

COST RECOVERY AND OTHER REFORMS FOR THE COMMONWEALTH MARRIAGE CELEBRANTS PROGRAM – REGULATORY IMPACT STATEMENT

The Attorney-General's Department administers the Commonwealth Marriage Celebrants Program. The Program is operated under subdivision C of Division 1 of Part IV of the *Marriage Act 1961* (Cth) and Division 1A of Part III of the *Marriage Regulations 1963* (Cth). Subdivision C celebrants are civil celebrants or ministers of religion from independent religious organisations, both of which are classified as Commonwealth-registered marriage celebrants.

PROBLEM IDENTIFICATION

MARRIAGE CELEBRANTS PROGRAM

2. In the years since its inception in 1973, the Program has grown significantly. Currently about 71% of Australian marriages (there were approximately 123,000 marriages registered in 2012) are performed by marriage celebrants registered by the Commonwealth. At the time of writing, there are over 10,500 Commonwealth-registered marriage celebrants administered by the Program (between 2003 and 2009, the number of marriage celebrants increased from 3,623 to 9,045).
3. Marriage celebrants perform an important role that carries significant legal responsibilities. A key part of upholding the institution of marriage is to ensure that celebrants undertake their role professionally and in accordance with relevant standards and legal obligations.
4. The existing legislative regime governing marriage celebrants is robust, with statutory provisions to ensure integrity and professionalism of celebrants. However, the department has had limited resources to effectively utilise the legislative provisions available to regulate the industry properly. For example, to respond in a timely way to complaints relating to the non-compliance of celebrants with their legislative obligations or with the statutory code. Having only limited resources has also meant that the department has not been able to provide sufficient services to celebrants to support them to meet their obligations.
5. Further detail is outlined in the Regulatory Impact Statement (RIS) published in June 2011 (Attachment A; pp. 3-7).

COST RECOVERY

6. The Australian Government is committed to ensuring consistency, transparency and accountability of Commonwealth cost recovery arrangements and promoting the efficient allocation of resources. 'Cost recovery' broadly encompasses fees and charges related to the provision of government goods and services (including regulation) to the private and other non-government sectors of the economy.
7. Cost recovery and other reforms for the Marriage Celebrants Program were to commence on 1 July 2013, subject to the passage of legislation. Legislation to implement the reforms was introduced into Parliament in March 2013. The Bills were passed by the House of Representatives, and the Senate Standing Committee for Legal and Constitutional Affairs recommended passage of the Bills. However, the Senate did not consider the Bills prior to Parliament being prorogued. This means that cost recovery could not be implemented from 1 July 2013.

OBJECTIVES OF PROPOSED REFORMS

8. The objective of the proposed reforms is to enable the department to improve the education and training services delivered to marriage celebrants, while also better regulating those celebrants. Improved service delivery from the department and efficient administration of the Program will in turn ensure professional, knowledgeable and legally correct services are delivered to marrying couples in Australia.

ADMINISTERING THE MARRIAGE CELEBRANTS PROGRAM

9. The department's administration of the Program includes assessing applications for registration from aspiring marriage celebrants, reviewing celebrant performance every five years, resolving complaints about celebrants, handling a large volume of enquiries from celebrants, producing information and guidance materials to assist celebrants to perform their role, managing ongoing professional development (OPD) arrangements for celebrants and engaging with celebrants particularly through representative associations and networks. Many of these functions are carried out by the Registrar of Marriage Celebrants, a departmental officer with specific authority under the Marriage Act to carry out various functions in Subdivision C of Division 1 of Part IV of the Act.

10. In addition to Subdivision C celebrants, the Marriage Act includes Subdivision A celebrants who are ministers of religion who solemnise marriages for religious organisations that have been proclaimed as recognised denominations; and Subdivision B celebrants who are officers who solemnise marriages on behalf of their state or territory (generally in registry offices and courts). The proposed cost recovery arrangements do not apply to Subdivision A and Subdivision B celebrants as they are regulated by the state and territory registries of births, deaths and marriages, and the department incurs minimal cost in relation to these celebrants.

OVERVIEW OF PROPOSED CHANGES FOR THE PROGRAM

11. The implementation of cost recovery will introduce an annual celebrant registration charge for all Commonwealth-registered marriage celebrants; a registration application fee for new marriage celebrants; and an application processing fee for seeking an exemption from the annual celebrant registration charge, the registration application fee or the annual ongoing professional development obligations.

12. In addition to cost recovery, administrative improvements are proposed to increase the efficiency and operation of the Program. These include:

- providing for more flexibility in undertaking celebrant performance reviews by removing the requirement that this be done for all marriage celebrants every five years
- providing for an Australian passport to be used as evidence of date and place of birth. This would be in addition to the existing acceptable evidence specified in the Marriage Act, and
- streamlining the marriage forms currently prescribed in the Marriage Regulations and providing for the majority of the forms to become forms approved by the Minister instead of being prescribed in the Regulations.

OTHER OPTIONS CONSIDERED TO MEET THE OBJECTIVES

13. The 2011 RIS provided details of the options for achieving the objectives of the proposed reforms to the Marriage Celebrants Program. Some of these included maintaining the status quo; the provision of increased budget funding to properly regulate the Program; and the introduction of cost recovery and improved regulation (Attachment A; pp.8-16).

CONSULTATION

14. Following the release of the options-stage RIS in 2011, the department undertook extensive consultation with marriage celebrants, celebrant associations and state and territory registries of births, deaths and marriages (BDMs) so as to inform the development of an appropriate fee structure and inclusions.

15. The department engaged with stakeholders in 17 meetings across Australia in October and November 2011. Approximately 696 people attended these meetings (despite 1,348 advising they would attend). The department also received over 280 written submissions during this time. This consultation elicited significant feedback from marriage celebrants about the charging structure and inclusions. A summary of the outcomes of this consultation process was made available on the department's website.

16. The department reviewed and revised processes, services and regulation to incorporate much of the feedback received during the consultations. It considered how to deliver the Program in the most cost efficient way, while providing value for money for celebrants and meeting government and legislative requirements, including cost recovery

policy objectives. An external consultant was engaged to determine the cost of effectively delivering these activities to celebrants.

17. In August 2012 a consultation paper was released. The paper provided detailed information on the quantum and structure of the fees and charges and the services that would be provided to registered marriage celebrants. 72 written submissions were received in response to the consultation paper.

18. Ongoing consultation was also undertaken with individual celebrants, celebrant associations (some of which are affiliated with the peak group), BDMs and training organisations delivering ongoing professional development to marriage celebrants. Consultation included regular meetings with the peak group.

REGISTRATION APPLICATION FEE

19. The idea to set a registration application fee was derived directly from consultations with stakeholders. This fee reflects the work carried out by the department specifically relating to the processing, assessment and approval of applications from aspiring marriage celebrants.

COSTING APPROACHES

20. In determining the structure for the annual registration charge, careful consideration was given to arguments presented by stakeholders during the consultation. While strong views were expressed during consultations about whether the annual registration charge should be flat or based on a sliding scale, there was no consensus on a preferred approach. For example, a strong argument presented during consultations was that many celebrants perform few weddings and should therefore be subject to a lower charge. For this to be consistent with the Australian Government Cost Recovery Guidelines, the department would need to demonstrate that it more actively regulates those celebrants who solemnise more marriages. However it is arguable that celebrants who perform more weddings may require less regulatory effort from the department as they have more experience and therefore require less guidance.

21. A sliding scale charge based on the number of weddings performed was therefore determined unsuitable and contrary to the policy objectives of the introduction of cost recovery for the Program.

22. Some stakeholders called for any fees and performance obligations to be applied to the three categories of celebrants authorised to conduct marriages under the Marriage Act:

- (a) ministers of religion from proclaimed recognised denominations
- (b) state and territory officers performing marriages in the course of their duties, and
- (c) Commonwealth-registered marriage celebrants.

Category (a) and (b) celebrants are not regulated by the department; they are regulated by the state and territory BDMs. The purpose of introducing the changes is not to reform regulatory roles and responsibilities, and to do so would involve significant amendments to the Marriage Act. Rather, the changes are designed to allow the department to improve the delivery of services to and the regulation of Commonwealth-registered marriage celebrants (category (c) celebrants).

