a declaration of validity of the marriage as sought by the wife and husband — where the wife appealed against the making of the declaration — where the wife alleged that the trial Judge applied “a wrong principle of law” and submitted that her marriage to her husband is not a valid marriage because one of the witnesses at the marriage was at that time under the age of 18 — appeal dismissed.
WYATT & HSIN-LU - BC201250423	24.1.2012	Family court of Australia	<b>FAMILY LAW — ANNULMENT — Application granted.</b>	That pursuant to s 51 of the Family Law Act 1975 (Cth) the court declares that the marriage that took place between Mr Wyatt and Ms Hsin-Lu on 3 October 2010 is invalid. The dilemma is that the ramifications for such an order are that the applicant faces the prospect of being prosecuted for bigamy, not to mention the potential false statement to the marriage celebrant [2] That the Registry Manager provide a copy of this order and the reasons for judgment this day to the Registrar of Births, Deaths and Marriages.

WOLD & KLEPPIR [2009] FamCA 178 BRC 3211of 2008	6.2. 2009	Family court of Australia	Appeal dismissed	FAMILY LAW – DECLARATION – Validity of Marriage – Husband claims mistaken as to the nature of the ceremony performed – Whether Iman performed a conversion to the Muslim faith or a marriage ceremony – Reject that Husband was mistaken FAMILY LAW – DECLARATION – Validity of marriage – potentially polygamous marriage – Polygamy invalid under Australian law – Distinguish English case of Sowa v Sowa [1961] 1 All ER 687 law – No underlying positive law to allow polygamous marriages – Not potentially polygamous
Dimitriou and Others v Homsy	23.5. 1997	Supreme Court of New South Wales	Appeal dismissed	Family Law and Child Welfare – <b>Marriage</b> – Grounds to avoid – Consent obtained by "fraud" – How pleaded – No distinction to be drawn between "invalidity" of <b>marriage</b> and <b>marriage</b> being "void or nullity"
NGO v NGO - BC201051183	12.10. 2010	Family court of Australia	<b>Appeal upheld. (CTH) Family Law Act 1975 MARRIAGE DECLARE VOID - CELEBRANT</b>	CTH) Family Law Act 1975 MARRIAGE DECLARED VOID – CELEBRANT ORDERS 1.That the marriage ceremony as between the applicant Ms Ngo and the respondent Mr Ngo that took place on ... July 2010 at B Street, Melbourne, Victoria was void. 2.That the application filed on 30 August 2010 is otherwise dismissed. 3.That the Registry Manager of the Melbourne Registry of the Family Court of Australia refer to the Attorney-General for the Commonwealth of Australia the following:  (a) a transcript of the proceedings this day; (b) a copy of the reasons for judgment this day; and (c) a copy of all documents on the court file, for consideration of an investigation into the conduct of marriage celebrant Mr DO. Marriage Celebrant

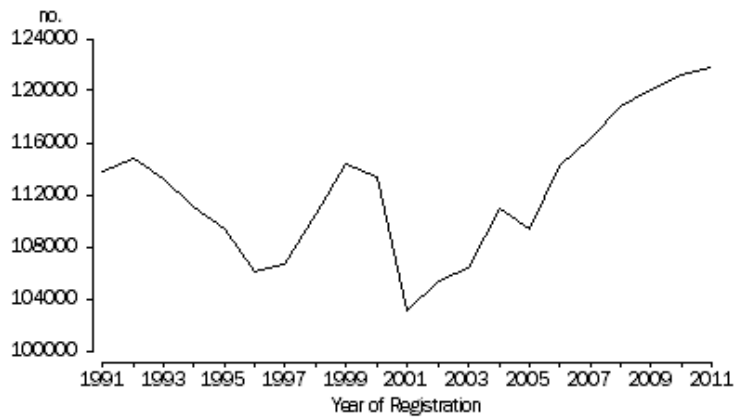
**CoCA Senate Submission Appendix No 5**

**Marriage Related Statistics from Australian Bureau of Statistics**

**NUMBER OF MARRIAGES**

The 121,752 marriages registered in 2011 represented an increase of 576 (0.5%) from the 121,176 marriages registered in Australia in 2010. This is the highest number of marriages registered in a single year and continues the relatively steady increase in marriages since 2001.

**1.1 Total marriages, Australia - 1991-2011**



**CRUDE MARRIAGE RATE**

The crude marriage rate represents the number of marriages registered during a calendar year per 1,000 estimated resident population at 30 June of the same year. For more information on the calculation of the crude marriage rate refer to the Glossary and Explanatory Notes 32 and 38-40.

**1.2 Crude marriage rates, Australia - 1991-2011**



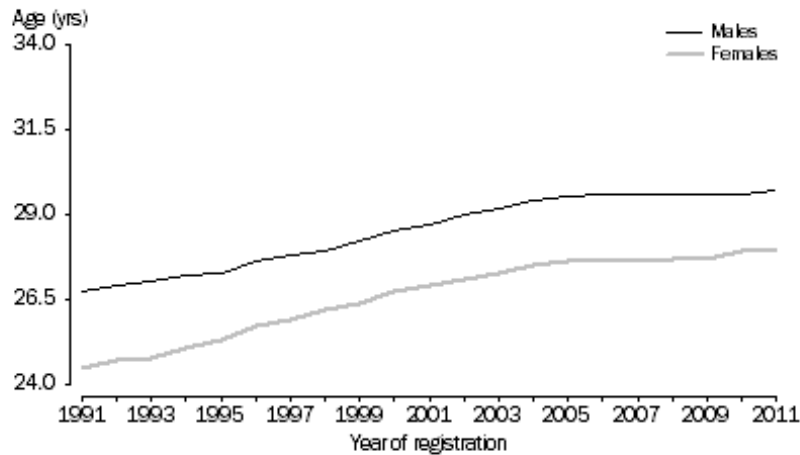
Although the number of marriages is now the highest recorded, the population has also increased substantially over time. As a result, the crude marriage rate is now lower than it was 20 years ago.

In 2011, the crude marriage rate was 5.4 marriages per 1,000 estimated resident population, compared with 7.6 marriages per 1,000 estimated resident population in 1991.

Between 1991 and 2001, the crude marriage rate declined from 7.6 to 5.3. Since 2001, the crude marriage rate has remained relatively steady.

The median age at first marriage in 2011 was 29.7 years for males and 28.0 years for females. Median age at first marriage for males has changed little since 2006, increasing by 0.1 years over this time. The median age at first marriage for females has increased by 0.4 years over the same period.

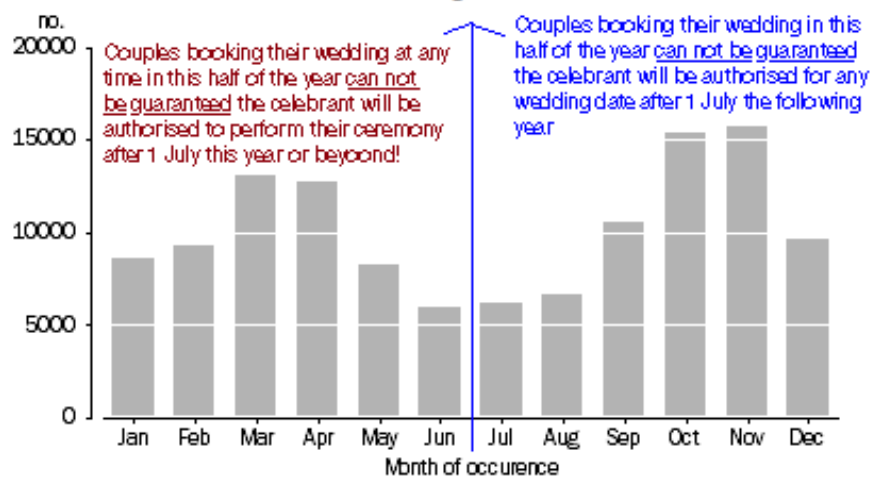
**1.4 Median age at first marriage, Australia - 1991-2011**



**MONTH OF MARRIAGE**

In 2011, the most popular month for marriages was November with 15,693 (12.9%) marriages, followed by October with 15,391 (12.6%) marriages. The month of June was the least popular month for marriages with only 5,889 (4.8%) marriages taking place in that month. The number of weekends in a month influences the number of weddings in that month, so this should be taken into consideration when interpreting these data.

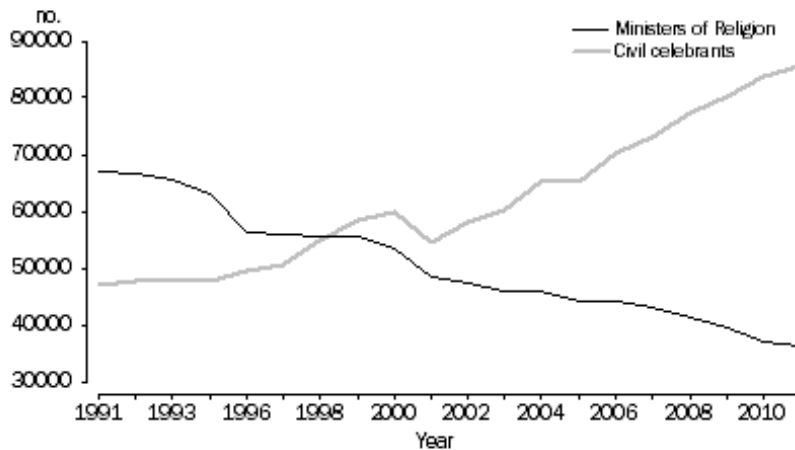
**1.12 Months of marriage, Australia - 2011**



## MARRIAGE CELEBRANTS

The proportion of marriages performed by civil celebrants has increased over the past 20 years. In 2011, 70.1% of all marriages were performed by civil celebrants. Civil marriages have outnumbered religious ceremonies since 1999. In 2011, of the 36,372 marriages performed by ministers of religion, the most common rites used were Catholic (32.9%) followed by Anglican (16.2%).

1.9 Type of celebrant, Australia, Selected years - 1991-2011



In 2011, couples who cohabited before marrying were more likely to marry in a civil ceremony than those who lived apart, with 76.6% of couples cohabiting married in a civil ceremony, compared with 46.6% of those who lived apart.

The previous table 1.9 showed an increase of approximately 25,000 weddings in twenty years (2002 to 2011) for Commonwealth Marriage Celebrants. On 2002 numbers of celebrants, this increase would have represented 7 extra weddings a year per celebrant.

However from 2002 to 2012 there has been approximately an extra 8,000 Commonwealth Celebrants appointed. This represents only 2.5 extra weddings per year.

The Effect of the "Unlimited Market" approach has been to turn what was pre-2003 community service approach into a volunteer charity work, not the intended effect of strengthening professionalism as far as Remuneration for work is concerned.

**CoCA Senate Submission Appendix No 6**

**Overall Effect on Access to Work and Remuneration of the 2003 Changes from 1999 to 2011**

**% of celebrants doing 1 to 10 weddings increased from 29.53% to 52.3 %**  
 % of celebrants doing 11 to 25 weddings decreased from 26.20% to 21.95 %  
**% of celebrants doing 25 to 100 weddings decreased from 33.8 % to 16.35 %**  
 % of celebrants doing over 100 weddings decreased from 3.73 % to 2.1 %

Given Commonwealth self-employed professionals-in-private practice need to average 100 weddings pa to make a sustainable weekly wage from wedding work, the effect of **the 2003 Changes have halved work and income and been disastrous.**

Adding other ceremony work in 1999 may have allowed 33.8 % celebrants with over 25 wedding per to make a part-time to full-time income from work as a civil celebrant. **This opportunity has shrunk by one half.**

And the number doing 10 weddings or less increased from 36.3% to 63.8%

At \$500 per wedding to compare AVERAGE GROSS incomes of independent celebrants, these tables show **a massive drop in earnings** from **\$17,500 pa (1999) to \$3,500 pa (2010).**

These figures demonstrate that Civil celebrants, like other professionals, need fair recompense for their work, but remuneration is not the prime or only reason they offer their services to the community.

**Table 1 - CIVIL MARRIAGES 1999 Dept AG's Statistics**  
**Average weddings per celebrant per year = 35**

Number Of Weddings Per Annum	Celebrants %	Celebrants Number
Nil	6.78 %	113
1 - 10	29.53 %	493
11 - 25	26.20 %	438
26 - 50	21.70 %	362
51 - 100	12.08 %	202
101 - 150	2.53 %	42
151 - 200	0.95 %	16
200 plus	0.25 %	4

*Handwritten annotations: 33.8% (spanning 26-50 and 51-100), 3.73% (spanning 101-150 and 151-200)*

**Celebrante and AFCC Association Survey (2012)**  
**Average weddings per celebrant per year = 7**

HOW MANY CEREMONIES DID YOU PERFORM IN 2011?

RESPONSE	%	COUNT
None	6.4%	94
<b>Between 1 and 5</b>	<b>32.8%</b>	<b>480</b>
Between 5 and 10	20.5%	300
Between 10 and 20	17.8%	261
Between 20 and 30	8.3%	122
Between 30 and 40	4.2%	61
Between 40 and 50	2.7%	39
Between 50 and 75	4.1%	60
Between 75 and 100	1.2%	17
More than 100	2.1%	31
<b>TOTAL</b>	<b>100%</b>	<b>1465</b>

*Handwritten annotations: 52.3% (spanning Between 1 and 5 and Between 5 and 10), 16.35% (spanning Between 40 and 50 and Between 50 and 75)*

**CoCA Senate Submission Appendix No 7 – Celebrante 2012 Celebrant Survey**

– NOTE Over 90% post-2003 appointed Celebrants completed this survey.

