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Aabbacus Celebrant Service

25 April 2013

SUBMISSION REGARDING:

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

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I was first credentialed as a Celebrant on 04 February 1971 in USA; was a General Celebrant in Sydney & Canberra from October 1981 to the present; Lifetime Authorized as a Commonwealth Marriage Celebrant on 08 October 1991; Past President/Convener of Humanist Celebrant Network (HCN); author of *"How to become a Successful Civil Celebrant";* 12 December 2005 proposed in writing to Registrar of Celebrants the concept of Civil Celebrant Peak Advisory Body to Advise Attorney General and staff; 2008 Foundation member of Coalition of Celebrant Associations Inc (CoCA) and the present Delegate to CoCA for HCN; Officiated at over 1,170 marriages in the ACT and NSW; member in good standing in several Celebrant Associations (HCN, AFCC, AMC, CNN), Appointed by Attorney General of NSW as Community Based Justice of the Peace until 2016 and registered as an ACT Civil Union Celebrant.

Overview:

Civil Marriage Celebrancy was established by that great Humanist, Justice and Senator, the Hon Lionel Murphy, when he was Attorney General. He created this forward looking program, which has been emulated in other countries, so that secular thinking couples seeking marriage would not be disadvantaged on one of the most important days of their lives. His vision offered these marrying couples a meaningful, custom made, creative, modern ceremony that could be enjoyed by families and friends at anytime and in any place (indoors or outside). Lovers were thus able to have a dignified peer Officiant valid alternative to legalistic short registry office or dingy courthouse weddings and rather than rigidly ritualized religious, clergy dominated, nuptial ceremonies.

Civil Marriage Ceremonies exist for the benefit of marrying couples. There is therefore a case to be made that these marriage celebrant regulation bills are faulty, in that they discriminate against those Australian Citizens couples, their families and our guests in our country (overseas marriage tourists) who do not wish to have a registry, courthouse or dogmatic religious ceremony. These bills place fees on their secular civil officiants, without placing the same fees upon most or all the other non civil secular officiants, such as well paid BD&M Registry officials, and the clergy Celebrants of "Recognised Religious" (which includes not only the major churches but also all of Islam, Ananda Marga, and various other small, non-mainstream 'religions').

The supposed rationale, as stated in the MLCS written Regulation Impact Statement (RIS) and other subsequent documents, to attempt to get Parliament to enact this discriminatory action against secular ceremony seeking couples is also extremely fictional. More regulation presided over by the MLCS is demonstrably NOT needed by the Commonwealth Marriage Celebrants, as most of the submissions to this Senate Inquiry (and in particular the CoCA submission) will show. The Celebrant Peak Body has told the MLCS how the proper cost saving goals could be met more equitably, quite efficiently and fairly. The MLCS constantly seem to choose not to listen and not to implement detailed suggestions from "them that's doin" (ie: Civil Marriage Celebrants as represented by the Associations within CoCA).

These bills have relied on a faulty RIS which stated that Commonwealth Marriage Celebrants are "private citizens", when in fact we meet all the criteria of "Officers under the Commonwealth" (according to a former Attorney General, Federal Justice and practicing QC) including those set out recently in the High Court Decision(2012) HCA 23 *Williams vs Commonwealth* by Justice Haydon. We stand in a different relationship (when performing our Marriage Act duties and responsibilities) to the Commonwealth than do "private citizens" and in fact are quasi staff, or similar to 'Agents of the Crown', when representing the Commonwealth of Australia as a government witness and performing the duties of a government officiant to validate a legal status change function in our society.

As "Officers under the Commonwealth" our duties are legal, official and extend far further than what the attendees might see at a wedding. It involves much more than reading pretty love poems under a tree on a sultry summer's day. For instance: If the Authorized Commonwealth Marriage Celebrant does not receive a Notice of Intended Marriage (NoIM) lodged on a proper form and filled in and signed and witnessed within a calendar month (unless shortened by another Commonwealth Prescribed Authority accompanied by a letter from the Celebrant) then the marriage may not proceed. If there is coercion, falsity in documentation, sham or fraud, if bribes are offered or threatening intimidation, etc, then there can be criminal and civil penalties involved. This is far from the description in the RIS of a simple "private citizen".

The RIS also asserts that there would be minimum actual impact upon the Celebrants, as any fees would be passed on to the marrying public choosing to utilize a Civil Commonwealth Marriage Celebrant. The required RIS "Consultations" by the Marriage Law and Celebrant Section (MLCS) were held and these were deemed unsatisfactory by a large majority of those attending, as comments in these submissions will attest. They were defective in that civil marriage celebrants were told that a $240 annual fee on Commonwealth Marriage Celebrants was the only option, and that only suggestions for implementation of that "given" fee would in reality be considered. The definition of "consultation" seemed to me to be a case of *"here's what we have decided and now we will show up to gauge your acceptance of what we have decided will happen."*

The RIS and consultations asserted that the MLCS needed more staff and more money than consolidated revenue could provide (and had always adequately provided heretofore) to have more MLCS staff do 'onerous' five yearly individual celebrant (paper screening) reviews. Yet these are now proposed to be done away with, as stated in these Bills and in the explanation material attached. This seems like the 'Bait and switch" tactics that Consumer Affairs Departments are always warning against!

