



Attorney-General's Department - Celebrant Associations Meeting Minutes

Thursday 14 April 2016

1. Welcome and introductions

The chair welcomed attendees to the meeting between the Attorney-General's Department and representatives from various celebrant associations and paid his respect through an 'acknowledgement of country'.

Attendees:

Attorney-General's Department

Greg Manning, First Assistant Secretary, Civil Justice Policy and Programmes

Janine McFarlane, Acting Registrar of Marriage Celebrants, Marriage Law and Celebrants Section

Kim Williams, Principal Legal Officer, Marriage Law and Celebrants Section

Rohan Verco, Assistant Director, Marriage Law and Celebrants Section

Rachel Trow, Project Officer, Marriage Law and Celebrants Section

Associations

Brian Richardson, Australian Federation of Civil Celebrants

Anthony Burke, Australian Federation of Civil Celebrants

Dorothy Harrison, Chair, Coalition of Celebrant Associations and Marriage Celebrants Australia

Liz Pforr, Vice-Chair, Coalition of Celebrant Associations and Alliance of Celebrants Queensland

Judy Brooks, Celebrations Australia Inc

Rona Goold, (Civil Celebrants Network) and Australian Civil Marriage Celebrants Association (Riverina)

Sonia Collins, Civil Celebrations Network

Lyn Knorr, Association of Marriage Celebrants of Victoria

Guy Piper, Professional Celebrants Association

Jan Bastick, Association of Civil Marriage Celebrants of NSW and ACT

Yvonne Werner, International College of Celebrancy Association

Sally Cant, Celebrants Association of Australia

Charles Foley, Humanist Celebrant Network

Apologies:

Tamsyn Harvey, Assistant Secretary, Family Law Branch

Sarah Teasey, Registrar of Marriage Celebrants

Association of Civil Marriage Celebrants of South Australia

Australian Marriage Celebrants

Civil Celebrants Graduate Association

Greg Manning provided an overview of the department's restructure, including the re-naming of the division. He advised that the Marriage Law and Celebrants Section was now part of the Family Law Branch, headed up by Tamsyn Harvey. The associations requested a copy of the new organisational chart.

2. Action items from previous meeting

The department reported that most action items from the previous meeting have been completed. Item 2, regarding contact issues with state and territory Registries of Births, Deaths and Marriages, (BDMs), has not been actioned as yet as there has not been an AGD/ BDM meeting since the last associations meeting. Item 3 involved associations providing further feedback on proposals raised by associations at the last meeting to re-register celebrants after de-registration for failure to pay the celebrant charge – the Civil Celebrations Network CCN advised it was finalising a submission to the department on this issue. Items 6 and 8 relate to aspects of the Notice of Intended Marriage (NOIM) and the Form 15 Certificate of Marriage and are part of the ongoing forms review.

3. Cost recovery and regulator performance

The department advised there was an approximate \$35,000 over-recovery forecast for the financial year at 1 March, however as there are still four months remaining before the end of financial year the figure may change. This amount is minimal and not considered an over-recovery by accounting standards.

The Humanist Celebrant Network enquired what happened to over recovered amounts at the end of the financial year. The department advised that cost recovery revenue goes directly to the Government's consolidated revenue. The Cost Recovery Implementation Statement reports on the financial performance of the programme.

The Department provided an update on what happens at the conclusion of the first assessment period for the Regulator Performance Framework. No questions were raised about this item.

4. Annual registration charge process for 2016 – 2017

The department advised that the registration charge for 2016/2017 will remain at \$240 and that the invoice process from 2015/16 would be used for 2016/17.

The Australian Federation of Civil Celebrants (AFCC) raised the issue of celebrants not receiving invoice emails and whether the department responds to email bounce backs. The department advised that all bounce back emails are followed up. However, some email undeliverables are not always identified, e.g. where a celebrant changes their email address but does not disable the old address. The department requested that associations consider whether they could have standard wording advising celebrants to notify any changes in contact details to the department when a celebrant changes details with the association.

The department confirmed that the annual registration charge is worked out on a pro-rata basis for newly registered celebrants. For celebrants who pass the registration assessment close to June, the department will provide them with an option to defer their registration until post 1 July. This is offered so the celebrant has a choice on whether to pay \$60 for one month of registration. Generally a low number of celebrants are registered in June, to prevent them having a pro-rata invoice and annual charge invoice due around the same time. The Celebrants Association of Australia requested that the associations be provided with a copy of the determination that sets the pro-rata rates for the annual registration charge.

