

REGULATION IMPACT STATEMENT

New Policy Proposal

Marriage Celebrants Program – Better Management through Fees

Background

The Marriage Celebrants Program

The Marriage Celebrants Program (the Program) was established in 1973 to provide marrying couples who did not want to have a religious ceremony with a dignified and meaningful alternative to a registry wedding. The Commonwealth has constitutional responsibility for marriage matters including the Program. It is administered by the Attorney-General's Department.

All persons conducting marriages in Australia must be authorised to do so under the *Marriage Act 1961* (the Act). The Act establishes 3 categories of people who may be authorised to conduct marriages in Australia.

- a) Ministers of religion from 'recognised denominations' under the Act,
- b) Officers of the States and Territories who are authorised to perform marriages as part of their duties, and
- c) Marriage celebrants authorised under the Program to perform marriages.

The proposals addressed in this RIS relate only to marriage celebrants in category (c).

When the Program was launched in 1973 less than 2% of couples chose a civil ceremony. Today 65% of marriage ceremonies within Australia are conducted by civil marriage celebrants registered under the Program.

Principal elements of the Program

Significant reforms to the Program were made as a result of the passage of the *Marriage Amendment Act 2002*. These reforms commenced operation on 1 September 2003. The major elements of the Program that resulted from these reforms were:

- completion of a prescribed training course in order to be registered as a celebrant (from 2010 this has required a Certificate IV in Celebrancy),
- a statutory application process for registration including criteria for assessing the suitability of applicants to be registered as marriage celebrants,
- public listing of approved celebrants on a Register of Marriage Celebrants,
- a requirement for celebrants to undertake a minimum of 5 hours of professional development each year,

- compliance with a statutory Code of Practice,
- a complaints process which enables complaints to be lodged against celebrants regarding their solemnisation of marriage ceremonies,
- review of the performance of each individual marriage celebrant against statutory criteria at least every five years,
- availability of disciplinary measures against marriage celebrants who fail to meet their statutory obligations (including suspension and deregistration), 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.

These requirements are necessary and appropriate for the authorisation 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.

Legal significance of the role of marriage celebrant

Marriage results in a change of legal status for the parties to it and often a change of name for one party. Marriage celebrants have a number of significant legal responsibilities in conducting marriages. They 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. Further, a new identity document, a marriage certificate, is created that is dependent on the individual celebrant's care and expertise in verifying individuals' identities. There is evidence of long-term problems with celebrants incorrectly verifying the identity of people prior to a marriage. 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.

State and Territory registering authorities register marriages on the basis of the material provided by the celebrant. Poor understanding of legal obligations and requirements on the part of celebrants may therefore have a significant effect on the marrying couple in relation to complex issues such as succession, divorce and the validity of marriages. Unprofessional performance by celebrants can leave marrying couples required to pay costs associated with obtaining the correction of records and certificates or rectifying other failures such as non-registration of marriages.

In 2010 there were a number of media reports claiming a large percentage of marriages may be invalid because the wording of the vows used in ceremonies did not comply with the Act. The

adequacy of vows is one example of a legal obligation of which some celebrants registered under the Program have a poor understanding. Under the Act marriages may be invalid if they do not meet specific legislative requirements for solemnisation. The use of vows in marriage ceremonies is considered a key element in establishing consent before witnesses.

In addition to these significant legal responsibilities marriage celebrants perform an important ceremonial role in the conduct of marriages. As marriages are an infrequent event in the life of people in the community, professional performance of this role is significant to marrying couples and their family and friends and something they are entitled to rely upon.

The Government has clearly stated that marriage is an important institution within society. Professional performance of the role of a marriage celebrant is a key part of upholding the importance of marriage within society.

Marriage celebrants registered under the Program

Marriage celebrants are registered as individuals. An organisation cannot be registered to solemnise marriages. Most celebrants charge couples a fee for the performance of their functions. There are no prescribed fees. Celebrants are able to charge whatever fee they judge appropriate and are therefore able to recover the costs of operating as a celebrant, including meeting legislative requirements.

A proportion of celebrants (up to 30%) do not charge marrying couples a fee or charge only a minimal fee. These celebrants include persons conducting marriage ceremonies on behalf of small independent religious organisations and celebrants in rural and remote locations in which few marriage ceremonies are performed each year.

