

Administrative Appeals Tribunal

**DECISION AND REASONS FOR DECISION [2004] AATA 1044
No V2004/88**

GENERAL ADMINISTRATIVE DIVISION

Re

SUZANNE INGLETON

Applicant

And

REGISTRAR OF MARRIAGE

CELEBRANTS

Respondent

DECISION

Tribunal

Mrs Joan Dwyer, Senior Member

Date 6 October 2004

Place Melbourne

Decision

1. The Tribunal sets aside the decision under review.

2. In substitution, the Tribunal decides:

(i) Ms Ingleton is, and at all material times has been, a fit and proper person to be a marriage celebrant under s 39C(1)(c) of the *Marriage Act 1961* ("the Act");

(ii) Ms Ingleton is to be registered as a marriage celebrant, with effect from 14 January 2004, pursuant to ss 39D(4) and 39J(3) of the Act.

[sgd] Joan Dwyer

Senior Member

REGISTRATION OF MARRIAGE CELEBRANT – whether applicant “a fit and proper person to be a marriage celebrant” under s 39C(1) Marriage Act 1961 – matters to be taken into account in s 39C(2)(a)–(h) Marriage Act 1961 considered – applicant advertised her services as a civil celebrant in Marriage Celebrants column – advertisement included the word “weddings”

- advertisement appeared when applicant was not registered as a Marriage Celebrant
- word “weddings” removed from advertisement prior to any contact from Registrar or her staff
- applicant advised Attorney- General that she had placed advertisement and that she conducted weddings with a signing celebrant completing formal requirements
- letter of complaint received by Registrar from an authorised celebrant complaining about applicant’s practice
- finding that applicant a person of highest standing in the community
- conducting weddings with formal requirements completed by or in the presence of a signing celebrant **not unlawful and contemplated by the Marriage Act 1961**
- finding that applicant told couples true position and always complied with the Act
- finding that her conduct was not misleading
- finding that applicant did not knowingly make a false and misleading statement in her application for registration
- meaning of “false”
- applicant “a fit and proper person to be a marriage celebrant”
- decision under review set aside.

Marriage Act 1961 , ss 5(2), 39C(1), 39C(2), 39D, 41, 45(2), 45(3), 46(1).

Marriage Regulations 1963

Australian Broadcasting Tribunal v Bond (1990) 94 ALR 11

Green v Daniels (1977) 13 ALR 1

Guse v Comcare (1997) 49 ALF 288

Hughes and Vale Pty Ltd and Anor v State of New South Wales and Ors [No. 2] (1955) 93 CLR 127

Murphy v Farmer (1988) 165 CLR 19

Re Siipola-Fortunaso and Registrar of Marriage Celebrants [2004] AATA 946

REASONS FOR DECISION

6 October 2004
Mrs J.R. Dwyer, Senior Member

FORMAL MATTERS

This is an application under s 39J of the *Marriage Act 1961* ("the Act") for review of a decision of the Registrar of Marriage Celebrants ("the Registrar") not to register Ms Ingleton as a marriage celebrant. The reviewable decision was made on 14 January 2004 under s39C and s39D of the Act. The issue is whether Ms Ingleton is a "*fit and proper person to be a marriage celebrant*".

Ms Duffy of Counsel appeared for Ms Ingleton. Mr Swan of Counsel appeared for the Registrar. The Tribunal had before it the documents ("the T-documents") lodged pursuant to s 37 of the *Administrative Appeals Tribunal Act 1975* ("the AAT Act") and also the exhibits tendered during and by leave after the hearing.

Those exhibits lodged with the Tribunal after the hearing have been marked as exhibits A3 and A4 (Diploma of Marriage Celebrancy dated 1 May 2003 and letter from Australian & International College of Celebrancy ("the College") and exhibits R6 and R7 (affidavit and supplementary affidavit of Susan de Carle, affirmed 15 and 20 July 2004).

After telephone directions hearings, Ms Ingleton was given leave to file further affidavits and these have been lodged with the Tribunal and marked as exhibits A5, A6 and A7 (affidavits of Ms Suzanne Ingleton sworn on 29 July 2004 and 18 August 2004, and affidavit of Dr Christopher Watson sworn on 17 August 2004). Ms Ingleton gave evidence. Evidence on her behalf was given by Dr Woolhouse and Mr Singaram.

RELEVANT LEGISLATIVE PROVISIONS

Sections 5(2), 41, 45(2) and (3) and 46(1) of the Act contain provisions as to the solemnisation of marriages. So far as relevant, they provide:

5(2) Where:

(a) a marriage is solemnized in the presence of a person, being a person in whose presence a marriage may, in accordance with this Act, be lawfully solemnized; and

(b) that person consents to the marriage being solemnized in his or her presence;

that person shall, for the purposes of this Act, be deemed to solemnize the marriage.

41 A marriage shall be solemnized by or in the presence of an authorized celebrant who is authorized to solemnize marriages at the place where the marriage takes place.

