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International College of Celebrancy

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Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House, PO Box 6100
Canberra ACT 2600

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Dear Chairperson and Senators,

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

I thank you for your very welcome invitation to submit suggestions for making the Marriage Act work better for the benefit of Australian society. I will submit my requests in brief and then give your the reasons behind my recommendations.

I ask you in the strongest terms to:-

1. Restore the provisions of Section 39 of the Marriage Act as it was before the downgrading of 2003.
At this time this provision gave the Attorney General the power to appoint civil celebrants. The wording was as follows: –

> *39 (2) The minister may, by instrument in writing, authorise other officers of a state or territory, or other fit and proper persons, to solemnise marriages.*

2. Delete the extensive provisions which now exist i.e. Section 39, A to M
out of the Act to a more appropriate place i.e. internal organising rules of the Attorney General's apartment. The wording of the provision which were inserted in 2003 begins as follows:-

> *39 (2) The minister may, by instrument in writing, authorise other officers of a state or territory to solemnise marriages.* (The "other fit and proper persons" - the basis of the civil marriage celebrant program, has been deleted.)
>
> *There then follows pages of subsections which give the power, formerly held by the Minister, to an unelected generally unaccountable public servant - and taken it right away from the elected Minister.*

(see further argument below)

3. Delete all reference to "Commonwealth Authorised Celebrants" and, where appropriate, refer to "Civil Marriage Celebrants" or "Clergy".
The words "Civil Marriage Celebrant" should be inserted somewhere into the Act preferably in Section 39.

4. Alter the wording of the Act i.e. Section 46,
referred to in many documents as the Monitum to reflect three agreed realities:-

- *the equality of the sexes,*
- *the high rate of divorce, and*
- *the friendly attitude of the state toward marriage.*

The current wording of the Act is:-

I am duly authorized by law to solemnize marriages according to law.
Before you are joined in marriage in my presence and in the presence of these witnesses, I am to remind you of the solemn and binding nature of the relationship into which you are now about to enter.
Marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.
(or words to that effect.)

The wording contained in my book (1) and approved by four Attorneys General as conforming to the Act's "words to that effect", and requested by Attorney-General Lionel Murphy, and lately condemned by the Registrar, is as follows:

Now I, 'Dulcie Citizen', a civil celebrant,
Am duly authorised by the law
To solemnise this, your marriage
According to the laws of Australia.
Before you, 'John' and you, 'Mary'
Are joined together in marriage in my presence
And in the presence of these, your family and friends,
I am bound as you know to remind you publicly
Of the solemn, the serious and the binding nature
Of the relationship into which you
Are now about to enter.
Marriage, as many of us understand it,
and is currently stated by law.
Is the voluntary and full commitment
Of a man to a woman and a woman to a man;
It is made in the deepest sense
To the exclusion of all others,
And is entered into with the desire,
The hope and the firm intention
That it will last for life.

(This version could be further improved before the current changes to the Act are finalised.)

5. Rearrange Sections 45 and 46
so the Monitum (46) comes first and the Vows follow, which is the logical and ceremonial order.

6. Dismiss the proposal of an annual fee on celebrants as clearly discriminatory and unconstitutional. (Section 116)
How anyone can propose to put a fee on Civil Celebrants but not on clergy and claim that it is not discrimination is quite beyond me. And in the same context to impose a financial charge on civil celebrants and not charge clergy, and claim that this is not a law favoring a religion is equally beyond me - especially so in the light of Professor Michael Pryles opinion. (http://www.collegeofcelebrancy.com.au/Pages3/Pryles2.html)

Reword Section 33 (1) (d) (II)
Since church attendances have substantially dropped, many clergy derive their income from weddings, especially those who have attractive churches. By analogy it is often applied to Civil Celebrants when for nearly forty years it has been approved as a full or part time professional income.

NOTES
Re. 1. Section 39 etc
1973 to 2003
This simple provision i.e the one up to 2003 **worked well for thirty years** until the downgrading of 2003. The responsibility for appointing Marriage Celebrants rested with the elected minister. He was answerable to the people and the Parliament for the appointment of civil marriage celebrants.

Attorney-General Daryl Williams
Just as he was leaving the Parliament in 2003, for reasons no one can understand, the **then Attorney-General Daryl Williams** approved changes which transferred the power of the Minister to an unelected public servant — giving that Public Servant extensive powers.

Disastrous results
This 2003 change to the Marriage Act and the connected Regulations under the Act have been disastrous for all concerned, as you will already know from many sources and submissions.

Excessive Numbers: Excessive Competition
Nearly 11,000 marriage celebrants have been appointed when a suitable maximum, which would allow for plenty of competition, would be 2500. Crass results have resulted from the over-competition which is now part of the degraded scene (One advertisement read - “Marriages: cheap cheap cheap”).

Injustice to Celebrants who relied on sensible Administration
Many celebrants over the years had spent a great deal of money, time and dedication doing this task really well. Many had spent thousands of dollars on worthwhile courses of study, music and PA systems, office equipment etc. Most of these good ones have

resigned or ceased operating because they could not stomach lowering the standards of ceremony they had established, and could not face the indignity of crass and expensive methods of marketing.

Lack of Practice results in lack of skills.
Most celebrants do not perform sufficient marriages to either develop or sustain skills. Even experienced celebrants have not been able to retain their developed skills both ceremonially and legally because of a lack of practice.