The number of marriages conducted in Australia in 2008 was 118,756 (ABS statistic). Of these, 35% were conducted by ministers of religion. The rest were conducted by marriage celebrants registered under the Program and the Registries of Births, Deaths and Marriages in the States and Territories. Approximately 5% of marriages fall into this latter category.

The raw average for the number of marriages conducted by each celebrant registered under the Program is approximately 6.6 per annum. A significant proportion would perform many more marriages than this (up to 50 or more per year) and a significant proportion would perform less (0-2 each year).

Many registered marriage celebrants are of retirement age or older and many undertake celebrancy to supplement other income, out of interest or to contribute to the community.

Problem identification

The legislative regime governing marriage celebrants registered under the Program is robust. It contains a range of mechanisms to ensure that the integrity of the Program is protected including performance reviews, disciplinary measures and a complaints procedure. From a legal standpoint, these measures are considered adequate to address non-compliance or poor performance by marriage celebrants.

However, practical experience in administering the Program has identified that a significant percentage of marriage celebrants do not fully understand either the legal or administrative requirements of marriage celebrancy and do not comply with their legislative obligations. The Department currently lacks the resources or capacity to apply the existing legislative measures provided to properly regulate the industry and respond in a timely way to those celebrants who do not comply with their legislative obligations. The factors underlying these problems are identified below.

Growth in the Program

The Program has experienced considerable growth in numbers – a trebling - and hence demand for Departmental services has increased steadily since 1 September 2003. On 1 September 2003 there were 3,317 celebrants registered under the Program. At 1 January 2011 there were approximately 10,500 celebrants.

Celebrants registered under the Program are placing increasing demands on the Department for guidance and advice on carrying out their responsibilities. The number of enquiries handled by the Department is approximately 18,000 per annum. Many of these enquiries are complex, raise significant legal issues and require a written response.

Celebrants pay no charge for provision of these services.

Inability to effectively regulate the Program

The huge growth in the Program has made it increasingly difficult to manage the statutory requirements involved in regulating celebrants within the resources provided through the budget. This has fuelled the continuation of poor performance by celebrants. Some key statutory regulatory responsibilities are currently not being met. A key example is provided by the conduct of performance reviews on marriage celebrants registered under the Program.

Performance reviews

Section 39H (1) of the Marriage Act provides that the Registrar of Marriage Celebrants must regularly review each marriage celebrant's performance to determine whether the performance is satisfactory. Subsection 39H (2) provides the time frame in which the Registrar must conduct the performance reviews: the first review must be completed within 5 years of the celebrant being registered; and each later review must be completed within 5 years of the previous review. A detailed analysis follows:

A large number of marriage celebrants registered prior to 1 September 2003 were transferred to the Program that commenced on that date. The reviews of 2,802 of these celebrants were required to be completed by 1 September 2008. Reviews of this group completed to date number 1,967. The number of celebrants identified as fully compliant with their obligations was only 753. The number of reviews in this group still to be finalised is 835.

Non-compliance with the legislative obligations contained in sections 45 and 46 of the Act (which establish the key requirements for the conduct of marriage ceremonies) required follow

up in at least 154 instances of the 1,967 completed reviews of celebrants registered prior to 1 September 2003.

Reviews due for completion by 1 September 2009 were 336. These were celebrants registered in the year 2003-2004. The number of reviews completed is 333 of which only 83 complied in all respects with their obligations. A total of 247 were subject to further follow up due to non-compliance with the obligations in sections 45 and 46 of the Act. Following a supplementary review of these celebrants in which further information was sought and examined, a total of 58 still did not comply and will require further action. A total of 15 reviews are still outstanding in this group.

The number of first reviews due to be completed by 31 December 2010 was 731. These celebrants were registered in 2004-2005. Of these, 506 have been assessed. A total of 239 have been assessed as meeting all obligations and 139 as meeting some. A total of 58 were found to have met no obligations. The total number within this group yet to receive any assessment is 225. Of those assessed, 275 do not comply with the requirements of sections 45 and 46 of the Act.

