



Australian Government
Attorney-General's Department

3 May 2013

Ms Julie Dennett
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Dennett

Thank you for your invitation to make a submission about the Marriage Amendment (Celebrant Administration and Fees) Bill and the Marriage (Celebrant Registration and Charge) Bill.

The Attorney-General's Department has considered the submissions received and published by the Committee and makes the following submission in relation to the key issues raised.

The department would be happy to appear before the Committee should this be required. The action officer for this submission is _____ who can be contacted on _____
Please contact Esther or me if the Committee requires any further information.

Yours sincerely

Peter Arnaudo
Assistant Secretary
Marriage and Intercountry Adoption Branch

**ATTORNEY-GENERAL'S DEPARTMENT SUBMISSION TO SENATE STANDING
COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS ABOUT
MARRIAGE AMENDMENT (CELEBRANT ADMINISTRATION AND FEES) BILL
AND MARRIAGE (CELEBRANT REGISTRATION CHARGE) BILL**

Who can solemnise a marriage in Australia

Currently, the Marriage Act establishes three categories of people who are authorised to solemnise marriages in Australia. These are:

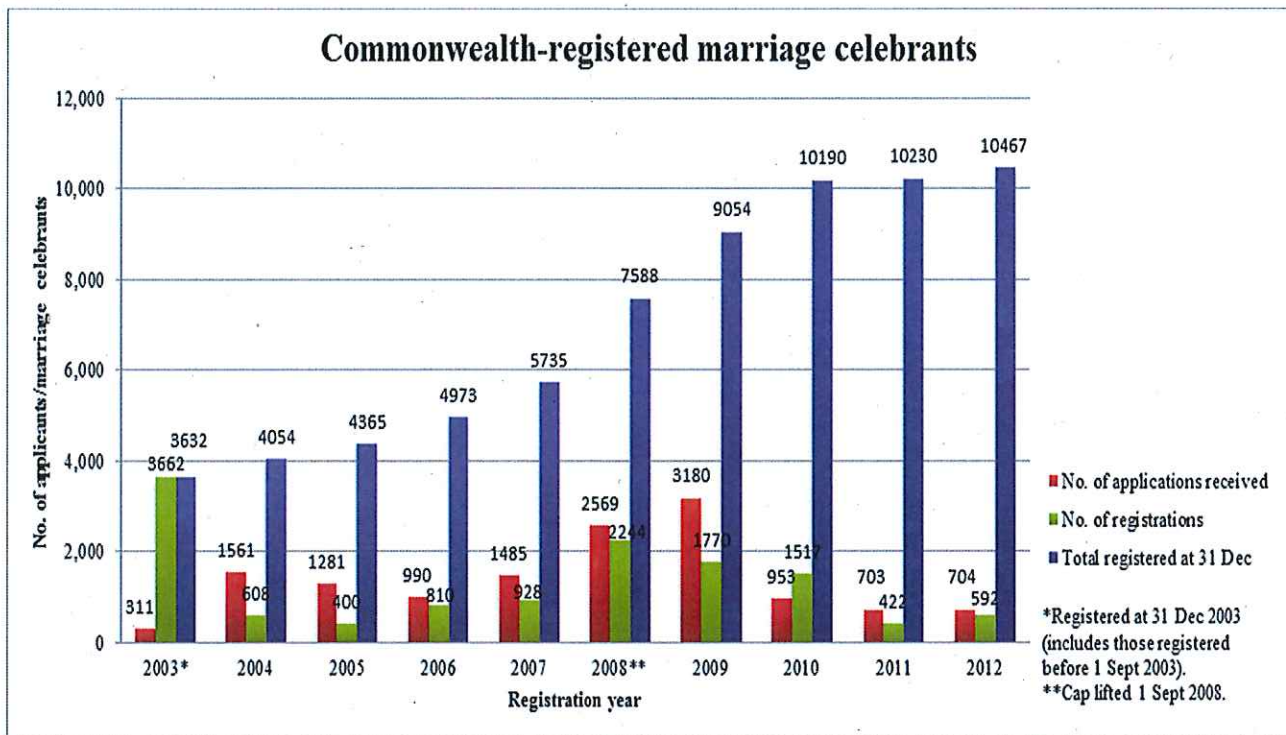
- A. Ministers of religion of a recognised denomination, proclaimed under section 26 of the Act (eg Catholic or Anglican church). These people are nominated by their denomination and registered and regulated by state and territory Registrars of Births, Deaths and Marriages. There are currently approximately 24,500 such people.
- B. State and territory officers who are authorised to perform marriages as part of their functions in registering marriages. These officials are regulated by state or territory Registrars of Births, Deaths and Marriages. There are currently approximately 730 such people.
- C. Commonwealth-registered marriage celebrants who are registered by the Registrar of Marriage Celebrants (a public servant within the Attorney-General's Department) under the Marriage Celebrants Program. This group includes civil celebrants and celebrants who are ministers of religion whose denomination is not proclaimed under section 26 of the Act (eg community churches). There are currently approximately 10,500 such people.