45(2) Where a marriage is solemnized by or in the presence of an authorized celebrant, not being a minister of religion, it is sufficient if each of the parties says to the other, in the presence of the authorized celebrant and the witnesses, the words:

"I call upon the persons here present to witness that I, A.B. (or C.D.), take thee, C.D. (or A.B.), to be my lawful wedded wife (or husband)";

or words to that effect.

(3) Where a marriage has been solemnized by or in the presence of an authorized celebrant, a certificate of the marriage prepared and signed in accordance with section 50 is conclusive evidence that the marriage was solemnized in accordance with this section.

46(1) Subject to subsection (2), before a marriage is solemnized by or in the presence of an authorized celebrant, not being a minister of religion of a recognized denomination, the authorized celebrant shall say to the parties, in the presence of the witnesses, the words:

"I am duly authorized by law to solemnize marriages according to law.

"Before you are joined in marriage in my presence and in the presence of these witnesses, I am to remind you of the solemn and binding nature of the relationship into which you are now about to enter.

"Marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.";

or words to that effect.

Section 39C and 39D of the Act contain provisions as to registration of marriage celebrants. So far as relevant, they provide:

39C(1) A person is only entitled to be registered as a marriage celebrant if the person is an individual and the Registrar of Marriage Celebrants is satisfied that the person:

- (a) is aged 18 years or over; and
 - (b) has all the qualifications, and/or skills, determined in writing to be necessary by the Registrar in accordance with regulations made for the purposes of this paragraph; and
 - (c) is a fit and proper person to be a marriage celebrant.
- (2) In determining whether the Registrar is satisfied that the person is a fit and proper person to be a marriage celebrant, the Registrar must take into account:
- (a) whether the person has sufficient knowledge of the law relating to the solemnization of marriages by marriage celebrants; and
 - (b) whether the person is committed to advising couples of the availability of relationship support services; and
 - (c) whether the person is of good standing in the community; and
 - (d) whether the person has been convicted of an offence, punishable by imprisonment for one year or longer, against a law of the Commonwealth, a State or a Territory; and
 - (e) whether the person has an actual or potential conflict of interest between his or her practice, or proposed practice, as a marriage celebrant and his or her business interests or other interests; and
 - (f) whether the person's registration as a marriage celebrant would be likely to result in the person gaining a benefit in respect of another business that the person owns, controls or carries out; and
 - (g) whether the person will fulfil the obligations under section 39G; and
 - (h) any other matter the Registrar considers relevant to whether the person is a fit and proper person to be a marriage celebrant.

39D(1) A person may apply to be registered as a marriage celebrant by giving the **Registrar of Marriage Celebrants**:

- (a) a completed application in the form specified by regulations made for the purposes of this paragraph; and
 - (b) any statutory declarations required by the form.
- (2) The Registrar must deal with applications in the order in which they are received.
- (3) In dealing with an application, the Registrar:
- (a) must have regard to the information in the application; and
 - (b) may have regard to any other information in his or her possession; and
 - (c) is not required to seek any further information.

- (4) The Registrar must register a person as a marriage celebrant if:
- (a) the person has applied in accordance with subsection (1); and
 - (b) the Registrar is satisfied that the person is entitled to be registered as a marriage celebrant.

The Registrar must not register a person as a marriage celebrant in any other circumstances.

THE ISSUES

The Registrar's concerns about whether Ms Ingleton is a fit and proper person to be registered as a marriage celebrant relate to an advertisement she placed in the classified section of the Midland Express on 9 September 2003. It stated (T3, p10):

SUZANNE Ingleton. Civil Celebrant. Weddings, Namings, Funerals, Personal Rituals, listening, serving, healing. susoulo@bigpond.com Ph 54722233 Mob. 0404098920

It is not in dispute that, at the time that advertisement was placed in the Midland Express, Ms Ingleton was not registered as marriage celebrant under the Act. She lodged an application for registration on 16 September 2003 (T4).

As set out in paragraph 5 of the written submissions of the respondent, dated 7 July 2004, the Registrar contends that Ms Ingleton is not a fit and proper person to be a marriage celebrant because:

- (1) She has insufficient understanding of the role and responsibilities of a marriage celebrant; and
- (2) Her premature and presumptuous advertising of herself as a marriage celebrant demonstrates poor judgement and a disregard for the truth.
- (3) Indifference to the confusion and inconvenience her modus operandi can and does cause to couples seeking a registered marriage celebrant; and
- (4) at best, indifference to, and, more likely, contempt for, formal legal requirements, which she seems to consider as merely technical obstacles to her getting on with what she considers to be the really important aspects of her activities as a "celebrant" in relation to marriages.

FACTUAL BACKGROUND

AMENDMENTS TO SYSTEM FOR REGISTRATION OF MARRIAGE CELEBRANTS

The Marriage Celebrant's Program was established in 1973 to enable the appointment of suitably qualified people to perform marriages and to provide couples with a meaningful alternative to Registry Office and mainstream church weddings.