23. Another suggestion put forward by some stakeholders was in relation to applying a charge to the Notice of Intended Marriage (NOIM). A fee on the NOIM is also unsuitable given that marrying couples are not the direct recipients of the services provided by the department to marriage celebrants. While this approach would apply the fee to all marrying couples in Australia, and therefore all types of marriage celebrants, it would create administrative, financial and legal difficulties in apportioning the fees between the separate Commonwealth, state and territory regulators the three categories of marriage celebrants under the Marriage Act. This would also not be cost effective and hence inconsistent with the Cost Recovery Guidelines.

REMOVAL OF 'LIFETIME' REGISTRATION

24. Some marriage celebrants suggested the introduction of cost recovery represents a shift away from the concept that registration as a Commonwealth marriage celebrant is a lifetime appointment. This characterisation is inaccurate. A

marriage celebrant who complies with the obligations of being a celebrant as set out in the Marriage Act can continue to be a celebrant. However a celebrant who does not meet his or her obligations can be deregistered (for example, since 2008 approximately 370 marriage celebrants have been deregistered following reviews of their performance).

25. The introduction of the annual celebrant registration charge creates a new obligation for marriage celebrants similar to existing obligations to undertake annual ongoing professional development, act in a fit and proper manner and update the Registrar of Marriage Celebrants of any change in their circumstances.

INTRODUCTION OF A CAP OR MORATORIUM FOR NEW APPLICANTS

26. Some marriage celebrants suggested the department should introduce new requirements for the registration of new celebrants including capping numbers, a moratorium or appointing a limited number of celebrants in specific regions every five years.

27. When the current form of the Program was introduced in 2003 it included a five year cap on the number of new celebrant registrations (the cap expired in September 2008). Under the 'cap' no more than 10% of the total number of registered marriage celebrants in the previous year could be registered as marriage celebrants (applied on a regional basis). In 2006, the cap was increased to 20% in order to reduce pressure on the extensive waiting lists that had developed of people aspiring to become Commonwealth-registered marriage celebrants. In August 2008, the cap ceased to exist by operation of section 39E of the Marriage Act.

28. A cap is not a viable or efficient way to manage celebrant numbers and ensure applicant quality. Experience with the 2003-08 'cap' on new registrations led to extensive waiting lists for aspiring celebrants who ultimately became registered before the cap expired (due to the increase in the cap in 2006) or at its expiry in 2008. A regional appointment process is also incongruous with the ability of marriage celebrants to marry couples anywhere in Australia once registered.

29. This was an option also considered in the 2011 RIS as unsuitable.

30. The introduction in 2010 of the requirement that applicants hold a Certificate IV level qualification has significantly reduced the number of applications submitted for registration from 3,180 in 2009 to 759 in 2013. The higher qualification delivers more in-depth training and better equips celebrants to fulfil their legal and professional role.

31. The department is confident that the strengthened process it proposes for the assessment of applications, along with the requirement of a Certificate IV qualification, will have a further positive impact on the quality of incoming celebrants without the need for a cap or a complicated regional appointments process.

CONSULTATION: CONCLUDING COMMENTS

32. As noted earlier, following the introduction of the Bills, the Senate Committee held an inquiry. 111 submissions were received from the peak group, celebrant organisations and individual celebrants. Submissions included a number of 'form-letter' type submissions. The views of celebrants remain divided. Some support the introduction of the fees and charges under cost recovery arrangements as a professional obligation; others oppose the introduction and suggest alternatives such as those discussed above. These issues were canvassed in the Senate Committee report which concluded no amendments to the Bills were required to address these issues and recommended passage of the Bills.

IMPACT ANALYSIS: COSTS AND BENEFITS

33. From 1 July 2014 the department intends to recover the following types of fees and charges in relation to registered and prospective marriage celebrants:

- (i) an annual celebrant registration charge for all Commonwealth-registered marriage celebrants – this charge will be set at \$240 in 2014/15
- (ii) a registration application fee for aspiring marriage celebrants seeking registration – this fee will be set at \$600 in 2014/15, and

(iii) an application processing fee of \$30 in 2014/15 for seeking an exemption from:

- the annual celebrant registration charge
- the registration application fee, or
- annual ongoing professional development obligations.

34. The department will provide a Cost Recovery Impact Statement to support the introduction of cost recovery from 1 July 2014.

ANNUAL CELEBRANT REGISTRATION CHARGE

35. The annual costs of administering Commonwealth-registered marriage celebrants will be fully cost recovered through a cost recovery levy known as the celebrant registration charge.

36. Registered marriage celebrants will be required to pay the annual registration charge to retain registration as a marriage celebrant. Failure to pay the charge by the due date will result in deregistration unless an exemption is granted by the Registrar of Marriage Celebrants.

37. The options for paying the annual charge will include credit card payment online or by other means such as telephone.

Costs and benefits for marriage celebrants, industry and marrying couples

38. The 2011 RIS anticipated that up to 10% of marriage celebrants registered under the Program may leave the industry as a result of the introduction of the annual celebrant registration charge. Following consultation, there is no indication to suggest that the anticipated figure of 10% has changed.

39. It is also anticipated there will be negligible impact on the number of marriage celebrants available to marrying couples if marriage celebrants leave the industry. For example, in February 2010 the minimum qualification requirement for marriage celebrants was significantly increased from a single unit of competency to a full Certificate IV level qualification. While the number of celebrant registrations has reduced since the introduction of the increased qualification, there has been no impact on the number of marriage celebrants available to marrying couples. In fact, there are more celebrants to choose from given that prior to the introduction of the increased qualification, there were 8,546 Commonwealth-registered marriage celebrants and today there are over 10,500 marriage celebrants registered under the Program.

40. The inclusion of exemptions from the annual charge for celebrants in remote areas will ensure continued access to celebrancy services for those communities.

41. It is estimated that 9800 marriage celebrants will be subject to the annual registration charge in 2014/15.

REGISTRATION APPLICATION FEE AND STRENGTHENED APPLICATION PROCESS

42. Aspiring marriage celebrants will be required to pay an application fee unless an exemption from the application fee has been granted. Currently no fee is payable. The application fee will apply irrespective of whether the application is successful as the department undertakes the assessment in either case. Regulations will provide for the granting of exemptions from the application fee, grounds for exemptions and a process of internal review of decisions to refuse to grant an exemption.

43. Once a person has paid the fee, completed and submitted their application for registration, the current practice of dealing with applications in order will be retained to maintain fairness in processing applications for registration.

44. Aspiring celebrants will complete an online application for registration and have the option to pay the fee online or to request an invoice to be sent to them. Moving the current paper based application form for registration as a marriage celebrant to an online application form will streamline the application process and improve the administration of the application process for the department. Prospective marriage celebrants will continue to have the option to apply using the paper based form. It is expected that only a small portion of applicants will use the paper based form (approximately 7%).

45. Aspiring celebrants are required to complete and submit an application form along with supporting documents when applying to become a marriage celebrant. It is proposed that a strengthened application process be introduced, including police background checks on all applicants, and interviews with aspiring celebrants where appropriate. The strengthened process will provide for better scrutiny of aspiring marriage celebrants before they are registered.

Costs and benefits for marriage celebrants, industry and marrying couples

46. The registration application fee does not impact existing marriage celebrants as it applies to aspiring marriage celebrants.

47. It is anticipated that while the number of applications for registration may reduce as a result of introducing the registration application fee, the actual number of overall registrations are likely to remain consistent. As noted in Attachment B, the number of applications has remained steady over the past four years. This is the case notwithstanding the increased qualification requirements for registration in 2010. The average annual number of applications for registration is expected to remain at 572.

48. The inclusion of an exemption on the grounds of remoteness from the registration application fee for aspiring celebrants will ensure access to celebrancy services for those communities.

EXEMPTION APPLICATION FEE

49. Marriage celebrants will be able to seek an exemption from either the registration application fee, the annual celebrant registration charge or from fulfilling their ongoing professional development obligations. Criteria for the processing of and grounds for exemptions will be set out in the Marriage Regulations. These criteria will include circumstances such as long term illness or incapacity for a significant period during the year. It is also intended that eligibility for exemptions be available for celebrants living in remote areas to assist remote communities maintain access to a civil celebrant service. An exemption application processing fee will apply. The exemption application fee will apply regardless of whether the exemption is granted as the department processes the request in either case.