Furthermore, regarding the lack of need for this money to have MLCS communicate more effectively, recent Freedom of Information (FOI) requests have revealed that there are an extremely minor amount of statutory complaints regarding ALL celebrants and hardly any problematic or invalid marriages as a result of Civil Celebrant error within the years covered by the FOI research (see CoCA submission for statistics).

Celebrant associations and State/Territory Offices of Births Deaths & Marriages answer the bulk of questions from all the various types of Celebrants. This is as it should be for the State/territory BD&Ms and the Celebrant Associations have the experience of actually solemnizing marriages (which the AGD MLCS staff do not) and the BD&Ms have years of knowledge of legalities, form correction and other specialized knowledge regarding Celebrancy.

FOI disclosures have also revealed that the number of calls to the AGs MLCS staff have steadily decreased over the last few years and the recent reports indicate that calls amounted to about one and a half calls per day! This is in spite of the fact that the MLCS staff mandated, in an Ongoing Professional Development (OPD) course, that all must Celebrants contact them for any answers to even simple questions (instead of to Associations or BD&M Offices).

For years I, within CoCA have proposed that there be fact sheets (as other customer centred federal and state/territory departments commonly utilize) for Frequently Asked Questions (FAQs). The MLCS is finally promising to progress FAQ fact sheets, thus lessening the FAQs they claim to have been experiencing. Many of their FAQs are from citizens and clergy asking about becoming authorized marriage celebrants and from the general populace asking about marriage and divorce issues. Civil marriage celebrants should not be penalized financially for these normal governmental questions and answers!

Time and again during the RIS "consultations" the MLCS staff heard a litany of problems (particularly as a result of oversupply of civil celebrant numbers) that have been of their own MLCS making. By not listening to Celebrants and Associations from 2002 onward, up to the present day, situations have become worse for all concerned.

In 2003 a five yearly Celebrant Program Review was promised in writing. It has not happened yet, ten years later! A Celebrant Program Independent Review is badly needed. These Bills are a tinkering "tune up", when an entire consolidation of all aspects of Marriage Celebrancy (Federal and State/territory controlled included) is urgently needed.

Three Attorney Generals ago the Labor government, in co-operation with the entire civil Celebrancy list of associations, set up CoCA as the Celebrant Peak Body to advise the Attorney and his/her staff, along with other federal departments, about Marriage related and Celebrancy related matters

After thousands of celebrant volunteer hours during the last 5 years and at a financial cost to individual volunteer attendee celebrants and at a cost to celebrant associations of over $121,000 (conservative estimate), there is continued widespread Celebrant expressed dissatisfaction with the administration of the Celebrant Program, as overseen by the MLCS. It is perceived that CoCA warnings are ignored; items, issues and suggestions are not responded to in a timely manner; and celebrant initiatives seem to be thwarted at almost

every turn. CoCA has set out some of these matters in its submission, which I commend to the attention of the Senators.

Whilst the $600 processing administration entry fee into Civil Marriage Celebrancy could indeed limit the number of new appointees. A higher amount would even better serve this goal, in my considered opinion. This will help turn around the continual flood of many naïve hopefuls who invest in their future only to find that they were throwing away their family treasure as Celebrancy has only so many ceremonies and a finite number of weddings each year Thus the average amount of solemnizations (less than 7) means that all the time, money and energy put into marriage celebrant education, skill development and maintenance, set-up necessities and extras will be for naught and the revolving exit door will be entered only to have MLCS appoint another wide eyed hopeful.

The concept of a "cap" on new appointees (until a need for new celebrants in a particular region of Australia is achieved) could be re-instated, instead of the previous capping arrangements being taken out of the Marriage Act by these Bills.

However, the use of a draconian and unneeded revenue raising annual "regulatory fee" of (starting) upwards from $240 to $600, which the AGs MLCS staff admits will limit Lifetime Authorizations, is a blatant denial of Natural Justice and Procedural Fairness, especially given the arguable status of Marriage Celebrants as 'Officers under the Commonwealth'. This has the potential to set in place for the first time a very unhealthy public policy, which is not in the long term National Interest and could become the slippery slope of charging other 'Officers of the Commonwealth' to maintain their appointments!

As an 'Officer Under the Commonwealth', fulfilling the criteria set out in a recent High Court Case in the decision of Justice Hayden in *Williams vs the Commonwealth*, and augmented elsewhere within Commonwealth legislation, it would seem (according to Dept of Finance Guidelines) to be against public Interest policy to have those authorized to be fulfilling the responsibilities and duties of an Office under the Commonwealth (when acting in their authorized capacity) to be charged an annual fee to retain their lifetime authorized service to the Commonwealth and thus impede that Lifetime Office or benefice.