The Commonwealth Marriage Celebrants Program

2. The department administers the Commonwealth Marriage Celebrants Program. This includes all celebrants who are registered under the third category referred to above.
3. In the years since its inception in 1973, the Program has grown significantly. Currently, about 70% of Australian marriages (there were approximately 121,000 marriages registered in 2011) are performed by marriage celebrants registered by the Commonwealth.
4. In 2001, the then Government introduced significant reforms to the Program to improve the transparency of the appointment process and improve the overall quality of the services provided to the public (including a requirement to undertake ongoing professional development and comply with a Code of Practice). These reforms came into effect in 2003 and followed extensive consultation over four years. As part of a transition to the new reforms, the then Government introduced a five year cap on the number of new celebrant registrations (section 39E of the Act which is proposed to be repealed by Item 1 of the Part 1 of Schedule 2 to the Celebrant Administration Bill as the cap expired in 2008). Under the 'cap' no more than 10% of the total number of registered marriage celebrants in the previous year could be registered as marriage celebrants (applied on a regional basis).
5. In 2006 the then Attorney-General agreed to increase the number of celebrants able to be appointed under the cap to 20% in order to reduce pressure on the extensive

waiting lists that had developed of people aspiring to become celebrants. In August 2008, the cap ceased to exist by operation of section 39E of the Act.

- The following table outlines the number of applications and registrations since the Program moved to its current form in 2003.



Introduction of Cost Recovery

- Since 2002, the Australian Government has adopted a formal cost recovery policy to improve the consistency, transparency and accountability of Commonwealth cost recovery arrangements and promote the efficient allocation of resources. 'Cost recovery' broadly encompasses fees and charges related to the provision of government goods and services (including regulation) to the private and other non-government sectors of the economy.
- As part of the 2011 Budget, the Government announced that it would introduce from 1 July 2013 cost recovery for the Commonwealth Marriage Celebrants Program in accordance with the Government's *Cost Recovery Guidelines*.
- The existing legislative regime governing marriage celebrants is robust, with statutory provisions to ensure integrity and professionalism of celebrants. However, the department has had limited resources or capacity to use the legislative provisions available to properly regulate the industry and respond in a timely way to the non-compliance of celebrants with their legislative obligations. It has also meant that the department has not had sufficient resources to provide educational material or services to celebrants to support them to meet their obligations.
- The implementation of cost recovery will enable the department to improve the services delivered to marriage celebrants, while also effectively regulating those celebrants. Improved service delivery from the department and effective regulation

will in turn ensure professional, knowledgeable and legally correct services are delivered to marrying couples in Australia. Through the introduction of cost recovery the Program will be placed on a more secure foundation into the future ensuring that the high standards Australians rightfully expect of Commonwealth-registered celebrants are properly monitored and enforced.

11. The fees and charges proposed to come into effect from 1 July 2013, subject to the passage of the Bills, are:

- an annual celebrant registration charge imposed on all Commonwealth-registered celebrants – this charge will be set at \$240 in 2013/14.
- A registration application fee for prospective celebrants seeking registration – this fee will be set at \$600 in 2013/14, and
- an application processing fee of \$30 in 2013/14, for seeking an exemption from:
 - the annual celebrant registration charge
 - the registration application fee, or
 - annual ongoing professional development obligations.

12. The fees and charges represent the projected costs of the department in administering the Program. They do not generate profit or revenue. The department is required to provide a Cost Recovery Impact Statement (CRIS) to support the introduction of cost recovery from 1 July 2013 (**Attachment A**).

13. Under the Cost Recovery Guidelines, costing arrangements must be reviewed at least every five years. The department undertakes to review this model before 1 July 2016, in consultation with celebrants and other relevant stakeholders.

Consultation with Celebrants

14. Following the Budget announcement in 2011, the department engaged in extensive consultation with all marriage celebrants. National consultations were held in 17 locations between October and November 2011. A further 280 written submissions were received and analysed during that time. A summary of the key issues raised by celebrants in those consultations is at **Attachment B**.