50. To apply for an exemption from the annual celebrant registration charge, marriage celebrants will be required to complete an application for exemption form, either online or on a paper form and pay the exemption application processing fee. Prior to completing the application for exemption form, they will self-assess their eligibility for making the exemption application. Guidance material will be made available by the department for celebrants to determine their eligibility.

51. An application for an exemption from the registration application fee must be made before the application for registration is submitted to the department. Prior to completing the application for exemption form, aspiring marriage celebrants will self-assess their eligibility for making the exemption application. Guidance material will be made available by the department for applicants to determine their eligibility.

52. The Marriage Regulations already provide that celebrants may apply for exemptions from annual ongoing professional development (OPD). It is intended a fee will be charged for processing OPD exemption applications. The process for applying for an OPD exemption will be streamlined and simplified including through the use of an online application form.

Costs and benefits for marriage celebrants, industry and marrying couples

53. It is estimated 200 marriage celebrants will apply annually for an exemption from fulfilling their OPD obligation.

54. The inclusion of exemptions from either the registration application fee or the annual celebrant registration charge will ensure continued access to celebrancy services for communities.

PERFORMANCE REVIEWS

55. Under the Marriage Act, the Registrar of Marriage Celebrants must regularly review each marriage celebrant's performance to determine whether the performance is satisfactory. The Marriage Act also provides the timeframe in which the Registrar must conduct performance reviews: the first review must be completed within five years of the celebrant being registered; and each later review must be completed within five years of the previous review.

56. Due to the rapid expansion of the Program and the resource intensive nature of performance reviews, it is not practicable for the department to perform meaningful performance reviews of each of the approximately 10,500 marriage celebrants every five years. For example, the number of reviews required to be completed in 2014 is 1,919.

57. The current statutory requirement to review every marriage celebrant regardless of identified concerns means that those that have provided no cause for concern must undergo an assessment in any event. This has resulted in insufficient focus on those marriage celebrants whose performance merits attention in a timely way.

58. The requirement to review a celebrant's performance every five years will be removed. Instead of all celebrants having their performance reviewed, the department will focus attention on celebrants about whom concerns are raised, for example through complaints.

59. The proposed change to performance review requirements will make performance reviews more meaningful and useful as part of the Program. It will provide the practical flexibility to enable performance reviews to address problems when they are identified.

60. For the majority of celebrants this will remove the burden of going through a mandatory review in circumstances where there may not be any grounds to impose such a process.

AUSTRALIAN PASSPORT AS ACCEPTABLE DOCUMENT FOR DETERMINING DATE AND PLACE OF BIRTH

61. Marrying couples must provide their celebrant with evidence of date and place of birth as part of the process of completing their notice of intended marriage. The Marriage Act lists the acceptable evidence, which includes a passport issued by a government of an overseas country. It is proposed to amend the Marriage Act to enable a marriage celebrant to accept an Australian passport as evidence of date and place of birth in addition to the existing provisions. This will increase the documentation that a marriage celebrant may use to determine the date and place of birth of the marrying parties.

62. Large numbers of overseas-born Australians seeking to be married do not have (or find it impracticable to obtain) official certificates, or official extracts of an entry in an official register, showing their date and place of birth. Many overseas-born Australians do not have a passport issued by a government of an overseas country showing their date and place of birth, but they do hold an Australian passport.

63. If a marrying individual does not possess a foreign passport, a birth certificate must be produced to verify the person's date and place of birth. If a person does not possess a birth certificate, this document must be obtained from the relevant authority, whether in Australia or overseas. This can involve considerable expense and inconvenience, particularly for those who were born overseas.

64. Increasing the documentation that may be used to determine the date and place of birth of marrying couples will significantly reduce the burden on them of having to locate their official certificates showing their date and place of birth or to complete a statutory declaration declaring that it is impractical to obtain an official certificate.

65. The department regularly deals with enquiries regarding evidence of date and place of birth from marrying individual and marriage celebrants. Anecdotal evidence, including feedback from marriage celebrants during the consultations, suggests that a significant number of marrying individuals with an Australian passport would seek to utilise this document as their evidence of their date and place of birth over trying to locate or obtain an original birth certificate or extract from an official register. Marriage celebrants are also supportive of providing for an Australian passport to be used as evidence of date and place of birth.

PRESCRIBED FORMS TO BECOME APPROVED FORMS

66. Currently all marriage forms are prescribed in the Marriage Regulations. A significant number of the forms are of an administrative nature. In order to improve and modernise the operation of the Program the majority of the existing prescribed forms (those of an administrative nature) will become Ministerial approved forms for the purposes of the Marriage Act. This will facilitate the department's ability to make relevant and timely updates while maintaining

appropriate checks and balances for the available marriage forms. For example, during the consultations for cost recovery and other changes, marriage celebrants identified the need to update and modernise the form 14A 'Happily Before and After' brochure which they are required to provide to marrying couples. In order to update the form 14A amendments to the Marriage Regulations are required. The administrative process for amendments to regulations requires a significant amount of time and is subject to external timeframes.

67. The marriage certificate that marrying couples receive will remain as a form prescribed in the Marriage Regulations.

REGULATORY COSTS AND OFFSETS ESTIMATE TABLE

AVERAGE ANNUAL COMPLIANCE COSTS (FROM BUSINESS AS USUAL)				
Costs (\$m)	Business	Community Organisations	Individuals	Total Cost
Total by Sector	\$0.119	\$0	\$0	\$0.119
Cost offset (\$m)				
Cost offset (\$m)	Business	Community Organisations	Individuals	Total by Source
Agency	\$0.061	\$	\$3.390	\$3.451
Within portfolio	\$	\$	\$	\$
Outside portfolio	\$	\$	\$	\$
Total by Sector	\$0.061	\$	\$3.390	\$3.451
Proposal is cost neutral? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no				
Proposal is deregulatory <input checked="" type="checkbox"/> yes <input type="checkbox"/> no				
Balance of cost offsets \$3,332,000				

Attachment B provides details on the compliance and costs.

CONCLUSION

68. The purpose of introducing cost recovery and other reforms to the Program is to streamline and modernise the administration of the Program particularly by moving most transactions with marriage celebrants to the online environment.

69. Stakeholder consultation elicited significant feedback on the proposed reforms. The department reviewed and revised processes, services and regulation to incorporate much of the feedback received during the consultations. In summary, feedback received during consultations indicated some marriage celebrants support the introduction of the fees and charges under cost recovery arrangements as a professional obligation; others oppose the introduction and suggest alternatives including, costing approaches such as a sliding scale based on the number of weddings performed or applying a charge on the Notice of Intended Marriage form. Some marriage celebrants suggested that the introduction of cost recovery represents a shift away from the concept that a registration as a Commonwealth marriage celebrant is a lifetime appointment. The introduction of the annual celebrant registration charge creates a new obligation for marriage celebrants similar to existing obligations, compliance with which is the basis for continuing registration. Some marriage celebrants suggested the department should introduce new requirements for the registration of new celebrants including capping numbers. Marriage celebrants overwhelmingly supported the introduction of a registration application fee in consultations.

70. It is envisaged the operation of the Program will be improved through the introduction of cost recovery. Cost recovery will enable the department to improve the education and training services delivered to marriage celebrants, while also efficiently regulating those celebrants and ensuring quality control. Improved service delivery from the department and efficient regulation will in turn ensure professional, knowledgeable and legally correct services are delivered to marrying couples in Australia. Through the introduction of cost recovery the Program will be placed on a more secure foundation into the future ensuring that the high standards Australians rightfully expect of Commonwealth-registered celebrants are properly monitored and enforced.

