

# **MARRIAGE CELEBRANTS PROGRAMME**

## **REGULATOR PERFORMANCE FRAMEWORK**

**1 JULY 2016 – 30 JUNE 2017**

The Attorney-General's Department (department) registers and regulates marriage celebrants under Part IV, Division 1, Subdivision C of the *Marriage Act 1961* (the Marriage Act) through the Commonwealth Marriage Celebrants Programme (the Programme). As at 30 June 2017, there were 8,641 marriage celebrants being regulated under the Programme, which remains largely consistent with previous years.

The Australian Government has committed to reducing the cost of unnecessary or inefficient regulation imposed on individuals, businesses and community organisations, such as marriage celebrants, by encouraging regulators to adopt consistent, risk-based approaches to administering regulation. To support regulators to achieve positive and lasting cultural change, the Australian Government has developed the Regulator Performance Framework (the Framework) which consists of six outcomes-based key performance indicators (KPIs).

The KPIs cover areas where the Programme could look to reduce the administrative costs to marriage celebrants of complying with regulation and managing their registration. The KPIs require the department to measure how the Programme is reducing administrative overheads for celebrants, ensuring communication is targeted and clear, using risk-based and proportionate approaches to enforcement, ensuring monitoring is efficient and coordinated, facilitating transparency, and identifying ways of adopting continuous improvement.

Each financial year, the department uses performance measures to track progress of the Programme against the six KPIs of the Framework. The Framework requires the department to publish a self-assessment report that is externally validated by celebrant associations and explains how the department is working to ensure the Programme is administered fairly, efficiently and effectively. The self-assessment process is also a useful tool for identifying future opportunities for managing the Programme with the minimum impact necessary to achieve the objective of ensuring that professional, knowledgeable and legally correct services are delivered to marrying couples.

The Programme's self-assessment of performance under the Framework for 2016-17 provides both qualitative and quantitative outcomes, and includes case studies for each of the six KPIs. The report outlines relevant activities that have been undertaken throughout 2016-17 and identifies opportunities for further progress against achieving the objectives of the Framework. This report, a self-assessment of the Programme against the Framework by the department, has been externally validated by celebrant associations, will be published on the department's [website](#).

## KPI ONE

KPI ONE	MEASURES OF GOOD REGULATORY PERFORMANCE
Regulators do not unnecessarily impede the efficient operation of regulated entities	<ol style="list-style-type: none"> <li>1. Regular consultations with marriage celebrants; Births Deaths and Marriage Registries; and training providers to ensure that the impacts of policies and legislative change are minimised.</li> <li>2. Regular environmental scanning and the development of communications and training material to address emerging issues.</li> <li>3. Consultation with regulated entities on proposed significant/regulatory changes.</li> </ol>
<b>SELF-ASSESSMENT AND SUPPORTING EVIDENCE</b>	
<p>AGD considers that the Programme has met this KPI for 2016-17, based on the following:</p> <ul style="list-style-type: none"> <li>• The Programme has held two stakeholder meetings with celebrant associations in the reporting period, to discuss the operation of the Programme. Meetings were held in October 2016 and May 2017 and matters considered included: the annual registration charge process; review of the Marriage Regulations; and, reviews of policies on ongoing professional development and conflict of interest and benefit to business. An update was provided at the May 2017 meeting on the review of marriage forms and drafts of the revised notice of intended marriage, official certificate of marriage, declaration of no legal impediment, and faithful performance by interpreters.</li> </ul> <p>To keep celebrant associations up-date-with particular issues of relevance, the Programme occasionally organises special presentations at these meetings. In October 2016, a presentation was given by Officers from the Department of Immigration and Border Protection who explained changes being made to partner and prospective marriage visas that aim to reduce family violence.</p> <ul style="list-style-type: none"> <li>• In April 2017, the department facilitated a teleconference with state and territory registries of Births, Deaths and Marriages (BDMs) about new draft marriage forms. Two registries participated in a discussion of the draft forms prior to their dissemination to celebrant associations for comment. A further teleconference was scheduled to obtain feedback on the preparation of draft regulations.</li> </ul>	
<p><b>Case Study:</b></p> <p>AGD holds teleconferences with BDMs. In September 2016, a teleconference was held with all state and territory registries, covering a range of issues including, the ‘place of birth’ information recorded on foreign passports and the use of electronic documentation when solemnising and registering marriages. These discussions are valuable in supporting the efficient operation of regulated entities.</p>	