In 2011, 767 celebrants will be due for their first performance review (these celebrants were registered in 2005-2006). In addition, 1,055 are due for follow up review. Thus 1,822 reviews are required to be completed in 2011. By 2013 the number required to be completed will increase to more than 4,500 due to the increased rate of registration of new celebrants from 2005-2006 onwards.

The above numbers do not take full account of the backlog of performance reviews remaining incomplete from previous years. The current backlog is over 1,000. These outstanding reviews all relate to celebrants about whom more complex and serious issues of non-compliance have been identified and in which the response to the specific issues must be directed to the individual circumstances of the particular celebrant.

The total number of performance reviews completed to date is 2,806. The issues identified as a result of these performance reviews are:

- non-compliance with the legislative requirements of sections 45 and 46 of the Act,
- compulsory activities such as questionnaires not being completed,
- full or partial non-compliance with professional development obligations,
- failure to meet annual reporting requirements, and
- non-compliance with legislative obligations to advise of changes of contact details or personal circumstances.

In order to finalise the 2,806 performance reviews completed to date, the scope of the reviews has effectively been reduced to a perfunctory level. The failure to respond to more serious allegations of non-compliance has been due to the strict requirements of administrative law

which must be afforded to celebrants before disciplinary measures can be imposed. Involuntary deregistration of a celebrant results in a review right to the AAT resulting in further strains on the Program.

Currently, perfunctory performance reviews are undertaken at a rate of approximately 8 per day resulting in a maximum of 1,840 being completed annually. The proper conduct of performance reviews would require an increase in time spent per review to an average of 2 hours per review which would result in the completion of only 3 per day for a total of 690 per annum.

A total of 244 celebrants have been deregistered as a result of performance reviews, another 261 voluntarily resigned (at least in part as a result of performance reviews), and 63 cautions have been issued. This result has not been achieved in a timely way which has resulted in significant issues of non-compliance remaining unaddressed. There is a significant concern that some celebrants who have outstanding performance reviews should not be performing marriages due to poor performance.

Performance of legal obligations

Lack of understanding of legal obligations remains a significant problem. The requirement that marriage celebrants complete a minimum of 5 hours of professional development per year is intended to ensure that celebrants maintain up-to-date knowledge of the law relating to marriages. However, as noted above, a large number have failed to complete these obligations since 2003. In 2005, 1,038 celebrants were issued with disciplinary measures as a result of failure to fulfil any professional development obligations in 2 years. The disciplinary measure imposed required them to complete some of the key professional development activities that had not been complied with in order to ensure that these celebrants were aware of key statutory changes. Only 61 of these celebrants complied with the disciplinary measures (a compliance rate of approximately 6%). While further action has since been taken against many of these celebrants and some have resigned, action still remains in train against others.

Poor understanding of legal requirements for marriage and obligations as a marriage celebrant is also evidenced by:

- the nature of many of the 18,000 enquiries received (which demonstrate a lack of understanding by celebrants of their legal obligations) and responded to by the Department each year,
- anecdotal advice received from Registries of Births, Deaths and Marriages. In their role registering marriages they have identified increasing error rates in documents lodged for registration, poor understanding of requirements and they receive frequent enquiries and requests for guidance. Errors by celebrants can be a significant matter for marrying couples as a fee must generally be paid for each error to be corrected. These fees vary between jurisdictions,

- referrals to the Registrar of Marriage Celebrants by the Family Court of Australia or others of marriage celebrants who have not complied with legal requirements or who are unsuitable for continuing registration by reason of criminal conviction,
- concern repeatedly expressed by the marriage celebrancy peak body – the Coalition of Celebrant Associations - in correspondence and at regular meetings with the Department since its formation in 2008– about the poor knowledge and skill level of a large number of celebrants, and
- media attention which reported the potential invalidity of a high proportion of marriages due to vows that do not comply with legislative requirements.

Steps taken to respond to these problems

The level of qualification required for registration has been significantly increased from a single unit of training to a full Certificate IV in Celebrancy. The latter came into effect on 3 February 2010. The increase in the level of qualification has, to date, had some marginal effect in raising the standard of training of applicants for registration but has not sufficiently addressed the fundamental problems of ensuring celebrants have an appropriate understanding of obligations and compliance with obligations outlined above. The completion of the Certificate IV in Celebrancy is considered to be a necessary condition to ensuring the professionalism of celebrants, but it is not of itself a sufficient condition. Appropriate monitoring and enforcement of the relevant standards is also required.