ATTACHMENT B – COST RECOVERY AND OTHER REFORMS FOR THE COMMONWEALTH MARRIAGE CELEBRANTS PROGRAM – REGULATORY COST AND OFFETS

Foundation Assumptions

A. Celebrant time costing: \$30/hr

This figure can be justified in three ways:

- 1) The consultation RIS indicates the average charge for a marriage celebrant's service is \$250-300 per ceremony. Informal consultation with celebrants has revealed approximately 10 hours of time per ceremony. This would translate to \$25-30/hr.
- 2) According to the Australian Bureau of Statistics, the average weekly earnings in 2012 were \$1,222.60 (<http://www.abs.gov.au/ausstats/abs@.nsf/mf/6306.0/>). Given the vast difference in celebrant working hours, charging rates and geographic placement, there is unlikely a more suitable figure than the average earnings across all Australian industries. This figure equates to a \$30-32/hr rate depending on hours worked per week (37.5 – 40).
- 3) The Office of Best Practice Regulation Interim Regulation Impact Statement Process Guidance Note provides in Attachment D, that the default wage for a non-managerial employee is \$34.20. The majority of marriage celebrants however, provide celebrant services on a part-time or casual basis as a sole trader or individual.

B. Time taken to complete tasks:

- 1) Time taken to complete tasks was estimated from trialling where possible. For example, researching potential exemptions in the register.

REGULATION COST AND IMPACT ASSESSMENT

Activity	No. of Celebrants affected	Calculation Justification and impact assessment	Time required to complete (minutes)	
1.	Registration application fee			
1.1	Paying the registration application fee	532	It is estimated that 572 applications will be received per year, of which a percentage will be eligible for an exemption from the registration application fee. The number of marriage celebrant applications has remained steady (at 45 – 50 per month) over the past four years, with little variation. The average number of applications that can be expected annually is 572. Paying the registration fee includes the payment of the fee during the registration process via the online portal or other means (such as over	20

Activity		No. of Celebrants affected	Calculation Justification and impact assessment	Time required to complete (minutes)
			the telephone), and receiving a payment receipt for the transaction. The registration application fee is a one-off start up cost.	
1.2	Seeking an exemption from the registration application fee		A number of aspiring celebrants will be eligible for an exemption from the registration application fee on the grounds of remoteness. All those seeking an exemption are required to research on the locator tool (web based) and the Register of Marriage Celebrants on the department's website to check if they fulfil the exemption eligibility requirements. Exemption applications are required to be completed and emailed or mailed to the department. This is accompanied by the payment of a \$30 exemption application processing fee. The applicant will receive notification of the outcome of the exemption via mail or email.	40
2.	Strengthened application process			
2.1	Strengthened application process including application interviews and police checks	572	As part of a more comprehensive application process, police checks are required for aspiring celebrants; applicants will be interviewed to determine their suitability as a marriage celebrant.	30
3.	Annual celebrant registration charge			
3.1	Paying the annual celebrant registration charge	9800	Over the past five years, there have been minor fluctuations in the balance between registrations and deregistrations, however the overall number of registered celebrants has remained relatively consistent. There are currently approximately 10,500 registered marriage celebrants. A percentage will be eligible for an exemption from the annual celebrant registration charge. This process includes receiving an annual invoice, payment of the registration charge via the online portal or other means (such as over the telephone), and receipt of a transaction receipt for the payment.	20
3.2	Seeking an exemption from the annual celebrant registration		It is estimated a percentage of celebrants will be eligible for an exemption from the annual celebrant registration charge, primarily based on the geographic location of the celebrant. The aim of the	40

Activity		No. of Celebrants affected	Calculation Justification and impact assessment	Time required to complete (minutes)
	charge		exemption is to ensure that celebrancy services remain available in remote communities. Celebrants seeking an exemption are required to research on the locator tool (web based) and the Register of Marriage Celebrants on the department's website to check if they fulfil the exemption eligibility requirements on the basis of remoteness.	
4.	OPD exemption application fee			
4.1	Paying the OPD exemption application fee	200	On average, 200 OPD exemption requests are received annually. This involves completing an exemption application form, and the payment of a \$30 administration fee.	30

Activity	No. of Celebrants affected	Calculation Justification and impact assessment	Time Saved (minutes)
1.	Performance Reviews		
1.1	Targeted performance reviews	<p data-bbox="499 400 562 427">1279</p> <p data-bbox="728 464 1487 587">Over the next five years, the average number of performance reviews required to be conducted annually is 1804. The marriage celebrants database can accurately predict that the number of performance reviews to be conducted are:</p> <ul data-bbox="779 596 958 756" style="list-style-type: none"> <li data-bbox="779 596 958 624">• 2014 – 1919 <li data-bbox="779 628 958 655">• 2015 – 1995 <li data-bbox="779 660 958 687">• 2016 – 427 <li data-bbox="779 692 958 719">• 2017 – 1098 <li data-bbox="779 724 958 751">• 2018 – 3581 <p data-bbox="728 852 1487 1007">Each performance review requires a comprehensive questionnaire, which includes marriage celebrants having to demonstrate an understanding of the requirements of the Marriage Act, in addition to providing the department with specific information regarding their practice.</p> <p data-bbox="728 1102 1487 1257">Targeted performance reviews will significantly reduce the number of performance reviews required to be undertaken by celebrants each year. Targeted performance reviews will be triggered by conduct, such as complaints, and the department’s administrative goal will be to conduct targeted reviews on 5% of registered celebrants per year.</p> <p data-bbox="728 1289 1487 1382">On average, this measure will reduce the annual regulatory burden on 1279 celebrants by not being required to complete a performance review in a given year.</p>	90

Activity	No. of Celebrants affected	Calculation Justification and impact assessment	Time Saved (minutes)	
2.	Marriage Celebrant Registration Application Streamlining			
2.1	Marriage celebrant registration application – online submission and removal of statutory declaration	572	Streamlined online application process has facilities for digital document upload and faster question submission. This will save celebrants time when making an application for registration to the department. Additionally, the statutory declaration is no longer required.	60
3.	Online OPD Exemption Application Form			
3.1	Applying for an OPD exemption	200	On average 200 OPD exemption requests are received annually. The online form will streamline the process for applying for an OPD exemption, with faster question submission and supporting document upload facilities.	20
4.	Evidence of date and place of birth			
4.1	Providing for an Australian passport as evidence of date and place of birth	62,783	The Marriage Act 1961 does not provide for an Australian passport to be used to establish a person’s date and place of birth for the purpose of getting married. If an individual does not possess a foreign passport, a birth certificate must be produced to verify the person’s date and place of birth. If a person does not possess a birth certificate, this document must be obtained from the relevant authority, whether in Australia or overseas. This can involve considerable expense and inconvenience, particularly for those who were born overseas. Providing for an Australian passport to verify a person’s date and place of birth would significantly reduce the time, cost and inconvenience involved to locate an original birth certificate or to provide a statutory declaration declaring it is impossible to do so for the purpose of getting married in Australia. During consultations, marriage celebrants supported providing for an Australian passport to be used as evidence of date and place of birth.	120

Activity	No. of Celebrants affected	Calculation Justification and impact assessment	Time Saved (minutes)
		<p>123,000 weddings are conducted each year in Australia, involving 167,423 Australian born individuals. The other individuals are foreign born, and will not be affected by this proposal. (latest available ABS statistics; the number of marriages that take place each year is steady at this number).</p> <p>There are 11 million (50% of the population) active Australian passports currently. Therefore 83,711 (50%) of the Australian born individuals getting married will have active Australian passports</p> <p>It is estimated 75% (62,783) will use an Australian passport. This is based on anecdotal evidence received during consultations and the enquiries dealt with by the department from both marrying couples and marriage celebrants.</p> <p>Whilst an individual requires a birth certificate to apply for an Australian passport (which is then usually valid for 10 years), a person does not need to provide a birth certificate for passport renewal. Anecdotal feedback suggests that a passport will more likely be readily accessible. A birth certificate may be left with other family members, or secured in less convenient location.</p>	

REGULATION IMPACT STATEMENT (2011)**New Policy Proposal****Marriage Celebrants Program – Better Management through Fees****Background***The Marriage Celebrants Program*

The Marriage Celebrants Program (the Program) was established in 1973 to provide marrying couples who did not want to have a religious ceremony with a dignified and meaningful alternative to a registry wedding. The Commonwealth has constitutional responsibility for marriage matters including the Program. It is administered by the Attorney-General's Department.

All persons conducting marriages in Australia must be authorised to do so under the *Marriage Act 1961* (the Act). The Act establishes 3 categories of people who may be authorised to conduct marriages in Australia.

- a) Ministers of religion from 'recognised denominations' under the Act,
- b) Officers of the States and Territories who are authorised to perform marriages as part of their duties, and
- c) Marriage celebrants authorised under the Program to perform marriages.