Commencing in 1996, the Government undertook an extensive four year review of the program. A package of reforms was developed that aimed to raise the professional standards in celebrancy services provided by marriage celebrants appointed under the program. The new system was introduced by way of amendments to the Act. The amending legislation, the *Marriage Amendment Act 2002* ("the Amendment Act") was passed on 8 October 2002, but the provisions relating to Marriage Celebrants did not commence until 1 September 2003 (Exhibit SGD1 to the affidavit of Susan de Carle (R6)).

The Attorney-General set out the objectives of the reforms at the Official Launch of the Marriage Celebrants Reform on 3 September 2003 (R5). He said:

First, opening the doors to marriage celebrancy to a greater number of appropriate applicants to enable talented and dedicated members of the community to influence and continue to improve the style, content and dynamism of celebrancy.

Secondly, broadening and enhancing the role of celebrants to include the promotion of pre-marriage and other relationship services to assist in building stronger and healthier family relationships.

Thirdly, elevating the overall standard of professional celebrancy services to ensure that all marrying couples receive celebrant services, which meet their reasonable expectations.

MS INGLETON'S DECISION TO SEEK TO BECOME REGISTERED AS A MARRIAGE CELEBRANT

Ms Ingleton graduated in architecture at the University of Melbourne in 1967. She practised as an architect for some years before changing the direction of her career and becoming a very successful actor, receiving a number of awards for her theatre work.

Over the years, Ms Ingleton also developed a strong interest in healing and in ceremony and ritual. She qualified as a Reiki practitioner. Throughout her career, she has performed much voluntary work and has worked with young people in creative arts programs. In 2003, Ms Ingleton completed a certificate course in workplace training and assessment.

Ms Ingleton gave evidence that, after attending some weddings celebrated by a civil celebrant, she decided that she would like to be a marriage celebrant. She explained that she saw that as an opportunity to combine a number of important elements of her previous career, especially her knowledge and experience of performance and ritual, with her own deeply held spiritual beliefs and her interest in people.

Ms Ingleton enrolled in a civil celebrancy course at the International College of Celebrancy ("the College") in early 2003. On 1 May 2003 Ms Ingleton received a Diploma of Marriage Celebrancy from the College (A3). She did a further three-month course in funeral celebrancy.

At the time Ms Ingleton undertook her course, the Amendment Act had been passed, but the amendments were not yet in force. It was a transitional time, both for those administering the program in the Marriage Celebrants Section ("the Section") of the Attorney-General's Department (the "Department"), and for those teaching or studying to attain the necessary formal qualifications.

There seems to have been confusion on a number of issues relating to the standing of the course Ms Ingleton completed at the College. There was correspondence on the issue in March 2003 between the Assistant Secretary, Family Law Branch of the Department ("the Assistant Secretary") and the College (R2, p2).

Presumably as a result of that correspondence, the College wrote to Ms Ingleton and other graduates of her course, in July 2003. The letter explained that the Department had advised that a Statement of Attainment in the unit of competency, "*Plan Conduct and Review a Marriage Ceremony*", would be required for appointment as a marriage celebrant under the reformed procedures (A4). Ms Ingleton was sent her Statement of Attainment, dated 14 July 2003 (T8 p34), with that letter.

Ms Ingleton said that subsequent to receiving her Statement of Attainment, her class of graduates received another letter from the College, advising that the College's registration as a registered training organisation had post-dated their graduation, and that therefore their Statements of Attainment did not satisfy the qualification requirements of the *Marriage Regulations 1963*, as amended ("the Regulations"). The students were advised that they would have to apply to an independent qualified assessor to be certified competent in the marriage celebrancy unit which, according to R2, only came into force on 1 September 2003.

On 9 September 2003, Ms Ingleton was assessed by a qualified assessor, Mr Meade, as having completed a course of training that satisfied the requirements of the unit of competency "*CHCNCEL 401A -Plan, Conduct and Review a Marriage Ceremony*" (T8, p33).

On 16 September 2003 Ms Ingleton lodged an application for registration as a marriage celebrant (T4 pp11-14). No decision was made on that application. It was pointed out to Ms Ingleton, by letter dated 3 October 2003, that she had failed to provide certified copy of proof of residence, and that she would have to lodge a new application. On 17 October 2003, Ms Ingleton lodged a second application. That application was rejected by the Registrar in the decision under review.

"FIT AND PROPER PERSON TO BE A MARRIAGE CELEBRANT"

As Ms Duffy pointed out, the Act requires the Registrar, in considering whether a person is a "*fit and proper person to be a marriage celebrant*", to take into account all of the factors specified in s 39C(2)(a) to (h). The Registrar, in her reasons for decision (T24, paragraph 22), wrote that she did not have any concerns about any factors other than the issues in relation to the

advertisement, which she took into account under paragraph 39C(2)(h) which requires the Registrar to take into account "...any other matter the Registrar considers relevant to whether the person is a fit and proper person to be a marriage celebrant".

