



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

25th April 2013

**Submission to
THE SENATE
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**

Re: Inquiry into the Marriage Amendment (Celebration Administration and Fees) Bill 2013 and the Marriage (Celebrant Registration Charge) Bill 2013

The Civil Celebrants Graduate Association [Monash] is an association whose membership is drawn from the celebrants who completed the Graduate Diploma of Arts (Civil Ceremonies) at Monash University.

We were pleased that the Marriage Law and Celebrants Section consulted widely with the celebrant community for responses to their Regulation Impact Statement on their Cost Recovery proposals but disappointed in some of the outcomes, especially as they contradicted some of the indications they gave to the celebrants' peak advisory body, the Coalition of Celebrant Associations (CoCA).

Causes for **satisfaction**, as reflected in the above-named Bills, have been:

- The introduction of a more stringent application process for people wishing to become celebrants.
- The introduction of an Australian passport being added to the acceptable proof of the date and place of birth of marrying couples.

Causes for **dissatisfaction** in the Bills are:

1. **The removal of celebrants' lifetime appointments to be substituted with annual appointments by means of an annual registration fee.**
2. **The proposed registration fee creates uncertainty as it is left open to an annual change in terms of re-registration.**
3. **The proposed registration fee is discriminatory**
4. **The removal of the ability to cap the number of appointments of marriage celebrants in a given year.**
5. **The failure to introduce terms for re-registration of celebrants which would acknowledge their qualifications, years of experience and compliance with celebrant obligations.**

Since the introduction of the Marriage Celebrant Program in 1973, when 2% of marriages were performed by civil marriage celebrants we have experienced the marriage reforms of 2002 which improved some aspects of the program but made the disastrous mistake of deregulating the program. This had the effect of thousands of appointments being made of new celebrants who were poorly trained. We are now in the position of having over 10,500 authorised civil marriage celebrants Australia-wide handling 70%, or approximately 72,000 marriages a year. This is close to an average of 7 weddings a year per celebrant. At the average fee of \$500 charged by Celebrants for each wedding they conduct the average celebrant's work generates an income of \$3,500 a year most of which is necessarily spent on advertising, insurances, copyright licensing, statutory and government charges, membership of celebrant associations, equipment required (e.g. sound system and ongoing maintenance, computer), regulatory marriage stationery, appropriate clothing and car and petrol expenses. The imposition of an annual fee will be unsustainable for many regardless of how good they are as celebrants. There is need for a more equitable system of appointment. Each celebrant should be able to earn enough through their work to operate a well-maintained business, satisfying all legal business requirements, and practise their craft enough to maintain their skills and, consequently, the standard of celebrancy in general.

The cost recovery fee has been introduced because of the exponential growth in the number of celebrants caused by the changes to the Marriage Amendment Act 2002 and the need to automate an unmanageable non-Act-compliant Departmental section's manual system. Authorised independent community celebrants are now being asked to pay for the costs which have been generated for the Marriage Law and Celebrants Section (MLCS) by the government's own mistaken policies of which they were loudly warned before these measures were introduced.

Celebrants are appointed by the government to perform a service on behalf of the government for the wider Australian community and now we are being asked to cover the costs of that service via legislative change.

We support the submission being made to this inquiry by CoCA (Coalition of Celebrant Associations), the peak body of celebrants of which we are a member. Their comprehensive recommendations would go a long way towards preventing the erosion of standards and conditions which the proposed legislation would introduce permanently to the role of celebrants.

The key to equitable cost recovery is to impose the cost on *all* marrying couples, as done in many other countries, rather than on one category of marriage celebrant via a registration fee. This would address most of the objections we list below.

Objections to the new Bills

1. The removal of celebrants' lifetime appointments to be substituted with annual appointments by means of an annual registration fee.

1.1 Under the current lifetime appointments Commonwealth-registered marriage celebrants undergo a five-yearly review (Section 39H) which takes into account, but is not limited to:

- Annual completion of mandatory Ongoing Professional development
- Compliance with Sections 45 and 46 of the Act.
- Compliance with the celebrant Statutory code of Practice
- Whether the celebrant had a complaint lodged against them.

These reviews look at how well the celebrant is meeting his/her statutory obligations. In the consultative process conducted during 2012 by the Marriage Law and Celebrant Section of the Attorney - General's Department, it was presented that the cost recovery was needed and justified largely to cover the cost of conducting these reviews. This now appears to be false representation.

