

**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</b> the person owns, controls or carries out; and	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</u> the Registrar:
<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</u> marriage celebrant's performance in respect of a period <u>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>	