The respondent's submissions of 7 July 2004, in paragraph 21, suggested that the Tribunal should take into account factors (e), (f) and (h). I have difficulty in understanding the basis of that submission. First, the Act requires that the Registrar take into account all of factors (a) – (h). Secondly, factors (a), (b) and (c) are very relevant, especially factor (c), and there was no evidence relevant to factors (e) and (f). Further, the respondent seemed to rely also on factor (g).

Because a decision under s39C(2) must take into account all the factors mentioned, and may require the exercise of discretion as to the weight to be given to the different factors, I consider it appropriate to refer to the evidence as to factors (a) to (g), as well as to the matters arising under factor (h).

(a) WHETHER THE PERSON HAS SUFFICIENT KNOWLEDGE OF THE LAW RELATING TO THE SOLEMNIZATION OF MARRIAGES BY MARRIAGE CELEBRANTS

As to s 39C(2)(a), Ms Ingleton had been assessed as having the qualification prescribed in reg 37G(2) of the Regulations, as demonstrating the required knowledge. The evidence gives no reason to doubt that she has sufficient knowledge of the law relating to the solemnisation of marriages.

(b) WHETHER THE PERSON IS COMMITTED TO ADVISING COUPLES OF THE AVAILABILITY OF RELATIONSHIP SUPPORT SERVICES

As to paragraph 39C(2)(b), the application form contemplates an applicant satisfying the Registrar of her commitment to advising couples of the availability of relationship support services by identifying the organisations that provide relationship services for couples in the applicant's area (Part C of the application form). Ms Ingleton specified four organisations providing relationship support services for couples in her area and gave an informed description of each of those services. No problem has been raised about that issue.

(c) WHETHER THE PERSON IS OF GOOD STANDING IN THE COMMUNITY

As to whether she was of good standing in the community, Ms Ingleton sent four references with her application. When she was told that there was a question as to whether she was a fit and proper person to be a marriage celebrant, she sent another five references.

The Registrar in her decision (T24), at paragraphs 20 to 21, dealt with the weight she attached to those references as follows:

You have provided reports from a number of referees. They have supported your application. Your first, very brief, referees reports did not address most of the criteria required by the application form but did comment positively on your integrity. These were supplemented by further referees reports that offered nothing further on the required criteria but did also positively affirm your integrity. Telephone contact was made with two of your referees to gain comments on the required criteria and they provided very positive comments on the matters raised. It is clear that all your referees regard you as being dedicated and enthusiastic and comment positively on your professional work. They all state their belief in your integrity. One of your referees commented when contacted that you did tell clients you were unable to conduct their ceremony but this does not diminish the confusion evident in your own description of the information you provided to members of the public or the potentially misleading nature of your advertisement.

I have no doubt on the basis of the material you have supplied and on the statements of your referees that you have believed yourself to have acted in good faith. I also have no doubt, on the basis of your application, that you would perform other aspects of the role of a marriage celebrant satisfactorily. That is not the issue. The issue is the effect of your potentially misleading and confusing presentation of your status on members of the public. You are providing information on an important matter that is not completely accurate prior to any registration as a marriage celebrant. In my view you have not demonstrated that you sufficiently understand the necessity to fully and accurately present your status as not being registered to solemnise marriages. Given the utmost importance of the full and accurate representation of these vital matters to the public and your seeming lack of understanding of this crucial point, I cannot be sufficiently confident that other equally important matters would be fully and

accurately presented to the public to register you as a marriage celebrant.

I consider that the references Ms Ingleton produced should be set out in full in these reasons. They are relevant to the ultimate question whether Ms Ingleton is a fit and proper person to be a marriage celebrant. They speak as to Ms Ingleton's integrity, and as to her "*honesty, knowledge and ability*". Those qualities were identified as relevant in deciding whether a person is a "*fit and proper person*" for a particular role by the High Court in *Hughes and Vale Pty Ltd and Anor v State of New South Wales and Ors [No. 2] (1955) 93 CLR 127*, where the High Court said, at 156:

The expression 'fit and proper person' is of course familiar enough as traditional words when used with reference to offices and perhaps vocations. But their very purpose is to give the widest scope for judgment and indeed for rejection. 'Fit' (or 'idoneus') with respect to an office is said to involve three things, honesty knowledge and ability: 'honesty to execute it truly, without malice affection or partiality; knowledge to know what he ought duly to do; and ability as well in estate as in body, that he may intend and execute his office, when need is, diligently, and not for impotency or poverty neglect it.

The referees also speak of Ms Ingleton's standing in the community and of her qualities relevant to the role and responsibilities of an authorised marriage celebrant, such as her empathy, understanding of peoples' needs, spiritual beliefs, interest in sacred rituals, sense of community and skills as a performer.

The references provide material relevant to a decision as to whether Ms Ingleton would be likely to confuse members of the public and whether she has a good understanding of issues such as her status. Those are the concerns the Registrar expressed. They are also relevant to a consideration of the qualities Ms Ingleton could bring to marriage celebrancy, and their relevance to the objectives of the reforms introduced by the 2002 amendments to the Act, as described by the Attorney-General at the launch of the Marriage Celebrants Reform (R5).