© CELEBRANTE PTY LTD 2012

## INTRODUCTION

### Welcome to the 2012 Australian Celebrant Survey.

Back in 2009, we decided to ask the celebrant community what they were thinking. We sent out an invitation to over 7,000 celebrants across Australia for their feedback on a range of issues and we were delighted to have over 1,500 celebrants take part.

This year we decided to ask you all again and, again, we've had over 1,500 responses to a range of celebrancy-related issues from the changes proposed by the Attorney-General's Department through to ceremony rates, locations and styles.

Without the support and resources of our sponsors this year - the **Australian Federation of Civil Celebrants** and **Celebrante** - the survey would have not had anywhere near the participation that it has.

To everyone who took part this year, a hearty "thank you"! For those that didn't or couldn't make it, I hope you will help us all learn more about the celebrancy industry when next we run the survey.

David Taylor  
Celebrante

### IN WHICH YEAR DID YOU BECOME A CELEBRANT?

RESPONSE	%	COUNT
2012	0.2%	3
2011	4.9%	73
2010	16.7%	248
<b>2009</b>	<b>22.4%</b>	<b>332</b>
2008	19.5%	289
2007	9.5%	141
2006	8.0%	119
2005	4.5%	66
2004	4.9%	73
2003	1.9%	28
Pre 2003	7.5%	111
<b>TOTAL</b>	<b>100%</b>	<b>1483</b>



WHICH CEREMONIES DO YOU PERFORM AND WHAT IS YOUR AVERAGE FEE FOR EACH?				
	> \$250	\$250 to \$400	\$400 to \$600	\$600 to \$800
Wedding	3.5%	31.4%	<b>57.0%</b>	7.4%
Naming	39.6%	<b>54.2%</b>	6.1%	0.0%
Renewal of Vows	25.6%	<b>56.7%</b>	16.4%	1.3%
Funeral	25.7%	<b>55.4%</b>	17.1%	1.3%
Commitment	14.4%	<b>57.7%</b>	26.0%	1.6%
Ashes Scattering	43.7%	<b>46.7%</b>	9.1%	0.5%
Boat Launching	45.5%	<b>46.5%</b>	7.9%	0.0%
New Home or Office	<b>51.3%</b>	41.6%	7.1%	0.0%

HOW WOULD YOU DESCRIBE YOUR MOST COMMONLY REQUESTED STYLE OF CEREMONY?

RESPONSE	%	COUNT
Intimate	12.6%	184
New Age	1.5%	22
<b>Personal</b>	<b>58.8%</b>	<b>858</b>
Religious (Buddhist)	0.1%	1
Religious (Christian)	1.9%	27
Religious (Hindu)	0.1%	2
Religious (Islamic)	0.1%	1
Religious (Jewish)	0.1%	2
Religious (Other)	0.1%	2
Spiritual	1.5%	22
Themed	0.4%	6
Traditional	18.0%	262
Other	4.7%	69

WHAT WOULD BE THE MOST COMMON SIZE 'AUDIENCE' AT YOUR WEDDING CEREMONIES?

RESPONSE	%	COUNT
Less than 5 people	0.2%	3
5 to 10 people	0.7%	10
11 to 25 people	3.2%	47
26 to 50 people	22.0%	319
<b>51 to 100 people</b>	<b>67.5%</b>	<b>981</b>
Over 100 people	6.4%	93

IS CELEBRANCY YOUR MAIN SOURCE OF INCOME?

RESPONSE	%	COUNT
Yes	14.6%	216
No, but I'd like it to be	29.8%	441
<b>No, this is just part time for me</b>	<b>55.5%</b>	<b>821</b>
<b>TOTAL</b>	<b>100%</b>	<b>1476</b>

DO YOU BELIEVE THAT THE COST-RECOVERY EFFORT VIA A CELEBRANT'S REGISTRATION FEE IS NECESSARY TO SUPPORT THE CELEBRANTS PROGRAM?

RESPONSE	%	COUNT
Yes	28.4%	404
<b>No</b>	<b>71.6%</b>	<b>1017</b>

**WHAT'S THE FURTHEST AHEAD YOU'VE TAKEN A BOOKING**

<b>RESPONSE</b>	<b>%</b>	<b>COUNT</b>
<b>1 Year</b>	<b>84.9%</b>	<b>1200</b>
2 Years	43.4%	613
More than 2 years	45.4%	642

## **CoCA Senate Submission Appendix No 8**

### **CoCA Submission on Cost Recovery and Increased Professionalism**

**<http://www.coalitionofcelebrantassociations.org.au/issues/the-proposed-fee-for-celebrants/table-of-contents/>**

#### **Preamble and Summary**

##### **Preamble:**

The celebrant peak body, the Coalition of Celebrant Associations (CoCA) in conjunction with members of their associations and submissions from individual celebrants, put forward in this document our recommendations for improvements to the Marriage Celebrants Program. This document is the result of a considerable consultation process and incorporates wide-spread views, thoughts and suggestions on the program from long-term and new celebrants. We commend these recommendations to you.

##### **Summary:**

This section contains responses from associations and individuals on the proposed fee. It has been used as the basis for the recommendations made in later sections of the document.

1. The "Professional" Fee is discriminatory and not in the public interest. Making only civil and minority religious marriages bear the full impact of cost recovery of the Marriage Law and Celebrant Section (MLSC) will unfairly affect 60+% of the marrying public. Commonwealth appointed marriage celebrants can be de-registered on the following grounds – failure to complete mandatory ongoing professional development, non-compliance with specific wording of sections 45 and 46, non-compliance with the Code of Practice, complaints and failure to pay an annual fee. Recognised religious and Registry Office marriage celebrants should have these measures equally applied to them.
2. The ability to pay an annual fee is not an indicator of the celebrant's competence or level of professionalism. It may be an indicator of their private wealth or income from other employment/ income support. The application of an annual fee however is a consequence of the failure of the government to implement a Marriage Celebrant Program that matched the number of appointments of independent celebrants to the level of community need. To correct the system so that the rate of appointment is regulated to community need and balanced with the attrition rate of celebrants due to death or retirement, CoCA's submission makes a comprehensive set of recommendations to:

- ensure the same principles apply to all marriage celebrants so that past and current political considerations do not discriminate against Commonwealth Marriage Celebrants in the delivery of marriage services by the government to all Australians.
- balance the rate of appointments with community need via Regional Advisory Committees.
- increase the standard for appointments by ensuring appointees are well informed as to the nature of the role prior to training, are fully trained for their specific marriage work, are assessed for knowledge and skills, and are interviewed and selected on the basis of the best applicant for the vacancy in a specific region.
- ensure the MLCS has efficient administrative and computerised data and IT website based systems from which to review and monitor the delivery of all marriage services in Australia
- support all marriage celebrants through a preventative and educative approach, making more information available via a Celebrants Only Section of the MLCS website and broader educational opportunities available for Ongoing Professional Development (OPD).
- support and involve stakeholders such as CoCA, celebrant associations, registry offices, recognized religious organizations to deliver marriage services.
- improve marriage information and community education of the general public.

3. Cost recovery needs to ensure the most effective and efficient use of the overall system of delivery of marriage services to the whole Australian community by utilising the various stakeholders according to their primary role, their expertise and practical experience in delivering marriage services.
4. The various aspects of the Marriage Law and Celebrant Section's national role in policy development, administration, appointment and compliance work needs to be cost recovery matched not only to the work done, but also to the receivers of that work such that
  - all aspects of servicing appointments are covered by cost recovery of applicants and new appointees
  - 5 yearly reviews for Compliance be costed at 1 hour per 5 years, plus fines to non-compliant celebrants to cover the extra work done in reviewing those celebrants
  - all other costs associated with the MLCS to be covered by all celebrants and/ or all marrying couples.

**NOTE:** Where there is the opportunity for cost recovery, these are highlighted in a Cost Recovery section at the end of each section.

In this submission, CoCA has made a number of recommendations based on discussions within CoCA associations and input from submissions made to us by associations and independent civil celebrants. Each recommendation is stated and includes the rationale for the recommendation. Any cost recovery opportunities are also indicated.

## **Summary of Recommendations**

### **1.0 Guiding Principles**

**It is recommended that the Attorney General, in aiming to increase professionalism of marriage celebrants and ensure the ongoing viability of the Commonwealth Marriage Celebrant Program, be guided by the following principles:**

1. **A professional model of celebrancy as "professional ceremonialists" is the most appropriate model upon which to base the future development of celebrancy.** The definition of a professional ceremonialist is a person who adheres to high ethical standards. They uphold themselves to, and are accepted by the public as possessing special knowledge and skills in creating appropriate dignified and meaningful ceremonies to meet the needs of individuals, couples, families and communities and use key elements of ritual and ceremony. In the provision of their marriage services, they exercise their knowledge and skills to meet the requirements of the Commonwealth Marriage act 1961 and its Regulations.
  - a. Increasing professionalism requires strengthening those characteristics associated with the traditional meaning of the word 'profession'. (refer appendix A)
  - b. Business skills are required of all independent professionals, but that does not define them as only businesses. Considering celebrancy as a small business only, 'unprotected' by government and regulated by market forces for a once in a life- time event is not appropriate because that approach has not worked. Many celebrants do not consider themselves a small business and do not operate as such.
  - c. It is not appropriate for a government program based upon government appointment
  - d. The original program with a set fee model remains inappropriate as the role requires, under the Marriage Celebrant's Regulation Code of Practice (37L), the delivery of personalised ceremonies. Thus remuneration needs to be tailored to the level of work done by the celebrant, the worth of the celebrant's skills and resources, and their costs in providing their assets and services.
2. **Acknowledging and respecting that marriage celebrancy services are part-time services for most marriage celebrants.**
  - a. Any fee needs to be based upon the capacity of marriage celebrants to make income from marriage work alone, not be subsidised by other means of

income. The vast majority earn a part-time income at the most. Thus cost recovery needs to be set at a level commensurate with part-time work.

3. **A limit to the number of celebrants on a regional basis.**
  - a. to ensure the Marriage Celebrant Program serves the community in providing a stable system of competent independent marriage celebrant services in an equitable manner.
  - b. to ensure the sector continues to increase in professional development of services – rather than becoming a “revolving door” of brand new inexperienced celebrants replacing older still relatively inexperienced marriage celebrants, with an annual massive loss of people’s time, financial and other resources.
4. **Utilising existing systems and services in training, education, administration, resource delivery.**
  - a. to maximise the competence and professionalism of celebrants entering the Marriage Celebrancy Sector and to retain experienced competent celebrants.
  - b. to ensure that marriage services delivered by all marriage celebrants (Recognised religious, BDM staff and independent Marriage Celebrants) are of a high quality.
5. **Ensuring that the majority of the work done by the MLCS is in line with its primary national role in making law and marriage law policy decisions.**
  - a. To ensure that the implemented measures will increase the professionalism of all celebrants, without causing financial hardship to existing celebrants.
  - b. MLCS will continue to provide indirect, supportive services, not direct services.
  - c. to ensure the Marriage Act and Regulations are administered by the MLCS nationally in an equitable manner across all jurisdictions, and reviewed regularly.
6. **Making the MLCS effective in quality and cost efficient in utilising state of the art computer and IT based systems.**
  - a. to minimise staffing and manual labour, and not duplicate knowledge and skills available in other sectors such as Registry Offices and Celebrant Associations
  - b. to provide statistical information on a range of items.XX
7. **Fees charged to Civil Celebrants must be directly related to work that is done for the MLCS’s compliance responsibilities**
  - a. cost recovery for appointments of new marriage celebrants needs to be obtained from those applying for authorisation
  - b. costs for all other functions of the MLCS that can be related to all marriage celebrants need to be recovered from all celebrants, not just Commonwealth appointed marriage celebrants.

## **2.0 Implement Limited Appointments**

The aim of this recommendation is to balance the intake rate with retirement, de-registration rates, regionally based community need and adequate access to work to improve and maintain skills.

### **It is recommended that the model for limiting numbers involves:**

- similar principles for appointment and registration being applied to civil as currently apply to Recognized religious (refer Division 1 – Subdivision A section 31 of the Marriage Act 1961)
- minimum overall average level of 24 weddings p.a per celebrant in each region, and upon the best applicant for an area by interview with a Regional Advisory Panel.

## **3.0 Conflict of Interest**

### **CoCA recommends that the following 6 main principles be used by MLCS in the consideration of Conflict of Interest:**

1. A professional is expected to be impartial in advice/ service giving. Thus a celebrant needs to be at arm’s length from any related activities.

2. The other activities of a professional can harm the public perception of the profession.
3. Free and informed consent to choose a celebrant must not be hampered by the actions of the celebrant's other activities.
4. A celebrant's other activities or roles must not impact on their ability to fully and competently prepare and deliver a marriage ceremony.
5. The benefit from another activity must never outweigh the benefit from the celebrant role (esp. financially), tempting the celebrant to take shortcuts or to act illegally.
6. A professional is expected to have some motive involved in their work, beyond their own personal needs.

