

Submission to the Attorney-General's Department

Ongoing Professional Development for Commonwealth-registered marriage celebrants and Guidelines on Conflict of Interest and Benefit to Business for Commonwealth-registered marriage celebrants DISCUSSION PAPER – NOVEMBER 2016

SUBMISSIONS MUST BE RECEIVED BY 5pm FRIDAY, 13 JANUARY 2017 AS AGREED
SUBMISSION EXTENDED TO 31ST JANUARY 2017

Your details

Name/organisation <i>(if you are providing a submission on behalf of an organisation, please provide the name of a contact person)</i>	Peter & Patricia Farnsworth Trading as the Natural Health Academy of Australia RTO 4891
Contact details <i>(one or all of the following: postal address, email address or phone number)</i>	1 South Rd Thebarton SA 5031 Email admin@nhaa.edu.au (08) 83518507

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- Microsoft Word
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- txt format.

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Would you prefer this submission to remain confidential? NO

Your submission

Please insert your text here and submit it as an electronic Word, RTF or txt document.

Thank you for granting us an extension in the closing date of the submission and we make our submission as detailed below.

In relation to your "*DISCUSSION PAPER – NOVEMBER 2016*"

We comment as follows

Part A Background

"The department prepares a compulsory activity which is delivered by a panel of approved OPD training providers¹ and approves elective activities submitted by the panel (and conference activities submitted by celebrant associations) for inclusion in the list."

Submission: Section 37 M of the regulations or any part of the Act does not make provision for the use of a "panel".

Further Section 39A of the Marriage Act states "There is to be a position occupied (on an acting, permanent, full-time or part-time basis) by an APS employee in the Department, the duties of which are expressed to consist of, or include, the performance of the functions given to the Registrar of Marriage Celebrants by or under this Act." It is important to note the words "performance of the functions **given** to the Registrar of Marriage Celebrants **by or under this Act**" which does not provide for the Registrar going beyond the express provisions of the Act and Regulations which do not include any provisions to establish a "panel" or limit delivery of professional development.

"Prior to this arrangement, anyone could apply to have an elective activity approved by the Registrar. As celebrancy training was in its infancy and options were limited in many areas, celebrants could also apply to have a relevant course that was locally available count towards their OPD. This process was resource intensive and many celebrants expended significant effort identifying appropriate courses, seeking approval from the department, and submitting annual returns. Feedback from the time suggests that many of the proposed OPD training courses were under-developed and unsuitable, while some locally available courses had limited relevance to a marriage celebrant's role. The department does not propose to return to a system where activities from a broad range of providers would be approved by the department."

¹ The compulsory activity is typically a two hour activity focussed on legal issues in the solemnisation of a marriage.

Submission: There should be concern in relation to this statement as Regulation 37M (1) clearly states “For paragraph 39G (1) (b) of the Act, as soon as practicable after the beginning of a calendar year, the Registrar of Marriage Celebrants must publish on the Internet a list of professional development activities (including the kinds of activities and the providers of the activities) for the year.”

It is clearly not the responsibility of the Celebrant to “identifying appropriate courses” or to seek “approval from the department” as the Registrar is responsible to “publish on the Internet a list of professional development activities (including the kinds of activities and the providers of the activities) for the year”. We submit that this list should be a clear document stating requirements for Celebrants and assisting by suggesting possible providers, but not limited to any specified provider(s).

Issues

“Celebrants also frequently cite the cost and availability of OPD as barriers to their compliance and have expressed the view that, when added to the annual registration charge, the cost of OPD is too much, in particular given the low number of weddings that they perform. A number of celebrants advise the department each year that they have experienced confusion about the requirement to complete OPD during a calendar year, when their registration was for the financial year. This is despite the department regularly reminding celebrants about the timing of their obligations.”

Submission: The “restriction” on which providers may provide OPD is a strong contributing factor to the cost(s) of OPD, as market forces do not prevail in having a “panel” which in effect is not only a restriction of trade to other training providers but further limits the choices for Celebrants in quality and options especially where geographic location and timing may be factors to consider.

We would agree that given that some Celebrants only perform a low, if any, number of weddings per year there should be particular emphasis on the legal requirements to reinforce the obligations of the Celebrant as apart from business and marketing developments and activities.

“The close monitoring of OPD is not a typical feature of professional development programmes in other professions.”

Many other professions such as lawyers and accountants are responsible for maintaining their own professional development records (subject to audit).”

Submission: We would support this and further add that many other professions have far greater requirements for OPD such as but not limited to, medical, dental practitioners, teachers, massage therapists, trainers and legal profession and accountants as identified. The requirements for Celebrants is far less onerous in time and costs when compared to many other professions and therefore in keeping with the intent and express provisions of the Act and Regulations we would submit that a clear set of required professional development activities must be published and that compliance be supported by random audit where the onus of proof would be on the Celebrant. This would substantially reduce the Registrar’s costs but it is important to note that the required development activities need to be clearly quantified and identified as is contemplated and required by the Regulations.

Options for change

Issue 1: OPD obligations that should be imposed on marriage celebrants

Number of OPD hours required for completion each year

Submission: There should be a requirement for a *minimum* number of OPD hours and Celebrants should be required to undertake these in face to face situations and not via distance learning.

We would support that as a minimum this should be **at least** 5 hours per year as this provides Celebrants an opportunity not only to have their knowledge and skills enhanced or reinforced but a requirement or opportunity to interact with others in the industry which we consider is an important factor and part of OPD.

Many other professions require 20 or more hours of OPD to maintain registration and in keeping with the requirements of the Act and Regulations where a change of legislation or the Registrar considers there is a need for specific professional development activities this can be made mandatory through the publishing of the requirement(s) in accordance with Regulation 37M (1) irrespective of other OPD or the time required to undertake the OPD activity.

