

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

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>	Patrick Grogan
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Your submission

OPD

Great idea, limited value

The idea of ongoing professional development (OPD) is good and has the potential to offer many benefits to celebrants and couples using the services of celebrants. This author has been, and remains, a strong advocate for professional development in their main profession, namely real estate services. However, while remaining an advocate of OPD, the types and range of courses offered are questionable. This problem is not limited to professional development of celebrants and persists in other professions too. The author lobbied for professional development programs in real estate: Deeply concerned with the lack of knowledge of agents in relation to contractual law and other technical areas, lobbying was focussed on the need for compulsory ongoing training to stay abreast of legislative change and refreshing knowledge of existing legislation to ensure the utmost attention, professionalism, and consumer protection, for clients while fulfilling the role of real estate agent. Legislation in Western Australia requires practitioners complete ten hours of approved training courses in the classroom (or online). Strangely, only three hours is dedicated to mandatory, law specific, activities. The remaining seven hours can be accumulated across a menu of approved courses, often not directly related to real estate, but generic courses, which would be equally relevant to other professions – such as celebrant activities, for instance.

Let's be relevant

It would be more beneficial from a professional perspective if OPD were five hours, strictly law related. That would include the teaching of new or amended legislation and refreshing participants on existing legislation that might be relevant to what the BDMs are finding persistent problems.

Give credit where credit is due

If the Attorney-General's Department determines that the current system of OPD should remain, then credit ought to be given to celebrants who work in other professions who complete other government approved ongoing professional training, and who complete generic, compatible, courses. This author this year completed OPD which included time dedicated to teaching celebrants how to use social media in promoting and developing their businesses. It was apparent that few, perhaps two or three, use social media or even Internet to any significant degree to promote their celebrant services. This author, during the course, contributed much to explaining the benefits and expertise in the technology; even the facilitator had no experience and was merely 'reading the script' given to them by the Registered Training Provider (RTO). The point is, the contribution was made possible because of previous training in ongoing professional development completed in real estate. That training ought to be available as credit. Of course, the celebrant would need to apply for the credit, but proving that the course was completed is made possible by providing a copy of the certificate from the RTO. It would be reasonable for the Attorney-General's Department to require that the credit was achieved in the current OPD year. Such credit system would reduce to impost on the celebrant who is 'doubling up' on professional development. At this point, it is appropriate to state that the preference was to attend a course that would be new to this celebrant, but the limited courses and awkward times and locations of the events dictated the necessity to complete a course less relevant.

Are you kidding?

A conflict of interest will arise with the proposals outlined in this submission, because it would reduce the student hours which RTOs could sell, and those organisations will exclaim 'Are you kidding?' Nevertheless, the Attorney-General's Department is not charged with providing income to third-party interests.

CONFLICT OF INTEREST

Opportunity for change

How opportune to be able to make comment on this matter, as it has been upon the mind of the author to challenge the current legislation as being unsafe when compared to other industries which also require either Commonwealth or State licensing, especially in context of fair trading legislation. Therefore, I thank the Attorney-General's Department for taking the initiative to at least consider the subject by way of the Discussion Paper. This author is also a Licensed Surveyor and Licensed Real Estate Agent, currently actively engaged in the latter. While these two professions are licensed at State level, they nevertheless demand a high degree of professional conduct and are rigorously monitored. It is worth noting that Real Estate Agents are subject to myriad laws and regulations across many Acts, and are arguably among the most regulated licensed practitioners in Australia. While regulation is complex and continually changing, real estate agents are permitted, subject to specific regulation, codes and protocols, able to operate their businesses professionally and ethically with, often, multiple layers of additional associated services, without compromising their ability to deliver professional services without those interests "*interfering with the proper fulfillment of their duties and function*" as real estate agents. It is most peculiar that a licensing authority would automatically assume that by offering and delivering an associated service at an additional cost, that a conflict of interest necessarily arises and the same demands that the licensed person or entity is incapacitated in fulfilling their duties within the scope of the laws and regulations of the profession: Yet, probably unintentionally, this is the very situation in which authorised marriage celebrants find themselves.