The proposals addressed in this RIS relate only to marriage celebrants in category (c).

When the Program was launched in 1973 less than 2% of couples chose a civil ceremony. Today 65% of marriage ceremonies within Australia are conducted by civil marriage celebrants registered under the Program.

Principal elements of the Program

Significant reforms to the Program were made as a result of the passage of the *Marriage Amendment Act 2002*. These reforms commenced operation on 1 September 2003. The major elements of the Program that resulted from these reforms were:

- completion of a prescribed training course in order to be registered as a celebrant (from 2010 this has required a Certificate IV in Celebrancy),
- a statutory application process for registration including criteria for assessing the suitability of applicants to be registered as marriage celebrants,
- public listing of approved celebrants on a Register of Marriage Celebrants,
- a requirement for celebrants to undertake a minimum of 5 hours of professional development each year,
- compliance with a statutory Code of Practice,

- a complaints process which enables complaints to be lodged against celebrants regarding their solemnisation of marriage ceremonies,
- review of the performance of each individual marriage celebrant against statutory criteria at least every five years,
- availability of disciplinary measures against marriage celebrants who fail to meet their statutory obligations (including suspension and deregistration), and
- a right of appeal for marriage celebrants to the AAT against decisions to reject their application for registration or to suspend or deregister them.

These requirements are necessary and appropriate for the authorisation and monitoring of private citizens who perform significant legal responsibilities where failure to properly perform those responsibilities can have a significant negative impact on members of the public.

Legal significance of the role of marriage celebrant

Marriage results in a change of legal status for the parties to it and often a change of name for one party. Marriage celebrants have a number of significant legal responsibilities in conducting marriages. They must satisfy themselves as to the identity of each party they marry. There is no subsequent official confirmation that the individuals a celebrant names in a marriage certificate are who they claim to be. Further, a new identity document, a marriage certificate, is created that is dependent on the individual celebrant's care and expertise in verifying individuals' identities. There is evidence of long-term problems with celebrants incorrectly verifying the identity of people prior to a marriage. Other significant and potentially complex legal responsibilities include ensuring the full and free consent of each of the parties to a marriage, that the parties are aged over 18 years and not closely related and that neither party is currently married. Fulfilling these obligations often requires celebrants to examine and assess foreign identity, marriage and divorce documents. Celebrants need to also ensure that the parties' marriage vows meet minimum requirements, prepare marriage certificates (which are identity documents) and send marriage certificates and other documents to registering authorities following the marriage ceremony.

State and Territory registering authorities register marriages on the basis of the material provided by the celebrant. Poor understanding of legal obligations and requirements on the part of celebrants may therefore have a significant effect on the marrying couple in relation to complex issues such as succession, divorce and the validity of marriages. Unprofessional performance by celebrants can leave marrying couples required to pay costs associated with obtaining the correction of records and certificates or rectifying other failures such as non-registration of marriages.

In 2010 there were a number of media reports claiming a large percentage of marriages may be invalid because the wording of the vows used in ceremonies did not comply with the Act. The adequacy of vows is one example of a legal obligation of which some celebrants registered under the Program have a poor understanding. Under the Act marriages may be invalid if they do not meet specific legislative requirements for solemnisation. The use of vows in marriage ceremonies is considered a key element in establishing consent before witnesses.

In addition to these significant legal responsibilities marriage celebrants perform an important ceremonial role in the conduct of marriages. As marriages are an infrequent event in the life of people in the community, professional performance of this role is significant to marrying couples and their family and friends and something they are entitled to rely upon.

The Government has clearly stated that marriage is an important institution within society. Professional performance of the role of a marriage celebrant is a key part of upholding the importance of marriage within society.

Marriage celebrants registered under the Program

Marriage celebrants are registered as individuals. An organisation cannot be registered to solemnise marriages. Most celebrants charge couples a fee for the performance of their functions. There are no prescribed fees. Celebrants are able to charge whatever fee they judge appropriate and are therefore able to recover the costs of operating as a celebrant, including meeting legislative requirements.

A proportion of celebrants (up to 30%) do not charge marrying couples a fee or charge only a minimal fee. These celebrants include persons conducting marriage ceremonies on behalf of small independent religious organisations and celebrants in rural and remote locations in which few marriage ceremonies are performed each year.

The number of marriages conducted in Australia in 2008 was 118,756 (ABS statistic). Of these, 35% were conducted by ministers of religion. The rest were conducted by marriage celebrants registered under the Program and the Registries of Births, Deaths and Marriages in the States and Territories. Approximately 5% of marriages fall into this latter category.

The raw average for the number of marriages conducted by each celebrant registered under the Program is approximately 6.6 per annum. A significant proportion would perform many more marriages than this (up to 50 or more per year) and a significant proportion would perform less (0-2 each year).

Many registered marriage celebrants are of retirement age or older and many undertake celebrancy to supplement other income, out of interest or to contribute to the community.

Problem identification

The legislative regime governing marriage celebrants registered under the Program is robust. It contains a range of mechanisms to ensure that the integrity of the Program is protected including performance reviews, disciplinary measures and a complaints procedure. From a legal standpoint, these measures are considered adequate to address non-compliance or poor performance by marriage celebrants.

However, practical experience in administering the Program has identified that a significant percentage of marriage celebrants do not fully understand either the legal or administrative requirements of marriage celebrancy and do not comply with their legislative obligations. The Department currently lacks the resources or capacity to apply the existing legislative measures provided to properly regulate the industry and respond in a timely way to those celebrants who not comply with their legislative obligations. The factors underlying these problems are identified below.

Growth in the Program

The Program has experienced considerable growth in numbers – a trebling - and hence demand for Departmental services has increased steadily since 1 September 2003. On 1 September 2003 there were 3,317 celebrants registered under the Program. At 1 January 2011 there were approximately 10,500 celebrants.

Celebrants registered under the Program are placing increasing demands on the Department for guidance and advice on carrying out their responsibilities. The number of enquiries handled by the Department is approximately 18,000 per annum. Many of these enquiries are complex, raise significant legal issues and require a written response.

Celebrants pay no charge for provision of these services.

Inability to effectively regulate the Program

The huge growth in the Program has made it increasingly difficult to manage the statutory requirements involved in regulating celebrants within the resources provided through the budget. This has fuelled the continuation of poor performance by celebrants. Some key statutory regulatory responsibilities are currently not being met. A key example is provided by the conduct of performance reviews on marriage celebrants registered under the Program.

Performance reviews

Section 39H (1) of the Marriage Act provides that the Registrar of Marriage Celebrants must regularly review each marriage celebrant's performance to determine whether the performance is satisfactory. Subsection 39H (2) provides the time frame in which the Registrar must conduct the performance reviews: the first review must be completed within 5 years of the celebrant being registered; and each later review must be completed within 5 years of the previous review. A detailed analysis follows:

A large number of marriage celebrants registered prior to 1 September 2003 were transferred to the Program that commenced on that date. The reviews of 2,802 of these celebrants were required to be completed by 1 September 2008. Reviews of this group completed to date number 1,967. The number of celebrants identified as fully compliant with their obligations was only 753. The number of reviews in this group still to be finalised is 835.

Non-compliance with the legislative obligations contained in sections 45 and 46 of the Act (which establish the key requirements for the conduct of marriage ceremonies) required follow up in at least 154 instances of the 1,967 completed reviews of celebrants registered prior to 1 September 2003.

Reviews due for completion by 1 September 2009 were 336. These were celebrants registered in the year 2003-2004. The number of reviews completed is 333 of which only 83 complied in all respects with their obligations. A total of 247 were subject to further follow up due to non-compliance with the obligations in sections 45 and 46 of the Act. Following a supplementary review of these celebrants in which further information was sought and examined, a total of 58 still did not comply and will require further action. A total of 15 reviews are still outstanding in this group.

The number of first reviews due to be completed by 31 December 2010 was 731. These celebrants were registered in 2004-2005. Of these, 506 have been assessed. A total of 239 have been assessed as meeting all obligations and 139 as meeting some. A total of 58 were found to have met no obligations. The total number within this group yet to receive any assessment is 225. Of those assessed, 275 do not comply with the requirements of sections 45 and 46 of the Act.