Correct understanding and performance of legal obligations has been a focus of professional development since 2003 but the effectiveness of this in addressing problems has not been great due to the large number of celebrants who fail to fulfil the obligation and the inability of the Department to respond to this failure in a timely way.

The quality of professional development provided to celebrants has been improved through an open and rigorous selection process for a panel of approved providers of professional development to marriage celebrants. Despite this the number of celebrants failing to fulfil this obligation remains high. Early analysis indicates that a considerable number of celebrants did not complete their professional development obligations in full in 2010.

The Department has significantly increased its provision of information to celebrants through its website in an effort to reduce the need to respond to enquiries and requests for guidance. This has had no effect in reducing the number of enquiries.

While steps have been taken to improve the quality of pre-registration training and professional development for marriage celebrants, those who were registered before the increased qualification was introduced in 2010 received either no, or inadequate, training. The majority of marriage celebrants were registered before the increased qualification was introduced in February 2010. As a result many marriage celebrants do not understand or properly fulfil their legal responsibilities.

Objective of the proposal

The Government's objective is to effectively regulate the Program, thereby improving the compliance and professionalism of marriage celebrants to the benefit of marrying couples and society more generally.

The legal requirements of the Program are appropriate but cannot be effectively implemented because of the lack of available resources to properly regulate celebrants who are failing to meet their obligations.

Options to achieve the objective

The following options are considered in this RIS:

Option 1: Maintain the status quo

This option would involve no change to the current arrangements.

Option 2: The provision of increased budget finding to properly regulate the Program

This option would involve the provision of additional funding from the budget to properly regulate the Program through the provision of additional resources (in particular legal resources) to enable proper regulation to be undertaken and failure to fulfil obligations to be responded to in a timely way.

Option 3: Introduction of a Fee Scheme and Improved Regulation

This option would involve the introduction of a fee scheme (on a cost recovery basis) to enable the proper regulation of celebrants registered under the Program. Fees would be levied annually on celebrants in order to retain their registration. The income from the fees would fund additional staffing resources (in particular legal resources) to properly regulate, review and discipline marriage celebrants who do not fulfil their obligations.

A fee would enable the Program to be put on a secure financial footing and provide the capacity to properly regulate it.

The fee per celebrant is expected to be in the region of \$600 per annum although the details of the fee will be addressed more closely during the consultation and implementation phase of the proposal.

Option 4: Pass responsibility for regulation of celebrants to the States and Territories

This option would involve the registration and regulation of celebrants registered under the Program being passed to the States and Territories to be administered by the Registry of Births, Deaths and Marriages in each jurisdiction. The celebrant would be registered and regulated by the state or territory in which he or she resides.

Under this option responsibility for the administration of the Act and marriage policy would remain with the Commonwealth. States and Territories would expect considerable funding support to implement this option.

Option 5: Pay celebrants to leave the industry

This option, suggested by the Coalition of Celebrant Associations, the celebrant peak industry group, would involve the Government offering to pay a significant number of marriage celebrants to leave the industry. It is likely that celebrants would seek payments as compensation for lost income and loss of lifetime registration as a celebrant.

Option 6: Reimposition of a cap on the number of marriage celebrants able to be newly registered in each year

Between 1 September 2003 and 31 August 2008 the number of marriage celebrants able to be registered each year was subject to a legislative cap. Section 39E of the Act, which enabled the imposition of the cap, ceased operation on 1 September 2008.

The cap was a transitional measure which operated for the first 5 years of the Program. Its intention was to enable celebrants registered prior to the reforms to the Program that began on 1 September 2003, to have a transition period in which to get used to the new requirements.

This option would involve reinstating a cap on the number of celebrants that could be newly registered each year in order to stabilise the growth of the Program, thereby enabling a greater proportion of existing resources to be focussed on ensuring the fulfilment of obligations on the part of celebrants.

