



Attorney-General's Department and Marriage Celebrant Associations Meeting Minutes Wednesday, 11 October 2017

1. Welcome

Attendees:

Attorney General's Department

Cameron Gifford, Civil Justice Policy and Programmes Division

Ashleigh Saint, Family Law Branch

Bridget Quayle, Marriage Law and Celebrants Section

Julie Taylor, Marriage Law and Celebrants Section

Rohan Verco, Marriage Law and Celebrants Section

Angela Tsongas, Marriage Law and Celebrants Section

Kerrin Stewart, Marriage Law and Celebrants Section

Sarah Christensen, Marriage Law and Celebrants Section

Lucy Stockwell, Marriage Law and Celebrants Section

Hala Botros, Marriage Law and Celebrants Section

Associations:

Dorothy Harrison, Coalition of Celebrant Associations and Marriage Celebrants Australia

Liz Pforr, Coalition of Celebrant Associations and Alliance of Celebrants Queensland

Judy Brooks, Celebrants Australia Inc

Rona Goold, Civil Celebrations Network

Sonia Collins, Civil Celebrations Network

Yvonne Werner, International College of Celebrancy

Marianne Macartney, Association of Marriage Celebrants of Victoria

Karen Rose, Alliance of Celebrants Queensland

Guy Piper, Professional Celebrants Association

John O’Carrigan, Association of Civil Marriage Celebrants of NSW and ACT

Marion Way, Riverina Marriage Celebrants Association

Judy Van Der Vegt, Riverina Marriage Celebrants Association

Anthony Burke, Australian Federation of Civil Celebrants

Irene Harrington, Australian Federation of Civil Celebrants

Sally Cant, Celebrants Association of Australia

Charles Foley, Humanist Celebrant Network

Apologies:

Association of Civil Marriage Celebrants of South Australia Inc.

Australian Marriage Celebrants Inc

2. Action items from previous meeting

The department provided an update on the progress of action items from the last meeting.

An association advised that in its view the guidance included in the Autumn/Winter edition of *Marriage Celebrant Matters* did not fully address concerns about: when electronic signatures can be used on marriage documents; and clarifying the use of electronic media in transferring NOIMs and obtaining shortening of times in a declared disaster situation (Action Items 10 & 11). Associations also expressed concerns that general guidance for celebrants prepared in response to an association request is published before associations have an opportunity to comment on the proposed guidance. The department advised it could only provide high level guidance and that it cannot direct registries of births, deaths and marriages (BDMs) in accepting marriage documentation or shortening of time. The department agreed to follow up on this issue with BDMs.

Action Item: Department to discuss with BDMs with regard to accepting electronic signatures on marriage documents and shortening of time for decisions in declared disaster situations.

3. Timing and frequency of future meetings

The department invited suggestions from associations on how the department and associations could most effectively engage in the future. Whilst previous meetings have been face to face, the department noted that other options, such as teleconferences, are available and may be a more efficient use of resources.

Associations noted that presentations from external stakeholders, such as the Department of Immigration and Border Protection and the Department of Finance, have been provided on occasion at previous meetings. Associations advised that these presentations were of significant value, especially on issues of which associations were not currently aware. The department undertook to consider opportunities for external presentations at future meetings, if associations raise areas of interest with the department.

Some associations suggested that future meetings would benefit if time can be set aside in the agenda to workshop specific issues. Associations also suggested that it may be beneficial if BDMs could provide representation at meetings.

Associations expressed concerns regarding the time provided by the department to comment on issues disseminated for consultation, and how input / feedback from associations is dealt with by the department. The department noted that it values and considers all feedback provided by associations.

Action Item: Associations to provide their views to the department on how future engagement could look.

4. General update from MLCS

Annual Registration Charge 2017

The department advised that the annual registration charge process for 2017 was coming to a close, with approximately 180 celebrants to be deregistered for failure to pay the annual registration charge.

Cost Recovery Implementation Statement (CRIS) and Regulatory Performance Framework Self-Assessment report (Self-Assessment Report)

The department advised that both the CRIS and the Self-Assessment Report are also nearing completion. The department advised that associations will be notified when the CRIS has been published; and an email will be sent shortly seeking feedback on the Self-Assessment Report.

Action Item: Department to advise associations when the CRIS is published.

Ongoing Professional Development (OPD)

The department advised that it has finalised its policy on OPD. OPD will stay within the calendar year; will remain at 5 hours per year; and compulsory activities will only be provided when required. The department confirmed that there will be a compulsory activity in 2018.

Associations expressed concern that the OPD policy was finalised without providing associations with an advanced copy of the policy before it was made final.

Associations also expressed concerns that association conferences will only count for a maximum of three hours OPD, and that in years without a compulsory activity, associations may have difficulty attracting attendees as celebrants cannot complete their entire OPD obligation through attending a conference.

The department advised that it will monitor the OPD policy over the next twelve months.

Same-Sex Marriage

The department noted that the Australian Marriage Law Postal Survey, being conducted by the Australian Bureau of Statistics (ABS), commenced on 12 September 2017 and that results will be published on 15 November 2017 on the ABS website.

The department also noted that if the results of the survey indicate Australians support changing the definition of marriage, the Government has indicated it will facilitate consideration of a private member's bill to amend the *Marriage Act 1961* to enable same-sex marriage in Australia.

The department advised that the content of the private member's bill will be a matter for the private member and the Parliament.

Action Item: Department to advise associations of postal survey outcome.

Marriage Forms

The department thanked associations for their substantial comments as part of the marriage forms consultation. The department has made significant progress on the forms and will be working with BDMs to

finalise the revised forms. The department noted that any changes to the forms will require approval from the Attorney-General. A transition period of 12-18 months will be considered to allow celebrants to use up existing forms.