Reference 1 was from **Carol Leen Huish**, a Registered Marriage Civil Celebrant. It reads as follows (T8, p27):

For many years I have admired Suzanne's work as a professional actor and have been pleased to be a mentor for her whilst she was studying the Celebrancy course. I have also witnessed her ceremony work and see that she brings an empathy and a deep, personal understanding of her clients particular needs and the ability to listen to what it is that they require.

Suzanne will be an asset to this profession both in her innovative style and content and in her passionate commitment to professionalism and integrity. Please don't hesitate to call me for further assistance.

Reference 2 was from the Reverend Daryl Colless, the Minister of the Northcote Uniting Church. He wrote (T8, p28):

The Northcote Uniting church is home to "Chalice" - a Centre for Contemporary Spirituality & the Creative Arts and offers a wide variety of community programmes for those seeking to find a sense of the "sacred" and spirituality in their lives. Since I became the minister of the Northcote Uniting Church some three years ago I have had the privilege of working with Suzanne Ingleton and have observed the creative ways in which she engages with a wide variety of people through her sacred ceremonies and performing arts programmes.

Suzanne has a strong sense of community and has been an activist for human rights. In addition, her experience as a dramatist is well known within the community where for over thirty years she has been an actor, writer, and director.

As a celebrant, Suzanne would have opportunity to bring together her spiritual beliefs, sacred rituals and her theatrical training. This would give her opportunity to fulfil her desire to manifest healing and happiness in this world. I believe that Suzanne would perform the duties of celebrant in a joyous and professional manner for those members of the community in Castlemaine and elsewhere who perhaps seek a sacred rather than religious ceremony.

Reference 3 was from **Professor Andrea Hull AO**, the Director of the Victorian College of the Arts. She wrote (T8, p29):

Suzanne has worked out front in the community for over thirty years as an actor/writer/director and activist for human rights and has donated much of her time to fundraising events. This

background has been valuable in adding to her ability to perform Civil Celebrant duties in a manner which will bring joy and satisfaction to her clients.

Suzanne also has a solid professional background, having trained as an architect with a degree from the University of Melbourne and a certificate in Workplace Training and Assessment, training in drama and creative writing and at various times teaching at the Victorian College of the Arts and NSW Writers Centre among others. I believe Suzanne is currently artiste in residence for the Royal Children's Hospital Festival of Healthy Living for Mental Health Week.

Suzanne resides in the Victorian town of Castlemaine where there is a burgeoning population of young people seeking sacred ceremonies as opposed to religious ceremonies so as you can see there is a great need for a sympathetic celebrant.

Reference 4 was from **Ms Eva Cox AO**, a Senior Lecturer, Faculty of Humanities and Social Sciences, University of Technology, Sydney. She wrote (T8, p30):

I have known Suzanne for more than a decade both through her work and personally, primarily the former. She is a woman of the highest integrity, both as a performer and community member and would add to the both dignity and breadth to the range of celebrants available. Her work in the area of drama and humour as well as her commitment to often disadvantaged groups in the community give her a set of skills and competencies which would make her an excellent celebrant.

She has used her skills to both amuse and educate the community in many areas of difficult social problems and has offered a healing set of viewpoints which appeal over a wide span of people. Her capacities as a performer would offer the people using her services occasions to remember with pleasure and gravity. She would conform to highest levels of ethical standards and be able to satisfy a wide range of applicants with her skills and empathy. Her situation in rural Victoria would offer additional choices to the local population for celebrating their special occasions.

I am more than happy to answer any further questions on her capacity for such a position and highly recommend her appointment.

Reference 5, from **Dr Davis McCaughey AC**, a former Governor of Victoria, read as follows (T13, p47):

....I am happy to recommend you to the Attorney-General for registration as a Civil Celebrant. While it is some time since we met, when you were a shining light in student theatre at the University of Melbourne, I am sure that the qualities of sympathy and integrity which you showed in those days will still characterize you, and that you can be trusted in all the delicate duties which you will have to fulfil as a Celebrant.

Reference 6 was from **Ms Slater**, a property technology and entertainment lawyer. She wrote (T13, p48):

I have continuously known Suzanne Ingleton of Castlemaine since at least late 1999 as both a friend and in her work with the New South Wales charity, The Northcott Society.

Prior to 1999, I have known of Ms Ingleton in her capacity as a distinguished actor, writer and entertainer in theatre and television. Her abilities have been recognised locally by Sidney Myer Individual Performing Arts Award, amongst other awards. As an entertainment lawyer and follower of the arts, I know her to have an artistic reputation for excellence that makes her internationally revered and renowned as an artist of exceptional abilities.

Having witnessed her in many artistic performances and having observed her tireless work for The Northcott Society, I have no hesitation in recommending her for a position that requires compassion, responsibility, performance and respect for ceremony and formality. I also know her to be a person of integrity and commitment to her chosen path.

It has been brought to my attention that Ms Ingleton seeks to be registered as a civil celebrant and all the responsibilities that that entails. I consider Ms Ingleton to be a person of good character and standing and an asset to the profession of civil celebrant.