Impact of the options

The impact of Options 4, 5 and 6 will not be addressed in detail in this RIS as they have been identified as not addressing the key objective of the proposal which is to effectively regulate the Program to the ultimate benefit of marrying couples and society more generally.

Options 5 and 6 do not address the objective at all and, in addition, option 5 is likely to generate high and increasing costs for Government and would not ensure that poorly performing celebrants are the ones leaving the Program.

Option 4 does not address the objective as it simply shifts the problem of effective regulation of non-compliant celebrants to the State and Territory authorities.

The groups likely to be affected, directly or indirectly, by Options 1, 2 and 3 outlined above are:

Directly

- (a) marriage celebrants, and
- (b) Government – Commonwealth, State and Territory

Indirectly

- (c) marrying couples, and
- (d) the general community.

Option 1: Maintain the status quo

(a) Marriage celebrants

There are no direct costs to marriage celebrants if the status quo is maintained. They would not be liable to any additional imposts or regulation. There are no direct benefits to marriage celebrants from maintenance of the status quo as quality of service provision, including meeting the requirements to ensure a valid marriage, would not improve and there would be no improvement in either the rigour or the timeliness of regulation by the Department.

There may be indirect costs to marriage celebrants in the maintenance of the status quo in that the continuing registration of non-performing celebrants serves to undermine the status of celebrants generally.

(b) Government

There are no direct or indirect costs to State or Territory government from maintenance of the status quo. There will be direct costs to the Commonwealth in continuing to manage the problems caused by non-compliant celebrants. There are also indirect costs to the Commonwealth. Without increased funding the Program will become increasingly expensive to administer given the annual application rate of approximately 1,800 per annum. The number of applications for registration slowed in 2010 as a result of the introduction of a higher qualification requirement. The number of applications for registration commenced increasing in the latter half of 2010 and information from training providers indicates that over 1,000 applications can still be expected in 2011. Inadequate levels of regulation will continue and perpetuate the problem of low levels of quality and professionalism. Another indirect cost of maintenance of the status quo is the continuing registration of celebrants who do not comply with legal obligations, have a poor understanding of the role and low professional standards. This generates a negative public perception of the Program and celebrants generally.

There are no benefits to Commonwealth, State or Territory governments from maintenance of the status quo.

(c) Marrying couples

There are no direct costs to marrying couples from this option. There are indirect financial and emotional costs for marrying couples where celebrants are non-compliant with legal

obligations or unprofessional in performing their role. For example, at one end of the spectrum, couples will continue to need to pay to have any errors on their marriage certificates corrected (in order to use the certificates as identity documents). At the other end failure by celebrants to understand their legal obligations, such as vow requirements, may result in invalid marriages and failure to check identity may result in underage, bigamous or forced marriages.

(d) General community

There are no direct costs to the community from this option. An indirect cost may be a loss of standing for the process of marriage if large numbers of unprofessional celebrants remain registered. There is no net benefit to the community from this option.

Option 2: the provision of increased budget funding to properly regulate the Program

(a) marriage celebrants

There is no direct or indirect cost to marriage celebrants as a result of this option. A direct benefit to marriage celebrants could be expected to arise from improved service to celebrants and improved regulation of the sector by the Department leading to an increase in the standing of celebrants.

(b) Government

There will be a significant direct financial cost to the Commonwealth under this option but no cost to State or Territory government.

(c) marrying couples

This option would have no direct cost to marrying couples. The improved regulation that it would enable would be of direct benefit in increasing their assurance of obtaining a knowledgeable, competent and professional celebrant who is fully conversant with his or her legal obligations and with developed skills in performing the role.

(d) general community

There would be no direct cost to the community arising from this option but there would be an indirect cost arising from the diversion of funding from other priorities to fund improved regulation of the Program. The community would receive a benefit from the improved professionalism and knowledge of marriage celebrants that would result.

Option 3: A Fee Scheme and Improved Regulation

(a) marriage celebrants

This option would lead to a direct cost to marriage celebrants in that they would need to pay a fee to obtain and retain registration. Currently there is no fee to obtain or retain registration. Detailed statistics on the number of marriages performed by each celebrant are not collected but as noted earlier, the raw average for the number of marriages conducted by each marriage celebrant registered under the Program is approximately 6.6 per annum. A significant proportion would perform many more marriages than this (up to 50 or more per year) and a significant proportion would perform less (0-2 each year).

