

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 bodies¹ 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 Guidelines² and the Cost Recovery Guidelines³ also highlight the principle of consultation, the former stressing prior consultation and the latter "appropriate" consultation.

CoCA considers that allowing significant⁴ 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"⁵

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 efficient⁶
- Cost effective⁷

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)⁸ 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 celebrants⁸ 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,⁹ 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 efficient⁵ and effective⁶

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 Recovery¹⁰ 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 Plan¹⁰ 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 Plan¹⁰ 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 Rate¹¹** 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 celebrants¹² 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	1721.00
			143.42
2010 JAN		311	
2010 FEB		374	
2010 MAR		280	
2010 APR		438	3124.00
			195.25
2010 MAY		9	
2010 JUN		0	
2010 JUL		6	
2010 AUG		0	
2010 SEP		2	114.00
			11.4
2010 OCT		20	
2010 NOV		29	
2010 DEC		27	1496.00
			124.67
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	421.00
			35.08
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	357
			44.625

(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 Professionalism¹³ 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 Recovery¹⁰ 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 Recovery¹⁰ 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 Complaints¹⁴ 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

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

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 Plan¹⁰ 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.

CoCA Recommendations	
1 Guiding Principles.	
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>
2 Implement Limited Appointments.	
	Appointments opened every 5 years by region (or electorate AND interviewed by a Regional Advisory Panel)
3 Conflict of Interest.	
	<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>

4 Implement Celebrant Pre-Training Processes
4.1 <i>Fit and Proper Persons</i>
4.2 <i>Implement a Information sessions or Suitability Course.</i>
5 Review approaches to Marriage Celebrant Training
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>
6 Implement a Independent Knowledge & Skills Pre-Appointment Assessment.
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
7 Review approaches to Ongoing Professional Development (OPD)
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>
8 Upgrade to MLCS Web and IT systems.
8.1 <i>Requirements for Data analysis and planning.</i>
8.2 <i>Celebrant Only Section.</i>
8.3 <i>General Public Section.</i>
9 Create an Expert Resource Team
Set up a panel of MLCS staff, BDM representatives and CoCA celebrant representatives to handle 'difficult' requests and review celebrant inquiries to MLCS
10 Streamline Celebrant Queries
<i>Celebrant queries referred to:</i>
<ul style="list-style-type: none"> • Marriage Guidelines, Fact Sheets and other information inside the Celebrants Only Section of the website. • Then BDM registering the marriage for clarification. • If advice appears contradictory, the matter raised with the "Expert Resource Team" via celebrant association or BDM • If matter is or becomes urgent contact the MLCS
11 Support for Celebrant Associations CoCA
Some funding for cost equalisation for travel expenses, and for a part-time Secretariat function for CoCA
12 Support for Public Information on Marriage
Some funding support for civil celebrants to host Marriage seminars with Relationship Educators
13 Cost Recovery Mechanisms
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 ¹⁵

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 Celebrants¹⁶

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 1st 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 policy²."

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/>