

Submission to
Senate Legal and Constitutional
Affairs Committee

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

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Marie McGrath-Kerr AM JP FAICD
Civil Celebrant

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Introduction

I welcome the opportunity to comment on the *Marriage Amendment (Celebrant Administration and Fees) Bill 2013* and the *Marriage (Celebrant Registration Charge) Bill 2013*.

I have been a Marriage Celebrant for over twenty years and have performed ceremonies in my home State of Tasmania and in all the Eastern States.

The fee structure proposed in these Bills will place an unnecessary and excessive burden on Celebrants for no real return to celebrants or to couples who are married by celebrants.

I have been concerned for some years at the way that important and valuable paperwork is sent by celebrants to State Births Deaths and Marriages, with no acknowledgement of receipt, and that BDMs are unaware of pending nuptials within the approved time frame as the Notice of Intended Marriage (Form 13) is not forwarded to BDMs until after the ceremony. These concerns need to be addressed.

I believe that the sector needs to undergo structural reform before any cost-recovery scheme is considered. The Bills under consideration will not deliver the improvements the sector needs and will not benefit couples wanting to marry.

The *Marriage Amendment (Celebrant Administration and Fees) Bill 2013* and the *Marriage (Celebrant Registration Charge) Bill 2013* should be rejected and the Attorney-General's Department instructed to work with the State Registries of Births Deaths and Marriages to formulate some common-sense proposals to improve the underlying structural problems in the sector. Some proposals are detailed in this submission.

Marie McGrath-Kerr AM JP FAICD

The current state of the marriage celebrant sector

1. From the celebrant's perspective, the marriage celebrant sector could be characterised as being over-serviced, largely unprofitable and poorly regulated. The proposed changes set out in these two Bills will do little to change that.
2. Celebrants compete not just with each other for business, but also with the various State BDMs that offer Registry Office ceremonies. Couples who use a civil celebrant are often highly conscious of cost, and if the local Registry Office offers a service (including venue) for less than a celebrant can reasonably offer, then those State BDMs are helping put downward pressure on prices that are already cut to the bone.
3. Ironically, overall professional standards appear to have fallen since the introduction of compulsory professional development training, most likely due to the huge influx of new marriage celebrants.
4. The sector is ripe for review and reform. The proposed fee structure, however, does not represent the sort of reform that the sector needs.

The impact of the 2003 reforms

5. The reforms implemented in 2003 by the Federal Government significantly changed the sector – and, in the view of many celebrants, not for the better.
6. The Attorney-General's Department's own statistics bear this out: since 2003 there has been a threefold increase in the numbers of celebrants while the number of weddings in the same time has increased by about 15%. Even this percentage figure is misleading, as the number of marriages in the period 1990-2002 fell by about 10%.¹
7. It is still unclear whether or not State and Territory Registry Office weddings are included in the total number of civil ceremonies conducted. If Registry Office weddings are included, then that would have an impact on the Department's estimated average number of ceremonies performed annually by civil marriage celebrants.
8. The Department's regulation impact statement stated that "a significant percentage" of celebrants do not understand their legal or administrative obligations and that they do not comply with their legislative obligations. How does the Department know this? Celebrants with queries are far more likely to contact their BDM than the Department – especially as they will be able to talk to a person at the BDM rather than a machine at the Department.

¹ Australian Bureau of Statistics, 2210.0 Marriages and Divorces, Australia, 2010

9. The Department is still silent on whether or not “a significant percentage” of celebrants did not understand their legal or administrative obligations **prior** to 1 September 2003. The Department did concede that the explosion in the number of celebrants has “fuelled the continuation of poor performance by celebrants.” This is as close as we may get to an admission that the 2003 reforms were bad for the sector.
10. There are serious questions that the Department should have addressed before the two Bills under consideration were drafted:
- a. Has the Attorney-General’s Department analysed the impact of the 2003 reforms on the numbers of weddings performed by established (i.e. celebrants who entered the sector prior to 2003) celebrants?
 - b. How many celebrants have never performed a wedding?
 - c. If there are errors with paperwork submitted by celebrants, has the Department analysed the sources of the errors? Are errors being made by inexperienced celebrants, or celebrants who perform a very small number of weddings per year?
 - d. Does the Department liaise frequently with State and Territory BDMs to collect their figures on marriages performed in their jurisdiction? Celebrants were once required to complete regular returns for the Department, containing statistics such as the number of ceremonies performed, but this is no longer the case. Nowadays marriage certificates are numbered but no-one collects the number or matches up the certificates with Notices of Intended Marriage.

