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Message from our team

Welcome to the Spring/Summer 2016–17 issue of *Marriage Celebrant Matters*.

The annual registration process for 2016–17 is now complete. Thank you to all the marriage celebrants who assisted the department by paying their invoices in a timely manner. As was the case last year, there was a significant increase in the number of enquiries received during the annual registration charge period. Over 7,000 enquires were received in July, August and September. Overall, the number of new registrations has been keeping pace with the number of celebrants leaving the Marriage Celebrants Programme.

The Marriage Law and Celebrants Section (MLCS) is now seeking your views on two important matters; ongoing professional development (OPD) for marriage celebrants, and the guidelines on conflict of interest and benefit to business. Your views are being sought through the release of a [discussion paper](#) and [survey](#) which is now available on the department's [website](#). **The survey will close at AEDT 5pm, Friday 13 January 2017.**

MLCS met with celebrant associations in October. These meetings provided an opportunity for the MLCS and associations to discuss a broad range of issues, including:

- the annual registration process, and
- the review of the Marriage Regulations, marriage forms, ongoing professional development (OPD), and the guidelines on conflict of interest and benefit to business.

The next meeting is scheduled for April 2017.

As the end of year is rapidly approaching, all celebrants should be aware of their obligation to complete five hours of OPD by 31 December. Applications for exemption from OPD can be made until 31 December 2016. However, we encourage eligible celebrants to apply as soon as possible so that if your exemption application is not successful you still have time to complete your five hours of OPD. More information about OPD and how to apply for an exemption is contained below.

With the spring/summer wedding season in full swing, the MLCS is available to discuss any questions regarding your obligations under the *Marriage Act 1961* or the *Marriage Regulations 1963*, either on the phone or by email. The [Guidelines on the Marriage Act 1961 for marriage celebrants](#) are also available on our website and provide comprehensive guidance for celebrants.

Key Dates

31 December 2016

Final date for applications for exemption from ongoing professional development for 2016.

13 January 2017

Final date for survey responses and submissions on ongoing professional development and the Guidelines on conflict of interest and benefit to business.

Professional development in 2016—REMINDER

You have until 31 December 2016 to complete your professional development for this year. To avoid a disciplinary measure, you must complete five hours of professional development each calendar year, unless you have an exemption. The five hours must include the compulsory activity and elective activities from the approved list on our website. Please visit the Attorney-General's Department's [website](#) for a list of approved activities and training providers for 2016. If you haven't yet completed your OPD, you should contact a training provider as soon as possible.

OPD exemptions

If you were registered as a marriage celebrant after 1 October 2016, you are exempt from completing professional development in 2016. Your requirement to complete professional development will commence in 2017.

For all other registered celebrants who are eligible for an exemption, applications, including payment of the \$30 exemption application fee, must be received by the department by 31 December 2016. From 16 December 2016 through to 31 December 2016, payment of the \$30 fee is only accepted via the [marriage celebrant self service portal](#) and celebrants should choose the option to pay at the time of lodging the application. More information is available on our [website](#).

2016–17 Annual registration charge

On 7 July 2016, 8,669 invoices were sent out to marriage celebrants. Invoices were also available on each celebrant's [self service portal](#).

Despite some early challenges, which saw many celebrants receive multiple emails enclosing invoices, overall, this year's invoicing ran quite smoothly. The multiple emails were a result of making changes to the way invoices were issued. The changes were made with the intention of speeding up the process. Unfortunately, communication problems were encountered between the two systems we use to generate and then send the invoices. These processes are being thoroughly reviewed to avoid any future problems and we apologise for any inconvenience caused.

MLCS accepts payments via credit card, electronic funds transfer (EFT) and cheque. A common problem with EFT payments continues to be where incorrect BSB and account numbers are used, or the payment reference does not identify who the payment is from. When paying by EFT, it is very important to follow the instructions on the invoice and carefully check reference numbers to ensure that your payment is received and can be attributed to your invoice.

The annual registration charge process is a busy time of year for MLCS. We sent out 8,669 invoices, assessed 60 applications for exemption from the registration charge (of which 56 were granted), and received just over 7,000 enquiries (phone calls, emails and letters) between 1 July and 30 September. 309 celebrants resigned between June and September 2016 and a further 176 celebrants were deregistered on 4 October 2016 for failing to pay the annual registration charge. At the conclusion of the registration charge process, there were approximately 8,450 Commonwealth registered celebrants, including 238 new registrations between June and September.