The new Bill removes the 5-yearly reviews of celebrants with lifetime appointments and replaces them with an annual registration fee based purely on whether the celebrant has paid his/her fees on time. This creates, in effect, annual appointments. Pay and you are re-registered. Fail to pay and you are deregistered within 7 days. There appears to be little flexibility in this or recognition of the celebrant's history, experience and compliance with the Act. It also creates insecurity for the celebrants and for marrying Australian couples planning future ceremonies.

This annual registration cycle for celebrants will create an unstable, inexperienced and reduced workforce capability by:

- lowering celebrants' motivation to invest in extra training and development, professional association support, clothing, computer, PA and other equipment and client-centred care
- creating a climate of fear and insecurity *i.e. my appointment may be terminated in a year or less if the rules get changed*
- creating a high turn-over of newer celebrants as most small businesses take 4 to 5 years to become established.

CCGA would like to see the annual lifetime appointments with 5-yearly reviews restored and therefore supports the Coalition of Celebrant Association's (CoCA) Recommendation No. 10:

CoCA Senate Recommendation No 10

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

2. The proposed registration fee creates uncertainty as it is left open to an annual change in terms of re-registration.

2.1 No certainty that a client will be married by the celebrant of their choice.

With annual re-registration there is no certainty for celebrants or their clients that they will be able to go ahead working together towards their planned ceremony. A celebrant quite often takes bookings for the spring marriage season (Oct-Nov) in the first half of the year. Re-registration takes place in July. The clients might find themselves without a celebrant at short notice if their celebrant has not been re-registered. They might also find difficulty in securing a replacement available or appropriate to their needs. If a celebrant is deregistered, they no longer have obligations under the Marriage Act. While the Notice of Intended Marriage can be transferred to another celebrant, according to current legislation the Notice must be transferred by 1. An authorised celebrant and 2. The celebrant who holds the original Notice. A deregistered celebrant is no longer authorised so further changes to the Act would be needed to ensure the successful transfer of the Notice of Intended Marriage. Additionally the rapport, understanding, trust and confidence the couple has built up with the first celebrant is lost and so, too, the deposit and fees they have paid to that celebrant for services so far delivered, including the writing of the ceremony and contractual obligations. With lifetime appointments and five-yearly reviews this situation does not arise.

2.2 No certainty that a celebrant can continue with their career.

While the fee proposed for July 2013, in the MLCS and Attorney General's memo, is \$240, Parliamentary explanation provides for a \$600 per annum fee and refers to a reduced introductory figure for the first year. \$600 is 1/6 of the average celebrant's \$3,500 gross income. This provision for a \$600 registration fee in subsequent years is further extended by being linked to annual indexation. For the conscientious celebrant trying to work to a business plan this creates uncertainty as to whether they can afford to continue. It will often be the better trained celebrants who are forced out of the program, leaving primarily those who have retirement benefits or capital that they can use to support their business, thus subsidising the government service. The celebrant community will lose many of its wise mentors and, as appointments continue at about 1000 every two years, the celebrant community will be weighted with new and inexperienced celebrants.

2.3 Uncertainty as to whether, by creating a precedent for annual registration, other requirements could be added.

There will be scope to introduce new criteria to be eligible for re-registration each year, such as a retirement age, the need to have performed a minimum number of ceremonies the previous year, the need to pay for other services.

2.4 Uncertainty for a celebrant whether they can continue to approach celebrancy in a holistic way.

Many celebrants perform a variety of ceremony types including funerals, namings, national and civic ceremonies, anniversaries and other life milestones. Increasingly experienced celebrants become family celebrants, learning many of the family stories. A family comes to trust them to perform a variety of ceremonies for different family members. A family celebrant by default becomes the family community's oral historian. If they lose their registration as a Marriage Celebrant they will lose some of their credibility as a civil celebrant who can meet all the family's celebration needs.

3. The proposed registration fee is discriminatory

3.1 Discrimination between categories of Marriage Celebrant

There are three categories of marriage celebrant:

- 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 first two categories are managed by the State or Territory Registrar of Births, Deaths and Marriages and the third category by the MLCS in Canberra. However the Commonwealth has overarching responsibility for all marriages performed under the Act. It is unfair that the weight of the cost recovery should be carried just by Marriage celebrants authorised under the Program to perform marriages.

