



Coalition of Celebrant Associations Inc

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Association Members

- Alliance of Celebrants Queensland Inc
- Association of Civil Marriage Celebrants of NSW & ACT Inc
- Association of Civil Marriage Celebrants of SA Inc
- Association of Civil Marriage Celebrants of Victoria Inc
 - Australian Marriage Celebrants Inc
 - Celebrants Australia Inc
- Civil Celebrations Network Inc
 - Civil Celebrants Graduate Association (Monash) Inc
 - ICC Alumni & Friends Association
- Humanist Celebrant Network
 - Marriage Celebrants Australia Inc
 - Professional Celebrants Association Inc
 - South East Australia Civil Marriage Celebrants Association Inc

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Department of Finance and Deregulation
Governance and Resource Management Group
Resource Management Branch
John Gorton Building,
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9th August 2013

Dear Charging Policy Team

Thank you for the opportunity to comment and be involved in the Stakeholders Consultative groups.

Due to time constraints it has not been possible to comment at the level of detail we would have wished to. However we offer the following comments based upon our experience, which we believe is a relevant case study, due to its complexity and the ignorance of our group of stakeholders to the Government's Cost Recovery Policy, Procedures and Implementation Processes at the beginning.

The major elements missing from the documents appears to be

1. The responsibility of the government entity, that the Stakeholder is forced to use, has a duty to ensure that the services and/or products being charged for are delivered in the most cost effective and efficient manner; matched to the level of justifiable need and not imposing charges that create inequities in the stakeholders ability to compete with other Australian suppliers of the products and/ or services they deliver that are impacted by Cost Recovery.
2. The responsibility of the government entity to work with their Stakeholders, respecting their knowledge and skill as equal in importance, even if different in role to theirs; and not to assume that the feedback provided is anymore biased by the stakeholders' conflict of interest than its own conflict of interest issues as the charges being made either directly or indirectly are paying for that entities staffing and resources.
3. The importance of the role of the Stakeholders in providing an Accountability Mechanism in the process of determining if, how, when and how much will be charged under Cost Recovery.

It is in the interests of the government entity to "get it right" by collaboration because doing so will ensure the stable and long term viability of achieving the goals for which charges are being made.

All this means the focus of your Department's review needs to look critically at how the Cost Recovery Guidelines can ensure that both Stakeholders and the Government entity are equally empowered to be able to work collaboratively.

The Guidelines, Templates and Supporting Resources need to be modified to ensure these aspects are made crystal clear at the beginning so that all the work in preparing the details are based upon an agreed framework, before such work is started.

There also needs to be a focus on how to empower Stakeholders, who do not work in a government context to understand what is being required of the government entity and how, and their importance in the process of keeping government accountable.

How this information is delivered in a cost efficient manner is important to Stakeholders, and should be important to government staff, who are also bearing the burden of having to do more with less. There should not be a reliance on the written word to communicate this information.

CoCA recommends the Department of Finance develop a sequenced program to inform, educate and support both the government ministers and staff and stakeholders in their work related to Cost Recovery, through:

- * provide briefing workshops where the Stakeholders and the Government staff preparing the Cost Recovery are present together at the beginning of the process
- * running half-day or one day seminars on Cost Recovery
- * audio and audio-visual presentations
- * ensuring the templates required to be submitted for approval, embed these principles into the documents' framework at the beginning, and require stakeholders to "sign off" or provide feedback to the Department of Finance and the relevant Minister, where agreement to the mechanism and amount of charges has not been reached.

The Coalition of Celebrant Associations, via these consultations, realizes that our recent experience with Cost Recovery contained all the elements of frustration and concerns as those of Stakeholders in totally different fields even if the fees being recovered were small in comparison.

This raises the need for how 'small business' can be dealt with as fairly as big business, given that small businesses do not have the time or resources to devote to becoming as proficient in managing their role on the process. And yet, these are the ones that need more protection from exploitation than those who can afford to lobby ministers and keep "on top of the game" so to speak.

Other aspects that CoCA found most concerning were:

- o the 'exemption' from consultation prior to the decision to cost recovery that appears to be the case at budget time. As we have written before, CoCA considers 'post decision to cost recover' meetings are 'Claytons' consultations.

Unless the process requires a collaborative approach as early as possible, the whole process becomes a waste of time, effort and money for the government and stakeholders.

- o The technical knowledge and skill of the government entity needs to somehow be assessed in the process.

The lack of computerization of the Marriage Law & Celebrant Section (MLCS) lead to huge problems in management of records, and thus the ability for the Section to monitor the 'stakeholders' as required by legislation.

CoCA does not consider that our constituents should be applying for poor administrative design and processes.

- The government entity moving to expand its role into areas beyond its legislative responsibility and professional expertise and experience. For example, the celebrant associations as the professional bodies should determine the Ongoing Professional Development for our sector, with the MLCS only monitoring the legal aspects where relevant.

The regulation of the Act for our sector requires primarily administrative staff, with the legal aspects relevant to all celebrants, not just our Sub-division of celebrants. The Marriage Celebrant Section changed its name after 7 or 8 years to The Marriage Law & Celebrant Section, reflecting the increased dominance of lawyers in the Section. This despite the fact that there is no evidence to support the need for additional AGD staffing to provide legal advice to our Sub-division. (Note: This is in spite of the fact that only our Sub-division is required to provide complaints information to marrying couples.)