Reference 7 was from **Dr Helen Ferguson**, a medical general practitioner. She wrote (T13, p49):

Suzanne Ingleton has been known to me for many years and I write to support her application as a Civil Celebrant. Suzanne is a person of great personal integrity who has made contributions to the community over the years in her work as an architect and also as an actor, creative writer, teacher and producer of drama.

She is currently residing in Castlemaine in central Victoria and is very active in the community there and I believe that her registration as a Civil Celebrant will be beneficial to the people of that community. She will doubtless bring to this position her personal integrity, high professional standards and a personality that is particularly suited to this work.

Reference 8, from **Professor Peter McIntyre AO**, Emeritus Professor of Architecture, University of Melbourne, read as follows (T13, p50):

Suzanne Ingleton has been known to me for the past thirty years. During that period of time I have always considered her as a person of outstanding character, integrity and ability.

She has informed me that she is applying for registration as a Civil Celebrant. In my opinion, she would do an outstanding job in this capacity and I support her in every endeavour that she is making for her registration.

Reference 9 was from **Carrillo Gantner AO**, Vice President of The Myer Foundation. He wrote (T13, p51):

I have known Suzanne Ingleton for almost 40 years, throughout her long and distinguished career as an actor, writer and director – a career with which she still has strong contacts. I am also aware of her former profession as an architect. I know that her life has also been built on a strong spiritual foundation, increasingly so in recent years. I am very happy, therefore, to be asked to support her application for registration as a Civil Celebrant.

Suzanne embodies so much that is professional and good in the sensitive area of personal relationships. She has strong personal integrity and her professionalism, as a highly regarded artist, brings to her Celebrancy a heightened feeling for ceremony and ritual.

I believe that, as she now resides in Castlemaine, an area that could well do with someone of her ability and experience, her registration will fill an obvious need within the community of Central Victoria.

(d) WHETHER THE PERSON HAS BEEN CONVICTED OF AN OFFENCE, PUNISHABLE BY IMPRISONMENT FOR ONE YEAR OR LONGER, AGAINST A LAW OF THE COMMONWEALTH, A STATE OR A TERRITORY

There is no suggestion that paragraph 39C(2)(d) of the Act has any relevance.

(e) WHETHER THE PERSON HAS AN ACTUAL OR POTENTIAL CONFLICT OF INTEREST BETWEEN HIS OR HER PRACTICE, OR PROPOSED PRACTICE, AS A MARRIAGE CELEBRANT AND HIS OR HER BUSINESS INTERESTS OR OTHER INTERESTS

There is no suggestion that Ms Ingleton has any actual or potential conflict of interest between her practice as a marriage celebrant and her business interests or other interests.

(f) WHETHER THE PERSON'S REGISTRATION AS A MARRIAGE CELEBRANT WOULD BE LIKELY TO RESULT IN THE PERSON GAINING A BENEFIT IN RESPECT OF ANOTHER BUSINESS THAT THE PERSON OWNS, CONTROLS OR CARRIES OUT

There is no suggestion that Ms Ingleton's registration would result in her gaining a benefit in respect of another business that she owns, controls or carries out.

(g) WHETHER THE PERSON WILL FULFIL THE OBLIGATIONS UNDER SECTION 39G

Section 39C(2)(g) imposes obligations on marriage celebrants. It reads as follows:

39G A marriage celebrant must:

- (a) conduct himself or herself in accordance with the Code of Practice for marriage celebrants prescribed by regulations made for the purposes of this paragraph; and

- (b) undertake all professional development activities required by the Registrar of Marriage Celebrants in accordance with regulations made for the purposes of this paragraph; and
- (c) notify the Registrar, in writing, within 30 days of:
 - (i) a change that results in the details entered in the register in relation to the person no longer being correct; or
 - (ii) the occurrence of an event that might have caused the Registrar not to register the person as a marriage celebrant if the event had occurred before the person was registered.

From her application, there was no reason to believe that Ms Ingleton would not fulfil the obligations under s 39G. Nor was that raised by the Registrar as a reason for rejecting Ms Ingleton's application for registration. However, under the heading, "*Demonstrated disregard for legal formalities*", Mr Swan, in paragraphs 75 to 86 and 91 of his written submissions of 7 July 2004, while not specifically referring to ss 39C(2)(g) or 39G, seemed to be suggesting that the Registrar could not have confidence that Ms Ingleton would fulfil her obligations under s 39G of the Act. That is a matter which will be considered in conjunction with the issues arising under paragraph 39C(2)(h).

(h) ANY OTHER MATTER THE REGISTRAR CONSIDERS RELEVANT TO WHETHER THE PERSON IS A FIT AND PROPER PERSON TO BE A MARRIAGE CELEBRANT

The matter which caused the Registrar to decide that Ms Ingleton was not "*a fit and proper person to be a marriage celebrant*", as I have already said, was an advertisement which she placed in her local newspaper, the Midland Express, on 9 September 2003. The Registrar considered that issue under paragraph 39C(2)(h) of the Act.