## KPI TWO

KPI TWO	MEASURES OF GOOD REGULATORY PERFORMANCE
Communication with regulated entities is clear, targeted and effective	<ol style="list-style-type: none"> <li>1. Provision of communications materials and maintenance of an up-to-date website ensuring that celebrants have ready access to current information to assist them to properly carry out their role.</li> <li>2. Provision of access to a telephone and email service which provides celebrants with clarification and guidance on their role and responsibilities.</li> <li>3. Consultation with regulated entities on proposed significant / regulatory changes.</li> </ol>
<b>SELF-ASSESSMENT AND SUPPORTING EVIDENCE</b>	
<p>AGD considers that the Programme has met this KPI for 2016-17, based on the following:</p> <ul style="list-style-type: none"> <li>• In November 2016, the Programme surveyed all marriage celebrants on the Ongoing Professional Development (OPD) requirements and the Guidelines on conflict of interest and benefit to business for Commonwealth-registered marriage celebrants. The survey ran from 25 November 2016 – 3 February 2017. The department consulted with marriage celebrants, registered training organisations, celebrant representatives and other interested stakeholders about these two issues. The department published the results of the OPD survey in April 2017 and the submissions to that review in June 2017. The survey results and submissions assisted the department to finalise its position on OPD.</li> <li>• In November 2016, a discussion paper was released on the conflict of interest and benefit to business provisions in the Marriage Act as they relate to Commonwealth-registered marriage celebrants. Stakeholders provided views by completing an online survey and/or by making a submission. The Programme received 2,940 survey responses and 62 submissions.</li> <li>• The Programme has held two stakeholder meetings in 2016-17. Immediately following these meetings the Programme finalised the minutes and agreed action items with each stakeholder. The minutes of each celebrant association meeting have been published on the AGD website for the information of all marriage celebrants. In addition, the Programme maintains regular contact with other key stakeholders such as the AGD sections responsible for identity security and people smuggling and trafficking, and other external stakeholders including the Department of Immigration and Border Protection, Department of Foreign Affairs and Trade, Australian Skills Quality Authority, Australian Federal Police and Commonwealth Department of Public Prosecutions.</li> <li>• In addition to meetings with celebrant associations, the Programme publishes a newsletter, Marriage Celebrant Matters, for all marriage celebrants to raise awareness about emerging issues. In 2016-17 these newsletters (autumn/winter and spring/summer) covered a wide range of current and relevant topics including, solemnising the marriage of a minor, backdating a notice of intended marriage and issues for marriage celebrants about commercial disputes. In July 2016, the Programme updated the Guidelines for marriage celebrants seeking an exemption from OPD requirements.</li> </ul>	

## KPI TWO

The Guideline clarifies what constitutes exceptional circumstances for the purpose of seeking an exemption from OPD. MLCS also responded to a request for guidance on the use of an expired passport to determine date and place of birth and to verify the identity of an individual. This guidance was published in the bi-annual newsletter.

- The Programme also circulated a communication around the payment charge. In preparation for the 2017-18 annual registration charge the department, in June 2017, produced and disseminated a fact sheet to all celebrants outlining a step-by-step process for each payment option.
- The Programme provides marriage celebrants with an enquiries service which provides access to a telephone service that is answered from 10:00am – 1:00pm and 2:00pm – 5:00pm, Monday to Friday, and a dedicated email address. The telephone service received 5,141 telephone enquiries over the reporting period. Marriage celebrants can also use the enquiries service to contact the Programme for clarification about their role, responsibilities or registration.
- During 2016-17, the Programme responded to approximately 14,769 written enquiries. Of the overall total of 19,910 enquiries, 7,000 of these were received in July, August and September 2016 which corresponds to the timing of the annual celebrant registration process.

