



Marriage Celebrants Programme

September 2017

Guidelines on conflict of interest and benefit to a business

What is the purpose of these guidelines?

Whether someone has a conflict of interest or a benefit to business are factors to be considered when assessing the person's entitlement to be a Commonwealth-registered marriage celebrant (*Marriage Act 1961* (Cth), paragraphs 39C(2)(e) and (f)).

The existence of a conflict of interest or benefit to business does not necessarily mean a person is not entitled to be registered as a marriage celebrant. Rather, these are factors the Registrar must weigh against the other considerations in subsection 39C(2), when determining the person's suitability for registration. The existence of a single factor is unlikely on its own to support a conclusion that someone is not a fit and proper person.

This paper aims to provide guidance to applicants for registration, and to Commonwealth-registered celebrants, about how to manage potential conflicts of interest, and the kinds of benefits to business that the Registrar considers would not raise concerns.

These guidelines are also intended to assist celebrants to identify, disclose and avoid conflicts of interest and benefits to business that may be of concern to the Registrar.

Principles of administrative law require that policies used to assist the Registrar in exercising his/her discretion under section 39C need to be applied flexibly. The Registrar must always have regard to the individual merits of the particular case being considered when applying this policy.

What is a conflict of interest/benefit to a business?

A **conflict of interest** is a situation where your interests or activities would make it difficult for you to fulfil your legal duties and functions as a marriage celebrant in good faith.

A **benefit to a business** is a situation where your registration as a marriage celebrant is likely to result in a benefit to another business you own, control or carry out.

How can I manage a potential conflict of interest/benefit to business situation?

- Provide couples with a choice about whether or not to purchase additional services.
- Declare your business and other interests to the couple (this may include declaring any commissions you are receiving for referring couples to other businesses).
- Agree up front with couples the arrangements to be followed if a legal impediment meant the marriage could not be solemnised on the planned wedding day. This could include, for example:
 - clearly indicating in your quote or contract that the ceremony cannot proceed, and the couple's fees may be forfeited (including fees for additional services), if legal obligations are not satisfied
 - offering to perform a commitment ceremony, with the legal marriage solemnised at a later date, perhaps at additional cost.
- If you wish to work as an in-house celebrant for a venue, you should discuss this with the Registrar of Marriage Celebrants first. The Registrar will need to be satisfied that appropriate arrangements are in place between the celebrant and the employer to manage any potential conflict of interest arising out of the employer-employee relationship.

What can I do under this policy?

- Marriage celebrants are permitted to offer additional services or products to the couples they are marrying, at an additional cost.
- Celebrants are required, under the Code of Practice, to respect a couple's wishes and to assist a couple to choose a marriage ceremony that meets their needs and preferences.
- A celebrant should not limit their celebrancy services in such a way that couples are not able to tailor their ceremony or package to their needs, or choose their own suppliers if they wish to do so.
- Marriage celebrants should allow couples to choose which services they wish to purchase, or to refuse additional services.
- Some activities are restricted by other regulatory rules. For example, if a celebrant is also a migration agent, they should not provide migration assistance to the couples they marry, as it is a breach of the Migration Agents Code of Conduct for a migration agent to accept a person as a client if they have or intend to act as the person's marriage celebrant.

Summary of conflict of interest and benefit to business guidelines

CONFLICT OF INTEREST	
GENERALLY ACCEPTABLE*	
Solemnising marriages of family members and friends.	
Solemnising marriages of couples to whom you are providing additional services for a fee, so long as you manage any potential conflict of interest, for example by declaring your interests, offering couples a choice on which services they purchase, and clearly indicating your cancellation terms and conditions to couples (eg in your quote or contract).	
GENERALLY NOT ACCEPTABLE**	
Solemnising marriages for couples to whom you have provided or will provide migration assistance, consistent with the Migration Agents Registration Authority (MARA) Code of Conduct for Registered Migration Agents.	
Solemnising marriages in your capacity as an employee of a business (for example, as an in-house celebrant) without satisfying the Registrar of the arrangements you have in place to effectively manage any conflict of interest	
BENEFIT TO BUSINESS	
GENERALLY ACCEPTABLE*	
In addition to your celebrancy fee, offering to and charging couples for other services, including, but not limited to:	
<ul style="list-style-type: none"> • accessories for the ceremony (sand, jars, ribbons, chairs, runners, arches etc) • fees for same-day lodgement of paperwork • venue hire • MC or DJ services • wedding planning • photography 	<ul style="list-style-type: none"> • hair and make-up • catering • flowers • dress hire • car hire • pre-marriage counselling
Working in partnership with your spouse or others to provide marriage-related services.	
GENERALLY NOT ACCEPTABLE**	
Offering celebrancy services only where your other business would benefit. For example, by not allowing couples a choice to refuse particular goods/services offered by the celebrant	

* 'Generally acceptable' means that performing these activities generally will not mean that a person is not a fit and proper person to be a marriage celebrant under section 39C of the Act.

** 'Generally unacceptable' means that performing these activities generally will mean that a person is not a fit and proper person to be a marriage celebrant under section 39C of the Act.

As stated above, each case must be assessed on its individual merits.

Further information

If you require further guidance please contact the **Marriage Law and Celebrants Section** of the Commonwealth Attorney-General's Department:

Email: marriagecelebrantssection@ag.gov.au

Post: Marriage Law and Celebrants Section
 Attorney-General's Department
 3–5 National Circuit
 BARTON ACT 2600