AGD meeting with associations October 2016

The MLCS met with celebrant association representatives on 27 October 2016. These meetings are held biannually and provide an opportunity to discuss a wide range of issues. The MLCS's updates included:

- the department's upcoming release of a discussion paper and survey on conflict of interest and benefit to business arrangements and professional development

- progress on the review of marriage forms and the review of the Marriage Regulations 1963
- the 2017 OPD compulsory activity being developed by the department, and
- the 2016–17 annual registration charge process.

The MLCS also circulated a draft report about the Marriage Celebrants Programme's performance for 2015–16 against performance indicators (see the Regulator Performance Framework update in this issue). Officers from the Department of Immigration and Border Protection explained changes being made to partner and prospective marriage visas that aim to reduce family violence.

Further detail on the meeting is available in the meeting minutes on the department's website under [Marriage celebrant associations](#) on the page [For Commonwealth-registered marriage celebrants](#).

Cost recovery—update

The second full year of cost recovery of the Marriage Celebrants Programme has now been completed. The programme is currently operating in line with forecasts with no significant over or under recovery forecast. The MLCS responded to more than 24,700 emails, phone calls and letters during the 2015–16 financial year. In addition, the MLCS resolved 35 complaints and issued 377 disciplinary measures, including where celebrants did not comply with their 2015 OPD obligations. Fees and charges remained the same for 2016–17, for the third consecutive year. The MLCS will continue to monitor alignment between the programme's expenses and revenue and ensure that fees and charges remain as low as possible. The current Cost Recovery Implementation Statement may be found on our [website](#).

Regulatory performance framework update

The Australian Government is committed to reducing the cost of unnecessary or inefficient regulations imposed on individuals, businesses and community organisations, and requires regulators to report against the Regulator Performance Framework. The department is in the process of finalising a self-assessment of the Marriage Celebrants Programme's performance in 2015–16 against six key performance indicators in the framework. A draft report was provided to celebrant associations for comment at the October meeting. The self assessment report will be available on the department's [website](#) in the near future.

In accordance with this framework, the department will continue throughout 2016–17 to identify ways to ensure that the burden of regulation on marriage celebrants is reduced to the extent possible to maintain professional and legally correct marriage services to the Australian public. For more information about the Australian Government's Regulator Performance Framework, please visit www.cuttingredtape.gov.au/resources/rpf/.

Passports as evidence of date and place of birth and identity

In July this year, the MLCS received a request for guidance on the use of an expired passport to determine date and place of birth and also identification of an individual.

The MLCS advice is guidance only. Ultimately it is up to each celebrant to determine whether they are satisfied as to the identity of the people seeking to get married. Our guidance on this issue is that:

- expired passports can be used to determine date and place of birth, no matter how old the passport is, and
- expired Australian passports (issued on or after 1 July 2000 with more than two years validity; that have not been expired for over ten years, or reported lost/stolen) can be used to determine the identity of a person.

Each decision on accepting evidence to determine identity should be made on a case by case basis. If a celebrant is not satisfied of a person's identity because of the age or validity of documents presented to them, they should request that the couple provide alternate evidence. For instance, an expired passport that belonged to a child may not be useful to determine the identity of an adult (even if it has been expired for less than ten years).

Backdating the Notice of Intended Marriage

All celebrants will be aware of section 42 of the [Marriage Act 1961](#) (the Act) which requires a couple to give their celebrant at least one month's notice of their intention to marry, unless a shortening of time has been approved by a prescribed authority.

This is one of the procedural requirements in the Act that, if breached, attracts criminal penalties. Subsection 99(1) of the Act provides that authorising

a marriage in contravention of the requirements in section 42 is an offence, with a penalty of 6 months' imprisonment or five penalty units. The falsifying of information in a Commonwealth document would also give rise to one or more offences under the *Criminal Code Act 1995*, one of which includes a potential penalty of 7 years' imprisonment.

The department takes very seriously any allegation that a celebrant has agreed to marry a couple with less than one month's notice and/or has falsified the dates on a Notice of Intended Marriage (NOIM) to make it appear as if one month's notice was given. If an allegation of this nature were substantiated, the matter may be referred to the Australian Federal Police for investigation. This would be in addition to considering whether a disciplinary measure should be imposed under the Act.