The Department advised that the period for deregistration will be extended from 14 days from the date of the notice to 21 days. CoCA requested that celebrants be given a 60 day notice period before being de-registered for non-payment, noting the potential difficulties to couples if their celebrant needs to be changed.

The Humanist Celebrant Network and CoCA expressed the view that the end users of the celebrants programme were couples, not the celebrants and that policy decisions should be made with couples in mind. The department advised that all stakeholders are considered in developing policy and we try to balance the interests of all relevant parties, including couples, in making these decisions. The department noted that we had significant feedback in the first year that celebrants who deliberately choose not to pay the annual registration charge but continue to practice until they were deregistered were incurring costs for the program as well as servicing clients and should be deregistered promptly after the payment date had past. All of these considerations formed part of the decision making process to extend the period to 21 days.

The department noted that it takes steps to actively inform celebrants of developments which will impact their registration (for example, failure to pay your annual charge will result in the issuing of notices of intent to de-register) so that celebrants had significant warning of the consequences of such actions and were on notice of the requirement to find couples a new celebrant.

CoCA queried processes around resignations and the annual fee. The department advised it was better for celebrants intending to resign to do so before 1 July, so that they did not incur a liability to pay the fee. The liability is accrued on 1 July and exists as a debt to the Commonwealth even if the celebrant subsequently resigns before the end of the payment date.

The Humanist Celebrant Network queried the information provided to resigning or de-registered celebrants. The department advised that the letter confirming de-registration (for whatever reason) contained

information about what a celebrant needs to do with their records and documents etc. The department also confirmed monthly notifications are sent to the BDMs about celebrants who are no longer registered.

The associations requested statistical information on de-registrations and resignations and the department advised that if the associations want particular types of statistics, beyond those already provided, that can be discussed with and provided by the department where possible. They also asked for a copy of the standard deregistration letters (both <20 years and >20 years) so that they were aware of celebrants' record keeping obligations etc.

5. Ongoing Professional Development

The representative of the International College of Celebrancy Association declared her interest as a provider of ongoing professional development (OPD). It was noted by the department that all OPD trainers were already aware of what will be discussed in relation to OPD and that there will be no further information about the OPD process raised beyond what is already known by all OPD providers. The department advised it was preparing a paper about future OPD arrangements including issues such as exemptions and alignment with the registration year (financial year), rather than calendar year. The department also provided an update about compliance with OPD this year (94% of celebrants met the requirements).

CoCA did not support a move back to a financial year and recommended that the Compulsory activity should be changed back to 1 hour unless there are legislative changes to justify longer time.

CoCA queried whether celebrants were automatically de-registered following non-completion of OPD. The department explained that disciplinary actions were based on a number of factors including a pattern of non-compliance, a failure to undertake additional OPD previously imposed, and a complete lack of engagement with the department over the non-compliance.

AFCC expressed that it was encouraging to see the rates of compliance increase, however they had some concerns over non-compliant celebrants being given numerous opportunities to complete their OPD, in particular by completing the previous years compulsory activities as the current year's elective activities. They are concerned that celebrants were being given this opportunity rather than being de-registered.

The department explained that the previous year's OPD had to be undertaken in addition to the current year's requirements. Therefore celebrants were being asked to complete ten or fifteen hours in the one calendar year (not just the compulsory units), as opposed to five hours. Additionally, the department explained that, if appealed, the Administrative Appeals Tribunal expects the department to demonstrate that it has given a celebrant every opportunity to meet their obligations.

The department agreed to consider including the available disciplinary measures, including specific references to the possibility of suspension or deregistration, in the Guidelines.

CoCA enquired if regulation 37M(6) will be removed from the Regulations as there are no longer any celebrants to whom the pre-2010 OPD regulation applied. The department advised that there were a small number of celebrants to whom it potentially applied however the department had confirmed with a number of RTOs that it was unlikely that any celebrant could still be enrolled in a course they started in 2010. Associations agreed that the Regulation was suitable to be removed without further consultation.

CoCA stated that the tone of the letter, notifying celebrants of their successful completion of OPD had improved this year, however suggested including the word 'successful' in the email subject line and reviewing some of the formatting of the letter. The department agreed to consider this feedback.