15. The department used the feedback received throughout consultations to develop the most efficient and effective policies and processes to provide services to and regulate Commonwealth-registered marriage celebrants.

16. The department engaged an independent consultant to develop a costing model. This model used a bottom up approach to analyse the activities of the department, the time it took to do each activity and included assumptions about the marriage celebrant industry over the coming three years. The outcome of this model is the three types of fees and charges outlined above.

17. In August 2012, the department released a consultation paper outlining the quantum

and structure of the fees and charges. 73 written submissions were received at that time.

Other costing approaches

18. Some submissions to the Committee suggest other approaches to the recovery of costs. The department investigated various options and recommended to the Government a flat, annual cost recovery charge for Commonwealth-registered marriage celebrants. Our comments in relation to some of the alternatives proposed are set out below.

All marrying couples pay a fee linked to the Notice of Intended Marriage that couples complete when marrying

19. This approach would not be consistent with the Government's cost recovery principles as it does not seek to recover the costs of providing Government services to an identifiable group. It is celebrants, not couples, who are provided with professional support by the department in carrying out their role. While increasing the professionalism of Commonwealth-registered marriage celebrants is likely to have a positive impact for marrying couples, couples are not in direct receipt of services from this department. It is also arguable that the introduction of a fee linked to the Notice of Intended Marriage may dissuade some couples from considering marriage. The administrative mechanisms required to recover such a fee would also be more extensive given the number of marriages that occur each year across Australia.

All people able to solemnise a marriage (including Ministers of Religion and State / Territory officials) should pay a fee

20. Similarly this approach would not be consistent with cost recovery principles as the department's activities and services relate primarily to Commonwealth-registered marriage celebrants. The department does not regulate Ministers of Religion from Recognised Denominations or state / territory officials. While it incurs some minor costs in relation to these two groups they are insignificant and not included in the cost recovery model. Adopting such an approach would also require significant legislative, policy and administrative amendments to recover a fee from a new class of people that are currently not subject to significant interaction with the department.

Introduce fees on a 'sliding scale' (eg. Celebrants that perform more marriages pay a higher fee)

21. Charging celebrants on a sliding scale, based on the number of weddings they perform is impractical and may be inequitable. It is not clear that celebrants conducting more weddings per year would require the attention of the department more or less than celebrants who are conducting fewer marriages.
22. For example, a celebrant conducting 40 weddings per year may be more experienced and therefore only make one or two enquires of the department per year, while a celebrant who conducts one wedding in the same year has less practice and may also make one or two enquiries of the department.
23. The department would also be unable to independently verify the charge amount to

impose except by relying on a celebrant to correctly state the number of marriages he or she had solemnised. Spot checks or full verification to ensure compliance would oblige state and territory Registries of Births Deaths and Marriages to provide the department with numbers of marriages registered by Commonwealth-registered celebrants annually. Basing an annual celebrant charge on the numbers of marriages he or she registered may create an incentive not to register marriages, which would negatively impact on couples.

Consequences of non-payment

24. Concerns have been raised in some submissions about the timeframes for the payment of the annual charge and the consequences for celebrants and marrying couples if the celebrant does not pay within the required time. The department is confident that these concerns have been addressed and that celebrants will have ample opportunity to pay the fee and that any impact on marrying couples will be minimal because of the time provided for celebrants to decide whether to pay or not pay the fee.
25. Under proposed section 39FA a celebrant will have at least 30 days from the date of the notice to:
- pay the celebrant registration charge, or
 - seek an exemption.

The department has committed to a 60 day payment term for the first two years to ensure that there is sufficient time for all celebrants to pay.

26. Under proposed section 39FB, if a celebrant has not paid their celebrant registration charge or received an exemption by the charge payment date, they will be given notice that they will be deregistered at a date that is at least seven days from the date that notice is sent.
27. This will give a celebrant notice to transfer any clients or completed Notices of Intended Marriage to another registered celebrant before that date.
28. Any deregistration because of non-payment of the fee will be subject to appeal to the Administrative Appeals Tribunal as is the case with any existing de-registration. The Bill amends paragraph 39J(1)(c) of the Act to make this clear.
29. The following example sets out how the process will operate in practice.

Non-payment example

John is a registered celebrant on 1 July 2013. Under the changes, he is liable to pay the annual celebrant registration charge for 2013/14. On 5 July 2013, the Registrar sends to John's postal address an invoice/notice that he has to pay the charge of \$240 by *the charge payment date* of 3 September 2013 (which is 60 days from the date of the invoice) or seek an exemption from paying the charge.

