

Secretary

Senate Legal and Constitutional Affairs Committee

PO Box 6100

Parliament House

Canberra ACT 2600

24 April 2013

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

I appreciate the opportunity to comment on the abovementioned Bills.

A brief CV is supplied to assist the Committee understand my background, interest and experience:

- My employment has included private and government sectors, as an employee and self-employed, predominantly in the areas of purchasing, supply and logistics.
- I have been active in numerous professional associations including committee member, State President and National Director, Professional Development for the peak body in Materials Management.
- The consulting company of which I was co-founder and MD was contracted by a key Commonwealth Government department to present all training in Victoria to Commonwealth departments and agencies re a major revision in policies and procedures.
- I have recently retired after 30+ years as a licenced honorary lay minister of a major Christian denomination.
- I been an Authorised Celebrant since 2008 and have officiated at 100+ marriages.
- I am an active member of three celebrant associations and one support group, and have been a committee member and President of one association.

The Senate committee will receive many arguments for and against all or parts of the Bills. Rather than reiterating many of these points I shall endeavour to present what may be a different perspective.

Yours faithfully

Peter Hooper

SUMMARY

- Defer all further action on Celebrant fees and charges
- Adverse effect on non-aligned religious celebrants
- Revise the Marriage Act 1961
- Clarify reasons for and desirability of the proposed charges
- Review procedures of MLCS
- Address the inequities under the current Act and Regulations, and the abovementioned Bills
- ***I contend that the fees and charges have been proposed, at least in part, for reasons not publicised by the Department and are at best they are a poor patch-up for a program in need of overhaul.***

A. Marriage Amendment (Celebrant Administration and Fees) Bill 2013

1. Revise Title, Short Title, Contents etc

Explanation: Consequential upon adoption of following recommendations.

2. Delete Schedule 1.

Explanation: Further work required as detailed below.

3. Pass Schedule 2.

Explanation: This overdue amendment is thoroughly commended. It repeals the unnecessary and very onerous five-yearly review of every Marriage Celebrant appointed under Subdivision C of the Marriage Act.

Its repeal allows for more productive use of MLCS staff, greatly reduces the need for increased staffing levels, and offers the Registrar the opportunity to use her/his expertise to target perceived/known problem areas, do spot checks and perform more thorough reviews as deemed appropriate.

Note: No such requirement has ever applied to the vast majority of celebrants – ie Ministers of recognised religions/denominations and State and Territory officers.

B. Marriage (Celebrant Registration Charge) Bill 2013

1. Delete Bill in its entirety.

Explanation: Requires substantial rethinking. Arguments are presented below.

C. Arguments against Marriage Amendment (Celebrant Administration and Fees) Bill 2013 [Schedules 1 and 2] and Marriage (Celebrant Registration Charge) Bill 2013.

1. Introduction

An understanding some of the background of the Marriage Celebrants Program etc is essential to understanding the Bills under consideration.

Since the introduction of marriages celebrants, 40 years ago this year, a revolution has occurred society's thinking at all levels in nearly all areas: human rights, privacy, restraint of trade, equal opportunity, sexual orientation, race discrimination, forced adoptions and civil rights, to name just a few.

It is my understanding that one of the changes – restraint of trade – was a catalyst for offering all qualified and appropriate persons the opportunity to become a marriage celebrant. Coinciding with this has been the wide embracing of non-church or registry office ceremonies. Marrying couples have voted with their feet to opt not only for venues of their choice, but also ceremonies of their choice.

2. Marriage Act 1961 revision

The drafting of the *Marriage Act 1961* does not meet today's standard. It is antiquated and vague, creating difficulties for all parties. Much of the MLCS' workload stems from the wording of the inherited Act (and Regulations to a lesser degree) and the various attempts to interpret its intent and lawful wording.

An example of out-dated wording is the current well-intentioned but impractical requirement for the Registrar to conduct five year performance reviews.

Examples of poor wording are found in what are the **only** words required for a legal marriage. They are Section 45 (2), the marriage vows and S.46. Prescribed words are given followed by "*or words to that effect*".

Eliminating the confusion caused by “*or words to that effect*” will dramatically reduce issues relating to the validity of marriages and should greatly reduce queries to MLCS and registries.