CCGA, like CoCA, opposes the introduction of a celebrant registration fee unless it applies to ALL marriage celebrants

The only fair way to spread the cost is to ask the marrying couples to pay, regardless of which category of celebrant they contract with.

3.2 Discrimination between marrying couples according to which category of celebrant they choose to be married by.

Marriage celebrants authorised under the Program to perform marriages charge an average of \$500 per wedding and perform an average of six or seven weddings a year. To cover the indicative introductory \$240 registration fee they will need to add another \$35- \$40 to their charge for each of these weddings. If the fee increases to \$600 they will need to charge approximately \$100 extra per couple. Couples who choose celebrants from the other categories will not be loaded with this extra charge. Again, the fairest policy would be to expect all marrying couples to pay an equal share.

For the above reasons CCGA supports CoCA’s Senate recommendations No. 2 and 3:

CoCA Inc Senate Recommendation 2

That the following amendment Marriage Act 1961 be approved:

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

Add

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

CoCA Inc– Senate Recommendation 3

That the following amendment Marriage Act 1961 be approved:

After Part 1A Marriage Education, insert

Part IB Marriage Registration and Regulation

(1) The regulations may make provision for a marriage registration fee to be collected from marrying couples through the sale of a government authorised Marriage

Registration Stamp via Australia Post or other so nominated accessible source with the revenue so collected being apportioned to fund its distribution costs (e.g. Australia Post), Commonwealth Marriage Law and Celebrant Section national responsibilities as well as its regulation responsibilities for Part IV, Division 1, Subdivision C celebrants with the residue of the funds collected being distributed to the state and territories Regulators according to the location of the marriage solemnization for the regulation responsibilities for Part IV, Division 1, Subdivisions A and B celebrants.

4. The removal of the ability to cap the number of appointments of marriage celebrants in a given year.

4.1 The provision for a cap on annual appointments of marriage celebrants needs to be maintained.

From 2003 to 2008 this clause served a valuable purpose. Since the cap has been lifted the program has become unmanageable because of the increased rate of appointment of new, undertrained celebrants. (We hope the mooted Diploma in Civil Ceremonies will be introduced soon as a training requirement) This creates extra work for MLCS. Celebrants report drops of over 50% in the number of ceremonies they conduct per annum since the removal of the cap. (See charts of statistics in the CoCA submission.) Professional standards depend on continuity of work experience over a variety of work situations and improve over time as newer celebrants are mentored by the more experienced ones. We should guard against those experienced ones being squeezed out by the constant influx of new celebrants.

CCGA recommends that the capacity for a cap on appointments should be left in the Bills. There is no recourse to the possibility of using this method to control celebrant numbers once it is removed. Therefore we support CoCA Senate recommendation no. 9:

CoCA Inc Recommendation No 9

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

5. The failure to introduce terms for re-registration of celebrants which would acknowledge their qualifications, years of experience and compliance with celebrant obligations.

5.1 If the annual deregistration on failure to pay the registration fee is implemented some celebrants may choose to take a break by means of non-payment.

Some disaffected celebrants or celebrants who have some other reason, for example a health problem, family issues, education or planned travel might choose not to re-register in a given year then decide later that they wish to return to celebrancy. There appears to be no provision for this to happen in the Bills. We hope this Senate inquiry can ascertain whether reinstatement will be made relatively easy if the celebrant has an unblemished history. We need to know that our qualification and experience will be recognised and entitle us to reregistration in order to share our expertise in the celebrant community again. We would expect to have to pay any registration fee that applied to other celebrants but not to have to go through the application process that a first-time applicant must face to prove their qualifications and that they are 'a fit and proper person'.

Overall, the members of the CCGA feel that the cost recovery program is about making the Celebrant Program cost effective for MLCS without recognising the adverse impact many of these measures will have on the professionalism and morale of celebrants and the satisfaction of their clients. There is a strong possibility that the government is actively promoting deterioration in the quality of the service that marriage celebrants authorised under the Program are offering to the marrying public. It is important to heed the calls being made by CoCA and the celebrant community to this inquiry before it is too late.

Chair: Meg L'Estrange

Secretary: Pamela Rolley

secretary@monashcelebrants.com.au

Website: <http://www.monashcelebrants.net.au/members/memgate.html>