The current legislation implies and assumes that a celebrant offering an associated service at additional cost is incompetent and that one not so offering additional services is completely competent.

A better level of service

When performing one's professional duties, the involvement of third-party people and entities always comes with increased risk, as often the third-party does not hold the same values and ethics of the professional, and may in fact impede on their capacity to perform the duties or deliver the service in the manner intended.

Unacceptable ambiguity

Quoting a statement from page 9 of the Discussion Paper, it says:

"The conflict of interest and benefit to business provisions do not impose a blanket prohibition on conflicts of interest or benefits to business. Rather, they require the Registrar to weigh these considerations against the other factors listed in subsection 39C(2) including, for example, the person's knowledge of the law, their standing in the community and whether they will fulfil their professional development and other obligations as a marriage celebrant."

Consider the ambiguity of "*not impos[ing] a blanket prohibition*". While the lack of a blanket prohibition might allow scope for some 'acceptable' conflicts of interest, weighing of the considerations by the Registrar must surely be open to subjectivity on the part of the Registrar and provides an environment with a high risk of inconsistency and potential for conflicts of interest within the framework of regulators themselves, which is unfair to both the regulators and celebrants. The author has observed among celebrants, especially in the OPD training environment, a fear of unintentionally breaching the Act and Code by way of possible conflict of interest. It is apparent that, while the "... *conflict of interest and benefit to business provisions do not impose a blanket prohibition on conflicts of interest or benefits to business*", celebrants impose their own blanket, perhaps unnecessarily: Of course, given the inherent ambiguity of the current laws and codes, it is not difficult to understand why this is so. It is also worth noting that OPD trainers are particularly adept at overstating the conflict of interest issue to the point of undue fear, again, understandably.

Remove ambiguity and impose appropriate disclosure

The solution to this problem is to permit celebrants to offer, provide and charge for other associated services, without restriction. In amending legislation to permit this change, it is both fair and reasonable, indeed safer, for amendments to require that celebrants give a written disclosure of benefit and conflict of interest statement, which is duly signed by the couple, outlining the nature of the benefit, at the time of the couple agreeing to use the service. These

statements are required by law in real estate, in Western Australia at least, and work very effectively. This author has been actively involved in real estate practice for over thirty-two years and has never had any complaint with respect of conflict of interest, despite offering associated services, sometimes for financial benefit, sometimes to direct business to a reliable service provider who is a friend. Amended legislation would provide for penalties and financial recompense in the case of a breach being properly investigated and upheld.

'Maybe' is not sufficient reason to restrict offering an additional service

Quoting from page 9 of the Discussion Paper

"For example, a person who offers their services as both a marriage celebrant and an event planner has a strong interest in ensuring that the couple's wedding day is delivered as planned. This can conflict with the marriage celebrant's duty to refuse to solemnise a marriage if, for example, the necessary documents have not been received."

The potential exists whether, or not, a potential conflict of interest exists for a celebrant to ignore the requirements of the Act with respect to the necessary documentation. In fact, this celebrant questions why the NOIM is not required to be lodged with the Attorney General's Department as evidence of proper procedure. As the legislation stands, only the integrity of a celebrant determines the legitimacy of, for example, the NOIM. While one would hope that all celebrants possess the integrity to be faithful to the requirements, it is naïve to believe that some might be inclined to act without integrity: How would one know, after all, except a complaint be raised?

That a conflict may arise the example of the wedding planner is no less hypothetical than an unscrupulous celebrant 'fudging' the paperwork. Yes, it might happen, but perhaps there is a celebrant out there who consistently completes the NOIM outside of the requirements and never bothers checking identification documents. At the risk of sounding flippant, May Be is ever present, but she rarely makes an appearance!