#### **4.0 Implement Celebrant Pre-Training Processes**

##### **4.1 Fit and Proper Persons**

The aim of this recommendation is to determine the suitability of the applicant for the profession PRIOR to commencing any course of celebrant training.

**It is recommended that some parts of the current Fit and Proper Person criteria be applied to those wishing to become civil celebrants.**

##### **4.2 Implement a Suitability Course.**

It is recommended that consideration be given to develop and implement a suitability course.

#### **5.0 Review approaches to Marriage Celebrant Training**

##### **5.1 Different approaches to training for different roles.**

The aim of this recommendation is to improve the knowledge and skills of all classes of marriage celebrants (Commonwealth & state, religious and civil) who conduct marriage ceremonies. It is recommended that:

- Civil marriage officers in Registry of Births Deaths and Marriages (BDM) and Court Houses – complete 2 of the compulsory legal units of the Certificate IV in Celebrancy. These would be:  
CHCCEL402A Maintain knowledge of the legal responsibilities of a marriage celebrant, and  
CHCCEL404A Plan a marriage ceremony in line with legal requirements.
- Ministers of religion in recognized denominations – complete 2 of the mandatory legal units of the Certificate IV in Celebrancy. These would be: CHCCEL402A Maintain knowledge of the legal responsibilities of a marriage celebrant, and CHCCEL404A Plan a marriage ceremony in line with legal requirements
- Independent religious celebrants – complete the 4 mandatory legal units of the Certificate IV in Celebrancy and 1 of the compulsory core units which would be CHCCEL401A Work effectively in a celebrancy role.
- Independent Civil Celebrants – complete the Full Certificate IV in Celebrancy

All marriage celebrants are required to meet the same standards for legal registration of Marriage Notice, Verification of Identity etc.

##### **5.2 Upgrade training of Civil Marriage Celebrants.**

It is recommended that two additional units of study be added to the core competency skills and recommend two particular electives if the trainee has no prior business experience. The two units recommended to be added as Core Units are:

- CUSMPF303A – Prepare for Performance. (or a similar unit that relates to voice and delivery)

- CUFWRT301A – Write content for a range of media.

.The two recommended electives if the trainee has no prior business experience are:

- BSBSMB405A – Monitor and Manage small business operations
- BSBSMB406A – Manage small business finances.

5.3 Use the services of ASQA to strengthen training in the VET system.

It is recommended that CoCA and the MLCS utilise the new national training authority, Australian Skills Quality Authority (ASQA) to strengthen the training of celebrants by the VET system. ASQA are responsible for mandating national Literacy and Numeracy (LLN) skills. MLCS and CoCA can work with ASQA to ensure:

- National Standards for Trainer Qualifications – Experience as a celebrant a must (varies each state)
- Time Frame – Set minimum time for the course eg VIC UNI = 800 hours
- Registered Training Organisations (RTO's) – if not doing the course, to take it off their scope and/or check the currency
- Competence testing to be reviewed.

#### **5.4 Upgrade skill levels for trainers of the Certificate IV Course**

The aim of this recommendation is to ensure high standards for trainers of the Certificate IV in Celebrancy course.

It is recommended that current and future trainers will need to achieve the following:

##### **Current Trainers:**

- MLCS to conduct a knowledge and skills assessment of all current trainers to gain MLCS approval to teach the Certificate IV in Celebrancy core and mandatory units.
- The MLCS assessment would require; a current Curriculum Vitae, proof of their status as a marriage celebrant, proof of having conducted a minimum of 10 weddings in the previous three years and proof of their qualification in Workplace Training and Assessment and the Certificate IV in Celebrancy.
- MLCS approval to be re-assessed every five years. NB in the initial period the Pre-Appointment Assessment process could be used as part of the MLCS assessment procedures

##### **Future Trainers:**

- Mandatory requirements for trainers will be:
  - Certificate IV in Celebrancy (including funeral units)
  - Certificate IV in Workplace Training and Assessment
  - Experience in the elective units
  - Proof of status and experience as above.
  - Approval from MLCS as a trainer.

#### **5.5 Audit of Registered Training Organisations**

It is recommended that Auditors of RTO's be provided with the results of pre-appointment skills and knowledge assessments. This concept is being discussed with ASQA. General auditors do not have celebrancy knowledge.

#### **6.0 Implement a Pre-Appointment Assessment.**

It is recommended that a self-funded uniform pre-appointment assessment process of knowledge and skills by interview be provided. This would ensure:

- a uniform high standard of entry for all independent marriage celebrants • a qualitative baseline for trainers qualifications to provide training with the VET system, and
- a measure against which existing celebrants could be tested as part of their OPD in a 5 year review cycle.

CoCA recommended a Pre-Appointment Assessment Process be established and presented a model for such a process at the October 2010 AGD-CoCA meeting.

## **7.0 Review approaches to Ongoing Professional Development (OPD)**

### **7.1 Flexible OPD phased-in over six years.**

The purpose for this recommendation is to provide for flexibility in OPD in the next OPD period.

It is recommended that:

A minimum of six OPD providers to be appointed for the compulsory and non- compulsory OPD for the 2013-6 period, with an extension of three years, subject to satisfactory performance.

- A minimum of six OPD providers to be appointed for the compulsory and non-compulsory OPD for the 2013-6 period, with an extension of three years, subject to satisfactory performance.
- That all trainers of OPD compulsory or legal topics are approved trainers as outlined in section 2.4.3 ?? Skill Levels for Trainers of Certificate IV in Celebrancy. (moved up)
- By 2019 a new system of approval for OPD activities will have been phased in providing a a more transparent and flexible process be developed for the approval and review of compulsory and non-compulsory OPD topics from approved OPD providers (and post 2016 other training/education providers).
- CoCA's comments to be sought on all applications for OPD Topics or activities
- All approved topics and activities to be published in the Celebrant Only section of the website.
- One day attendance at a Celebrant Association Conference to be approved as three hours of OPD in 2013–2019, unless changed to 5 hours prior to the end of that period by the MLCS.
- Review and general evaluation to be conducted by survey via the Celebrants Only Section of the website.

### **7.2 Approaches to Compulsory Legal OPD**

The aim of this recommendation is to improve the knowledge and skills of celebrants within the context of compliance with the compulsory legal aspects of their statutory obligations.

There are many topics of a legal nature that celebrants may need or wish to do as a refresher. Limiting topics of a legal nature to one topic only for the Compulsory does not address these needs.

It is recommended as follows:

- That all trainers of OPD compulsory or legal topics are approved trainers as outlined in section 2.4.3 Skill Levels for Trainers of Certificate IV in Celebrancy.
- That there be 2 hours minimum for compulsory legal topics to enable maximum cover of material and interactive learning.
- In conjunction with this there should be flexibility for a celebrant or celebrant association to choose the legal topic they wish to pursue. This will allow celebrants/associations to pursue the area of the legal studies where they assess the most need.



- Previous approved compulsory/ legal topics to be available as part of the compulsory and non-compulsory OPD mix.
- Compulsory OPD topic definition to be expanded to include subjects and activities related to the role of a marriage celebrant of a non-legal nature, eg How to access the AGD's website portal for celebrants.
- That units provide self-assessment and interactive learning opportunities – both face to face and online
- Celebrants to complete new units when available and not to repeat a unit under 5 years.
- All available legal topics to be published in the Celebrant Only section of the website.

### **7.3 Approaches to Non Legal OPD**

The aim of this recommendation is to improve the knowledge and skills of celebrants within the context of compliance with the non legal aspects of their statutory obligations.

It is recommended that:

- All trainers of OPD non legal topics are approved trainers as outlined in section 2.4.3 Skill Levels for Trainers of Certificate IV in Celebrancy.
- Non legal OPD be developed over time to provide an extensive list of approved topics and learning activities.
- Any unit component of the Certificate IV in Celebrancy, core, mandatory or elective, are to be considered appropriate topics for Non legal OPD.
- A full day attendance at a Celebrant Association Conference to be accepted as 3 hours of non legal OPD.

### **7.4 Meeting the new requirements for appointment.**

The aim of these recommendations is to encourage celebrants to meet the new requirements for appointment through the use of the Pre-appointment assessment and the Certificate IV in Celebrancy.

It is recommended that:

- In the OPD period 2013-2019, celebrants complete the Pre-appointment assessment of both Knowledge and Skills,
- the completion of units of study within the Certificate IV in Celebrancy to be approved as OPD.

### **8.0 Upgrade to MLCS Web and IT systems.**

#### **8.1 Requirements for Data analysis and planning.**

It is recommended that:

- CoCA be consulted as regards what data MLCS is proposing to store for planning, program review and compliance needs.

#### **8.2 Celebrant Only Section.**

It is recommended that:

- All marriage celebrants have the ability to login to a secure portion of the new system via an easily understood web portal environment.

#### **8.3 General Public Section.**

It is recommended that for celebrants:

- The national register contains celebrant details of suburb/region, phone and email contacts.
- It also contains language skills and association membership or religious organization affiliation where applicable.

It is recommended for the marrying public that information is provided on:

- The different types of celebrants
- The different types of fee structures
- Information on how to choose a celebrant
- Relationship education
- Press releases

It is recommended for prospective celebrants that the site provides information about:

- The celebrants role, and especially the independent civil celebrant role.
- The characteristics, values, skills and resources one needs to be a competent celebrant
- The disadvantages as well as advantages of being a celebrant.
- Financial resources needed to set up a celebrancy practice
- Step by Step Process of how to apply
- A listing of CoCA and Celebrant Associations

### **9.0 Create an Expert Resource Team**

It is recommended that:

- A resource team made up of MLCS legal staff, BDM representatives and celebrant association/CoCA representatives be appointed to handle difficult questions/situations.
- The role of this panel would be to:
- To examine the more tricky questions that come in via celebrant associations or BDM
- Provide a team approach to problem solving.
- To request the AGD to contact the relevant embassies etc as required
- To document the findings into Fact Sheets or Information Sheets as matters are resolved.
- Be a resource group for Prescribed Authorities
- It is envisaged that this panel would be a closed in-house web-based forum inside the upgraded MLCS website.

### **10.0 Streamline Celebrant Queries**

It is recommended that in the event of a celebrant contact to any source, in the first instance:

- All celebrants to be asked whether they have made reference to the Explanatory Material, When Words are Not Enough, the Marriage Act and the Marriage Regulations, the Fact Sheets and other information available inside the Celebrants Only Section of the website.
- Then contact the BDM who will be registering the marriage for clarification.
- If the question asked is not covered by the Explanatory material and/or BDM advice appears contradictory, the celebrant raises the matter via their celebrant association or requests the BDM raise the matter with the "Expert Resource Team" on their behalf.
- If no answer is forthcoming within a reasonable period of time, then the celebrant may contact the MLCS.

### **11.0 Support for Celebrant Associations**

It is recommended that the AGD/MLCS provide funds to support CoCA for the following:

- With assistance to upgrade the CoCA website
- With travel equalisation
- With a salary for a part-time person to resource CoCA
- Recommendation 12

### **12.0 Support for Public Information on Marriage**

It is recommended that funding for marriage information sessions for the general public be provided to CoCA associations.

**CoCA Senate Submission Appendix No 9  
 Cost Recovery Estimates from the Marriage Celebrant Section Oct 2012.**

Assume	Staffing 15 as "Crimtrack included in D							
staff ?	<b>average salary (est from new applic)</b>							
12.00	85715.00	1028580.00	1.03 M					
15.00	85715.00	1285725.00	1.29 M			diff	.26 M	
PART A	<b>ANNUAL DIRECT COSTS</b>	minues salary costs						
	- supplier costs (eg office equipment, stationary, training and travel).			%				
12.00	1533000.000	504420.000	0.5 M	32.9				
15.00		247275.000	0.25 M	<b>16.1</b>				
<b>Expense</b>	<b>Explanation of costs represented</b>	<b>Estimated cost based on current proposal</b>			<b>PA in millions</b>	<b>dollars</b>	<b>PA in millions</b>	<b>10,000 celebrants</b>
A. Direct Costs	Direct costs are those incurred in the direct day-to-day running of the Program, including < staff salary and superannuation costs, and < supplier costs (eg office equipment, stationary, training and travel).	\$4.6m spread over a three year period.	4.600	4.600	<b>1.533</b>	<b>\$153.33</b>	1.280 0.253	<b>\$128.00</b> <b>\$25.33</b>
B. Indirect Costs	Indirect costs relate to overhead costs, or the costs of running the Program that are not necessarily visible on a day to day basis. This category includes: < the cost of using office space < IT system and back-end costs, and < utility costs.	\$1.9m spread over a three year period.	1.900	1.900	<b>0.633</b>	<b>\$62.33</b>		<b>\$62.33</b>
C. Capital Costs	Capital costs relate to upgrading the MARCEL database, including a web based portal and payment gateway, to manage and monitor celebrants.	\$1m spread over a three year period.	1.000	1.000	<b>0.333</b>	<b>\$33.33</b>		<b>\$33.33</b>
D. Other Costs	Other costs are items that either relate to the running of the Program, or are integral to its management within the community. The category includes: < Stakeholder engagement < CrimTrac checking costs for applicants, and < stationery costs for an annual registration certificate.	\$0.3m spread over a three year period.  Includes new registrations	0.300	0.300	<b>0.100</b>	<b>\$10.00</b>		<b>\$10.00</b>
					<b>Sub-total Other costs</b>	<b>\$105.67</b>		<b>\$105.67</b>
					<b>TOTAL</b>	<b>\$260.00</b>		<b>\$260.00</b>

Charge type	Inclusions	Full Time Equivalent current	Full Time Equivalent staff reforms				
<b>Annual registration charge</b>	OPD	2012	2013	2014	2015		
	Training	7.25	11.9	11.45	11.37		
	Complaints		1.533				
	AAT	0.933970588	0.128823529				
	Performance management						
	Enquiries						
	Education						
	Stakeholder management						
	Fee administration						
	Program policy work						
<b>New application charge</b>	Processing new applications including:	3.5	2013	2014	2015	500 pa	At \$600
	< Enquiries about applications		3.5	3.5	3.5	300000.00	
	< Preparing application package	mm					for 3 staff is
	< Assessment:						
	- Phone/skype interviews						
	- Assessing application form						
	- Assessing legal questions						
	- Assessing mock NOIM						
	- Referee checks						
	< Registration process						
	< or						
	< Rejection and statement of reasons						
	Ongoing process and documentation update.						
	Review of trainers and determinations.						