Anecdotal information provided by celebrant representative bodies indicates that the number of marriages conducted by each celebrant annually varies widely as a result of factors such as the location of the celebrant and a range of individual factors.

The price charged by celebrants to conduct a marriage is considered a matter for each of them to determine according to a wide range of factors including their own individual circumstances and the necessity to comply with legislative obligations such as professional development. Anecdotal information available to the Department indicates that a fee of \$250-\$300 per marriage is not uncommon and that a large number of celebrants charge considerably more than that. Celebrants in rural and remote areas and celebrants conducting marriage ceremonies for small independent religious organisations generally charge significantly less than this per marriage ceremony. The imposition of fees on a cost recovery basis may result in those persons who conduct relatively few marriages from becoming or remaining registered as celebrants and this will be an indirect cost to the sector more generally. It is anticipated that up to 10% of celebrants may leave the industry if fees are introduced although each celebrant will need to assess his or her own circumstances in making that decision. It is anticipated that this would be essentially a one-off reduction.

The benefit of this option to marriage celebrants both individually and as a sector is that the celebrants who continue will develop better experience through the opportunity to conduct more ceremonies thereby improving their level of professionalism and the overall performance and the standing of the sector. They will also receive improved standards of regulation by the Department.

Costs would be higher under this option for the small proportion of celebrants that perform religious marriage ceremonies for small independent religious communities at either no or minimal cost to marrying couples. It is the celebrant who would need to individually pay the fee as only individuals can be registered as celebrants. As such celebrants effectively operate as volunteers and often do not charge any fee for conducting marriages, the cost of the fee would relatively be more significant for these celebrants than those operating on a more commercial basis. Such celebrants would find it difficult to pay a full annual fee for registration and this may result in marrying couples in small independent religious communities being unable to have their marriage conducted by the minister of their group according to their group's rites.

The relative cost of this option would also be higher for those celebrants in rural and remote areas who perform few marriage ceremonies each year owing to the small population. While

statistics are not available, anecdotal information from celebrant representative bodies indicates that such celebrants may conduct only 2 or 3 marriage ceremonies per annum. This small number of marriages may make it uneconomical to remain registered and this may leave some rural and remote communities at risk of not having available the services of a civil celebrant.

(b) Government

There is no cost to State and Territory government in this option but a potential benefit in a reduction of workload caused by the improved regulation of the Program.

There will be costs to the Commonwealth in order to implement this option but this option is anticipated to provide the necessary resources to properly regulate celebrants through cost recovery arrangements. Establishment costs would be offset by cost recovery along with the ongoing program costs. The benefit to the Commonwealth will be that funding will be provided by those who benefit from the Program which is appropriate and equitable. This will, in turn, free resources to be directed elsewhere. Benefit to the Commonwealth will also be gained as a result of improved regulation of the Program.

(c) marrying couples

This option 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. The increase is likely to be small in the context of the overall cost of getting married. The costs of getting married vary widely but appear to range between \$5,000 to \$30,000 or more. Most Registries of Births, Deaths and Marriages offer to solemnise marriages on their premises – so-called ‘registry office’ marriages. The charges in those jurisdictions that offer this service range from \$250-\$300 as a standard weekday fee to \$320-\$420 for weekends. In this context a small increase in the fees charged by celebrants under the Program would not be significant. More efficient and effective regulation of the Program could be expected to benefit marrying couples by leading to improved services. It would also mean greater compliance by celebrants with legal obligations which would reduce the risk of invalid marriages and other potential costs.

It is of critical importance, given the significant legal responsibilities of marriage celebrants, that those who utilise marriage celebrants registered under the Program have access to high quality services that do not result in invalid marriages (which have serious consequences in terms of inheritance, property rights and proving identity). Recovery of costs will ensure the Department can properly monitor and enforce the standards which marrying couples are entitled to expect of all marriage celebrants.

While an absolute reduction in celebrants could be argued to reduce the choice available to marrying couples, the anticipated 10% one-off reduction in the number of available celebrants within the Program is not likely to have more than a marginal impact on the choice of celebrants available in most areas. The potentially greater impact on choice in rural and remote regions or in the case of small independent religious bodies is discussed further below.