Issue 2: Timeframe for completing OPD activities

Requirement to complete OPD in a calendar year

Submission: As with any other profession or undertaking there are legal obligations and strict time requirements that need to be met to avoid actions such as, but not limited to, de-registration, suspensions and or cancellations loss of licences etc.

Part of the training and function of a Celebrant is to manage, co-ordinate and pre-plan activities, events and timing therefore it should not be an impost on a Celebrant to manage the requirement of having undertaken the required OPD during a specified and fixed 12 month period.

Most if not all other professions requiring OPD are very strict in the requirements for OPD during a specific 12 month period and Celebrants should not be any different in relation to their legal obligations to maintain registration.

Issue 3: Subject variety and availability

Submission: We have particular concerns in relation to the matters raised by this section from a legal prospective and in the obligations the Registrar has under the Act and Regulations.

“Currently, the panel of four training providers deliver around 175 OPD activities. In addition, the department approves two or three celebrant association conferences each year. There are a number of additional types of activities that could be considered to count towards OPD for celebrants.

It is the considered opinion of our organisation and that of other knowledgeable persons that this arrangement is outside the scope of the Act and Regulations and therefore may be a breach of the Act and or other Acts or lawful requirements as previously stated above.”

The Act and Regulations makes no provisions for “panels” but does impose a requirement on the Registrar in Regulation 37M (1) that “For paragraph 39G (1) (b) of the Act, as soon as practicable **after the beginning of a calendar year**, the Registrar of Marriage Celebrants **must publish on the Internet a list of professional development activities** (including the kinds of activities and the providers of the activities) **for the year.**” How the Registrar determines the requirements is a matter for them to determine but the limiting of provision to a “panel” or specific Celebrant Associations is beyond the powers of the Registrar and may soon be tested at law.

“the department is only responsible for the regulation of marriage and the purpose of ongoing professional development is to ensure that the marrying public receive professional and legally accurate services, any expansion of the range of activities will still require a link to the particular role of a *marriage celebrant*.”

Submission: We concur with the above as is clearly supported by the intent and express requirements of Regulation 37M (1) but would further add that the implementation of processes and the powers of the Registrar are clearly restricted by Section 39A of the Marriage Act which states “There is to be a position occupied (on an acting, permanent, full-time or part-time basis) by an APS employee in the Department, the duties of which are expressed to consist of, or include, the performance of the functions given to the Registrar of Marriage Celebrants by or under this Act.” It is important to note the words “performance of the functions **given** to the Registrar of Marriage Celebrants **by or under this Act**”.

It is important that the Registrar does not overstep the express “functions given”

3.1 Guidelines for appropriate activities

“It is open to the department to move away from the approved list of OPD activities and instead prepare guidelines about what kinds of activities can be counted towards OPD”

Submission: We do not concur with this as the Registrar does not have the authority but more specifically has obligations as stated in the Act and Regulation 37M (1) “For paragraph 39G (1) (b) of the Act, as soon as practicable after the beginning of a calendar year, the Registrar of Marriage Celebrants must publish on the Internet a list of professional development activities (including the kinds of activities and the providers of the activities) for the year.” The changes being contemplated will require changes to the Act and Regulations which would require due parliamentary processes and public consultation.

“If this option were to eventuate, the department does not propose to pre-approve each course that might be identified by a celebrant as this would be administratively inefficient.”

Submission: We reiterate that the Registrar does not have the authority to do the above but is required to meet the requirements of Regulation 37M (1) and is obligated to “must publish on the Internet a list of professional development activities”

3.2 Panel of training providers

Submission: We reiterate that the Registrar does not have the authority to establish “panels” or restrict providers or take other such measures as previously stated and demonstrated above. The only authority and or obligation in relation to this is that the Registrar “must publish on the Internet a list of professional development activities (including the kinds of activities and the providers of the activities) for the year.”

The reference to the “providers of the activities”, contained in brackets, is a guide to Celebrants in assisting them to find a provider for the “list of professional development activities” required by the Registrar. ASQA are the governing body who regulate national accredited training and the Registrar has no authority in relation to approving training providers either under the Marriage Act or any other Act.

Therefore this section is irrelevant and subject to challenge without appropriate changes to the Act and Regulations.

Issue 4: Exemptions from OPD Exemption for first year of registration

Submission: We would consider this a reasonable proposition but would require Regulation change.

Issue 5: Compliance monitoring Self-assessment

Submission: We would consider this a reasonable proposition subject to the Celebrant making a signed declaration that they have met the OPD requirements of having undertaken appropriate OPD activities as contained in the yearly list of professional development activities as set out by Regulation 37M (1).

Part B: Conflict of interest and benefit to business

Submission: We would support the position and the possible strengthening of the Code of Practice and or further clarification to reflect matters arising from conflict of interest. In the alternative conflict of interest in relation to trading restrictions, not Celebrant lawful obligations or performance of duty, should be removed and should rely upon appropriate federal and state legislation provisions as the Marriage Act is very specific and limited in relation to its intent and function.

Issues to consider

Changes in the profession

Submission: comments noted

The department's responsibility as a regulator

Submission: Noted and raises serious concerns in relation to the legality of the Registrar's authority and or powers given to them, specifically in relation to any OPD provider restrictions and the potential for the Registrar to having breached State and or Federal Acts given the Department's awareness of some of the Acts which are noted in this section.

Possible policy options

Submission: We consider that the Department should have specific focus on the requirements and intent of the Marriage Act and as such should not have input in relation to other matters unless specifically required by the Act or Regulation. Any policy must relate to the requirements and authority granted in accordance with the Act and Regulation to avoid being challenged and the overreaching of authority.