**CoCA Senate Submission Appendix No 10**

**Assessment of Costs to set up and Maintain an Independent Celebrancy Practice**

**SET-UP costs** - proportioned across number of years practice or need to be covered before any "real" income can be realized.

**\* Training Costs – Greater than \$4000 – depends on course and trainee location**

- 13 units of Certificate IV in Celebrancy course fees
- Associated administration and travel costs for course

**\* Set-Up Small Business Greater than \$ 8,000 – depends on course and trainee location**

- Office equipment (*Computer, Software, Camera, Desk, Phone/Fax, Filing Cabinets, Brief Case*)
- Office stationery (*business cards, certificates, ceremony planners*)
- Mobile phone, reliable motor vehicle, umbrella, PA system etc
- Celebrant website
- Celebrancy library of legal and other resources
- Celebrancy clothing (*higher quality than day-to-day wear*)

**ONGOING COSTS**

- Phone rental \$250 to \$480 pa
  - Internet connect ion /downloads/ \$ 600 pa
  - Power and office cleaning costs \$520 pa
  - Vehicles Costs \$1000 pa plus petrol
  - Clothing - \$500 - \$1000+ especially for females celebrants
  - Dry cleaning and repairs - \$100
  - Disposables - *batteries, printing cartridges and other* \$ 50 pa
  - Printing and stationery supplies \$50 - \$200 pa
  - Advertising costs \$ 500 pa
  - Small business networking costs \$200
  - Website maintenance and upgrade costs \$ 100 to \$500+ pa
  - Yellow pages advertising \$ 300+
  - Other Advertising – *eg print and internet* \$ 300 ps
  - Promotions budget - *eg wedding expos* - \$400 pa
  - Office equipment maintenance and replacement budget - \$100 pa
  - Home Office Insurance - \$ 200 pa
  - Celebrant insurance - \$ 120 to \$250 pa
  - Celebrant copyright licence - \$ 50 pa
  - Celebrant associations / network memberships - \$ 100 to 200 pa
  - Ongoing Professional Development – Compulsory - \$200 pa
  - Other Professional Development - Voluntary *eg Conferences* \$ 500 to \$1000pa
- Estimated as \$ 4,500 pa for 10 weddings  
 Estimated as \$ 8,000 pa for 50 weddings

**Net Income = Annual Gross Income minus Annual Gross Costs for Independent celebrants**

10 weddings per year at \$ 500 each wedding This equals \$ 5,000.	50 weddings per year (one a week) at \$ 500 each . This equals \$ 25,000.
Each Wedding requires approx average 10 hours of time (100 hours) Plus the 5 hours per week spent in working on your celebrancy practice (250 hours)	This requires approx 10 hours of time (500 hours) Plus the 5 hours per week spent in working on your celebrancy practice (250) hours
<b>PRE-TAX Net Hourly Rate for 10 weddings pa:</b> Net Income (\$5,000 - \$4,500) equals \$ 500 now divided by the (total 350 hours ) <b>= \$ 1.42 per hour.</b>	<b>PRE-TAX Net Hourly Rate for 50 weddings pa:</b> Net Income ( \$25,000 - \$8,000) equals \$ 17,000 now divided by the (total 750 hours or 21.5 weeks of yours and your family's life) <b>= \$22.66 per hour.</b>

## **CoCA Senate Submission Appendix No 11**

### **COCA Recommendations with respect to Ongoing Professional Development (OPD). Submission February 2012**

Recommendations for these OPD recommendations would not change the existing arrangements for cost recovery of OPD that is borne by the marriage celebrants themselves.

These recommendations are made in the context of an approved training and appointment system. Celebrants would be supported by associations and/or BDM's, and an Expert Advisory Team. Celebrant Only Fact sheets and other information would be available inside the Marriage Law and Celebrant Section website.

The aim of this group of recommendations is to strengthen the Ongoing Professional Development (OPD) process.

There is no change to the minimum number of hours recommended for OPD, it remains at 5 hours. This is considered appropriate, given the part-time nature of marriage work.

#### **7.1 Flexible OPD phased-in over six years.**

The purpose for this recommendation is to provide for flexibility in OPD in the next OPD period.

It is recommended that:

A minimum of six OPD providers to be appointed for the compulsory and non- compulsory OPD for the 2013-6 period, with an extension of three years, subject to satisfactory performance.

- A minimum of six OPD providers to be appointed for the compulsory and non-compulsory OPD for the 2013-6 period, with an extension of three years, subject to satisfactory performance.
- That all trainers of OPD compulsory or legal topics are approved trainers as outlined in section 5.4
- By 2019 a new system of approval for OPD activities will have been phased in providing a a more transparent and flexible process be developed for the approval and review of compulsory and non-compulsory OPD topics from approved OPD providers (and post 2016 other training/education providers).
- CoCA's comments to be sought on all applications for OPD Topics or activities
- All approved topics and activities to be published in the Celebrant Only section of the website.
- One day attendance at a Celebrant Association Conference to be approved as three hours of OPD in 2013-2019, unless changed to 5 hours prior to the end of that period by the MLCS.
- Review and general evaluation to be conducted by survey via the Celebrants Only Section of the website.

Under this new arrangement it is envisaged that:

- The contracted OPD providers would provide OPD as an exclusive right between 2013-2016, but this would not be an exclusive right post 2016.
- New approved activities could be added in from other educational organizations from 2016 so that by 2019 a full and flexible program of OPD approved topics of a mix of previous compulsory and non-compulsory topics would be available.
- Any component of the Certificate IV in Celebrancy or any unit related to Celebrancy, whether ceremony, business, IT, computer related units/activities would be appropriate topics for submission for OPD approval.
- By 2019 the Marriage Regulations should be changed to stipulate five hours of approved OPD Topics or one day (minimum 5 hours) of Celebrant Association Workshops or Conferences from the list of OPD approved topics. This would remove the compulsory/ non-compulsory categories.

The benefits to celebrants and MLCS can be stated thus:

- Adult Learning Principles will be employed to give more choice and flexibility.
- Educationalists will determine how celebrants will be trained, with the MLCS to approve topics in principle, given the MLCS primary role is legal and administrative and is limited in relevant ceremonial and educative expertise.
- An approved topic would have stated objectives, time frame, suggested activities and approved trainers, but not include information of an in-house commercial in confidence nature.
- A wide range of education and training opportunities will become available, especially as it relates to the skills needed to operate a viable celebrancy practice offering wedding services.
- Celebrant association membership will be strengthened.
- Celebrants will be able to access existing education and training opportunities from existing education and other services in the community, especially to make local learning courses and programs more accessible, thus reducing travel and other costs.

## **7.2 Approaches to Compulsory Legal OPD**

The aim of this recommendation is to improve the knowledge and skills of celebrants within the context of compliance with the compulsory legal aspects of their statutory obligations.

There are many topics of a legal nature that celebrants may need or wish to do as a refresher. Limiting topics of a legal nature to one topic only for the Compulsory does not address these needs.

It is recommended as follows:

- That all trainers of OPD compulsory or legal topics are approved trainers as outlined in section 2.4.3 Skill Levels for Trainers of Certificate IV in Celebrancy.
- That there be 2 hours minimum for compulsory legal topics to enable maximum cover of material and interactive learning.
- In conjunction with this there should be flexibility for a celebrant or celebrant association to choose the legal topic they wish to pursue. This will allow celebrants/associations to pursue the area of the legal studies where they assess the most need.
- Previous approved compulsory/ legal topics to be available as part of the compulsory and non-compulsory OPD mix.
- Compulsory OPD topic definition to be expanded to include subjects and activities related to the role of a marriage celebrant of a non-legal nature, eg How to access the AGD's website portal for celebrants.
- That units provide self-assessment and interactive learning opportunities – both face to face and online
- Celebrants to complete new units when available and not to repeat a unit under 5 years.
- All available legal topics to be published in the Celebrant Only section of the website.

### **Measures recommended are to:**

- ensure Adult Learning Principles are adhered to and provide more choice
- ensure all Marriage Celebrant legal knowledge and skills are extensive in range and of a high order
- allows Marriage Celebrants to self-assess areas where they need more training

## **7.3 Approaches to Non Legal OPD**

The aim of this recommendation is to improve the knowledge and skills of celebrants within the context of compliance with the non legal aspects of their statutory obligations.

It is recommended that:

- All trainers of OPD non legal topics are approved trainers as outlined in section X Skill Levels for Trainers of Certificate IV in Celebrancy.
- Non legal OPD be developed over time to provide an extensive list of approved topics and learning activities.
- Any unit component of the Certificate IV in Celebrancy, core, mandatory or elective, are to be considered appropriate topics for Non legal OPD.
- A full day attendance at a Celebrant Association Conference to be accepted as 3 hours of non legal OPD.

These recommendations will ensure and provide:

- Adherence to Adult Learning Principles
- More choice and flexibility for long-term and non-aligned religious celebrants
- A wide range of education and training availability, especially as it relates to the SKILLS needed to operate a celebrancy practice providing weddings.
- The opportunity to have local learning courses and programs accessible to reduce travel and other costs.
- Encouragement to marriage celebrants to up-skill to the current qualification
- Utilization of existing education and training opportunities from education and other services in the community
- Strengthen celebrant association membership

#### **7.4 Meeting the new requirements for appointment.**

The aim of these recommendations is to encourage celebrants to meet the new requirements for appointment through the use of the Pre-appointment assessment and the Certificate IV in Celebrancy.

It is recommended that:

- in the OPD period 2013-2019, celebrants complete the Pre-appointment assessment of both Knowledge and Skills,
- the completion of units of study within the Certificate IV in Celebrancy to be approved as OPD.

The Knowledge and Skills assessment in both time and money is commensurate with the time and cost of 5 hours of OPD. Thus we believe that completion of this assessment will qualify as the persons 5 hour OPD in the year of completion.

We believe this will also enable all marriage celebrants to be informed about their current level of knowledge and skills as they are matched with those being required of current appointees. This may enable celebrants to plan to retire or complete further training if their knowledge and skills are assessed as not adequate.

It is firmly believed that the encouragement of celebrants to upgrade to the Certificate IV in Celebrancy qualification will be a significant means by which they can improve their knowledge and skill over time.

Therefore it is recommended that:

- Completion of one unit of study by face-to-face or distance education be equal to 5 hours OPD.
- Completion of two units of study by Recognition of Prior Learning (RPL) be equivalent to 5 hours of OPD.

Implementation of this measure will ensure that all marriage celebrants have the current qualifications if intending to stay as a MC for more than 5 years. Most professions require existing professionals to upgrade their qualification when entry qualifications are changed.



## **CoCA Senate Submission Appendix 12 Ongoing Professional Development CoCA August 2012**

CoCA has attempted to highlight problems with its role in "monitoring" the OPD program previously with the Department. CoCA has had no part in the selection of OPD providers nor activities, nor in gaining access to any of the feedback and evaluation information that the OPD providers themselves have. This makes it difficult for CoCA to play any meaningful role, even though as the peak body CoCA is in a key position to play a much more active role in approval and monitoring of OPD.

CoCA's position is that

- The current OPD system is neither cost effective, nor efficient
- 10,000 adults have 10,000 different adult learners needs, and as such 10,000 OPD plans are needed.
- Australia has a very competent tertiary education system that has lots of resources that celebrants can access.
- There will always be complaints about an OPD system that does not provide the widest possible range of choice for celebrants
- As adults, professional celebrants should be able to choose OPD to meet their individual needs, providing the approved OPD activities meet the Knowledge, Skills, Values Clarification and Support required to be a modern Professional Civil Marriage Celebrant.

The CoCA's February Submission argued a phase in of a new Approval and Monitoring System by 2016, but believe that such a new system could be phased in much sooner than that. CoCA has provided the Department with more details on such a system recently.

Such a change to a more flexible system would mean all current OPD activities would be automatically approved, and as such the existing OPD providers would be able to deliver those OPD options without further work on the MLCS's part.