In 2011, 767 celebrants will be due for their first performance review (these celebrants were registered in 2005-2006). In addition, 1,055 are due for follow up review. Thus 1,822 reviews are required to be completed in 2011. By 2013 the number required to be completed will increase to more than 4,500 due to the increased rate of registration of new celebrants from 2005-2006 onwards.

The above numbers do not take full account of the backlog of performance reviews remaining incomplete from previous years. The current backlog is over 1,000. These outstanding reviews all relate to celebrants about whom more complex and serious issues of non-compliance have been identified and in which the response to the specific issues must be directed to the individual circumstances of the particular celebrant.

The total number of performance reviews completed to date is 2,806. The issues identified as a result of these performance reviews are:

- non-compliance with the legislative requirements of sections 45 and 46 of the Act,
- compulsory activities such as questionnaires not being completed,
- full or partial non-compliance with professional development obligations,
- failure to meet annual reporting requirements, and
- non-compliance with legislative obligations to advise of changes of contact details or personal circumstances.

In order to finalise the 2,806 performance reviews completed to date, the scope of the reviews has effectively been reduced to a perfunctory level. The failure to respond to more serious allegations of non-compliance has been due to the strict requirements of administrative law which must be afforded to celebrants before disciplinary measures can be imposed. Involuntary deregistration of a celebrant results in a review right to the AAT resulting in further strains on the Program.

Currently, perfunctory performance reviews are undertaken at a rate of approximately 8 per day resulting in a maximum of 1,840 being completed annually. The proper conduct of performance reviews would require an increase in time spent per review to an average of 2 hours per review which would result in the completion of only 3 per day for a total of 690 per annum.

A total of 244 celebrants have been deregistered as a result of performance reviews, another 261 voluntarily resigned (at least in part as a result of performance reviews), and 63 cautions have been issued. This result has not been achieved in a timely way which has resulted in significant issues of non-compliance remaining unaddressed. There is a significant concern that some celebrants who have outstanding performance reviews should not be performing marriages due to poor performance.

Performance of legal obligations

Lack of understanding of legal obligations remains a significant problem. The requirement that marriage celebrants complete a minimum of 5 hours of professional development per year is intended to ensure that celebrants maintain up-to-date knowledge of the law relating to marriages. However, as noted above, a large number have failed to complete these obligations since 2003. In 2005, 1,038 celebrants were issued with disciplinary measures as a result of failure to fulfil any professional development obligations in 2 years. The disciplinary measure imposed required them to complete some of the key professional development activities that had not been complied with in order to ensure that these celebrants were aware of key statutory changes. Only 61 of these celebrants complied with the disciplinary measures (a compliance rate of approximately 6%). While further action has since been taken against many of these celebrants and some have resigned, action still remains in train against others.

Poor understanding of legal requirements for marriage and obligations as a marriage celebrant is also evidenced by:

- the nature of many of the 18,000 enquiries received (which demonstrate a lack of understanding by celebrants of their legal obligations) and responded to by the Department each year,
- anecdotal advice received from Registries of Births, Deaths and Marriages. In their role registering marriages they have identified increasing error rates in documents lodged for registration, poor understanding of requirements and they receive frequent enquiries and requests for guidance. Errors by celebrants can be a significant matter for marrying couples as a fee must generally be paid for each error to be corrected. These fees vary between jurisdictions,
- referrals to the Registrar of Marriage Celebrants by the Family Court of Australia or others of marriage celebrants who have not complied with legal requirements or who are unsuitable for continuing registration by reason of criminal conviction,
- concern repeatedly expressed by the marriage celebrancy peak body – the Coalition of Celebrant Associations - in correspondence and at regular meetings with the Department since its formation in 2008– about the poor knowledge and skill level of a large number of celebrants, and
- media attention which reported the potential invalidity of a high proportion of marriages due to vows that do not comply with legislative requirements.

Steps taken to respond to these problems

The level of qualification required for registration has been significantly increased from a single unit of training to a full Certificate IV in Celebrancy. The latter came into effect on 3 February 2010. The increase in the level of qualification has, to date, had some marginal effect in raising the standard of training of applicants for registration but has not sufficiently addressed the fundamental problems of ensuring celebrants have an appropriate understanding of obligations and compliance with obligations outlined above. The completion of the Certificate IV in Celebrancy is considered to be a necessary

condition to ensuring the professionalism of celebrants, but it is not of itself a sufficient condition. Appropriate monitoring and enforcement of the relevant standards is also required.

Correct understanding and performance of legal obligations has been a focus of professional development since 2003 but the effectiveness of this in addressing problems has not been great due to the large number of celebrants who fail to fulfil the obligation and the inability of the Department to respond to this failure in a timely way.

The quality of professional development provided to celebrants has been improved through an open and rigorous selection process for a panel of approved providers of professional development to marriage celebrants. Despite this the number of celebrants failing to fulfil this obligation remains high. Early analysis indicates that a considerable number of celebrants did not complete their professional development obligations in full in 2010.

The Department has significantly increased its provision of information to celebrants through its website in an effort to reduce the need to respond to enquiries and requests for guidance. This has had no effect in reducing the number of enquiries.

While steps have been taken to improve the quality of pre-registration training and professional development for marriage celebrants, those who were registered before the increased qualification was introduced in 2010 received either no, or inadequate, training. The majority of marriage celebrants were registered before the increased qualification was introduced in February 2010. As a result many marriage celebrants do not understand or properly fulfil their legal responsibilities.

Objective of the proposal

The Government's objective is to effectively regulate the Program, thereby improving the compliance and professionalism of marriage celebrants to the benefit of marrying couples and society more generally.

The legal requirements of the Program are appropriate but cannot be effectively implemented because of the lack of available resources to properly regulate celebrants who are failing to meet their obligations.

Options to achieve the objective

The following options are considered in this RIS:

Option 1: Maintain the status quo

This option would involve no change to the current arrangements.

Option 2: The provision of increased budget finding to properly regulate the Program

This option would involve the provision of additional funding from the budget to properly regulate the Program through the provision of additional resources (in particular legal resources) to enable proper regulation to be undertaken and failure to fulfil obligations to be responded to in a timely way.

Option 3: Introduction of a Fee Scheme and Improved Regulation

This option would involve the introduction of a fee scheme (on a cost recovery basis) to enable the proper regulation of celebrants registered under the Program. Fees would be levied annually on celebrants in order to retain their registration. The income from the fees would fund additional staffing resources (in particular legal resources) to properly regulate, review and discipline marriage celebrants who do not fulfil their obligations.

A fee would enable the Program to be put on a secure financial footing and provide the capacity to properly regulate it.

The fee per celebrant is expected to be in the region of \$600 per annum although the details of the fee will be addressed more closely during the consultation and implementation phase of the proposal.

Option 4: Pass responsibility for regulation of celebrants to the States and Territories

This option would involve the registration and regulation of celebrants registered under the Program being passed to the States and Territories to be administered by the Registry of Births, Deaths and Marriages in each jurisdiction. The celebrant would be registered and regulated by the state or territory in which he or she resides.

Under this option responsibility for the administration of the Act and marriage policy would remain with the Commonwealth. States and Territories would expect considerable funding support to implement this option.

Option 5: Pay celebrants to leave the industry

This option, suggested by the Coalition of Celebrant Associations, the celebrant peak industry group, would involve the Government offering to pay a significant number of marriage celebrants to leave the industry. It is likely that celebrants would seek payments as compensation for lost income and loss of lifetime registration as a celebrant.

Option 6: Reimposition of a cap on the number of marriage celebrants able to be newly registered in each year

Between 1 September 2003 and 31 August 2008 the number of marriage celebrants able to be registered each year was subject to a legislative cap. Section 39E of the Act, which enabled the imposition of the cap, ceased operation on 1 September 2008.

The cap was a transitional measure which operated for the first 5 years of the Program. Its intention was to enable celebrants registered prior to the reforms to the Program that began on 1 September 2003, to have a transition period in which to get used to the new requirements.

This option would involve reinstating a cap on the number of celebrants that could be newly registered each year in order to stabilise the growth of the Program, thereby enabling a greater proportion of existing resources to be focussed on ensuring the fulfilment of obligations on the part of celebrants.

Impact of the options

The impact of Options 4, 5 and 6 will not be addressed in detail in this RIS as they have been identified as not addressing the key objective of the proposal which is to effectively regulate the Program to the ultimate benefit of marrying couples and society more generally.