### **Case Study:**

The *Happily Ever...Before and After* brochure published by the Programme is an 'approved form' under the Marriage Act and aims to assist marrying couples understand the process of marrying in Australia, some of the legal consequences of marriage, and how couples can access support services. In accordance with the Australian Government's Multicultural Access and Equity Policy, the Programme published thirteen additional languages (translation editions) of the brochure on the AGD website in early 2017. In addition to the fourteen translations already published (Spanish, Tagalog, Nepali, Japanese, Vietnamese, Greek, Chinese (simplified and traditional script), Hindi, Korean, Indonesian, Thai, Italian, Arabic), the brochure is now available in the following languages: Croatian, Serbian, Khmer, Macedonian, Turkish, Punjabi, Dari, Sinhalese, Bengali (Bangla), Russian, Urdu, Ukrainian and Persian (Farsi).

## KPI THREE

KPI THREE	MEASURES OF GOOD REGULATORY PERFORMANCE
<p>Actions undertaken by regulators are proportionate to the regulatory risk being managed</p>	<ol style="list-style-type: none"> <li>1. Compliance activities that are targeted and use a mix of self-reporting and information available on the database to identify areas of actual and potential non-compliance.</li> <li>2. Processing of complaints in accordance with natural justice principles and application of a proportionate response when considering appropriate action.</li> </ol>
<b>SELF-ASSESSMENT AND SUPPORTING EVIDENCE</b>	
<p>AGD considers that the Programme has met this KPI for 2016-17, based on the following:</p> <ul style="list-style-type: none"> <li>• Clear guidance is provided to marriage celebrants about their obligations and the mechanisms available for the Registrar of Marriage Celebrants to review their performance, including through professional development monitoring, performance monitoring, the complaints framework and the disciplinary measures that can be imposed by the Registrar for failure to meet their obligations. In the 2016 calendar year, 95% of marriage celebrants met their professional development requirements.</li> </ul> <p>As a result of monitoring compliance with professional development, in 2016-17, 245 celebrants were cautioned, 37 were required to complete additional professional development, 18 were suspended and four were deregistered. All celebrants who were suspended or deregistered were advised about their right to seek a review of the decision under section 39I of the <i>Marriage Act 1961</i>.</p> <ul style="list-style-type: none"> <li>• Five applications for review were lodged with the AAT during 2016-17 in relation to deregistration for non-payment of the annual celebrant registration charge. The Registrar’s decision to deregister was upheld in all cases – three matters were withdrawn and in two the Registrar’s decision was affirmed. No AAT applications were made in relation to other disciplinary measures imposed by the Registrar in the reporting period, demonstrating the proportionate response taken to regulation by the Programme.</li> <li>• The Programme continues to look for ways to reduce the burden of regulation on marriage celebrants and, where possible, to provide professional and timely marriage services to the Australian public. This includes monitoring alignment between the Programme’s expenses and revenue and ensuring that fees and charges remain as low as possible in line with the government’s cost recovery framework. Fees and charges remained the same for 2016-17, for the third consecutive year.</li> </ul>	
<p><b>Case Study:</b></p> <p>During 2016-17, the Programme resolved 30 complaints relating to marriage celebrants. All complaints were dealt with in accordance with the principles of natural justice, and disciplinary measures were issued proportionately, taking into account the celebrant’s history, any remedial actions undertaken by the celebrant, and the seriousness of the breach of their obligations. As a result, nine disciplinary measures were imposed on celebrants, with eight celebrants receiving a caution and one celebrant receiving a suspension.</p>	