Performance reviews

11. The Department has previously claimed that there is “significant concern that some celebrants who have outstanding performance reviews should not be performing marriages due to poor performance.” How does the Department know that there is “poor performance” when no performance review has been done?
12. The Department’s inability to adequately regulate the sector is directly linked to the large number of celebrants. Introducing a levy will not in itself solve this problem.

Impact of cost recovery fees on celebrants

13. Cost recovery fees will be detrimental to the sector.
14. In other industries, where the Government has imposed fixed cost recovery fees there may be a reasonable expectation that the businesses in that industry can alter their pricing structures so that any additional regulatory costs are passed on to the consumer. Or it may be that significant benefits accrue to the fee payer. This is not the case in the marriage celebrant sector.

15. Celebrants will be unable to reasonably alter their pricing structure to account for any increase in costs for a number of reasons:

- a. Couples who use a civil celebrant are usually very cost-conscious. These are not couples who might spend a large amount of money on a wedding. We often serve couples who are from lower socio-economic groups, recently arrived immigrant communities or who are tertiary students. Older couples, especially those who have been married previously, usually seek a simple, personal and – importantly – inexpensive ceremony. One of the very first questions that couples ask is, “What is your fee?” Cost is a decisive factor for many couples.
- b. When celebrants set their fees, it is in the knowledge that there is no guarantee of how many weddings they will perform.

16. If the Government does decide that a cost recovery fee will be imposed, a more suitable fee structure would be a per-ceremony fee, levied directly upon all couples by the Department. This would be a scalable and dynamic solution that would not discriminate against couples or category of celebrants.

Application fee for new celebrants

17. There probably should be an application fee for new celebrants, but included in that fee must be a training session with their State BDM, which would include an interview where an assessment can be made of the applicant’s suitability.

18. State BDMs would also be able to assess the need for more celebrant services in the applicant’s area. The State BDMs would know their own States best in this regard, including any local conditions.

19. An application fee may act as a deterrent for prospective celebrants, however given the existing training costs for new celebrants it would be more likely that new celebrants will be even more desperate for work once they enter the industry.

20. There is also a strong suggestion that new or inexperienced celebrants are keen to take any fee from couples just to gain experience at performing weddings.

21. Perhaps it would be more useful if prospective celebrants were informed of the current state of the sector. A warts-and-all disclosure document detailing the issues facing celebrants (including oversupply) would give prospective celebrants a clear picture of the realities of being a celebrant.

What services should be offered by the Department?

22. Some other services that the Attorney-General’s Department should offer celebrants include:

- a. Official stationery – at present celebrants have to pay for stationery such as certificates and registers.
- b. Listing on Attorney-General's website – the listing of marriage celebrants on the Attorney-General's website lists celebrants in alphabetical order. It would be more equitable if the website were to list celebrants in random order, or by geographic location (such as electorate or postcode).
- c. Help desk with extended hours (including weekends) – many interviews and ceremonies take place outside of working hours or on the weekend.
- d. Professional indemnity scheme.

Cost savings

- 23. Celebrants currently answer to two Government agencies: the relevant State Births, Deaths and Marriages section as well as the Attorney-General's Department. There must be some work that is duplicated at State and Federal level. A review of the Attorney-General's Department's work may identify tasks that could be handed back to the relevant State Births, Deaths and Marriages.

The application process for new celebrants

- 24. A moratorium on new applications should be introduced. The sector already suffers from oversupply of celebrants.
- 25. Once a better ratio of celebrants to weddings is achieved, new application and evaluation processes for new celebrants can be introduced. These processes should include the interview of potential celebrants by the Department or by the State/Territory BDM.