Options 5 and 6 do not address the objective at all and, in addition, option 5 is likely to generate high and increasing costs for Government and would not ensure that poorly performing celebrants are the ones leaving the Program.

Option 4 does not address the objective as it simply shifts the problem of effective regulation of non-compliant celebrants to the State and Territory authorities.

The groups likely to be affected, directly or indirectly, by Options 1, 2 and 3 outlined above are:

Directly

- (a) marriage celebrants, and
- (b) Government – Commonwealth, State and Territory

Indirectly

- (c) marrying couples, and
- (d) the general community.

Option 1: Maintain the status quo

(a) Marriage celebrants

There are no direct costs to marriage celebrants if the status quo is maintained. They would not be liable to any additional imposts or regulation. There are no direct benefits to marriage celebrants from maintenance of the status quo as quality of service provision, including meeting the requirements to ensure a valid marriage, would not improve and there would be no improvement in either the rigour or the timeliness of regulation by the Department.

There may be indirect costs to marriage celebrants in the maintenance of the status quo in that the continuing registration of non-performing celebrants serves to undermine the status of celebrants generally.

(b) Government

There are no direct or indirect costs to State or Territory government from maintenance of the status quo. There will be direct costs to the Commonwealth in continuing to manage the problems caused by non-compliant celebrants. There are also indirect costs to the Commonwealth. Without increased funding the Program will become increasingly expensive to administer given the annual application rate of approximately 1,800 per annum. The number of applications for registration slowed in 2010 as a

result of the introduction of a higher qualification requirement. The number of applications for registration commenced increasing in the latter half of 2010 and information from training providers indicates that over 1,000 applications can still be expected in 2011. Inadequate levels of regulation will continue and perpetuate the problem of low levels of quality and professionalism. Another indirect cost of maintenance of the status quo is the continuing registration of celebrants who do not comply with legal obligations, have a poor understanding of the role and low professional standards. This generates a negative public perception of the Program and celebrants generally.

There are no benefits to Commonwealth, State or Territory governments from maintenance of the status quo.

(c) Marrying couples

There are no direct costs to marrying couples from this option. There are indirect financial and emotional costs for marrying couples where celebrants are non-compliant with legal obligations or unprofessional in performing their role. For example, at one end of the spectrum, couples will continue to need to pay to have any errors on their marriage certificates corrected (in order to use the certificates as identity documents). At the other end failure by celebrants to understand their legal obligations, such as vow requirements, may result in invalid marriages and failure to check identity may result in underage, bigamous or forced marriages.

(d) General community

There are no direct costs to the community from this option. An indirect cost may be a loss of standing for the process of marriage if large numbers of unprofessional celebrants remain registered. There is no net benefit to the community from this option.

Option 2: the provision of increased budget funding to properly regulate the Program

(a) marriage celebrants

There is no direct or indirect cost to marriage celebrants as a result of this option. A direct benefit to marriage celebrants could be expected to arise from improved service to celebrants and improved regulation of the sector by the Department leading to an increase in the standing of celebrants.

(b) Government

There will be a significant direct financial cost to the Commonwealth under this option but no cost to State or Territory government.

(c) marrying couples

This option would have no direct cost to marrying couples. The improved regulation that it would enable would be of direct benefit in increasing their assurance of obtaining a knowledgeable, competent and professional celebrant who is fully conversant with his or her legal obligations and with developed skills in performing the role.

(d) general community

There would be no direct cost to the community arising from this option but there would be an indirect cost arising from the diversion of funding from other priorities to fund improved regulation of the Program. The community would receive a benefit from the improved professionalism and knowledge of marriage celebrants that would result.

Option 3: A Fee Scheme and Improved Regulation

(a) marriage celebrants

This option would lead to a direct cost to marriage celebrants in that they would need to pay a fee to obtain and retain registration. Currently there is no fee to obtain or retain registration. Detailed statistics on the number of marriages performed by each celebrant are not collected but as noted earlier, the raw average for the number of marriages conducted by each marriage celebrant registered under the Program is approximately 6.6 per annum. A significant proportion would perform many more marriages than this (up to 50 or more per year) and a significant proportion would perform less (0-2 each year).

Anecdotal information provided by celebrant representative bodies indicates that the number of marriages conducted by each celebrant annually varies widely as a result of factors such as the location of the celebrant and a range of individual factors.

The price charged by celebrants to conduct a marriage is considered a matter for each of them to determine according to a wide range of factors including their own individual circumstances and the necessity to comply with legislative obligations such as professional development. Anecdotal information available to the Department indicates that a fee of \$250-\$300 per marriage is not uncommon and that a large number of celebrants charge considerably more than that. Celebrants in rural and remote areas and celebrants conducting marriage ceremonies for small independent religious organisations generally charge significantly less than this per marriage ceremony. The imposition of fees on a cost recovery basis may result in those persons who conduct relatively few marriages from becoming or remaining registered as celebrants and this will be an indirect cost to the sector more generally. It is anticipated that up to 10% of celebrants may leave the industry if fees are introduced although each celebrant will need to assess his or her own circumstances in making that decision. It is anticipated that this would be essentially a one-off reduction.

The benefit of this option to marriage celebrants both individually and as a sector is that the celebrants who continue will develop better experience through the opportunity to conduct more ceremonies thereby improving their level of professionalism and the overall performance and the standing of the sector. They will also receive improved standards of regulation by the Department.

Costs would be higher under this option for the small proportion of celebrants that perform religious marriage ceremonies for small independent religious communities at either no or minimal cost to

marrying couples. It is the celebrant who would need to individually pay the fee as only individuals can be registered as celebrants. As such celebrants effectively operate as volunteers and often do not charge any fee for conducting marriages, the cost of the fee would relatively be more significant for these celebrants than those operating on a more commercial basis. Such celebrants would find it difficult to pay a full annual fee for registration and this may result in marrying couples in small independent religious communities being unable to have their marriage conducted by the minister of their group according to their group's rites.

The relative cost of this option would also be higher for those celebrants in rural and remote areas who perform few marriage ceremonies each year owing to the small population. While statistics are not available, anecdotal information from celebrant representative bodies indicates that such celebrants may conduct only 2 or 3 marriage ceremonies per annum. This small number of marriages may make it uneconomical to remain registered and this may leave some rural and remote communities at risk of not having available the services of a civil celebrant.

(b) Government

There is no cost to State and Territory government in this option but a potential benefit in a reduction of workload caused by the improved regulation of the Program.

There will be costs to the Commonwealth in order to implement this option but this option is anticipated to provide the necessary resources to properly regulate celebrants through cost recovery arrangements. Establishment costs would be offset by cost recovery along with the ongoing program costs. The benefit to the Commonwealth will be that funding will be provided by those who benefit from the Program which is appropriate and equitable. This will, in turn, free resources to be directed elsewhere. Benefit to the Commonwealth will also be gained as a result of improved regulation of the Program.

(c) marrying couples

This option would be likely to impose some additional cost on marrying couples as celebrants would be likely to pass on the cost of the fee in the form of higher charges. The increase is likely to be small in the context of the overall cost of getting married. The costs of getting married vary widely but appear to range between \$5,000 to \$30,000 or more. Most Registries of Births, Deaths and Marriages offer to solemnise marriages on their premises – so-called 'registry office' marriages. The charges in those jurisdictions that offer this service range from \$250-\$300 as a standard weekday fee to \$320-\$420 for weekends. In this context a small increase in the fees charged by celebrants under the Program would not be significant. More efficient and effective regulation of the Program could be expected to benefit marrying couples by leading to improved services. It would also mean greater compliance by celebrants with legal obligations which would reduce the risk of invalid marriages and other potential costs.

It is of critical importance, given the significant legal responsibilities of marriage celebrants, that those who utilise marriage celebrants registered under the Program have access to high quality services that do not result in invalid marriages (which have serious consequences in terms of inheritance, property rights and proving identity). Recovery of costs will ensure the Department can properly monitor and enforce the standards which marrying couples are entitled to expect of all marriage celebrants.