- The 'fair work', 'anti-competitive', human rights, historical consideration and discrimination issues need to be seriously considered in principle, not just a narrow 'letter of the law' approach. Cost Recovery in our situation will embed into the system, unfair fees because of the AGD's narrow focus on one celebrant group rather than on its national responsibilities for all. Also receiving a fee for a service does not of itself make an individual a 'business' or a 'private contractor'.

Fair Work Australia makes these points in relation to un-skilled labourers and other vulnerable groups who are providing their services without the normal work place protections and remuneration because the 'employers' use 'different terminology' to avoid their responsibilities.

In our case, re-defining individual 'appointees' as 'small businesses' means the government can absolve itself of its responsibilities. Yet 'appointees' are remunerated for participating in activities of government, such as those who take up certain positions - High Court Justices, Commissioners, participants on Public Inquiries and the like.

We say 'historical consideration' because Commonwealth Marriage Celebrants were 'appointees' from 1973 until 2003 without 'registration' or time limits on those appointments; from 2003 Commonwealth Marriage Celebrants were 'registered' also without time limits on those appointments. In the past four decades, government information has not stated in legislation or in other forms of information that Commonwealth Marriage Celebrants are 'businesses'.

This is because the underlying premise was that those appointed under Sub-division C were expected to behave as other Sub-divisions (such as the 'religious celebrants'*), by not aiming to make a "business" out of being marriage celebrants. The latter was seen as a "conflict of interest" and important because the celebrant's legal responsibilities should not be compromised by financial reward. ** In fact, a Recognised Religious Marriage Celebrant can be de-registered by a Births Deaths & Marriages (BDM) Registrar if they deem the celebrant "has been making a business of solemnising marriages for the purpose of profit or gain" under Section 33 (1) (d) (ii) of the Marriage Act.*

The Cost Recovery process we have been through has made no attempt to compensate those who commenced work under different contractual arrangements with the government (limited appointments to ensure fair recompense for services provided; and those appointed with no time limits on their authorizations).

We say “Fair Work” principles as in other areas of employment, instant dismissal would not be appropriate unless the offence was of an extreme nature such as threat of violence. In our case, non-payment of a single CR fee amounts to instant dismissal. Even from the perspective of one entity conducting a ‘business type’ transaction with another, the normal business practice would be an Initial Invoice, A Reminder Invoice and then A Final Notice threatening legal action for non-payment, not the severe legal action (of de-registration) after non-payment of a only one invoice.

- The context of the Cost Recovery must also be considered in terms of parity, not only with other workers/ companies that provide the same service, but also with others who have the same relationships with government. A recent High Court decision outlining the characteristics of “Officers of the Commonwealth” raised the serious matter of the status of Commonwealth Marriage Celebrants, for which it would not be appropriate to charge CR fees.

Until the government resolved this matter legally, a fee should not be applied. It is not good enough for a government entity responsible for protecting the public interest to require the stakeholders to mount expensive legal cases to resolve a dispute of this nature.

- More attention needs to be given to how to determine the ‘public good’ or ‘public interest’ component where the broader public should bear the total cost or a major portion of CR. In our situation, the recipients of this government service (the ‘valid civil marriage’ component of a wedding ceremony) delivered by all marriage celebrants on behalf of the government (without government involvement there is no valid marriage) are the marrying couples, not celebrants.

As not all couples marry, one can argue that they should be the ones to pay, rather than general taxpayer. On the other hand, marriage is a fundamental part of a society’s structure and breakdown of marriage impacts across all other areas of government spending – Social Security, Health, Welfare, Accommodation, Policing, etc and all are impacted by family breakdown that comes as the consequence of couples not marrying, or not staying married.

Plus the critical examination of the remuneration for the ‘workers’ in this sector shows that they are certainly not the financial beneficiaries of the service they provide, any more that those delivered by religious celebrants. In fact the latter can be argued to be in a better position.

- CoCA estimates CoCA alone has spent the equivalent over \$200,000 in our role in trying address the concerns of our profession. This does not include the involvement of celebrants at the 17 consultations held, nor their submissions to their MPs, to the Department and to the Senate Inquiry; nor the cost to government of the AG, AG’s staff, the Department’s staff, the Senators, Senate Inquiry Staff etc. involved in this process.

CoCA recommends, as others have, that following the CR Guidelines be mandatory.

We look forward to meeting with you to assist in ensuring this aspect of government service works as well as possible, as CoCA considers government does have an important role in Australia's community care and development.

For Cost Recovery Guidelines (See Attachment 1) we have made some brief comments that perhaps we can expand upon when we meet. More detailed suggestions have been made in Cost Recovery Implementation Statement Template (Attachment 2)

Please let us know if you require any more information.

Yours sincerely

A handwritten signature in black ink that reads "Rona Goold." The signature is written in a cursive style with a long, sweeping underline.

Rona Goold
Secretary
Coalition of Celebrant Associations (CoCA) Inc.

Attachment 1 - Cost Recovery Guidelines

Attachment 2 - Cost Recovery Implementation Statement Template