No appeals allowed on most of the decisions of the Registrar
The Registrar has made a number of unjust decisions against which there has been no appeal allowed.

The writer personally approached Attorney General McClelland regarding this. He agreed that there should at least be an internal departmental committee, independent of the Registrar, to which celebrants could appeal if they felt they were unjustly treated by the Registrar.

Later on he reneged on this undertaking and claimed that he had not made it. Solution: there should be no Registrar - the Minister should be responsible, and should be assisted by public servants (without deflecting titles) who understand what the celebrant program is trying to achieve, have listening skills, sound discernment and judgment, and are idealistic, friendly and supportive to those who are attempting to do the minister and the country proud.

Administrative Appeals Tribunal ruling
One small area of appeal which was allowed to the Administrative Appeals Tribunal was taken in the case of Suzanne Ingleton -- **[2004] AATA 1044 No V2004/88 -**

- **The Tribunal ruled strongly against the Registrar**, accusing her, inter alia, of
- *Proceeding with a groundless accusation*
- *Signing a false affidavit*
- *Threatening the Tribunal*
- *Acting Ultra Vires*
- *Misinterpreting the law*
  (the Tribunal strongly disagreed with the Registrars' interpretation of the law)

No action was ever taken despite this clear ruling of the injustice involved.

Institution of Marriage belittled
Other results of this change to the Marriage Act were that celebrants in general felt downgraded and degraded and were a symbol of the federal parliament's lack of interest in the institution of marriage and it its success in our society.

Unelected Public Servants should not have excessive power. The appropriate and accountable power should be the responsibility of the Minister.

Even if the registrar had shown a level of intelligence and maturity it is still totally inappropriate that a relatively junior public servant should be written into the Marriage Act. When and if these rules were required, they should be some kind of standing orders within the Department. Public servants are not accountable to the electorate. The Minister is accountable and he/she should be the only mention in the Marriage Act and relevant Regulations under the Act.

My observation has been that the Minister could not take this responsibility even if he/she wanted to, because this power was compromised, and he/she intimidated by this legal provision.

"Commonwealth Authorised Celebrants" or "Civil Celebrants?"

One of the worst features of the changes of 2003 is that civil celebrants lost their identity.

They were now mixed up with the clergy from small churches as "Commonwealth Authorised Celebrants". I have many friends in the clergy and I have had many conversations on this topic. The clergy do not want to be mixed up with civil celebrants, and civil celebrants do not want to be mixed up with clergy. There are many distinctions between celebrants and clergy in the Marriage Act.

Public Understanding

The public understands the distinction between civil celebrants and clergy. The public are entitled to a clear understanding of what kind of celebrant they can choose.

Ongoing Professional Development (OPD) is ineffective

A particularly bad effect has been that to do with Ongoing Professional Development (OPD). Many clergy felt humiliated to have to attend/study activities (for convenience) which have no relevance to them.

The Monitum - Section 46

At the beginning of this program Lionel Murphy asked me personally to include, in a basic book of ceremonies, a rewritten Monitum. He did not like it for the reasons given above. He actually exempted every civil celebrant from having to recite it - an exemption which continued in force until 2003.

If a celebrant wished to recite the Monitum, Murphy approved the version which has occurred in every edition of my book "Ceremonies and Celebrations" (the most widely used book by celebrants)(1). (http://www.collegeofcelebrancy.co.uk/Pgs-Gen/CC-The%20Book.htm)

"Words to that effect" or "Words that mean the same"

Defying 30 years of precedent plus at least four approvals of Attorney Generals the Registrar condemned my book and insisted that the wording on the Monitum be strictly adhered to with only the various very slightest changes coming under the heading of "words to that effect". Celebrants teaching ongoing professional development had to sign a fearsome paper addressed to the Registrar that they would obey her very strict and narrow interpretations.

Addenda

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I would like it clearly known that I support the Coalition of Celebrants Associations and their submissions.

Worst feature: attention away from ceremonies.
The emphasis on the minutiae of the law over the last ten years, he four reviews of the Department's own interpretations, each correcting the errors of the previous, has been so over-the-top and confusing as to be ineffective and harmful.
But by far the worst feature of this unbalanced approach has been that the main reason celebrants were appointed has been eclipsed.

Celebrants were appointed to bring ceremonies of beauty, dignity, meaning and substance to non-church people. I have been a celebrant for nearly 40 years and the only focus the people have is **"How good was the ceremony?"**. (That the law and the procedures be sensibly followed is taken as a given, as it should be.)

Senators, as representatives of the people you attend many ceremonies. Most people only go to a few in their lifetime. I ask you not to become de-sensitised to the needs of the people you serve. This wonderful program, unique in the Western world, has been badly administered for at least a decade. I ask you for your continued monitoring and effective interest.

With good wishes

Dally Messenger III

Foundation National Secretary* of the Association of Civil Marriage Celebrants of Australia (at the request of Lionel Murphy).
Foundation President of the Funerals Celebrants Association of Australia (1977).
Foundation National President and Administrator of the Australian Federation of Civil Celebrants Inc 1995 and (Life Member)
Attorney-General's Department participant in established competency standards (1995).
Principal of the International College of Celebrancy. (www.collegeofcelebrancy.edu.au) (www.collegeofcelebrancy.com.au)

(1) Ceremonies for Today / Ceremonies and Celebrations, 4th Edition, Hachette Livre Publishers, Sydney, 1998 ISBN 978 0 7336 2317 2