It is also believed that the new Celebrant Website Portal will provide an independent feedback loop to access the suitability of the OPD sessions approved under a new system.

### **RECOMMENDATION :**

CoCA strongly recommends

1. The establishment of AGD\_CoCA Joint Standing Committee for OPD Approval and Monitoring
2. A simple and clear set of Guidelines for Approvals of OPD activities
3. An Application and Monitoring Process that requires minimal support and supervision from the MLCS, and allows the MLCS to concentrate on ensuring all marriage celebrants are up-to-date with their OPD obligations.

**AGD\_CoCA Joint Standing Committee: OPD Approval and Monitoring**

A new structure to be established jointly between CoCA and MLCS to work online with occasional face-to-face meetings

**Standing Committee Members: (For Example)**

*MLCS:* Marriage Registrar and Senior Legal Officer

*CoCA:* 3 delegates with no RTO or other educational facilities connections

*Independent*

Person with Adult Education Expertise – *perhaps from elsewhere in the VET Section eg IRG for Client Services*

**Administrative Support**

MLCS Administrative Officer

**Process:**

Applications circulated for comment and approval by the panel.

Teleconferencing on applications where there is not 2/3 rd agreement on the approval.

Annual meeting to review feedback from celebrants and providers

**GUIDELINES FOR OPD APPROVAL (For Example)**

1. All OPD applications are to be made according to the approved format.
2. Objectives of Ongoing Professional Development activities must relate to the knowledge, skills and competencies objectives on the Certificate IV in Celebrancy and/ or the professional duties and support required of Marriage Celebrant.
3. OPD Providers must be recognised educational agencies and/or facilities.
4. OPD Trainers must be qualified to deliver the specific OPD objectives of the OPD activity
5. OPD activities must be delivered in appropriate venues, with appropriate learner/ trainer ratios and resources as required by the objectives.
6. OPD providers delivering compulsory units are required to provide feedback to the AG Department in the format supplied
7. OPD Activities will be designated with an approval number.
8. Celebrants will be required to provide feedback on their OPD activity as part of the Annual Survey of their work.
9. Re-approval of a particular OPD activity is not automatic and will be assessed in conjunction with the OPD provider feedback and celebrants feedback from their Annual surveys.

**Approval Form: (For Example)**

<b>OPD Topic</b>			
OPD Code:		Approval	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> More required?
Date received		Date approved for OPD Year	
Delivery	<input type="checkbox"/> Online <input type="checkbox"/> External Study	<input type="checkbox"/> Face-to-face classes	<input type="checkbox"/> Conference - celebrant <input type="checkbox"/> - other
Duration of Topic		Max Class size	
Target Group for Topic			
<input type="checkbox"/> Compulsory <input type="checkbox"/> Elective	Marriage Act, Regs, Guidelines related <input type="checkbox"/> Yes <input type="checkbox"/> No		
Main focus of Activity	<input type="checkbox"/> Knowledge <input type="checkbox"/> Skills <input type="checkbox"/> Values Clarification <input type="checkbox"/> Support/ Resources		
Objectives of Topic	1. 2. 3. 4.		
Objectives relevant to the knowledge, values, skills & support needed by a professional celebrant appointed to conduct marriage ceremonies			Yes/ No
Learning Activities	1. 2. 3.		
<b>Name of OPD Provider</b>			
Address of OPD Provider			Postcode
Contact Details :	Phone	Fax	Email
Status of OPD	<input type="checkbox"/> RTO <input type="checkbox"/> Uni <input type="checkbox"/> CAE <input type="checkbox"/> other		Approved/ Not
Trainers	Names	Qualifications	Approved/ Not
Name & Qualifications of Trainers	1. 2. 3.	1. 2. 3.	1. 2. 3.
Assessment/ Feedback Measures			Approved/ Not Approved

<b>Post Delivery</b>			
Feedback from Online Annual Surveys			
<b>Provider Feedback Report</b>	Required <input type="checkbox"/> Yes <input type="checkbox"/> No	Date Received	
<i>Session Details*</i> *Legal Topics only			
Date	Town/ State	No Celebrants attended	Attendance report/ certificates given
1.			
2.			
3.			
Add rows as required.			
Summary of Assessment/ Feedback from Provider*			
Comments for Next Approval Round.			
Panel / MLCS Notes:			

### **CoCA Senate Submission Appendix 13**

#### **Letter to Attorney-General re "Officers of the Commonwealth"**

**<http://www.coalitionofcelebrantassociations.org.au/issues/letter-to-ag-re-officers-of-the-commonwealth/>**

#### **Coalition of Celebrant Associations Inc.**

Secretary Rona Goold  
P.O. Box 3113  
Robertson N.S.W 2577  
Phone: 02 48852393  
e-mail: [secretary@coca.org.au](mailto:secretary@coca.org.au)  
w: [www.coca.org.au](http://www.coca.org.au)

#### **The Hon Nicola Roxon**

#### **Attorney-General**

Parliament House  
Canberra ACT 2600

*Re: Commonwealth Marriage Celebrants as Officers of the Commonwealth*

Dear Attorney

The Coalition of Celebrant Associations (CoCA) is writing to seek clarification of the status of Commonwealth Marriage Celebrants as Officers of the Commonwealth.

At the 19 April 2012 meeting with the Attorney-General's Department, CoCA raised the matter of Commonwealth Marriage Celebrants acting as Officers of the Commonwealth while fulfilling their responsibilities as Marriage Celebrants.

Since that meeting, the High Court of Australia, in its judgement in the Williams v Commonwealth of Australia [2012] HCA 23 (20 June 2012) matter<sup>1</sup>, dealt with the issue of whether chaplains appointed under the Chaplaincy in Schools program were Officers of the Commonwealth. By so doing the High Court noted a number of criteria to assess whether a person held "office ... under the Commonwealth".

While not an exhaustive definition, The High Court noted the following criteria:

- "An " office" is a position under constituted authority to which duties are attached **[584]**. That suggests that an "officer" is a person who holds an office which is in direct relationship with the Commonwealth and to which qualifications may attach before particular appointments can be made or continued. <sup>Paragraph 444</sup>
- The need for a "legal relationship" with the 'officer' and the ability to "appoint, select, approve or dismiss" such officers. <sup>Paragraph 445</sup> [A1]
- "Under which particular standards are stipulated, and under which reporting obligations are created to ensure compliance with those standards. <sup>Paragraph 446</sup>

Being Marriage Celebrants appointed by the Commonwealth Attorney-General's Department would appear therefore to fit the definition of "Officers of the Commonwealth".

The Regulation Impact Statement (RIS), prepared by the Department to justify the imposition of a professional celebrant fee for full cost recovery purposes, supports the above criteria. The RIS stated:

- "The Commonwealth has constitutional responsibility for marriage matters including the Marriage Celebrant Program."

- "It is administered by the Attorney-General's Department." <sup>2</sup> ( *NB: The Marriage Act 1961 and marriage law policy is the responsibility of the Attorney-General who appoints and directs staff to administer The Marriage Celebrant Program*)
- "All persons conducting marriages in Australia must be authorised to do so under the *Marriage Act 1961* (the Act) <".<sup>2</sup>
- "Completion of a prescribed training course in order to be registered as a celebrant (from 2010 this has required a Certificate IV in Celebrancy)".<sup>2</sup>
- "A statutory application process for registration, including criteria for assessing the suitability of applicants to be registered as Marriage Celebrants." <sup>2</sup> ( *NB: This involves the Department selecting only those marriage celebrant applicants considered "Fit and proper persons" by Commonwealth Registrar of Marriage Celebrants under Section 39C of the Marriage Act 1961*)
- "Public listing of approved celebrants on a Register of Marriage Celebrants."<sup>2</sup>
- "A requirement for celebrants to undertake a minimum of 5 hours of professional development each year".<sup>2</sup> ( *NB: Ongoing Professional Development includes a compulsory component. Failure to complete OPD can be grounds for dismissal.*)
- Compliance with a statutory Code of Practice."<sup>3</sup>
- "A complaints process which enables complaints to be lodged against celebrants regarding their solemnization of marriage ceremonies."<sup>3</sup>
- "Review of the performance of each individual marriage celebrant against statutory criteria at least every five years."<sup>3</sup>
- "Availability of disciplinary measures against Marriage Celebrants who fail to meet their statutory obligations (including suspension and deregistration)".<sup>3</sup> (*NB: This constitutes dismissal*) and
- "A right of appeal for Marriage Celebrants to the AAT against decisions to reject their application for registration or to suspend or deregister them."<sup>3</sup>

The Department justified the new policy of cost recovery in its RIS, quoting:

- "These requirements are necessary and appropriate for the authorization and monitoring of private citizens who perform significant legal responsibilities where failure to properly perform those responsibilities can have a significant negative impact on members of the public".<sup>3</sup>
- "Marriage Celebrants have a number of significant legal responsibilities in conducting marriages" <sup>3</sup> as "Marriage results in a change of legal status for the parties to it and often a change of name for one party" <sup>3</sup>. Marriage Celebrants "must satisfy themselves as to the identity of each party they marry. There is no subsequent official confirmation that the individuals a celebrant names in a marriage certificate are who they claim to be." <sup>3</sup> (*NB: Marriage Celebrants are also designated to witness Commonwealth Statutory Declarations and are called upon to verify Lodgement of Notice of Intended Marriage by the Commonwealth Department of Immigration in spousal visa cases.*)
- "Other significant and potentially complex legal responsibilities include ensuring the full and free consent of each of the parties to a marriage, that the parties are aged over 18 years and not closely related and that neither party is currently married. Fulfilling these obligations often requires celebrants to examine and assess foreign identity, marriage and divorce documents. Celebrants need to also ensure that the parties' marriage vows meet minimum requirements, prepare marriage certificates (which are identity documents) and send marriage certificates and other documents to registering authorities following the marriage ceremony".<sup>3</sup>
- "Under the Act marriages may be invalid if they do not meet specific legislative requirements for solemnization. The use of vows in marriage ceremonies is considered a key element in establishing consent before witnesses".<sup>3</sup>

The Department, as quoted from the RIS (Recovery Impact Statement), fully expected that:

- *The option of charging Commonwealth celebrants a substantial annual fee "would be likely to impose some additional cost on marrying couples as celebrants would be likely to pass on the cost of the fee in the form of higher charges."*<sup>4</sup>

Given that over 90% of civil marriages are conducted by Commonwealth Marriage Celebrants, this method of cost recovery can be viewed as the Department encouraging indirect discrimination towards couples choosing a civil ceremony. CoCA raised this issue with the Department in its Submission on this proposal earlier this year.

As the proposed changes to the Marriage Celebrant Program included the imposition of a cost recovery fee on Marriage Celebrants to contribute to the administration of the Program, the Commonwealth Department of Finance's Office of Best Practice required the preparation of the RIS stating:

- *"Given the estimated size of the fee and the number of part-time Marriage Celebrants, the establishment of the cost recovery fee was considered to have more than a minor regulatory impact on the Marriage Celebrants' industry and so required a Regulation Impact Statement."*<sup>5</sup>

It is understood that the role of the Office of Best Practice is to ensure that changes to government policy remain in the public interest and that cost recovery mechanisms are appropriately applied to those that receive a government service. As Officers of the Commonwealth, Marriage Celebrants are delivering a service on behalf of the Government under Commonwealth law, the recipients of which are the marrying couples.

Therefore, if Marriage Celebrants authorised by the Attorney-General's Department are Officers of the Commonwealth, this would call into question the approval granted by the Office of Best Practice for the Regulation Impact Statement, which was based upon the assumed status of Commonwealth Marriage Celebrants as private citizens.

There is no question as to the status of the marrying couple being private citizens and in the 'private economy' (unlike an "Officer of the Commonwealth"). Therefore, cost recovery for the Marriage Law and Celebrant Section (MLCS) could be obtained via some fairer, non-discriminatory mechanism that imposed a fee upon the entirety of the marrying public (whether marrying in a Registry or religious or civil marriage celebrant ceremony. This would cover the prospective costs of the legal responsibilities and duties the MLCS expects to perform with its proposed increase in Legal staff (as per the RIS), as recommended in the 2012 CoCA submission on Cost Recovery and Increased Professionalism<sup>6</sup>

Clarifying the status of marriage celebrants as 'Officers of the Commonwealth' before the CRIS is finalized, would save the Department unnecessary time, energy and taxpayer money in the medium term, even if this means delaying the introduction of the fee.

The Coalition of Celebrant Associations (CoCA) respectfully requests that the Department defer the imposition of a fee on Marriage Celebrants appointed by the Commonwealth until there is a definitive ruling as to their status as Officers of the Commonwealth.