## KPI FOUR

KPI FOUR	MEASURES OF GOOD REGULATORY PERFORMANCE
Compliance and monitoring approaches are streamlined and coordinated	<ol style="list-style-type: none"> <li>1. Continuous review of IT systems to improve ease of compliance with requirements.</li> <li>2. Provision to celebrants of an online portal that allows them to manage their own information. The portal also provides a single point for celebrants to pay their annual registration charge.</li> <li>3. Maintenance of a case management system to ensure that accurate records are maintained, stored and information is re-used.</li> </ol>
SELF-ASSESSMENT AND SUPPORTING EVIDENCE	
<p>AGD considers that the Programme has met this KPI for 2016-17, based on the following:</p> <ul style="list-style-type: none"> <li>• Work commenced by the department in 2015-16 on moving the marriage celebrants database (Marcel) to an updated platform, was continued through and completed in 2016-17. These improvements to the way the system stores information and manages the way in which bulk communications can be generated and distributed to celebrants, has ensured appropriate ongoing system support. This is consistent with the Australian Government’s revised National Digital Economy Strategy released in 2013, in that the department continues to encourage marriage celebrants to use a self-service portal to manage their registration online, including applications for exemption, changes to details, reviewing OPD history and payments of fees and charges.</li> <li>• Under the Programme’s integrated framework for complaints and performance reviews of celebrants, the department conducted one performance review in 2016-17. This process is coordinated with the complaints framework so that the complaints and compliance teams engage in regular communication and cross-refer matters where appropriate. Both the complaints and performance review policies ensure that marriage celebrants will have an opportunity to put forward their view about any information the Registrar receives, even if the Registrar is not taking any further action in relation to the information. This will ensure that the celebrant’s statement about the circumstance is on record if it is considered in any future performance review.</li> </ul>	
<p><b>Case Study:</b></p> <p>Early each calendar year, professional development training providers advise the section of which marriage celebrants have completed their OPD for the previous calendar year. The section contacts celebrants where it appears they have not completed their OPD and offers them an opportunity to explain the circumstances before the Registrar of Marriage Celebrants decides whether to issue a disciplinary measure. In the 2016 calendar year, 95% of marriage celebrants met their OPD requirement. The Programme targeted resources on the remaining celebrants who had not met their legal obligations. The Programme increased the efficiency of recording OPD data by using analysis tools to validate the data, provided by training providers, to ensure the most accurate information was uploaded against celebrant records. This reduced the error rate and dramatically decreased the number of calls by celebrants to the telephone service.</p>	

## KPI FIVE

KPI FIVE	MEASURES OF GOOD REGULATORY PERFORMANCE
Regulators are open and transparent in their dealings with regulated entities	<ol style="list-style-type: none"> <li>1. Provision of access to a telephone and email service for celebrants to contact the department for clarification and guidance about their role and responsibilities.</li> <li>2. Processing of applications from prospective celebrants within legislated timeframes.</li> <li>3. Provision of information about the performance of the Programme in the cost recovery implementation statement (CRIS) and in regular stakeholder meetings and consultations.</li> </ol>
<b>SELF-ASSESSMENT AND SUPPORTING EVIDENCE</b>	
<p>AGD considers that the Programme has met this KPI for 2016-17, based on the following:</p> <ul style="list-style-type: none"> <li>• A telephone help desk and email service was maintained throughout 2016-17 – see response to KPI two above. The Programme provides transparency to all marriage celebrants through regular reporting to celebrant associations of statistics, such as new registrations, de-registrations and enforcement actions taken.</li> <li>• During 2016-17, the Programme received 745 applications for registration as a marriage celebrant, and registered 709 marriage celebrants. The average time taken to process applications of two months remains consistent with previous years, and is well within the three month timeframe required by subsection 39J(2) of the Marriage Act.</li> <li>• The third full year of cost recovery has been completed. In October 2016, AGD published the Cost Recovery Implementation Statement (CRIS) for the Programme on the department’s website in accordance with the expected timeframes for disclosure under the Australian Government’s Cost Recovery Guidelines.</li> </ul> <p>The CRIS is a continuous disclosure tool that contains detailed information about the financial performance of the Programme and explains what activities the Programme undertakes and applies cost recovered funds towards. At the time of writing, the 2017-18 CRIS is being updated with financial and performance information for 2016-17 and forward year estimates taking into account the projected costs and revenue for the Programme.</p> <p>The Programme has a policy of providing a regular update to stakeholders at biannual celebrant association meetings on the current financial status of the Programme throughout the year, and is available to answer any questions or concerns raised by stakeholders.</p> <ul style="list-style-type: none"> <li>• The Programme continues to ensure that marriage celebrants are aware of the consequences of not paying their celebrant registration charge by the due date. Marriage celebrants are required to pay the annual fee during the months of July – September each year. In July 2016, the Programme sent invoices to approximately 8,640 marriage celebrants, reconciling their payments against their record and sent follow-up reminders to celebrants who have not paid. The consequence of not paying by the legislated ‘charge payment day’ (60 days after the invoice is issued) is deregistration. Intensive follow-up with celebrants included emails and text message reminders in the period leading up to the charge payment date.</li> </ul> <p>The objective of the follow-up, is to ensure that any celebrant who wants to remain registered pays by the charge payment day. While this is an administratively intensive two month period, the</p>	

## KPI FIVE

Programme considers that due to the non-discretionary nature of the legislation and consequences of non-payment, a robust and intensive process is justified. This also minimises the likelihood of appeals to the AAT.