That advertisement was forwarded to the Registrar by a registered celebrant, Ms Foster, by letter dated 2 October 2003. In her lengthy letter, Ms Foster explained how she had learned that Ms Ingleton had advertised herself as a civil celebrant for weddings, when she was not a registered marriage celebrant (T5, p15-16). Even though the letter made it clear that Ms Ingleton had only celebrated marriages together with a registered marriage celebrant, it was written in an aggrieved and immoderate tone.

The letter set out an account of one couple's contact with Ms Foster and Ms Ingleton about their proposed marriage. At no stage did it assert that Ms Ingleton had indicated to anyone that she was entitled to celebrate the formal aspects of marriage for that couple. She had arranged for Ms Ford, an authorised marriage celebrant in Kyneton, to perform the formal components of the solemnisation of the marriage in accordance with the Act. Ms Foster, in her letter, wrote (T5, p15):

Apparently, she tells the client she is a Civil Celebrant but has not got her number yet. I understand she advertises as conducting weddings, namings and funerals. I asked her how she did the interviews [and] she told me she takes all the NIM'S off the Internet and uses those.

It is not contended by the respondent that the procedure adopted by Ms Ingleton, of performing marriages with an authorised celebrant, is unlawful. Paragraph 19 of the Respondent's Statement of Facts and Contentions, states:

19. Within clearly defined parameters it is permissible to have authorised celebrants perform weddings with a celebrant who is not registered to solemnise marriages, although this is not a practice that is endorsed by the respondent.

The Registrar wrote in similar terms in her decision, paragraph 13.

The Registrar's Statement of Facts and Contentions, at paragraph 17, states:

17. Without registration, the applicant is not entitled to solemnise marriages. Although she may advise clients once they have engaged her services or enquire as to her services that another celebrant will need to be present to solemnise the marriage, this fact is not clear from the advertisements placed.

CONSIDERATION OF ISSUES

LEGAL BASIS FOR REGISTRAR'S CONCERNS

The first sentence of paragraph 17 of the Registrar's Statement of Facts and Contentions, quoted above, is not accurate. There is no restriction in the Act on an unauthorised celebrant solemnising a marriage, **so long as it is done "in the presence of an authorised celebrant", and so long as there is compliance by an authorised celebrant with ss 42 and 46 of the Act.**

Although the Registrar's Statement of Facts and Contentions in paragraph 19 referred to "*clearly defined parameters*", no such parameters were referred to during the hearing. The only "*clearly defined parameters*" seem to be those in ss 42 and 46 of the Act. **There is no suggestion in the evidence that Ms Ingleton ever acted in breach of those sections.**

Further, although the Registrar stated that the practice of an authorised celebrant performing a wedding with a celebrant who is not authorised was "*not endorsed*" by the respondent, **that practice is clearly envisaged by the Act.** My attention was not drawn to any regulation or guideline "*not endorsing*" it. Indeed, **if there were any such regulation or guideline it would probably be without power or "ultra vires"**, in view of the clear words in many sections of the Act, which expressly allow a marriage to be solemnised "**by or in the presence of an authorised celebrant**". That is precisely the practice Ms Ingleton adopted. If she celebrated or solemnised a marriage, it was always done in the presence of an authorised celebrant. The authorised celebrant actively participated in the ceremony, and complied with all the requirements of the Act imposed on an authorised celebrant who is present at the solemnisation of a marriage.

Section 41 of the Act provides:

A marriage shall be solemnized by **or in the presence of** an authorized celebrant who is authorized to solemnize marriages at the place where the marriage takes place. [emphasis added]

The same words allowing a marriage to be solemnised "*by or in the presence of an authorised celebrant*" are used in s 45(1)(2) and (3):

45 (1) Where a **marriage is solemnized by or in the presence of an authorized celebrant**, being a minister of religion, it may be solemnized according to any form and ceremony recognized as sufficient for the purpose by the religious body or organization of which he or she is a minister.

(2) Where a **marriage is solemnized by or in the presence of an authorized celebrant**, not being a minister of religion, it is sufficient if each of the parties says to the other, in the presence of the authorized celebrant and the witnesses, the words:

"I call upon the persons here present to witness that I, A.B. (or C.D.), take thee, C.D. (or A.B.), to be my lawful wedded wife (or husband)";

or words to that effect.

(3) Where a **marriage has been solemnized by or in the presence of an authorized celebrant**, a certificate of the marriage prepared and signed in accordance with section 50 is conclusive evidence that the marriage was solemnized in accordance with this section. [emphasis added]

The emphasised words show that the Act does not prevent Ms Ingleton solemnising marriages without being registered as an authorised celebrant, so long as that is done in the presence of an authorised celebrant, who is deemed under s 5(2) of the Act to have solemnised the marriage. The evidence is that the marriages in which Ms Ingleton participated were solemnised by an authorised celebrant, either at the ceremony Ms Ingleton performed, or at a separate solemnisation of the marriage.