Yours sincerely

Robyn L Caine.  
CoCA Chairperson.  
27 July 2012

## References:

1. Appendix 1 – High Court of Australia in its judgement of the Williams v Commonwealth of Australia [2012] HCA 23 (20 June 2012) Paragraphs 442 – 447
2. Regulation Impact Statement Page 1.
3. Regulation Impact Statement Page 2.
4. Regulation Impact Statement Page 13
5. Commonwealth Department of Finance's Office of Best Practice  
<http://ris.finance.gov.au/2011/06/02/marriage-celebrants-program-better-management-through-fees-regulation-impact-statement-%E2%80%93-attorney-general%E2%80%99s-department/comment-page-1/#comment-719>
6. Submission on Increasing Professionalism of Marriage Celebrants and Proposed Celebrant Fee. Section 13.0 Summary on Cost Recovery  
  
<http://www.coalitionofcelebrantassociations.org.au/issues/the-proposed-fee-for-celebrants/13-0-summary-on-cost-recovery/>

## Appendix 1.

Reference: <http://www.austlii.edu.au/au/cases/cth/HCA/2012/23.html>

442. The plaintiff advanced two submissions concerning s 116 of the Constitution, which relevantly provides: "no religious test shall be required as a qualification for any office ... under the Commonwealth." First, the plaintiff submitted that NSCP "chaplains" hold an "office ... under the Commonwealth" within the meaning of s 116. The plaintiff submitted that the more closely "chaplains" complied with Commonwealth requirements as to their qualifications, activities and obligations, the more they acted for the Commonwealth and under its supervision. Secondly, the plaintiff submitted that the eligibility criteria in the Agreement imposed a religious test as a qualification for the offices of the "chaplains". In relation to his second submission, the plaintiff accepted that "this is not a scheme which proclaims its uniquely Christian character" and that it was "a scheme which forbids proselytising". But he argued that it was "to provide for spiritual guidance, and by persons who are likely to be clerics."

443. In relation to the first submission, the plaintiff drew attention to the differences between s 44(iv) of the Constitution s 75(v) of the Constitution and s 116. Section 44(iv) refers to an "office of profit under the Crown", and means a permanent officer of the executive government [583]. The plaintiff submitted that the omission of the words "of profit" from s 116 suggests that it contemplates something less than a relationship of employment. The plaintiff also pointed to the fact that s 75(v) refers to "officer of the Commonwealth" while s 116 refers to an "office ... under the Commonwealth". The plaintiff submitted that "of" indicates a person engaged or appointed by the Commonwealth, while "under" indicates the exercise of Commonwealth supervision or control over the office holder. The plaintiff submitted that if his proposed construction of s 116 were not adopted, the Commonwealth could evade by engaging subcontractors to perform its activities and stipulating that those subcontractors employ only adherents to a particular religious faith. The plaintiff contended that the Commonwealth exercised supervision or control over the "chaplains". That is because if the Code of Conduct were breached, the Commonwealth would cause the "chaplain" in breach to cease providing "chaplaincy services". And it is because the Commonwealth had the right to conduct monitoring activities.

445. The Commonwealth has no legal relationship with the "chaplains". It cannot appoint, select, approve or dismiss them. It cannot direct them. The services they provide in a particular school are determined by those who run that school. The provision of those services is overseen by school principals.

446. In the result, the plaintiff's construction of s 116 is an unattractive one. Under that construction, whenever the Commonwealth enters a contract under which services are to be provided by a party with whom it is to have no legal relationship, under which particular standards are stipulated, and under which reporting obligations are created to ensure compliance with those standards, that party would hold an office under the Commonwealth. This would radically expand s 75(v).

Coalition of Celebrant Associations (CoCA) Inc. April 2013  
*The Attorney-General's Peak Advisory Body for Commonwealth Celebrants*

The effect would be greatly to widen opportunities to commence litigation within the original jurisdiction of this Court, without the possibility of statutory restriction of them. Section 75(v) is a very beneficial provision, but not as beneficial as that.

This is not the occasion on which to attempt an exhaustive definition of "office ... under the Commonwealth". It is sufficient to say that whatever its outer limits, the "chaplains" are beyond them.



**CoCA Senate Submission Appendix 14**

**re: Review of Cost Recovery Guidelines**

**Coalition of Celebrant Associations Inc.**

**Secretary**  
**Rona Goold**  
**P.O. Box 3113**  
**Robertson N.S.W 2577**  
**Phone: 02 48852393**  
**e-mail: [secretary@coca.org.au](mailto:secretary@coca.org.au)**

**Chairperson**                    **Robyn L. Caine**  
**Vice-Chair**                    **Ph: 0412294537**  
   **Ian Deegen**

Charging Policy Team  
Financial Framework Policy Branch  
Department of Finance and Deregulation  
John Gorton Building,  
King Edward Terrace

Email [costrecoveryreview@finance.gov.au](mailto:costrecoveryreview@finance.gov.au)

Dear Sir/ Madam

Thank you for the opportunity to comment on the Cost Recovery Guidelines.

The Coalition of Celebrant Associations (CoCA) is recognised by the Commonwealth Attorney General as the peak body for Commonwealth Marriage Celebrants and is the only national body representing the majority of celebrant associations in Australia.

As arranged with your Department, CoCA appreciated the extension granted to it, to submit its response today 29<sup>th</sup> August 2012.

**CoCA has formulated its response under the following sections:**

1. Transparency
2. Consultation with Stakeholders
3. End Users of Government Services/ Products
4. Clear Legal Authority for the imposition of charges
5. Cost recovery – neither efficient nor effective
6. Natural Justice
7. Conclusion

**Should you require any further information please contact CoCA as above.**

Your sincerely

Rona Goold  
**CoCA Secretary**  
**Wednesday 29<sup>th</sup> August 2012**

## **1. Transparency**

As a group of providers, namely Commonwealth appointed Marriage Celebrants, of marriage services to the general public under a Commonwealth Act of Parliament we were extremely surprised to find ourselves targeted for Cost Recovery.

The Guidelines state that Cost Recovery applies to certain agencies and bodies<sup>1</sup> that have been notified under Sections 28 or 43 of the CAC Act. Whilst we can find references to the Attorney-General's Department, we can find no references specifically mentioning Commonwealth Marriage Celebrants.

Therefore these Guidelines certainly fail a transparency test from Stakeholders (-about-to-be-charged)' perspective.

## **2. Consultation with Stakeholders**

The Department of Finance's Best Practice Guidelines<sup>2</sup> and the Cost Recovery Guidelines<sup>3</sup> also highlight the principle of consultation, the former stressing prior consultation and the latter "appropriate" consultation.

CoCA considers that allowing significant<sup>4</sup> Cost Recovery Measures to be implemented at budget time, allows the Government to by-pass its own "best practice" guidelines.

Secondly The Oxford Advanced Learner's Dictionary defines "consultation" as "a formal discussion between groups of people before a decision is made about something"<sup>5</sup>

So communication processes after a decision has been made to apply Cost Recovery from the Stakeholders perspective, cannot be termed "consultation" (perhaps a conversation, dialogue, talk, chat or debate) and cannot be considered as meeting the principles behind these Guidelines that are intended for Cost Recovery strategies to be

- Cost efficient<sup>6</sup>
- Cost effective<sup>7</sup>

## **3. End Users of Government Services / Products**

CoCA understands the intent of Cost Recovery is to apply the "users-pays principle". That is that the end users of the government service pay for the benefit they receive.

Clearly the Recovery Impact Statement (RIS)<sup>8</sup> that the Attorney-General's Department produced for the Department of Finance made it clear that

- Commonwealth Marriage Celebrants were not the end users (fee is expected to be passed onto the marrying couple)
- Commonwealth Marriage Celebrants were not the beneficiaries of the service they provided on behalf of the Government (an average of 7 weddings per celebrant pa with a fee per wedding of less than \$500 thereby making an annual average GROSS income of \$3,500.)

CoCA asserts that the marrying couple is the end-user and as such Cost Recovery should be applied by some mechanism that charges the couple, such as a Marriage Registration Fee, but not their celebrant

## **4. Clear legal authority for the imposition of charges**

CoCA asserts that

- since 1961 all marriage celebrants, whether State registered or Commonwealth appointed, are providing marriage services on behalf of the Commonwealth Government under the Marriage Act 1961
- since 1961 all marriage celebrants have been required by the Commonwealth Government

- a. to provide those marriage services according to the rules set by the Commonwealth Government
- b. to register those marriages as directed by the Commonwealth with the State or Territory Registry within whose geographic boundaries the marriage takes place
- c. to use forms and other documentation as set by the Commonwealth and sold via the government printing services or the government contracted printing services

Therefore if Cost Recovery is to be applied for the services that the Marriage Law and Celebrant Section provides then the Marriage Act 1961 provides clear legal authority for costs to be recovered from all marrying couples, not just those using the services of a Commonwealth Marriage Celebrant.

Secondly, the Federal Government has Anti-discrimination laws that prohibit discrimination based upon marital status. It can be argued that Cost Recovery being passed onto the 70% of couples married by Commonwealth marriage celebrants<sup>8</sup> in predominantly civil marriage ceremonies means these married couples unfairly carry the burden of Cost Recovery, being treated differently from those couples married by Recognised Religious celebrants.

Thirdly, CoCA asserts that, since the High Court of Australia judgement in the Williams v Commonwealth of Australia [2012] HCA 23 ( 20 June 2012) matter,<sup>9</sup> where the High Court noted criteria upon which to assess whether a person held "office ... under the Commonwealth", there are now strong grounds upon which to state the status of Commonwealth marriage celebrants as "Officers of the Commonwealth".

As such, that High Court judgement means that the "legal grounds" for specifically singling out Commonwealth Marriage Celebrants for the Regulation measures of Commonwealth appointed Celebrants brought in 2003 is certainly not "clear".

#### **5. Cost Recovery - not efficient<sup>5</sup> and effective<sup>6</sup>**

Between 1973 and 2003 the services provided by marriage celebrants appointed by the Commonwealth Attorney-General's Department were delivered to the Australian marrying public without the need for a Regulatory function by the Commonwealth Attorney-General's Department.

This is because:

- the State & Territory Registries of Births Deaths and Marriages are responsible to register all valid marriages held within their geographic boundaries
- since 1973 the state registries have provided information and support to all marriage celebrants who marry couples in their jurisdiction regardless of whether those marriage celebrants are civil or religious, state registered or Commonwealth appointed as part of their responsibilities
- The Marriage Act 1961 protects all marrying couples from any mistakes made by their marriage celebrant whether religious or civil, whether Commonwealth appointed or State registered.

These three factors still apply.

The 2003 Regulatory Measures were introduced when the previous needs-based system was replaced with an "open market unlimited' appointment system.

The 2003 changes, which applied radically different principles to Commonwealth marriage celebrants performing civil marriages, have never been independently reviewed or evaluated.

#### **However what is manifestly evident is that this "new" post-2003 Commonwealth system is inefficient because the new system**

- a. Continues to appoint new marriage celebrants far in excess of what the marriage market can provide in opportunities for new marriage celebrants to gain the experience required to increase their professionalism

- b. Proposals under Cost Recovery<sup>10</sup> to require a huge annual cost recovery bill currently proposes to correct an insignificant number of Statutory Complaints i.e. \$120,000 per Statutory Complaint
- c. Now proposes a Cost Recovery Plan<sup>10</sup> that seems unlikely to use any of the major recommendations of the Attorney-General's own expert advisory group, namely the celebrant associations peak body CoCA, which were specially designed to be both cost effective and efficient AND actually increase professionalism of the sector.
- d. The proposed Cost Recovery Plan<sup>10</sup> proposes to expand the services it provides into areas beyond its expertise and which duplicate services already provided by Registries of Birth, Deaths and Marriages and celebrant associations.

**5a. Continues to appoint new marriage celebrants far in excess of what the marriage market can provide in opportunities for new marriage celebrants to gain the experience required to increase their professionalism.**

Commonwealth marriage celebrants currently marry between 65% and 70% of all marrying couples annually.

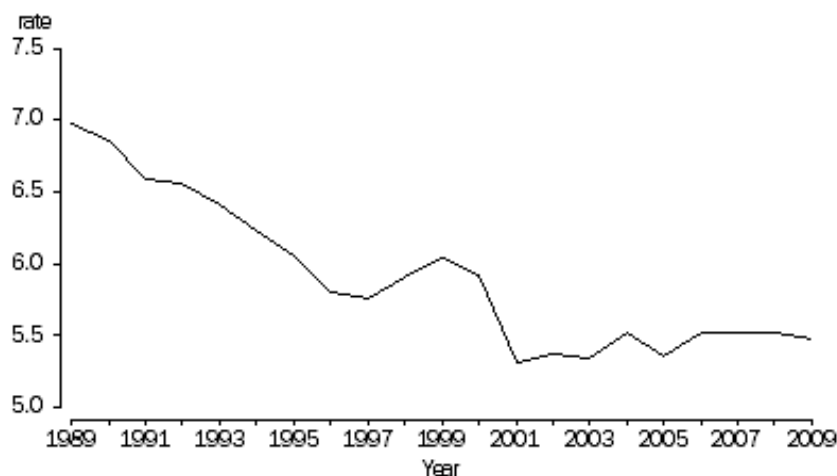
Even if Commonwealth Marriage Celebrants were to marry 100% of the marriage market (*i.e. all the 120,000 marrying couples annually or a weekly average of 2307 weddings*) and each marriage celebrant did only one wedding per week, the number of civil marriage celebrants required would be 2307, not approximately four times that figure at the current number of approximately 10,000 celebrants.

This is not taking into account the 23,500 marriage celebrants registered by Recognised Religious organisations and the 500 marriage celebrants employed by the State and Territory Registry Offices. I.e. another 24,000 marriage celebrants!