### **Case Study:**

There was a significant reduction in the number of AAT matters lodged in relation to deregistration for non-payment of the annual charge from fourteen in 2014 to five in 2016-17. This reduction in numbers reflects substantial changes to the celebrant registration charge invoicing process which contributed to a higher number of celebrants being aware of, and complying with, the legislated timeframes for payment of the charge. Work also commenced in the reporting period on a fact sheet for the annual celebrant registration charge which will provide celebrants with information on the amount, the due date for payment (the charge payment date) and consequences of not paying by the charge payment date.

## KPI SIX

KPI SIX	MEASURES OF GOOD REGULATORY PERFORMANCE
Regulators actively contribute to the continuous improvement of regulatory frameworks	<ol style="list-style-type: none"> <li>1. Consideration of input received through consultations with stakeholders on the ongoing management of the Programme and possible future reforms or changes to the Programme.</li> <li>2. Timely provision of documents, agendas and meeting notes to facilitate flow of information and feedback.</li> <li>3. Consultation with other government agencies.</li> </ol>
<b>SELF-ASSESSMENT AND SUPPORTING EVIDENCE</b>	
<p>AGD considers that the Programme has met this KPI for 2016-17, based on the following:</p> <ul style="list-style-type: none"> <li>• In early 2017, the Programme released a referee report template to assist applicants submit complete and correct reports. The provision of unsigned and undated reports, and reports that failed to address required criteria impacted on application processing times as evaluators, were required to go back to applicants for further information. Since the template was released, the majority of new applications have been lodged using the new template requiring less follow up.</li> <li>• The Programme has introduced a new informed consent form which applicants must complete to authorise national police history checks. The new form pre-populates three existing fields which caused some confusion for applicants. The new form also provides for the Programme to quality assure applicant identity documents through the Australian Government’s Document Verification Service (DVS). Utilising the DVS removes the requirement for applicants to submit certified identity documents when using Australian passports, state or territory driver’s licences, or state or territory birth certificates.</li> <li>• The department consulted with relevant stakeholders on improvements that could be made to the Marriage Regulations 1963. The consultation on regulations related to the Programme’s future operation.</li> </ul>	
<p><b>Case Study:</b></p> <p>The Programme has revised the way it prepares celebrant registration letters. Previously each letter was customised and individually attached to an email to each newly registered celebrant. In early 2017, a new automated process was introduced, significantly reducing the amount of time to complete each registration run. The previous process took approximately two hours to complete and the new automated process takes approximately 10 minutes.</p>	

## Looking Ahead

### LEARNINGS AND PRIORITIES FOR 2017-18

During 2017-18, the Programme intends to maintain its process of continual improvement and refinement to identify further efficiencies in the operation of the Programme.

The Programme will continue to look for ways to improve the quality, efficiency and effectiveness of consultations between the department, professional associations and marriage celebrants more generally. Efficiencies will be identified through effective consultation with professional associations in both the development of materials and analysis of celebrant enquiries (with the aim of reducing the number of enquiries).

In addition, the Programme will examine the way the overall programme is monitored to find ways to reduce the regulatory burden on celebrants – this will include a review of the ongoing professional development compliance process and the application form for registration as a Commonwealth-registered marriage celebrant (including looking at the evidentiary requirements to establish whether an applicant is a “fit and proper person”).

The review of the marriage regulations, which is the first major review in over 40 years, will simplify and modernise the language of these regulations so that it is more easily understood by all authorised celebrants, other stakeholders such as BDMs and the general public.

The completion of a review of the marriage forms should contribute to a reduction in the costs of compliance by marriage celebrants by making the forms more streamlined, intuitive and clearer. Obsolete fields on the forms will be considered for removal, thereby reducing the number of requests for information that celebrants will need to make of their clients and requests to the Programme for clarification. Once feedback has been received on the forms from celebrant associations, AGD will seek to finalise for the Attorney-General’s approval.

2017-18 will also see the Programme continue to work on reviewing and upgrading the marriage celebrant database, Marcel, to enhance the administrative efficiency and effectiveness of the Programme.