6. Communications – upcoming newsletter, fact sheets

The department advised that the Autumn 2016 edition of the Celebrant Newsletter would be sent to celebrants in late April/early May.

Associations expressed appreciation for the recently developed 'Solemnising a marriage' fact sheet/checklist for use by new celebrants or those who do not solemnise marriages often. The Humanist Celebrant Network requested that the checklist be included in the *Guidelines on the Marriage Act 1961 for Commonwealth-registered marriage celebrants* as these were also used by Ministers of Religion and the checklist would be useful for them too. The department noted that the checklist was already contained (in a slightly different form) in the Guidelines and that it could be considered for update in any future review.

CoCA raised the apparent absence of substantive content on the 'My Blue Sky' forced marriages resource website and raised concerns about the absence of consent provisions in some religious marriage ceremony texts. The department advised it will review the website to see if there was substantive content.

Celebrants Association of Australia queried the process for advising and correcting information in the Fact sheets. The department advised that the usual marriage celebrants email address could be used to bring errors to its attention.

CoCA advised that as part of their workforce development they were putting out a newsletter this year that included information on a survey they were conducting. The department agreed to consider including a reference to CoCA's survey in the upcoming AGD newsletter – CoCA would send through some suggested text and a link for the survey.

7. Revised Certificate IV in Celebrancy

The department advised that a revised Certificate IV in Celebrancy was endorsed by the then Community Services and Health Industry Skills Council (now SkillsIQ Limited) in December 2015 resulting in the four celebrancy units being consolidated into three units.

The department advised the Marriage (Celebrancy qualification or skills) Determination had been updated in March 2016 and that both versions of the Certificate IV will be accepted in the application to become a celebrant for the foreseeable future, in particular as it will ensure that celebrants who are de-registered for non-payment of the annual charge would not be required to update their qualification.

The representative from Celebrants Association of Australia, in their capacity as trainer, expressed concern about the significantly increased assessment workload of the certificate, which is likely to result in a substantial increase (to approx. \$4000) in the cost of obtaining the new certificate. It was suggested that the qualification was now a diploma level in all but name.

There was significant discussion around the process conducted by the Community Services and Health Industry Skills Council for arriving at the new Certificate IV, the levels of engagement of relevant stakeholders and the reasons underlying the more robust assessment requirements.

The department advised that, while it was responsible for determining the appropriate level of qualification that would be recognised for registration, concerns about the content of the Certificate IV would need to be raised with the industry skills council. The department confirmed that the option was open to them to require the marriage units in the new Certificate IV rather than the entire qualification if the qualification proved too burdensome for aspiring celebrants. It was noted that there are no plans to do so and would only be considered if it became obvious to the department that this is an issue.

CoCA queried the listing of Registered Training Organisations delivering the Certificate IV available on the department's website and whether they are current. The department advised that it would check the RTO information it provides on its website to ensure it links to the appropriate external website for the most current information.

8. Forms review

The department advised that the timing of consultation on the forms would be moved back as there were a number of consultations already being undertaken with associations in May-June.

AFCC enquired whether the information being collected by the Australian Bureau of Statistics (ABS) would change given that the question about children of previous marriages was contentious for some couples. The department advised that it had consulted with the ABS about the information they collected and that consideration was being given to removing certain questions, including this one.

The Humanist Celebrant Network queried what changes were being made to the parentage and gender questions on the forms. The department explained that the amended forms would give the couples the option to nominate the relationship of the parent to them and would include an option to indicate that a person had only one legal parent. The forms were being updated in compliance with current Government policy on references to gender.

CoCA queried whether celebrants and associations would be consulted on any same-sex marriage changes to the Marriage law. The department was unable to provide advice at this point about what sort of consultation the government would undertake. However noted it is possible that an amendment Bill, once introduced into Parliament, may be referred to the Senate Committee on Legal and Constitutional Affairs where members of the public usually have an opportunity to make submissions on the Bill. The department advised it will endeavour to keep associations updated on any public developments/ statements on proposed changes to the Marriage Act, including the release of a Bill.

9. Portal update

The department advised of changes to the celebrant self service portal that have been made available. These include publishing OPD history (from 2015 onwards), the inclusion of receipts for payments received, and invoices being displayed only whilst they remained unpaid. CoCA raised that the portal does not always operate on some internet browsers and requested that an advice to that effect be placed on the main page to the portal.