The Cost recovery process, as I understand it, is stated in Finance documents to be set up to recover costs of governance from end users, who are not part of the Commonwealth or part of a taxpayer supported government department.

It seems that it could be reasonably argued that Authorized Commonwealth Marriage Celebrants are inside the government ,by virtue of their function, duties and responsibilities and their historic treatment under the Commonwealth Marriage Act and any other relevant Acts ("Officers under the Commonwealth").

It would also seem that the government has long accepted that it has a duty of care and good maintenance of public order to the end users (the people who marry according to our national Legislation, rules and regulations, etc). They then are the END USERS who expect, as in most other countries, to pay a fair and equitable "Licence to marry" fee. All of the marrying couples, not just a segment who prefer NOT to have a religious or registry marriage ceremony should be responsible for any real shortfall the AGs MLCS needs cash to fill, since they are the end users and the true beneficiaries of any officiant "Regulation"! If so, there have certainly been better methods than these bills that have been proposed by numerous

marriage celebrants, celebrant Associations and the Peak Celebrant Body, CoCA, to achieve this result.

Issues with the Bills:

1) ***Schedule 1 Part 1 - Annual Celebrant Registration Charge*: I oppose and disagree with this annual charge for the reasons outlined above, including but not limited to the fact that it will unfairly be administered (as proposed and stated in these bills); that it will limit the expected continuation of the Lifetime Authorization of the present holders of a benefit as an 'Officer Under the Commonwealth'**
   and
   I strongly suggest that the proposed amendment *"39FA Celebrant registration charge: liability to pay charge"* NOT be adopted, unless this applies to ALL Categories of marriage celebrants of whatever type.

2) ***Schedule 1, Part 2 - Fee for applying to become a marriage celebrant*: I support and agree with this as per above overview, including the recommendation that if the House and Senate work to consolidate various differing opinions, that an increase of doubling or tripling the entry to Marriage Celebrancy fee be considered for all except those that are presently included in the Indigenous entry considerations (which don't seem to rate a mention in these Bills but which are a legislated fact in the practice of the MLCS Administered Marriage Celebrant Program.**

3) ***Schedule 1, Part 2 Subsections 39 H(1) and (2) – performance reviews removal of 5 year reviews:* I disagree and oppose this for the reasons set out above in the overview, including but not limited to the fact that the removal of these reviews has not been adequately thought out , especially in view of yearly applications limiting Lifetime Authorizations and the institution of annual paper screening of eligibility for continuation. The complications of this will unduly inconvenience the (presently) 70% of secular marrying couples that the Marriage Act was designed to protect.**

4) ***Schedule 2 Other Amendments Subparagraph 42(1)(b) – Australian Passport as evidence of place and date of birth, Australian Passport Inclusion:* I support and agree this is long overdue but caution that DFAT and the AGs has entered into an agreement regarding Transgender and Intersex Citizens (without consulting the Celebrant Peak Body CoCA). This can cause difficulties to Marriage Celebrants of all categories regarding the gender requirements of the present definition of marriage and it illustrates the fallacy that the AGs has no obligation to marriage celebrants (and this incurs no costs or regulatory obligations) other than to Commonwealth Marriage Celebrants as the Guidelines and other considerations apply across all categories of marriage celebrants. Also false Australian Passports have also been proven to be utilized by Israeli Mossad and (perhaps) by other intelligence services and other secret operations to change names and identities. False Australian passports have also been reported to have been given to certain deportees and other "stateless" persons. Training may need to be given to celebrants regarding these and other passport issues.**

5) ***Page 6 of the Explanatory Notes regarding Lifetime Authorization as a Celebrant:*** **I am against and oppose this for reasons set out in the Overview and especially because this set of proposals reduces and effectively eliminates our Lifetime Registration by removing 5 year reviews and instead imposes a yearly registration fee with almost instant deregistration as a marriage celebrant for slow or non-payment to the detriment of marrying couples pre-booked.**
6) **That the proposed amendment *"39FB Celebrant registration charge: consequence of nonpayment"* NOT be adopted due to the reasons explained in the Overview and especially because Civil Marriage Celebrants have a Natural Justice and Procedural Fairness right to an expectation that an existing benefit (unpriced Lifetime Authorization, subject to 'Fit and Proper Persons' criteria) will remain as is.**
7) **Lastly, the Regulation Impact Statement (RIS) initiating the rationale for these bills stated that the government fully expected any costs to Civil Celebrants to be passed on to that discrete segment of those couples wanting a secular marriage. This is discrimination against that segment of the end user marrying couples on the basis of Belief (or non-belief), which is against international (UN Covenant on Human Rights, etc) and national anti-discrimination laws, rules, covenants and regulations.**

I personally support the CoCA submission, which the inquiry has received.

Thank you for your consideration of my submission,

Charles R Foley

Charles R Foley

Canberra Region Officiant