Fielding enquiries from celebrants

- 26. The Department noted in its regulation impact statement concerning the proposed fee structure that despite having increased information available to celebrants via the Department's website, this "has had no effect in reducing the number of enquiries."
- 27. Has the Department categorised the enquiries received to evaluate if the information provided to celebrants can be improved? Would those enquiries have been better directed to the relevant State/Territory BDMs?

Rural and remote areas

28. A listing of postcodes does not necessarily reflect rural and remote areas. Some postcode areas cover vast regions.

Procedural improvements

29. I propose that the Notice of Intended Marriage (Form 13) should be completed in duplicate. One copy should be sent to the relevant Births, Deaths and Marriages immediately upon signing, so that any irregularities can be discovered before the wedding takes place. It would then be matched up with the original documents when lodged after the wedding takes place.

30. At present there is no acknowledgment of receipt of any papers sent to Births, Deaths and Marriages, leaving celebrants unsure that paperwork has been received at Births, Deaths and Marriages. Some form of acknowledgement of receipt needs to be implemented.

31. It is disappointing that the Department failed to pick up on these points following its most recent round of consultation.

Marriage (Celebrant Registration Charge) Bill 2013

A fixed per-celebrant fee

32. The proposed fixed, per-celebrant annual fee should be rejected. If the Government decides that a cost recovery fee is needed, then a more equitable, scalable fee should be introduced, levied by the government on couples.

33. The fixed annual charge in effect limits the celebrant to a year-to-year operation. The celebrant would not be able to accept bookings outside of the current registration year (that is, the financial year) because the celebrant would in effect not be registered beyond that period.

34. This would result in the ridiculous situation of celebrants being unable to accept bookings in April for a July wedding. A farcical situation, entirely of the Department's making.

35. Regardless of how the Government introduces any fee, the end result will be reduced incomes to celebrants because couples will still look at the total cost to them of the ceremony.

Increases to the celebrant registration charge

36. The proposed fixed charge is a poor implementation of the principle of cost recovery and should be rejected. Notwithstanding that fact, there are other shortcomings with the proposed fixed charge and its indexation.
37. The Bill states that the statutory limit of the proposed celebrant registration charge will be linked to the “All Groups” Consumer Price Index, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.
38. Will the Department review the average income of celebrants to evaluate whether the annual increase to the statutory limit outstrips any increase in earnings to celebrants?
39. What consultation will take place prior to any changes being made to the celebrant registration charge? No provision for consultation is made in the Bill, which is a frightening prospect for celebrants. Furthermore, the majority of celebrants are not members of any celebrant association. Individual experienced celebrants must be invited to take part in any consultation.

Marriage Amendment (Celebrant Administration and Fees) Bill 2013

Exemptions from paying annual fee

40. Section 39FA notes that grounds for exemptions from paying the annual fee may be specified in the regulations.
41. The Autumn 2013 edition of *Marriage Celebrant Matters* published by the Attorney-General’s Department lists two possible reasons for an exemption from the annual registration charge:
- a. Celebrants in remote areas where there are only one or two registered marriage celebrants.
 - b. Where personal circumstances warrant an exemption.
42. Celebrants in remote areas certainly should be granted an exemption. It is a shame that the Department is currently unable to identify these celebrants so that they are automatically granted an exemption.
43. The very idea that some celebrants might require an exemption for “work-related overseas postings”, as posited in *Marriage Celebrant Matters*, is ridiculous. Those who treat being a celebrant as a hobby are the very celebrants who should be encouraged to leave the sector.
44. “Personal circumstances” is too broad and open to abuse.