Since 1989, the **Crude Marriage Rate<sup>11</sup>** has dropped substantially

- Although the number of marriages is now the highest recorded, the population has also increased substantially over time. As a result, the crude marriage rate is now lower than it was 20 years ago.
- In 2009, the crude marriage rate was 5.5 marriages per 1,000 estimated resident population, compared with 7.0 marriages per 1,000 estimated resident population in 1989.
- Between 1989 and 2001, the crude marriage rate declined from 7.0 to 5.3. However, after a slight increase between 2001 and 2004, there has since been little variation.

**1.2 Crude marriage rates, Australia, 1989-2009**



However despite this clear picture that the marrying population do not require more marriage celebrants, the Commonwealth is continuing to appoint NEW marriage celebrants<sup>12</sup> at the rate of 45 per month or 450 pa or 2,250 every 5 year review period.

STATS		no new appointments	monthyl average
2009 JAN		135	
2009 FEB		152	
2009 MAR		103	
2009 APR		110	
2009 MAY		135	
2009 JUN		115	
2009 JUL		73	
2009 AUG		142	
2009 SEP		154	
2009 OCT		219	
2009 NOV		151	
2009 DEC		232	<b>143.42</b>
2010 JAN		311	
2010 FEB		374	
2010 MAR		280	
2010 APR		438	<b>195.25</b>
2010 MAY		9	
2010 JUN		0	
2010 JUL		6	
2010 AUG		0	
2010 SEP		2	<b>11.4</b>
2010 OCT		20	
2010 NOV		29	
2010 DEC		27	<b>124.67</b>
2011 JAN		13	
2011 FEB		8	
2011 MAR		62	
2011 APR		18	
2011 MAY		27	
2011 JUN		43	
2011 JUL		38	
2011 AUG		18	
2011 SEP		51	
2011 OCT		22	
2011 NOV		57	
2011 DEC		64	<b>35.08</b>
2012 JAN		50	
2012 FEB		64	
2012 MAR		36	
2012 APR		7	
2012 MAY		30	
2012 JUN		30	
2012 JUL		109	
2012 AUG @ 29.8.1		31	<b>44.625</b>

**(NB The Figures for 2012 are now averaging 48 new appointments every month or over 1000 new celebrants appointed every two years.)**

CoCA's Submission on Cost Recovery and Increased Professionalism<sup>13</sup> was based on a comprehensive holistic assessment and strategic approach to increase professionalism by streamlining the process so that Cost Recovery would be both Cost Effective and Cost Efficient.

To stabilise the sector and ensure that new inexperienced marriage celebrants have access to a reasonable number of weddings to gain experience, CoCA recommended

1. A moratorium on appointments to be implemented such that celebrant appointments for each Region would only be available each 5 years *i.e. celebrants be organized into 30 Regions (5 electorates) and that appointments for each Region only be available each 5 years, and*

2. A Cap on appointments such that no new appointments would be made until the average number of weddings per Commonwealth Celebrant pa was less than 25 weddings per celebrant per year.

To ensure that all new marriage celebrant appointments were of a uniform baseline high standard of knowledge and skill in all areas of their competence as a Marriage Celebrant i.e. not only to have sufficient knowledge to apply the Marriage Act, Regulations and Guidelines but also to meet the skills and behaviours required by the Code of Practice, CoCA has recommended

1. The Setting up of a System of 4 hour Post Training and Pre-Appointment Assessment of both knowledge and skills by Trained Assessors with qualifications in the delivery of Work Place Training as well as Assessment and who are involved in the delivery of the Certificate IV in Celebrancy.
2. This system to assign prospective applicants to assessors who are not related to the RTO where the applicant trained
3. The ongoing Cost Recovery of running this pre-Appointment assessment to be paid for by prospective celebrant i.e. fully cost recovered. CoCA estimates this would cost the applicant approximately \$400 for this assessment
4. The provision of a one-off amount of approximately \$20,000 to set this scheme up. The delay in appointment of one new staff position for 3 months would effectively cover the cost of such assessment.

CoCA is extremely concerned to see that the Marriage Law and Celebrant Section has not acknowledged the importance of implementing these particular measures to increase the professionalism of marriage celebrants which is the stated aim of the RIS the AGD prepared.

Proposals in the AGD Discussion Paper on Cost Recovery<sup>10</sup> would appear to indicate that MLCS staff, who are neither trained in Work Place Assessment nor Trainers, and who are not trained Marriage Celebrants nor who conduct any marriage ceremonies (unlike BDM Staff who do the latter) are planning to do a much less thorough assessment of new applicants themselves.

CoCA considers

- the unwillingness by the MLCS to implement these key Strategy recommendations means that the Cost Recovery system being imposed on celebrants is neither cost efficient nor cost effective.
- and so both existing and new marriage celebrants will be paying much more to be regulated than is in any way necessary.

This is particularly un-just as neither 5 yearly reviews nor specified hours of OPD apply to the 24,000 state appointed marriage celebrants.

If the validity of marriages conducted by marriage celebrants truly warranted this level of regulation then ALL marriage celebrants would be required to be trained in marriage law and have the same Regulatory Measures applied to them.

The fact that 24,000 celebrants are not required to be trained in marriage law and have the same Regulatory Measures applied to them logically makes invalid the MLCS arguments for these measure to apply to Commonwealth Marriage celebrants.

Otherwise the AGD would be taking steps to ensure

1. all Australian marriages meet the same requirements for validity, whether the marriage is conducted in a religious or civil setting and
2. the same grounds for de-registration need to apply to all marriage celebrants.

**5b Proposals under Cost Recovery<sup>10</sup> to require huge annual cost recovery bill currently proposed to correct an insignificant number of Statutory Complaints i.e. \$120,000 per Statutory Complaint**

The number of Statutory Complaints<sup>14</sup> against Commonwealth Marriage Celebrants has been extremely low. This table shows the highest number as 20 for 2009.

These Statutory Complaints related to only 20 celebrants of the 8546 celebrants performing 72070 marriages in 2009. That is

- a complaint rate of 0.23 % of all those celebrants or
- 0.03% of all marriages performed by those Commonwealth marriage celebrants.

**Table 3: Numbers of statutory complaints in each of the last four years**

<b>Statutory complaints for calendar year ending: -</b>	<b>Statutory Complaints</b>
31-Dec-07	11
31-Dec-08	7
31-Dec-09	20
31-Dec-10	14
*incomplete - Year to 30-Aug-11	14

CoCA as yet has not received a breakdown of the Cost Recovery Fee to be charged to existing celebrants. However the fee is proposed to be of the order of \$240 pa.

**For 10,000 celebrants this represents \$2.4 million or a cost of \$120,000 per Statutory Complaint!**

CoCA estimates that the cost of the 5-year Review is

- one hour of an Administrative Officer's time in reviewing the celebrant's computerized file, say \$50 every 5 years i.e. \$10 pa., and
- plus \$35 per head an administrative component ( 4 staff positions x \$80,000 pa with on costs) for the coordination of information for celebrants on the Attorney-General's Department (AGD)'s website for the other components recommended by CoCA namely
  - provision of information to all celebrants ( by making use of existing resources via Births, Deaths & Marriages (BDMs) and professional celebrant associations)
  - the provision of OPD as approved by the sector's peak expert body (and delivered by a range of Registered Training Organisations that train celebrants in the Certificate IV in Celebrants and related VET units, as well as relevant educational programs offered by universities and colleges of advanced education)
  - the collection of Cost Recovery Fees through the existing mechanism for providing resources to all marriage celebrants ( i.e. Canpint)

Thus the annual cost recovery figure would be in the order of \$45 per head or \$225 per marriage celebrant each 5 years.

As such the fee collection would then be able to be streamlined and fall due at the beginning of each celebrants review period.

A 5 year Cost Recovery Fee would also be more cost efficient than the Annual Collection of Cost Recovery Fees which represents 5 times the staffing and associated costs.

CoCA also considers that charging all celebrants to duplicate services freely available from the Registry Offices to service those celebrants who do not avail themselves of the services of the BDMs or Celebrant Associations is a system which punishes the most professional and highly skilled celebrants who will not have the need of such services and rewards those with poor knowledge and skills.

CoCA has recommended that celebrants pay fines if they do not meet their Regulatory requirements i.e.

- 5 hours of annual OPD
- Updating their contact information in the AGD's online website portal, and
- Having substantiated complaints made against them

The AGD has expressed concerns about being able to recoup these costs via fines. However CoCA has proposed that a bond could be required at the commencement of the Celebrants career and used to cover unpaid fines, if the celebrant is suspended or deregistered.

**5c Now proposes Cost Recovery Plan<sup>10</sup> that seems unlikely to use any of the major recommendations of the Attorney-General's own expert advisory group, namely the celebrant associations peak body CoCA which were specially designed to be both cost effective and efficient AND actually increase professionalism of the sector.**

In fact, reviewing the Cost Recovery Discussion Paper against the peak body's recommendations, it is hard to find anything new to the AGD proposals of May 2011.

<b>CoCA Recommendations</b>	
<b>1 Guiding Principles.</b>	
i	<i>A professional model of celebrancy as "professional ceremonialists" is the most appropriate model upon which to base the future development of celebrancy</i>
ii	<i>Acknowledging and respecting that marriage celebrancy services are part-time services for most marriage celebrants.</i>
iii	<i>A limit to the number of celebrants on a regional basis.</i>
iv	<i>Utilising existing systems and services in training, education, administration, resource delivery.</i>
v	<i>Ensuring that the majority of the work done by the MLCS is in line with its primary national role in making law and marriage law policy decisions.</i>
vi	<i>Making the MLCS effective in quality and cost efficient in utilising computer and IT based systems.</i>
vii	<i>Fees charged to Civil Celebrants must be directly related to work that is done for the MLCS's compliance responsibilities</i>
<b>2 Implement Limited Appointments.</b>	
	Appointments opened every 5 years by region (or electorate AND interviewed by a Regional Advisory Panel)
<b>3 Conflict of Interest.</b>	
	• <i>A professional is expected to be impartial in advice/ service giving. Thus a celebrant needs to be at arm's length from any related activities.</i>
ii	• <i>The other activities of a professional can harm the public perception of the profession.</i>
iii	• <i>Free and informed consent to choose a celebrant must not be hampered by the actions of the celebrant's other activities.</i>
iv	• <i>A celebrant's other activities or roles must not impact on their ability to fully and competently prepare and deliver a marriage ceremony.</i>
v	• <i>The benefit from another activity must never outweigh the benefit from the celebrant role (esp. financially), tempting the celebrant to take shortcuts or to act illegally.</i>
vi	• <i>A professional is expected to have some motive involved in their work, beyond their own personal needs.</i>



<b>4 Implement Celebrant Pre-Training Processes</b>
4.1 <i>Fit and Proper Persons</i>
4.2 <i>Implement a Information sessions or Suitability Course.</i>
<b>5 Review approaches to Marriage Celebrant Training</b>
5.1 <i>Different approaches to training for different roles.</i>
5.2 <i>Upgrade training of Civil Marriage Celebrants.</i>
5.3 <i>Use the services of ASQA to strengthen training in the VET system.</i>
5.4 <i>Upgrade skill levels for trainers of the Certificate IV Course</i>
5.5 <i>Audit of Registered Training Organisations</i>
<b>6 Implement a Independent Knowledge &amp; Skills Pre-Appointment Assessment.</b>
Set up an independent panel of Assessors to conduct a 2 hour knowledge and 2 hour skills assessment of all applicants post training/ pre appointment. Initial outlay \$20,000 then self funded by applicants @ \$400 per head
<b>7 Review approaches to Ongoing Professional Development (OPD)</b>
7.1 <i>Flexible OPD phased-in over six years.</i>
7.2 <i>Approaches to Compulsory Legal OPD</i>
7.3 <i>Approaches to Non Legal OPD</i>
7.4 <i>Meeting the new requirements for appointment.</i>
<b>8 Upgrade to MLCS Web and IT systems.</b>
8.1 <i>Requirements for Data analysis and planning.</i>
8.2 <i>Celebrant Only Section.</i>
8.3 <i>General Public Section.</i>
<b>9 Create an Expert Resource Team</b>
Set up a panel of MLCS staff, BDM representatives and CoCA celebrant representatives to handle 'difficult' requests and review celebrant inquiries to MLCS
<b>10 Streamline Celebrant Queries</b>
<i>Celebrant queries referred to:</i>
<ul style="list-style-type: none"> <li>• Marriage Guidelines, Fact Sheets and other information inside the Celebrants Only Section of the website.</li> <li>• Then BDM registering the marriage for clarification.</li> <li>• If advice appears contradictory, the matter raised with the "Expert Resource Team" via celebrant association or BDM</li> <li>• If matter is or becomes urgent contact the MLCS</li> </ul>
<b>11 Support for Celebrant Associations CoCA</b>
Some funding for cost equalisation for travel expenses, and for a part-time Secretariat function for CoCA
<b>12 Support for Public Information on Marriage</b>
Some funding support for civil celebrants to host Marriage seminars with Relationship Educators
<b>13 Cost Recovery Mechanisms</b>
Fee collection via existing mechanisms eg Canprint, BDMs
Cost spread across all marriages
Cost recovery of MLCS work for processing new applications covered by the applicant

The move from paper based to online integrated computerized systems was foreshadowed by the AGD at prior meetings of CoCA with the MLCS.