John does not seek an exemption or pay the charge by 3 September. On 6 September 2013, the Registrar writes to John to notify him that because he has not paid the charge or been granted an exemption, he will be deregistered on 13 September 2013 (which is 7 days after the date of the Registrar's notice of deregistration). On that date, John will be removed from the Register of Marriage Celebrants and can no longer solemnise marriages from that date.

Removal of a 'lifetime' appointment

29. Some submissions have argued that the introduction of cost recovery represents a shift away from the concept of appointment as a marriage celebrant being an appointment for life.
30. The department does not agree with this characterisation. A celebrant who complies with the obligations of being a celebrant can continue to be a celebrant for many years. However, a celebrant who does not meet these obligations can be deregistered (for example since 2008 approximately 370 celebrants have been deregistered following reviews of their performance).
31. The introduction of an annual cost recovery charge imposes a new obligation upon celebrants (similar to existing obligations to undertake annual ongoing professional development, acting in a fit and proper manner and updating the Registrar of Marriage Celebrants of any change in their circumstances).

Statutory limit for annual registration charge

32. The Celebrant Registration Charge Bill provides legislative authority for the Minister to determine the amount of the celebrant registration charge each financial year.
33. As required by all imposition legislation, a statutory limit must be set in legislation. Section 8 sets the statutory limit at \$600. This is the maximum amount that the charge can be without amendments to the enabling legislation.
34. The actual amount of the charge will be set by a disallowable legislative instrument each financial year. This will ensure that the Government remains accountable to Parliament each year in relation to the amount of the charge.
35. During the Second Reading Speeches for the Bills in the House of Representatives, the Attorney-General indicated the amounts proposed for each of the fees (including that the annual registration charge will be \$240 in the 2013-14 financial year).

Review of celebrant performance

36. A number of submissions have expressed concern at the removal of requirement for the Registrar to review a celebrant's performance every 5 years and replacing this with a more general requirement that the Registrar may from time to time review a celebrant's performance (see Item 1 of Schedule 2 of Part 1 of the Celebrant Administration and Fees Bill).
37. This amendment will provide more flexibility in undertaking performance reviews than is currently the case. The ability for the Registrar to undertake reviews remains but the requirement that this be done to all celebrants every 5 years is removed.

Instead of all celebrants having to have a performance review, this ensures that appropriate attention is given to celebrants about whom concerns were raised. It is a more selective and targeted approach to performance review and monitoring than the current blanket reviews on all celebrants once every 5 years.

38. Performance monitoring of celebrants will also be strengthened by the introduction of an annual online performance questionnaire. The questionnaire will collect information from celebrants both to confirm that they are continuing to meet their obligations, and also to collect statistical information to improve the quality of departmental services for celebrants.
39. It will also allow the department to target performance reviews towards areas of concern or celebrants who are not meeting their obligations, and take disciplinary action where it is reasonable and appropriate to do so.
40. The completion of the questionnaire will be a requirement, but will not be linked to the celebrant registration charge. A celebrant will not be automatically deregistered if they do not complete the questionnaire. The existing provisions that apply where a marriage celebrant fails to comply with an obligation would apply to the failure to complete an annual questionnaire (see section 39I of the Act).

Introduction of a cap or moratorium for new applicants

41. Some submissions suggest that the department should introduce new requirements for the registration of new celebrants including capping numbers, a moratorium or appointing a limited number of celebrants in specific regions every five years.
42. The department does not consider a cap to be a viable or efficient way to manage celebrant numbers and ensure applicant quality. Experience with the 2003-08 'cap' on new registrations (see Table 1 above) indicates that the cap did not dissuade people from applying to become a celebrant, but rather led to extensive waiting lists for aspiring celebrants who ultimately became registered before the cap expired (due to the increase in the cap in 2006) or at its expiry in 2008. A regional appointment process is also incongruous with the ability of marriage celebrants to marry couples anywhere in Australia once registered.
43. The introduction in 2010 of the requirement that applicants hold a Certificate IV level qualification has reduced the number of applications submitted for registration (from 3,180 in 2010 to 953 in 2009). The higher qualification delivers more in-depth training and better equips celebrants to fulfil their legal and professional role.
44. The department is confident that the new process it proposes for the assessment of applications, along with the requirement of a Certificate IV qualification, will have a further positive impact on the quality of incoming celebrants without the need for a cap or a complicated regional appointments process.