(d) general community

There is no cost to the general community arising from this option as the cost would be borne by those being regulated (the registered celebrants) and the marrying couples using the service. A likely reduction in the number of celebrants will result in an industry with more committed and professional celebrants. The improvement in the performance of celebrants resulting from the improved regulation would accord with community expectations of marriage celebrant service standards.

An indirect cost to particular sectors of the community might arise as a result of this option. As noted above, the Program includes celebrants that perform religious marriage ceremonies for small independent religious communities. Such celebrants effectively operate as volunteers and do not usually charge any fee for conducting marriages. The relatively greater difficulty such celebrants would find in paying a fee for registration may result in marrying couples in small independent religious communities being unable to have their marriage conducted by the minister of their group according to their group's rites.

People in rural and remote areas may also be at risk of not having available the services of a civil celebrant given the relatively higher cost of the annual fee to celebrants in those areas owing to the small number of marriages annually. Up to 30% of celebrants may fall into one or other of these categories.

Overall there is a net benefit to the community generally from this option. This arises from having those who benefit from the Program providing its funding and from the overall improvement in professional standards of celebrants.

Conclusion and recommended option

The legislative regime governing marriage celebrants registered under the Program is robust. It contains mechanisms including performance reviews, disciplinary measures and a complaints procedure, any or all of which are capable of addressing non-compliance or poor performance by marriage celebrants.

Experience in administering the Program has identified that a significant percentage of marriage celebrants do not fully understand either the legal or administrative requirements of marriage celebrancy and do not comply with their legislative obligations. However, the Department has insufficient resources or capacity to use the legislative measures provided to properly regulate the industry and respond in a timely way to those celebrants who do not comply with their legislative obligations.

The benefits of addressing underperforming marriage celebrants are not readily quantifiable. However, given the significant legal responsibilities of celebrants, improved regulation is critical to ensuring improved compliance with legal obligations by celebrants as well as enhancing professionalism within the sector. This would enable those who utilise marriage celebrants registered under the Program to be assured that any celebrant registered by the Government

under the Program fully understands and complies with all legal obligations and provides a professional service.

With this in mind the Government's objective is to effectively regulate the Program, thereby improving the compliance and professionalism of marriage celebrants to the benefit of marrying couples and society more generally.

The preferred option to achieve this objective is Option 3.

Increased funding would enable the Program to be properly regulated and thereby improve compliance and professionalism. While increased budget funding directly to the Program would achieve this, it does not provide any guide to either celebrants or marrying couples as to the cost of providing professional celebrants who have a full understanding of, and comply with, all legal obligations involved in conducting marriages. It is also unlikely that such funding would be available in the current budgetary situation.

Option 3 will provide the necessary resources to properly regulate the Program. It is effective and transparent in providing a viable means to properly regulate the Program. It is also an appropriate way of achieving the Government's objective.

Registration under the Program provides celebrants with the authority of the Government to perform a legally significant and socially important function and to charge marrying couples for the performance of this function. It is appropriate that the beneficiaries of the Program - the celebrants registered under it - provide the funding to properly regulate it. It is also appropriate that marrying couples who utilise the services of celebrants contribute in a reasonable way towards the proper regulation of the Program through the payment of the celebrant who solemnises their marriage.

Similar regulatory environments, such as those applicable to migration agents, impose significant fees for regulating their program. Migration agents, like marriage celebrants, are registered and centrally regulated to perform an essential role in the community. It is a role that carries significant legal responsibilities and for the performance of which they are able to charge their clients.

Option 3 may result in some marriage celebrants, who conduct relatively few marriages deciding to leave the sector because a fee would make it less economically viable to remain registered. As noted above, it is anticipated that this factor may result in approximately 10% of celebrants registered under the Program deciding to leave the Program on a one-off basis.

A full cost recovery fee may have a negative impact on specific sub-groups of celebrants registered under the Program. One group is the small proportion that provides religious marriage ceremonies to small independent religious organisations. Such celebrants do not usually charge a fee to marrying couples for conducting marriages. Such celebrants would find it uneconomic to pay a cost recovery fee for registration and this may result in marrying couples in these small independent religious communities being unable to have their marriage conducted by the minister of their group according to their group's rites.