Associations sought clarification whether progressing revised forms before the outcome of the same-sex marriage postal survey is known would result in a duplication of effort. The department noted that the outcome of the survey is unknown; and the outcome of Parliament's consideration of a private members bill if there is a 'yes' vote, and the timing of that, is also unknown.

The department indicated that its intention is that, if same-sex marriage is legalised prior to the revised forms being approved by the Attorney-General, the Attorney's approval for the minimum changes needed to the forms (replacing the terms 'bride' and 'bridegroom') would be sought, and the more substantive changes reflected in the revised forms would be progressed separately.

The department confirmed that the new forms are being developed to be gender neutral.

An association suggested that the forms should include a prompt for celebrants to question parties to a marriage about existing overseas marriages, and that a separate Declaration of No Legal Impediment should be available for where a proposed marriage involves a party who is a minor. The department noted that including the questions on minors in the Declaration of No Legal Impediment acts as a prompt for marriage celebrants to confirm the necessary order authorising the marriage has been sought by the minor.

Action Item: The department undertook to include an article on recognition of prior marriages in the next edition of the newsletter.

Conflict of Interest and Benefit to Business Policy

The department noted that new conflict of interest and benefit to business guidelines were published on the department's website on 5 October 2017, and thanked associations for their contribution to the consultation process.

CoCA advised that it does not support the new guidelines and claimed that the position taken by the department is not supported by the statistics generated from the consultation process. CoCA believes that the new policy will open the "floodgates" and existing celebrants will face unfair competition from bigger organisations running "whole of wedding" packages.

Other associations expressed a difference of opinion from CoCA noting that some celebrants were already operating outside of the previous guidelines and that the new guidelines more accurately reflect the existing environment. Suggestions were made about clarifying the description of generally acceptable services in the new guidelines.

The department acknowledged associations' views and confirmed that in developing the new guidelines all feedback provided via the consultation process, including the survey results and all submissions, was taken into account, as well as other policy considerations.

The department agreed that the new guidelines are a shift in policy position and noted safeguards and protections have been retained to ensure that a ceremony is completed in accordance with the requirements of marriage legislation.

The department noted it is confident marriage celebrants understand the importance of taking steps to ensure the marriages they solemnise will be legally valid and will put in place appropriate measures to avoid unacceptable conflicts of interest or benefits to business.

Action Item: Department to consider inserting wording in the table in the guidelines about mandatory requirements under the Marriage Act and Regulations and also clarifying the scope of the term 'employee'.

5. Legislative work

New Marriage Regulations 2017

The department advised that the Attorney-General has approved the new Marriage Regulations 2017, following the request for associations' comments on an Exposure Draft of the new regulations.

On 16 October 2017, the Governor-General made the new regulations and they will come into effect on 1 April 2018.

The department advised that it is reviewing the *Guidelines for Commonwealth-Registered Marriage Celebrants* for any updates needed to reflect the new regulations.

Action Item: Department to circulate to associations the new regulations and explanatory statement once they have been tabled in Parliament.

Action Item: Department to recirculate to associations the consultation documents relating to the Exposure Draft of the regulations.

Action Item: Once the *Guidelines for Commonwealth-Registered Marriage Celebrants* are updated, department to circulate the updated guidelines to associations for comment.

Civil Law and Justice Legislation Amendment Bill 2017

The department advised that this Bill has not yet been considered by the Parliament. The department will advise associations if/after the Bill is considered.

6. Other business

An association advised that NSW BDM has requested that when celebrants utilise Lifelink they should submit signed documents electronically (by uploading scanned copies into Lifelink) and keep the original documents in their possession for seven years. The department advised that celebrants are currently only required to keep the official certificate of marriage for six years, and that it is considering publishing a new factsheet or guidance on record-keeping obligations to reflect the new Marriage Regulations 2017. The department agreed to discuss this matter with NSW BDM.

Action Item: Department to discuss retention of marriage documents with NSW BDM, where documents are provided to NSW BDM electronically.

An association noted that the *Marriage Amendment Bill 2002* Explanatory Statement provided that the changes to the Marriage Act contained in that Bill would be reviewed within 18 months of the Bill coming into law. The association noted that they are not aware of the review being completed.

Action Item: Department to respond to associations on the review foreshadowed in the 2002 Bill amendments.

An association asked whether the requirement to produce two copies of the marriage certificate is still relevant now that documentation is often scanned and sent electronically to BDMs.

Action Item: The suggestion of moving to one copy of the marriage certificate to be placed on the department's list of possible amendments to the Marriage Act.

Consolidated Action Items

1.	Department to discuss with BDMs with regard to accepting electronic signatures on marriage documents and shortening of time for decisions in declared disaster situations.
2.	Associations to provide their views to the department on how future engagement could look.
3.	Department to advise associations when the CRIS is published.
4.	Department to advise associations of postal survey outcome.
5.	Department to include an article on recognition of prior marriages in the next edition of the newsletter.
6.	Department to consider inserting wording in the table in the guidelines around mandatory requirements under the Marriage Act and clarifying the scope of the term 'employee'.
7.	Department to circulate to associations the new regulations and explanatory statement after they are tabled.
8.	Department to recirculate to associations the consultation documents relating to the Exposure Draft regulations.
9.	Once the <i>Guidelines for Commonwealth-Registered Marriage Celebrants</i> are updated, department to circulate the updated guidelines to associations for comment.
10.	Department to discuss retention of marriage documents with NSW BDM, where documents are provided to NSW BDM electronically.
11.	Department to respond to associations on the review foreshadowed in the 2002 Bill amendments.
12.	The suggestion of moving to one copy of the marriage certificate to be placed on the department's list of possible amendments to the Marriage Act.