Information on how to calculate 'one month' for the purposes of section 42 is available in Part 4.3.3 of the [Guidelines on the Marriage Act 1961 for marriage celebrants](#).

If you have evidence that a celebrant has improperly recorded the date of receipt of a NOIM in contravention of section 42, information about making a complaint can be found on our [Complaint against a marriage celebrant](#) webpage.

Our work with the Department of Immigration and Border Protection

We continue to work with the Department of Immigration and Border Protection (DIBP) on a broad range of issues.

Recently, we have been working with DIBP to resolve concerns about the question on the online partner visa application form that asks for a celebrant's 'A' number. DIBP has advised that this question has now been removed from all new forms. Our advice to marriage celebrants continues to be to keep your 'A' number secure by not disclosing it to others, and to avoid using it in advertising.

DIBP officers also attended the celebrant associations meeting on 27 October 2016. The officers discussed changes being made to partner and prospective marriage visas that aim to reduce family violence. From 18 November 2016, DIBP can advise people applying for partner and prospective marriage visas

if their sponsor (generally their spouse or fiancée) has a conviction for a 'relevant offence'. Relevant offences include those involving violence, harassment, molestation, intimidation, stalking, dangerous weapons, people smuggling, or human trafficking. More information about these changes is available on the [DIBP website](#).

The officers also discussed that DIBP does not expect or require marriage celebrants to assess whether a couple has a genuine relationship. Marriage celebrants are only responsible for ensuring that the requirements of the *Marriage Act 1961* are met—such as, that the couple are free to marry and give real consent.

Marriage celebrants cannot provide advice to marrying couples on migration issues. However, marriage celebrants can inform couples about the changes to partner and prospective marriage visas, and encourage them to visit the DIBP website for more information. If marriage celebrants have suspicions that relate to migration matters, they can call DIBP's dob-in line 1800 009 623, or use the form available on the DIBP website at www.border.gov.au.

Solemnising the marriage of a minor

Additional requirements apply to celebrants when solemnising the marriage of a minor. Below is some general guidance for celebrants in this situation. Celebrants should refer to Part 8.8 of the [Guidelines on the Marriage Act 1961 for marriage celebrants](#) or contact MLCS for further information or assistance in relation to these types of marriages.

A person under the age of 16 cannot legally marry in Australia under any circumstances. Two people under the age of 18 also cannot marry under any circumstances.

In exceptional circumstances a person aged between 16 and 18 years may marry a person who is aged 18 years or over. In order to do so the following requirements must be satisfied:

- a judge or magistrate has made an order authorising the person to marry a particular person who is 18 years or over, and
- the required consents (usually parental) have been given to the marriage.

In order to authorise the marriage of a minor the judge or magistrate must be satisfied of two things:

- the applicant is at least 16 years old, and
- the circumstances of the case are so exceptional and unusual as to justify the making of the order.

Whether or not the order is made is at the discretion of the judge or magistrate. If the order is not granted, the person cannot marry, even if parental consent has been granted.

An authorised celebrant must ensure the court order has been obtained by the minor before agreeing to solemnise the marriage. The marriage must take place within three months of the date of the court order.

In addition to the court order, it is also necessary to obtain the consent of any person whose consent to the marriage is required under the *Marriage Act 1961*. This is usually the parents of the party who is not of marriageable age. The marriage must be solemnised within three months of the date of this consent.

It is the authorised celebrant's responsibility to ensure that the necessary requirements have been met before they solemnise the marriage. This includes a requirement to endorse on the consent the manner in which the celebrant satisfied themselves that the person who gave the consent is the appropriate person. It is not the authorised celebrant's responsibility to arrange for the court order or the necessary consents.

It is a criminal offence for a celebrant to solemnise a marriage where the required consents have not been obtained or to marry someone who is not of marriageable age.

An authorised celebrant must forward the court order and consents, along with the other marriage registration documents, to the relevant registry of birth, deaths and marriages within 14 days after the marriage has taken place.

Role of the MLCS when responding to enquiries

Sometimes marriage celebrants request specific legal advice from the MLCS. We cannot provide specific legal advice to members of the public, including marriage celebrants.

Although celebrants can seek information or guidance on their legal obligations under the *Marriage Act 1961* and *Marriage Regulations 1963* from the MLCS, ultimately it is up to the individual

celebrant to ensure they are satisfied that the marriage will comply with the legal requirements—such as the ability of a couple to marry each other.