Exemptions from professional development

45. Mandated professional development courses for celebrants are a sham that serve only to rob celebrants of time and money.
46. For example, sessions on filling in the marriage certificate are pointless. If you can't fill out a form you shouldn't be a celebrant. This should be covered in the basic initial training and then only monitored for exceptions – that is, celebrants who consistently fail to correctly and accurately complete the marriage certificate.
47. At most, celebrants should be encouraged to attend an annual seminar (if required) that covers any relevant changes to legislation. This should be carried out by the Department or the State/Territory BDMs. It would benefit celebrants in being able to ask questions as well as benefiting Departmental and BDM staff in being able to get a feel for any trends or issues in the sector from celebrants' perspectives.
48. Otherwise, all these useless training sessions on how to use candles, crystals, hand-binding and so on should be completely discretionary. These sessions have nothing to do with the legality or validity of a marriage and everything to do with lining the pockets of the trainers.
49. State BDMs could tell the Department if celebrants are meeting the basic requirements. If a celebrant gets something wrong or omits something, then the State BDM contacts the celebrant. So surely the State BDM would be able to identify those celebrants who are getting it right and those who aren't – no need to put competent professional celebrants through ongoing professional development.
50. Getting rid of unwarranted training would cut costs for celebrants, give celebrants back a day of their life (which if it's a weekend means they've had to knock back work), and it would save the Department the work of checking that celebrants have attended mandatory courses.
51. What oversight is there by the Department on the trainers? Does the Department do spot checks on the trainers? My experience is that although the trainers are nice people, they are not "trainers" in the accepted sense of the word.
52. With these comments in mind, exemptions for professional development should be extended to all experienced celebrants with a clean track record without any fee being payable.
53. It is reasonable for celebrants in remote areas to apply for an exemption from face-to-face training, but these celebrants should be able to access over-the-phone training and assistance from the Department or BDM so that they can maintain high professional standards.
54. Training should be on a voluntary basis. It would probably be utilised by those who need it most – new and inexperienced celebrants.

Passport as evidence of place and date of birth

55. I support the amendment that will allow an Australian passport as evidence of the date and place of birth of the party seeking to marry. This will assist refugees who arrive in Australia without any personal documentation.

Communications with celebrants

56. Communications to celebrants from the Department must not be solely by email – news must be sent by post as well. Some celebrants do not have internet access. Email is also plagued with trust issues, meaning that many emails are “lost in the ether”, or simply end up in junk or spam filters.

57. Communications from the Department must be numbered, so that it is possible to know if any communications have been missed. The *Marriage Celebrant Matters* newsletter carries the season – e.g. Autumn 2013 – giving the recipient no idea as to the frequency of the publication. It is strongly recommended that the Department number its bulletins sent to celebrants so that celebrants can track the bulletins and ensure that they have received **all** bulletins from the Department.

58. The Department must review the content of its communications with celebrants. A small working group made up of Departmental representatives with some experienced celebrants and BDM representatives would be able to develop a framework for future communications to ensure that celebrants receive information that is relevant and interesting. The Department would also be able to demonstrate greater value of its communications.

Conclusion

59. The Department has acknowledged that there are problems in the marriage celebrant sector. Yet a golden opportunity to reform the sector has been missed. Instead we have taken a step back in time, towards the era when the Department set celebrants' fees.
60. The proposed fee structure should be rejected. If the Attorney-General's Department wishes to embark on cost-recovery, it should levy each marrying couple – regardless of the type of ceremony, be it civil, religious or Registry Office.
61. Many of the problems outlined in the Department's previous discussion paper and regulatory impact statement arose from the expansion of celebrant numbers post-2003. While we cannot turn back the clock, the Department must learn from the errors made at that time and try to address some of the issues.
62. Celebrant numbers need to be reduced. While the introduction of a fixed annual fee may force some celebrants from the sector, it is a blunt and indiscriminate method. It would be better to focus on those celebrants who consistently fail to meet legislative obligations or offer financial incentives to those in over-served areas to voluntarily leave the industry.
63. Prospective celebrants need to be given full disclosure on the state of the sector before they commit to a training course or setting up their business. Better disclosure of the commercial realities of being a celebrant may lead to a reduction in the number of new celebrants entering the sector.
64. Initial training and mandatory ongoing professional development for celebrants needs to be reviewed. There are many shortcomings that render professional development costly and irrelevant.
65. The Notice of Intended Marriage (Form 13) needs to be completed in duplicate and receipt acknowledged by the local BDM.