AFCC queried whether OPD letters will continue to be sent in hard copy if the information is uploaded into the portal. The department confirmed that hard copy letters and email will still be sent, and that the intent of the portal is to provide celebrants with ready, easy access to their information.

The department confirmed that there is potential to increase the use of the portal to cover all correspondence. This may be considered as part of future developments.

10. Marriage Regulations Review

The department advised that the Office of Parliamentary Counsel will begin drafting the revised Marriage Regulations. It is expected that the draft regulations will be made available for consultation in mid-2016, however this may be affected by the timing of the election.

CoCA enquired about purchasing bound copies of the Marriage Act and the Marriage Regulations and was advised that copies can be purchased through CanPrint and are freely available via download from the Comlaw website.

The Humanist Celebrant Network raised section 47 of the Marriage Act which provides that Ministers of Religion are not obligated to solemnise a marriage and enquired if a similar provision for marriage celebrants can be put into the Marriage Regulations as part of the review. The department advised that such a provision would need to be put into the Marriage Act, that the power to make regulations would not support such a substantive change. The department further advised that there is no positive obligation in the Marriage Act which requires a marriage celebrant to solemnise a marriage but that in refusing to solemnise a marriage, a celebrant must do so according to Commonwealth and state and territory laws, including anti-discrimination law.

The Humanist Network raised the situation of a celebrant who was sued in various courts and tribunals for not solemnising a marriage. They expressed that the Marriage Act should provide safeguards for celebrants who do not wish to solemnise same-sex marriages. CoCA suggested that the safeguard could be extended to existing celebrants who have signed onto the existing marriage regime but not to celebrants who become registered after any changes to the Marriage Act.

The department advised that same-sex marriage was a matter for the Government and that the Government had made no public statement on whether it proposed to amend the Marriage Act to allow marriage celebrants to exercise a conscientious objection to same-sex marriage.

11. Conflict of Interest review

The Department confirmed that a conflict of interest review paper was being finalised and we anticipate that it would be released for celebrant associations and all celebrants to provide comment on in May or June this year. A brief overview of the four options that have been developed as possible options was provided.

Celebrants Association Australia queried whether option 4 (removing conflict of interest and benefit to business altogether) would be balanced with the Code of Practice and best practice recommendations in the *Guidelines on the Marriage Act 1961 for Commonwealth-registered marriage celebrants*.

The department advised that all suggestions would be considered and that, as any changes to current conflict of interest/ benefit to business policy would affect all celebrants, consultation would be undertaken with all stakeholders, not just celebrant associations.

12. Workforce development

This agenda item was delivered by Yvonne Werner on behalf of CoCA. CoCA are currently considering how to plan for future workforce development, which meets the needs of the public and provides a career path for marriage celebrants.

Ms Werner reported that the removal of the cap on the number of registered celebrants has resulted in a significant increase in the number of celebrants with some celebrants experiencing a drop in income achievable from a celebrancy business. It was suggested that with fewer opportunities to solemnise marriages that there was a loss of expertise and experience and more queries were being directed to the department, BDMs and associations.

Celebrants and associations see themselves as stakeholders in the Marriage Act and want to have a say in the future development of the Marriage Act. Issues of particular interest to associations are statistics around when celebrants are registered, how long they are registered for and reasons why celebrants are resigning.

The department provided some information around current known statistics. 814 celebrants had been de-registered in the last eighteen months, either by resignation or de-registration by the Registrar. The longest time registered of those celebrants was 42 years; the shortest time was two months. The department advised that within the bounds of what was technologically possible, there is a range of statistics that it could provide on marriage celebrants. If associations have interest in particular statistical information, they can advise the department and it will see what information it can provide.

CoCA queried whether the department would consider implementing a cap on the number of celebrants. The department advised that the current Government policy is de-regulation. Currently, any regulation which imposes a cost must be offset somewhere else in the department. The current policy starting point is that no new regulation should be imposed, therefore the department would not set minimum fees celebrants could charge customers, or impose caps on the number of registered celebrants.