Another group is celebrants in rural and remote areas who may only perform one or two marriage ceremonies per year owing to the small population. A full cost recovery fee may make it uneconomic for such celebrants to remain registered. This could create a risk that some rural and remote communities may not have the services of a civil celebrant available to them.

The impact of Option 3 on these groups within the sector will need to be considered in the implementation of the Option with a view to seeking to accommodate their specific needs. It is intended that significant consultation would be undertaken with all key stakeholders in relation to the implementation of Option 3. The consultation period would provide the opportunity for the details of the operation of the scheme to be discussed with stakeholders so as to ensure that all Australians continue to have access to suitable and professional marriage celebrant services regardless of where they live.

Consultation

It has not been appropriate to undertake detailed consultation with the sector to this point. Some canvassing of options has been undertaken with the peak body representing marriage celebrants, the Coalition of Celebrant Association (CoCA). The CoCA is a coalition of up to 17 marriage celebrant representative bodies and was formed in 2008. Not all celebrant representative bodies are members of CoCA. The majority of marriage celebrants registered under the Program are not members of any representative body. CoCA, however, is the body that is most representative of the sector. At CoCA's December 2010 meeting with the Department the question of the problems relating to the quality and professionalism of some marriage celebrants were raised and discussed.

CoCA reiterated its long standing concern that the failure of celebrants to meet obligations was not being addressed in a timely way by the Department. The Department raised the need to consider more fundamental changes to address these problems and invited views from CoCA. At that meeting CoCA suggested celebrants be paid by the Government to leave the sector. This suggestion forms Option 5 of this Regulation Impact Statement. The poor professionalism of some celebrants has also been raised by CoCA in meetings with the Attorney-General.

In addition, correspondence over several years to the Attorney-General from celebrant associations and individual celebrants has raised concern about the poor performance of some celebrants and the failure to properly regulate the Program and take prompt action against those celebrants who have not fulfilled their obligations.

Option 3 may be expected to elicit a range of views among celebrants. Some may be expected to oppose the introduction of a fee as one has not been charged to date. These celebrants may be likely to acknowledge the need for improved regulation but argue that this should be budget funded.

Other celebrants, as well as the Registries of Births, Deaths and Marriages, will support Option 3 as providing the means for the regulation of non-performing registered celebrants and improvement of professional standards they have been seeking for many years.

Detailed consultation with stakeholders will commence in the second half of 2011 to seek their views on how the fee scheme could be introduced to ensure the need to address the professional standards of celebrants is addressed. This will include consultation through meetings with peak bodies representing marriage celebrants and communication directly to registered celebrants.

The development phase will also focus on measures to assess and minimise any negative impacts of the fee charging scheme and respond to the likely concern of those celebrants who perform marriages at little or no cost for small independent religious organisations or those in rural and remote areas. Some segments of the sector such as these groups may point to the need for an exemption from paying any fee to be considered or a reduced rate of fee where celebrant services are provided on a voluntary basis or at minimal cost.

More detailed assessment of these potential impacts will take place in the consultation phase during the two year period prior to the introduction of the new fee arrangements and included in future impact statements. The result of these assessments will be considered in settling the final detail of Option 3 and in the implementation of the option.

The implementation phase of this option would also involve the preparation of information materials to be released on announcement of the new arrangements and delivery of an information and education campaign to marriage celebrants, state and territory authorities and the general public.

Implementation and Review

The implementation of Option 3 would require the development and passage of primary legislation through Parliament in 2013 followed by the development of subordinate legislation. The implementation arrangements would be developed over a two year period prior to commencement in full consultation with the sector. The fee regime would commence on 1 July 2013. The revenue from the payment of fees, the number of registered celebrants and their compliance with legal obligations will be monitored by the Government. This will be done on an ongoing basis with progress reported annually to the Attorney-General. Monitoring will also ensure cost-recovery principles are complied with in relation to the administration of the fees. A review of the structure of the fee arrangements will occur in 2014-15 and this review will canvass whether the amount of fee is still appropriate.