While an absolute reduction in celebrants could be argued to reduce the choice available to marrying couples, the anticipated 10% one-off reduction in the number of available celebrants within the Program is not likely to have more than a marginal impact on the choice of celebrants available in most areas. The potentially greater impact on choice in rural and remote regions or in the case of small independent religious bodies is discussed further below.

(d) general community

There is no cost to the general community arising from this option as the cost would be borne by those being regulated (the registered celebrants) and the marrying couples using the service. A likely reduction in the number of celebrants will result in an industry with more committed and professional celebrants. The improvement in the performance of celebrants resulting from the improved regulation would accord with community expectations of marriage celebrant service standards.

An indirect cost to particular sectors of the community might arise as a result of this option. As noted above, the Program includes celebrants that perform religious marriage ceremonies for small independent religious communities. Such celebrants effectively operate as volunteers and do not usually charge any fee for conducting marriages. The relatively greater difficulty such celebrants would find in paying a fee for registration may result in marrying couples in small independent religious communities being unable to have their marriage conducted by the minister of their group according to their group's rites.

People in rural and remote areas may also be at risk of not having available the services of a civil celebrant given the relatively higher cost of the annual fee to celebrants in those areas owing to the small number of marriages annually. Up to 30% of celebrants may fall into one or other of these categories.

Overall there is a net benefit to the community generally from this option. This arises from having those who benefit from the Program providing its funding and from the overall improvement in professional standards of celebrants.

Conclusion and recommended option

The legislative regime governing marriage celebrants registered under the Program is robust. It contains mechanisms including performance reviews, disciplinary measures and a complaints procedure, any or all of which are capable of addressing non-compliance or poor performance by marriage celebrants.

Experience in administering the Program has identified that a significant percentage of marriage celebrants do not fully understand either the legal or administrative requirements of marriage celebrancy and do not comply with their legislative obligations. However, the Department has insufficient resources or capacity to use the legislative measures provided to properly regulate the industry and respond in a timely way to those celebrants who do not comply with their legislative obligations.

The benefits of addressing underperforming marriage celebrants are not readily quantifiable. However, given the significant legal responsibilities of celebrants, improved regulation is critical to ensuring improved compliance with legal obligations by celebrants as well as enhancing professionalism within

the sector. This would enable those who utilise marriage celebrants registered under the Program to be assured that any celebrant registered by the Government under the Program fully understands and complies with all legal obligations and provides a professional service.

With this in mind the Government's objective is to effectively regulate the Program, thereby improving the compliance and professionalism of marriage celebrants to the benefit of marrying couples and society more generally.

The preferred option to achieve this objective is Option 3.

Increased funding would enable the Program to be properly regulated and thereby improve compliance and professionalism. While increased budget funding directly to the Program would achieve this, it does not provide any guide to either celebrants or marrying couples as to the cost of providing professional celebrants who have a full understanding of, and comply with, all legal obligations involved in conducting marriages. It is also unlikely that such funding would be available in the current budgetary situation.

Option 3 will provide the necessary resources to properly regulate the Program. It is effective and transparent in providing a viable means to properly regulate the Program. It is also an appropriate way of achieving the Government's objective.

Registration under the Program provides celebrants with the authority of the Government to perform a legally significant and socially important function and to charge marrying couples for the performance of this function. It is appropriate that the beneficiaries of the Program -the celebrants registered under it - provide the funding to properly regulate it. It is also appropriate that marrying couples who utilise the services of celebrants contribute in a reasonable way towards the proper regulation of the Program through the payment of the celebrant who solemnises their marriage.

Similar regulatory environments, such as those applicable to migration agents, impose significant fees for regulating their program. Migration agents, like marriage celebrants, are registered and centrally regulated to perform an essential role in the community. It is a role that carries significant legal responsibilities and for the performance of which they are able to charge their clients.

Option 3 may result in some marriage celebrants, who conduct relatively few marriages deciding to leave the sector because a fee would make it less economically viable to remain registered. As noted above, it is anticipated that this factor may result in approximately 10% of celebrants registered under the Program deciding to leave the Program on a one-off basis.

A full cost recovery fee may have a negative impact on specific sub-groups of celebrants registered under the Program. One group is the small proportion that provides religious marriage ceremonies to small independent religious organisations. Such celebrants do not usually charge a fee to marrying couples for conducting marriages. Such celebrants would find it uneconomic to pay a cost recovery fee for registration and this may result in marrying couples in these small independent religious communities being unable to have their marriage conducted by the minister of their group according to their group's rites.

Another group is celebrants in rural and remote areas who may only perform one or two marriage ceremonies per year owing to the small population. A full cost recovery fee may make it uneconomic for such celebrants to remain registered. This could create a risk that some rural and remote communities may not have the services of a civil celebrant available to them.

The impact of Option 3 on these groups within the sector will need to be considered in the implementation of the Option with a view to seeking to accommodate their specific needs. It is intended that significant consultation would be undertaken with all key stakeholders in relation to the implementation of Option 3. The consultation period would provide the opportunity for the details of the operation of the scheme to be discussed with stakeholders so as to ensure that all Australians continue to have access to suitable and professional marriage celebrant services regardless of where they live.

Consultation

It has not been appropriate to undertake detailed consultation with the sector to this point. Some canvassing of options has been undertaken with the peak body representing marriage celebrants, the Coalition of Celebrant Association (CoCA). The CoCA is a coalition of up to 17 marriage celebrant representative bodies and was formed in 2008. Not all celebrant representative bodies are members of CoCA. The majority of marriage celebrants registered under the Program are not members of any representative body. CoCA, however, is the body that is most representative of the sector. At CoCA's December 2010 meeting with the Department the question of the problems relating to the quality and professionalism of some marriage celebrants were raised and discussed.

CoCA reiterated its long standing concern that the failure of celebrants to meet obligations was not being addressed in a timely way by the Department. The Department raised the need to consider more fundamental changes to address these problems and invited views from CoCA. At that meeting CoCA suggested celebrants be paid by the Government to leave the sector. This suggestion forms Option 5 of this Regulation Impact Statement. The poor professionalism of some celebrants has also been raised by CoCA in meetings with the Attorney-General.

In addition, correspondence over several years to the Attorney-General from celebrant associations and individual celebrants has raised concern about the poor performance of some celebrants and the failure to properly regulate the Program and take prompt action against those celebrants who have not fulfilled their obligations.

Option 3 may be expected to elicit a range of views among celebrants. Some may be expected to oppose the introduction of a fee as one has not been charged to date. These celebrants may be likely to acknowledge the need for improved regulation but argue that this should be budget funded.

Other celebrants, as well as the Registries of Births, Deaths and Marriages, will support Option 3 as providing the means for the regulation of non-performing registered celebrants and improvement of professional standards they have been seeking for many years.

Detailed consultation with stakeholders will commence in the second half of 2011 to seek their views on how the fee scheme could be introduced to ensure the need to address the professional standards of

celebrants is addressed. This will include consultation through meetings with peak bodies representing marriage celebrants and communication directly to registered celebrants.

The development phase will also focus on measures to assess and minimise any negative impacts of the fee charging scheme and respond to the likely concern of those celebrants who perform marriages at little or no cost for small independent religious organisations or those in rural and remote areas. Some segments of the sector such as these groups may point to the need for an exemption from paying any fee to be considered or a reduced rate of fee where celebrant services are provided on a voluntary basis or at minimal cost.

More detailed assessment of these potential impacts will take place in the consultation phase during the two year period prior to the introduction of the new fee arrangements and included in future impact statements. The result of these assessments will be considered in settling the final detail of Option 3 and in the implementation of the option.

The implementation phase of this option would also involve the preparation of information materials to be released on announcement of the new arrangements and delivery of an information and education campaign to marriage celebrants, state and territory authorities and the general public.

Implementation and Review

The implementation of Option 3 would require the development and passage of primary legislation through Parliament in 2013 followed by the development of subordinate legislation. The implementation arrangements would be developed over a two year period prior to commencement in full consultation with the sector. The fee regime would commence on 1 July 2013. The revenue from the payment of fees, the number of registered celebrants and their compliance with legal obligations will be monitored by the Government. This will be done on an ongoing basis with progress reported annually to the Attorney-General. Monitoring will also ensure cost-recovery principles are complied with in relation to the administration of the fees. A review of the structure of the fee arrangements will occur in 2014-15 and this review will canvass whether the amount of fee is still appropriate.