3. Adverse effect on non-aligned religious celebrants

Rather than the traditional handful of major denominations Australia now has hundreds of non-aligned “family”, community or ethic based congregations as well as a very multi faith nation. Leaders of these worshipping communities do not come under the category of “recognised denominations”. If they wish to officiate at the marriage of members of their congregations their only option is to become a marriage celebrant.

The changed requirements from one legal subject to a full Certificate IV course and ongoing professional development costs impose a heavy financial and time burden on non-aligned religious leaders, many of whom will not average even one marriage per year.

- ***Further imposts will adversely affect their justification to provide an important service for their members.***
- ***The Department’s solution to have two ceremonies – one by the minister and one by an authorised celebrant - is unacceptable.***

4. Clarify the reasons for these Bills

When the fee on marriage celebrants was first announced by MLCS it was called “Professional Celebrant fee”. The justification for the charge was that it would make celebrants more professional. There was an understandable outcry at the absurdity of the claim equating payment of a fee with improved professionalism!

Following the release of the department’s internal background paper it was clear that the reason was that MLCS wanted more staff to conduct performance reviews. The paper stated that MLCS was, and had been for some years, failing to meet their statutory requirements.

- ***One must question why an increase in staff numbers was not sought earlier.***

The paper set out three options for increased funding. The first two options (asking the government for greater funding and devolve the responsibility to BDMs) were dismissed out of hand. The third option was to tax the perceived “end user”, marriage celebrants.

- ***Celebrants argue that the end users are the marrying public.***

CoCA has questioned the legality of the proposed annual fee. This case was made to the previous Attorney-General and to best of my knowledge no formal response has been received.

MLCS' current justification of the proposed cost recovery fees include the department's need for an improved computer system.

MLCS claim the upgrade will benefit celebrants as they, marriage celebrants, can update their own change of contact details on line. This argument is flawed – it is MLCS who will save by saving time and costs at the expense of marriage celebrants.

- ***Why are marriage celebrants being asked to fund MLCS cost savings?***
- ***The productivity gains should in fact reduce staffing levels and costs.***

MLCS want a large reduction in marriage celebrant numbers. From the Section's point of view, reduced celebrant numbers, and a reduced number of applications from potential celebrants will further reduce MLCS' workload. Fewer celebrants will reduce the number of queries.

MLCS have stated it anticipates a 10% reduction in celebrant numbers, although budget figures seem to indicate an anticipated 30% reduction.

- ***What are the REAL reasons behind the proposed fees and charges? I contend they are primarily a 'back door' approach to reducing celebrant numbers. If numbers are to be reduced it should be done openly and transparently to all – including politicians who are being asked to sign off on these Bills.***
- ***Reduced marriage celebrant numbers will decrease competition and increase fees. This may suit celebrants but could cause an electoral backlash at the ballot box.***

5. Complaints against marriage celebrants etc

The Department has used the number of complaints about and queries by celebrants to substantiate their claim for increased staffing levels.

Marriage celebrants alone are required by law to give their clients a copy of the complaints procedures. Whilst I do not have any personal concerns in doing that, the Committee needs to appreciate that by proactively advising clients of these procedures we are effectively inviting them to lodge a complaint in they are in any way dissatisfied with their ceremony.

- ***This requirement does NOT apply to aligned religious and state celebrants.***

Any form of hiccough in a ceremony and/or its preparation can be greatly magnified when clients are highly stressed and anxious.

In many cases opinions expressed by MLCS are exactly that – opinions. And those opinions vary from time to time, further exacerbating confusion. Other times the guidance is incomplete (eg: “When Words are Not Enough” (a mandatory OPD) omitted to include Annulment as a valid reason for ending a marriage. No-one is perfect.

- ***Not only do these complaints seriously skew MLCS’ impression of marriage celebrant compared to aligned religious and state celebrants, it has proven extremely difficult for associations to obtain the precise the nature of complaints or errors. Such information is invaluable to enable associations educate their members.***

6. Qualifications to be a marriage celebrant

Forty years ago celebrants were appointed with absolutely no training what-so-ever. Those early celebrants not only survived, but did so without the legality marriages being called into question, without complaints of incompetence being levelled against them etc. In fact they are highly regarded for the knowledge and experience learnt from the “School of Hard Knocks”. Many of those early marriage celebrants became the formal teachers for following celebrants, and have been the driving forces behind associations and skills training.