If you are not satisfied that legal requirements will be met, it is open to marriage celebrants to seek more information, including from the marrying couple or a lawyer, or to refuse to solemnise the marriage. The MLCS will provide you with information and guidance to assist you to make your decision.

If legal advice is required, our department provides funding for several programs to help people access legal assistance. Information about legal assistance programmes is available on the [Legal assistance](#) page of the Attorney-General's Department's website.

MLCS is available to answer telephone enquiries on 1800 550 343 (Monday to Friday between 10am–1pm and 2pm–5pm Canberra local time) or email marriagecelebrantssection@ag.gov.au.

Marriage celebrants and commercial disputes

The MLCS occasionally receives enquiries or complaints relating to commercial disputes. For example, if a couple has had a disappointing experience in the lead up to, or at their wedding, they may, whilst making a complaint under our Code of Practice, request that the Registrar require the celebrant to give them a refund or partial refund. We have also received complaints about celebrants in relation to alleged misleading or inappropriate advertising. Finally, we sometimes get enquiries from celebrants who are involved in business disputes with other wedding service providers.

Under the *Marriage Act 1961*, the Registrar of Marriage Celebrants has no power to require a celebrant to provide a refund to a couple, to make an apology, to change his or her advertising, or to mediate a commercial dispute. If a complaint against a celebrant is determined to be well-founded, the only disciplinary measures open to the Registrar are to:

- caution the celebrant
- require additional ongoing professional development
- suspend a celebrant, or
- deregister a celebrant.

However, where a commercial dispute has arisen, other Australian Government and State or Territory government agencies may be able to help. Each jurisdiction has its own consumer protection laws and enforcement bodies that may be able to assist in the resolution of a commercial dispute.

The Australian Competition and Consumer Commission's (ACCC) website provides useful information about consumer rights, and guidance about where to go for help, including guidance on how to take legal action in a small claims court or tribunal. Further information is available at www.accc.gov.au/consumers/complaints-problems/make-a-consumer-complaint.

State and territory consumer protection agencies also have mechanisms to receive complaints about commercial disputes and may offer mediation services to assist in resolving the dispute. Links to these agencies are also available on the ACCC website at www.accc.gov.au/contact-us/other-helpful-agencies/consumer-protection-agencies.

Finally, the ACCC also provides links to the various Small Business Commissioners and Ombudsmen around Australia which may be able to assist in the resolution of commercial disputes: www.accc.gov.au/contact-us/other-helpful-agencies/industry-ombudsmen-dispute-resolution.

Whilst the Registrar has no ability to investigate and resolve a commercial dispute, an adverse finding against a celebrant made by a consumer protection body, such as the ones listed above, would be relevant for the Registrar to consider in determining a celebrant's ongoing entitlement to be registered as a celebrant.

New resources for marriage celebrants

Information documents

New information documents and fact sheets are now available from our website:

- [Complaint against a Commonwealth-registered marriage celebrant](#)—available from the page, '[Complaint against a marriage celebrant](#)'. This fact sheet provides information about the complaints the Registrar of Marriage Celebrants can deal with including the process for dealing with them.
- [Marriage Celebrants Programme—APP 5 Privacy Notice](#)—available from the [Marriage page](#) of our website. The document explains how the Attorney-General's Department will collect, store, use and disclose aspiring celebrants' personal information when applying to be registered as a marriage celebrant under the *Marriage Act 1961* and the Marriage Regulations 1963, and in managing your information under the Marriage Celebrants Programme.

Other fact sheets on issues commonly raised by celebrants are available from the [For Commonwealth-registered marriage celebrants](#) page under the link [Celebrant resources](#). This part of the website provides marriage celebrants with a variety of resources to assist you to easily access topical information. We encourage you to visit the website regularly as it is the best way to remain informed about changes to the law and practices.

Questions

If you have any questions about the information provided in this newsletter please contact us.

Contact us

Email: marriagecelebrantssection@ag.gov.au

Phone: 1800 550 343 Monday to Friday from 10am to 1pm and 2pm to 5pm Canberra local time.

Postal address: Marriage Law and Celebrant Section, 3-5 National Circuit, Barton, ACT, 2600

To provide feedback or suggestions for this newsletter or our Programme, you may email us at: marriagecelebrantssection@ag.gov.au.