The MLCS had explained that their administrative system for the tracking of each celebrant was in 3 separate paper based files, thus making the task of reviewing each celebrant cumbersome and lengthy in time allocation.

CoCA finds this situation extremely concerning that the time and effort of the peak body whose delegates offer their time and expertise for the betterment of their colleagues, their profession and for the betterment of the general public should have their Recommendations treated in such a superficial way.

This means taxpayers money used in this exercise of so-called "consultation" has not resulted in any major improvements to the system.

Rather the outcome will use Cost Recovery to entrench an inefficient and ineffective system, at a cost to the Stakeholders and the marrying public who choose civil marriage.

## **6 Natural Justice**

Definition <sup>15</sup>

*English legal system doctrine that protects against arbitrary exercise of power by ensuring fair play. Natural justice is based on two fundamental rules: (1) Audi alteram partem (Latin for, hear the other side): no accused, or a person directly affected by a decision, shall be condemned unless given full chance to prepare and submit his or her case and rebuttal to the opposing party's arguments; (2) Nemo iudex in causa sua (Latin for, no man a judge in his own case): no decision is valid if it was influenced by any financial consideration or other interest or bias of the decision maker. These principles apply to decisions of all governmental agencies and tribunals, and judgments of all courts, which may be declared to be of having no effect (ultra vires) if found in contravention of natural justice. See also natural law and natural rights.*

CoCA has a number of concerns that relate to the principle of natural justice. The Cost Recovery Guidelines appear to be based upon the principle that changes should not unfairly be applied to the end-users without consultation and clear legal authority to do so etc.

For 30 years (1973 to 2003) Commonwealth Marriage Celebrants were appointed with the right to a life time appointment and no cost applied to the regulation of their services which were done on the same basis as the Recognised Religious Celebrants<sup>16</sup>

For 10 years (2003 to 2013) Commonwealth Marriage Celebrants have been appointed subjected to a 5-year Review Process to encourage professionalism and to de-register those celebrants who were not meeting their Regulatory Requirements under the amended Marriage Act 2003. No cost was applied to the Regulation of their services.

Therefore CoCA considers that it is against the principle of 'natural justice' to now apply a ONE year annual fee retrospectively to all celebrants appointed prior to the introduction of Cost Recovery planned to start July 1<sup>st</sup> 2013 and the failure to pay the said fee to result in instant suspension of the celebrant's right to conduct marriages.

This measure will de-stabilise the sector and create more problems for the marrying public who often plan their marriage 18 months or more before the date they choose.

## **7 Conclusion**

The Coalition of Celebrant Associations experience of the application of the Department of Finance Cost Recovery Guidelines demonstrates that they are ineffective in meeting the needs of the Stakeholders and more importantly, do not ensure that Cost Recovery by the government agencies who are required to apply these Guidelines is actually achieved in a Cost effective and Cost efficient manner.

## References

### **1 Australian Government Cost Recovery Guidelines - Purpose**

"Cost Recovery (CR) applies to all *Financial Management and Accountability Act 1997* (FMA Act) agencies and also to those *Commonwealth Authorities and Companies Act 1997* (CAC Act) bodies that have been notified, under sections 28 or 43 of the CAC Act, to apply the cost recovery policy<sup>2</sup>."

**2. Department of Finance Best Practice Regulation Handbook Reference:**  
<http://www.finance.gov.au/obpr/proposal/gov-requirements.html>

**3. Australian Government Cost Recovery Guidelines Reference. Reference;**  
<http://www.finance.gov.au/financial-framework/financial-management-policy-guidance/cost-recovery/review-of-cost-recovery.html>

**4. Australian Government Cost Recovery Guidelines – Key Point 12**

**5. Oxford Online Dictionary Reference**  
<http://oald8.oxfordlearnersdictionaries.com/dictionary/consultation>

**6. Australian Government Cost Recovery Guidelines – Key Point 3**

**7. Australian Government Cost Recovery Guidelines – Key Point 4**

**8 Regulation Impact Statement – AGD**

<http://ris.finance.gov.au/2011/06/02/marriage-celebrants-program-better-management-through-fees-regulation-impact-statement-%E2%80%93-attorney-general%E2%80%99s-department/>

**9. High Court of Australia in its judgement of the Williams v Commonwealth of Australia [2012] HCA 23 (20 June 2012)** Paragraphs 442 – 447

**10 Release of New Consultation Paper – Cost recovery arrangements for the Marriage Celebrants Program would be implemented from 1 July 2013. Reference:**

<http://www.ag.gov.au/Marriage/Pages/MarriageCelebrantsProgramReforms.aspx>

**11 ABS Crude Marriage Rate Reference:**

<http://www.abs.gov.au/ausstats/abs@.nsf/Products/1D63A0059ECDFDCFA2577ED00146123?opendocument>

**12. Figures obtained by Advance Search Function the monthly analysis of the Commonwealth Marriage Register. Reference:**

<http://152.91.15.12/internet/marriagecelebrants.nsf/publicAdvancedSearch?openform>

**13 The Coalition of Celebrant Associations (CoCA) Submission on Cost Recovery and Increased Professionalism**

<http://www.coalitionofcelebrantassociations.org.au/issues/the-proposed-fee-for-celebrants/table-of-contents/>

**14 20111008 Marriage Celebrants Statistics FOI**

URL: <http://www.celebrants.org.au/what-is-new/824-20111008-marriage-celebrants-statistics-foi>

**15. Natural Justice** <http://www.businessdictionary.com/definition/natural-justice.html>

Read more: <http://www.businessdictionary.com/definition/natural-justice.html#ixzz24tS81QSY>

**16 List of Recognised Religious Marriage Celebrants. Reference:**

<http://www.celebrantsequality.org.au/exempted-marriage-celebrants/>

## **CoCA Inc– Senate Appendix 15**

All persons who solemnise marriages in Australia must be authorised under the one Marriage Act. Marriage celebrants are in three categories in the Marriage Act 1961 under

- Division 1—Authorised celebrants - Subdivision A—Ministers of religion and
- Division 1—Authorised celebrants - Subdivision B—State and Territory officers etc.
- Division 1—Authorised celebrants - Subdivision C—Marriage celebrants

The proposed "Registration Fee" is only to be applied to Subdivision C Commonwealth Marriage Celebrants

### **Exempted Marriage Celebrants**

So all staff at State Registry offices, who conduct marriages and are on a salary (unlike Commonwealth Marriage Celebrants) will be exempted from this fee.

Marriage Celebrants from these Recognised Religions will be exempted from the proposed Annual Registration Fee.

### **Division 1—Authorised celebrants - Subdivision A—Ministers of religion**

FROM : Marriage (Recognised Denominations) Proclamation 2007-

- Aboriginal Evangelical Fellowship of Australia
- Ananda Marga
- Anglican Catholic Church in Australia, The
- Anglican Church of Australia,
- The Antiochian Orthodox Church
- Apostolic Church (Australia),The
- Apostolic Church of Queensland, The
- Armenian Apostolic Church in Australia, The
- Assemblies of God in Australia
- Associated Christian Ministries
- Associated Christian Spiritual Churches of Australia
- Associated Mission Churches of Australasia Incorporated
- Association of Vineyard Churches Australia, The
- Australian Christadelphian Ecclesia
- Australian Church of Antioch, The
- Australian Fellowship of Bible-believing Churches
- Australian Fellowship of Mission Centres (Youth with a Mission)
- Australian Indigenous Ministries
- Australian Unitarian Druze
- Autocephalic Greek Orthodox Church of America and Australia
- Baha'i Faith
- Baptist Union of Australia, The
- Belarusian Autocephalous Orthodox Church in Australia and Abroad
- Bethesda Ministries International Incorporated
- Brethren
- C3 Church Global
- Calvary Life Assemblies
- Chinese Methodist Church in Australia
- Christian and Missionary Alliance of Australia, The
- Christian Brethren
- Christian Church in Australia
- Christian Church, The
- Christian Israelite Church
- Christian Life Churches International
- Christian Outreach Centre
- Christian Reformed Churches of Australia
- Churches of Christ in Australia
- Church of God (Australia) Limited
- Church of Jesus Christ of Latter-Day Saints
- Church of Scientology Incorporated, The
- Church of the Foursquare Gospel (Australia) Limited
- Church of the Foursquare Gospel in Australia

- Church of the Nazarene
- Church of Tonga in Australia, The
- Churches of Christ in Australia
- Community of Christ
- Congregational Christian Church in Samoa, The
- Congregational Federation of Australia
- Connexions Ltd
- Cook Islands Christian Church
- Coptic Orthodox Church of Australia
- CRC Churches International
- Crosslink Christian Network
- Dream Centre Christian Church Limited
- Evangelical Presbyterian Church of Australia, The
- Federation of Australian Buddhist Councils
- Federation of Reformed Christian Churches of the Pacific Australia Incorporated
- Fellowship of Congregational Churches
- Fellowship of Evangelical Churches in Australia
- Fellowship of Independent Evangelical Churches
- Free Reformed Church of Australia
- Free Serbian Orthodox Church, Diocese for Australia and New Zealand
- Full Gospel Churches of Australia
- German Evangelical Lutheran Church
- Goshen Ministry International Outreach
- Greek Orthodox Archdiocese of Australia
- Hindu Council of Australia, The
- Holy Apostolic Catholic Assyrian Church of the East
- Hungarian Reformed Church of Australia, The
- Iglesia ni Cristo
- Independent Baptist Fellowship
- Independent Baptists of Australia
- Independent Church of Australia, The
- International Council of Spiritualists
- International Society for Krishna Consciousness
- Islam
- Jehovah's Witnesses
- Jerwry
- Latvian Evangelical Lutheran Church in Victoria, The
- Liberal Catholic Church, The
- Lutheran Church of Australia Incorporated, The
- Macedonian--Bulgarian Eastern Orthodox Church
- Macedonian Orthodox Church, Diocese of Australia and New Zealand
- Ministers Fellowship International
- New Apostolic Church in Australia, The
- New Church in Australia, The
- New Life Churches of Australia
- OzReach
- Pacific LMS Church Australia Incorporated
- Potters House Christian Fellowship of Australia, The
- Power of the Spirit Ltd
- Presbyterian Church of Australia, The
- Presbyterian Church of Eastern Australia
- Presbyterian Reformed Church
- Reach Out for Christ Limited
- Reformed Presbyterian Church of Australia, The
- Religious Society of Friends, The
- Revival Centres International
- Revival Fellowship, The
- Rhema Family Churches Australia
- Roman Catholic Church
- Romanian Orthodox Church
- Russian Orthodox Church Outside of Russia
- Salvation Army, The
- Serbian Orthodox Church in Australia and New Zealand, The
- Seventh--day Adventist Church

- Sikh Council of Australia Incorporated, The
- Society of Saint Pius X Limited
- Southern Cross Association of Churches, The
- Strict and Particular Baptist Churches of Australia, The
- Ukrainian Autocephalic Orthodox Church in Diaspora, Diocese of Australia and NZ
- Unitarians
- United Aborigines Mission
- United Church of God — Australia
- United Pentecostal Church of Australia
- United Spiritualism of Australia
- Uniting Church in Australia, The
- Victorian Spiritualists' Union
- Victory Life Centre Incorporated
- Welsh Calvinistic Methodist Connexion in Victoria, The
- Wesleyan Methodist Church, The
- Westminster Presbyterian Church, The
- Worldwide Church of God
- Worship Centre Christian Churches Worldwide (Australia) Ltd

**PART VIII Terminology**

AG = Attorney-General

AGD = Attorney-General's Department

BDM = Births, Deaths & Marriages

Category A = Marriage celebrants appointed under *Marriage Act 1961 Part IV Div. 1 Subdivision A Ministers of religion*

Category B = Marriage celebrants appointed under *Marriage Act 1961 Part IV Div. 1 Subdivision B State and Territory officers*

Category C = Marriage celebrants appointed under *Marriage Act 1961 Part IV Div. 1 Subdivision C Authorised Celebrants*

Civil Celebrants = Marriage celebrants appointed under *Marriage Act 1961 Part IV Div. 1 Subdivision C Authorised Celebrants – authorised to conduct "civil ceremonies"*

CoCA = Coalition of Celebrant Associations (CoCA) Inc.

CMC = Civil Marriage Celebrant

Independent Celebrants = Marriage celebrants appointed under *Marriage Act 1961 Part IV Div. 1 Subdivision C Authorised Celebrants*

MLCS = Marriage Law and Celebrant Section of the Attorney-General's Department

NARC = Non-Aligned Religious Celebrant (Marriage celebrants appointed under *Marriage Act 1961 Part IV Div. 1 Subdivision C Authorised Celebrants – authorised to conduct "religious ceremonies"*)

OPD = Ongoing Professional Development

Recognised Religious Celebrants = Marriage celebrants appointed under *Marriage Act 1961 Part IV Div. 1 Subdivision A Ministers of religion*

*Registry Marriage Officers* = Marriage celebrants appointed under *Marriage Act 1961 Part IV Div. 1 Subdivision B State and Territory officers*

RIS = Recovery Impact Statement

The Act = The Marriage Act 1961

The Department = Commonwealth Attorney-General's Department