In 2002 the Act was amended to require marriage celebrants to pass a specific unit of marriage Celebrancy competence, identified as CHCMCEL401A, of the Community Services Training Package 2002. This unit was to ensure that marriage celebrants had “sufficient knowledge of the law relating to the solemnization (*sic*) of marriages by marriage celebrants”, as required by the Act.

In recent years the Section has introduced (via Regulations) the requirement for a compulsory full Certificate IV course. Work is currently underway to upgrade the course to Diploma status. Having been heavily involved in training and the promotion of professional development for many years I welcome the availability such courses.

However, these courses are time consuming and costly for prospective celebrants and are more appropriate for celebrant’s personal development rather than being mandated. Core topics include marriage and non-marriage ceremonies, running a small business, stage craft skills, writing for a range of media etc..

Similarly, ongoing professional development has moved well away from the legal areas of marriage.

- ***MLCS has been moved into areas outside its intended charter and sphere of competence, and are promoting these higher qualifications largely as a means of reducing marriage celebrant numbers.***

7. Role of MLCS

As demonstrated above MLCS are creating work for themselves in areas that do not appear to have ever been contemplated.

I acknowledge that the increase in celebrant numbers has created additional work for the Section, particularly in relation to performance reviews. However the *Marriage Amendment (Celebrant Administration and Fees) Bill 2013* which is before the Committee seeks to **REMOVE** this task, and therefore should **free existing staff** for other purposes.

- ***MLCS argument for additional staff for performance reviews is invalid***

A presumed substantial cost has been incurred in the hire of venues, transporting and accommodating staff and engaging a retired judge to chair “consultation meetings”. As the Budget Papers had pre-set the anticipated income and expenditures relating to the fees, the basic conclusion was foregone. All that remained was to juggle figures around a little.

MLCS demanded that celebrant associations create a peak or umbrella organisation (CoCA) so that the Section would have only one body to deal with. The cost of maintaining CoCA, together with airfares and accommodation for association delegates, is yet another impost on marriage celebrants.

From my observations dealings between MLCS and marriage celebrants is, at best, that of a master and slave! Greater cooperation and recognition of the skills and goodwill available in the celebrant associations could alleviate many of the queries received by the Section. Aligned religious and state celebrants do not encounter these pressures from the BDMs to whom they report.

MLCS staff advise that they will **NOT** provide advice on individual cases; marriage celebrants are to work it themselves and suffer the consequences if their interpretation differs to that of MLCS. The Section does not provide helpful advice but creates a fear of losing one’s authorisation, thereby creating many unnecessary questions as celebrants seek to cover their individual backsides.

- ***Are existing MLCS resources, both human and financial, are being utilised appropriately?***
- ***Is the Section operating outside intended perceived charter?***
- ***Has the Section adequately justified its 'need' for additional staff/funding?***
- ***To what extent have activities such as OPD and Certificate IV increased the Section's workload?***
- ***Does the Section possess the necessary skills for the areas in which it is operating?***

8. Inequities

The existing *Marriage Act* and *Regulations* discriminate heavily against marriage celebrants in several areas. Particular attention is drawn to the initial training and annual professional development requirements which do not apply to aligned religious and state celebrants. I have previously mentioned the requirement to advise couples of the complaints procedures is applicable to marriage celebrants only.

Now it is proposed to levy fees on (predominantly part-time) marriage celebrants which will **not** apply to two-thirds of authorised celebrants, for whom marriages are part of the normal paid work. Ironically, many aligned denomination celebrants have far less training and less marriage experience than many marriage celebrants.

I had an aligned denomination minister ring me for advice when she had a forthcoming marriage ceremony. She had received zero training, and said that there could be some forms and information "in the box that can down from Queensland"! (I remind the Committee of the above brief CV. I am stating facts, and certainly am not opposed to aligned denomination celebrants. My father was one!)

- ***Why do basic requirements vary between marriage celebrants on one hand and aligned denomination and state celebrants on the other?***
- ***Non-aligned religious celebrants are being priced out of existence. Why are they treated differently to aligned celebrants?***

I am not opposed to justified fees or levies on marriages and/or all celebrants, but restate my belief that at far more work needs to be done and correct answers supplied before such charges are implemented. An annual fee of \$240 will put some celebrants out of business which may or may not have merit. An annual fee of \$600 would have major ramifications. An application fee of \$600 will only benefit **existing** marriage celebrants and MLCS.

If Parliament is being asked to effectively re-cap celebrant numbers it needs to be so advised.