CoCA advised that the overall number of celebrants meant some celebrants may not be able to make a living. Changes to the programme in 2002 were to achieve higher standards for training and registration, which would naturally result in a levelling of the overall number of celebrants, yet this was not happening. In CoCA's view, the government has a role in ensuring the qualifications for the broader role of civil celebrant was not restrained by the department's view of what was adequate for authorisation as a marriage celebrant. CoCA pointed to section 31 of the Marriage Act, which permits a state or territory officer to refuse registration of a Minister of Religion if there are already sufficient numbers in a particular locality.

The department advised that the Marriage Act does currently impose some restrictions on a person's entry as a marriage celebrant by requiring appropriate skills through the qualification requirements and ensuring aspiring marriage celebrants are fit and proper. These restrictions are for the purpose of ensuring that marriage celebrants perform to a high standard and it is not appropriate to use these barriers in an attempt to restrict competition. The application fee is reflective of the actual cost of processing an application, it is not a tool to be used for restricting application numbers. If the cost of processing an application reduces then so would the application fee. The Department also noted that section 31 only applied to ministers of religion of a particular religious denomination in a locality, not the total number of ministers across all recognised denominations in that area.

The Humanist Celebrant Network queried whether additional information could be included on the website about the costs of becoming qualified and getting registered and the likelihood of recouping those costs through celebrancy work. The department advised it would review the information on the website.

13. Update on complaints, Administrative Appeals Tribunal cases and prosecutions

The department advised that there are 20 active complaints against celebrants on hand. Additionally, six complaints are on hold pending investigation by the Department of Immigration and Border Protection. There were five AAT appeals resulting from the last annual registration charge process with one matter remaining on hand. There are no current prosecutions.

The department advised that DIBP have an immigration fraud hotline if celebrants were concerned about contrived marriages. The department agreed it would seek information from DIBP on whether they had any preferred approach or standard words that celebrants should use when concerned about the purpose of the marriage and provide the fraud hotline number.

14. Other business

The International College of Celebrancy Associations enquired about the Chanel 9 television show 'Marriage at First Sight' and what action the department had taken against the show.

The department explained that it had met with Chanel 9 prior to the first season going to air and was given assurances that it was clearly explained to couples and those witnessing the ceremonies that the 'marriages' were commitment ceremonies and not legal marriages. The department has no control of the way in which the show was edited and had no regulatory power to force Chanel 9 to edit the show in a particular way.

CoCA expressed the view that the show "purports" to marry people, a breach of section 101 of the Marriage Act. The department explained that section 101 required that a celebrant intend to marry/ purport to marry people in a legally binding marriage and the show was not doing that. The Department advised that they were comfortable that the show was not breaching the Marriage Act. The Department noted that the critical issue was what took place at the actual ceremony, not the edited version as shown later on TV.

The department addressed the issue of celebrants who, at the request of couples, were asking witnesses present at a solemnisation to place their hands over their ears when the monitum was being read out. The department recommends that celebrants should not be doing this. Item 5(g) of the Code of Practice requires a marriage celebrant to make efforts to ensure that the marriage ceremony is audible to all those present. The Departments view is that asking people to put their hands over their ears for part of the ceremony does not meet that obligation.

15. Action Items

1. AGD to provide new organisational structure document to associations
2. CCN to finalise paper on celebrants re-registering after being deregistered for failure to pay annual registration charge
3. Associations to advise their members to contact AGD if the member has changed contact details with the association
4. AGD to provide copy of the determination which sets out the pro-rata fee structure for the annual celebrant registration charge
5. AGD to send copy of template deregistration letters to associations
6. AGD to review content of letter advising of successful OPD completion
7. AGD to consider specifying possible disciplinary measures available where celebrants do not meet their OPD obligations within the Guidelines
8. AGD to consider including reference in Autumn newsletter to CoCA's survey
9. AGD to consider whether the 'Solemnising a Marriage' fact sheet/checklist should be sent out to BDMs/RDs
10. AGD to check level of content on My Blue Sky website
11. AGD to check the information about RTOs delivering the Certificate IV in celebrancy it provides on its website.
12. AGD to consider whether it should provide advice on its portal login page that the portal may not work on all internet web browsers
13. AGD to review information on website provided for potential applicants around costs of obtaining and maintaining registration and income potential
14. AGD to provide information on DIPB Immigration Fraud hotline and enquire with DIBP about possible standard words for dealing with suspected contrived marriages

Next Meeting

Proposed to be October 2016 [TBC].