Sections 42 and 46 of the Act set out obligations imposed on an authorised celebrant who solemnises a marriage. Section 42 relates to matters such as notice of the marriage being given and received by the authorised celebrant, and production to the authorised celebrant of proof of birth certificates, passports and evidence of conjugal status. Section 46 requires the authorised celebrant to say to the parties, in the presence of witnesses, the following words, or "*words to that effect*":

"I am duly authorized by law to solemnize marriages according to law.

Before you are joined in marriage in my presence and in the presence of these witnesses, I am to remind you of the solemn and binding nature of the relationship into which you are now about to

enter.

Marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life."

EVIDENCE AS TO COMPLIANCE WITH THE ACT

Ms Ingleton and her witnesses gave evidence that the authorised celebrants, at the marriages Ms Ingleton celebrated, complied with ss 42 and 46 of the Act. There was no evidence to the contrary.

Ms Ingleton said that, when someone rings her about performing a marriage ceremony, she explains that she can create a ceremony, but she needs a *"signing celebrant"* to complete the formal requirements of the marriage.

Ms Ingleton explained that, if the decision is made to use her services, she meets with the couple and explains the Notice of Intention of Marriage ("NIM") to them. She sends it to the authorised celebrant, a month before the marriage, as required by s 42(1)(a) of the Act. She explains to the couple that they will have to produce their birth certificates to the authorised celebrant and, if either of them have been married before, evidence that they are free to marry. Those matters are necessary for compliance with s 42 of the Act.

Ms Ingleton plans the ceremony with the couple and attends a rehearsal with the authorised celebrant if it is to be a joint ceremony. She discusses the need to have witnesses present.

Prior to the ceremony, Ms Ingleton gives the parties a folder with relevant information, including information about relationship support services. She discusses with the parties the reasons why they want to be married, and talks with them about the nature of marriage and the legal requirements of a marriage and tells them that the vows are very important. She tells them about the difficulties of marriage and directs them to seek help and guidance at difficult times, especially if they have children.

Where Ms Ingleton celebrates a marriage in the presence of an authorised celebrant, the authorised celebrant says to the parties the words specified in s 46 of the Act. After the making of the vows required by s45(2) of the Act, Ms Ingleton says, *"by the elements and the affirmation of the people here I pronounce you man and wife"*.

FINDING AS TO COMPLIANCE WITH THE ACT

I find from the evidence given by Ms Ingleton that she has a good understanding of the formal requirements for the solemnisation of a marriage under the Act. I find that she arranges for an authorised celebrant to fill in the forms as required in s 42 of the Act. The authorised celebrant attends the ceremony and makes the declaration in s 46(1) of the Act. The authorised celebrant either solemnises the marriage or consents to it being solemnised in his or her presence and is therefore deemed to have solemnised the marriage. I find that the procedures adopted by Ms Ingleton comply with the requirements of the Act, and show a good understanding of those requirements.

EVIDENCE AS TO THE ADVERTISEMENT

After receiving Ms Foster's letter of 2 October 2003, referred to in paragraph 45 of these reasons, Ms de Carle, a Senior Legal Officer in the Section, wrote to Ms Ingleton attaching Ms Foster's letter and a copy of the Midland Express advertisement (T12, p41). Ms de Carle suggested that the advertisement could be regarded as potentially misleading to couples in that they could believe that, upon making a booking with Ms Ingleton, they were doing so with a registered marriage celebrant.

In her reply, dated 3 November 2003 (T13, pp42-45), Ms Ingleton explained that, since 14 October 2003, the word *"weddings"* had been deleted from the advertisement. She sent a copy of the amended advertisement (T13, p46). Ms Ingleton also wrote (T13, p42):

...I am not and never have been in the practice of deceiving anyone regarding my status. I am practising as a civil celebrant in my trained areas and not taking weddings until I receive an authorisation from the AG's department.

Later in her letter, Ms Ingleton wrote (T13, p44):

Elizabeth [Ms Foster] knew I was not authorised from the word go. I have nothing to hide here. And her use of language certainly makes me look like I was actively engaged in some kind of fraud or deception. I utterly refute her inferences here. No 'apparently' about it - the first thing I **do** tell my clients is that I am a Civil Celebrant (I am!) and that I have not got my authorisation number yet! That's the truth.

At the hearing, Ms Ingleton explained that she had already removed the word "*weddings*" from her advertisement, prior to receiving Ms de Carle's letter of 30 October 2003. The advertisement in the Midland Express from 28 October 2003 read (T13, p46):

SUZANNE Ingleton. Civil

Celebrant. Namings. Funerals.

Personal Rituals. listening,

servicing, empowering.

susoulo@bigpond.com

Ph 54722233

Mob. 0404098920

Ms Ingleton was cross-examined about the fact that the advertisement still appeared under the heading "*Marriage Celebrants*". She explained that the Midland Express had not had a "*Civil Celebrants*" column. The evidence included a letter from the Midland Express to the Registrar dated 2 February 2004 (T26, p80). It confirms that Ms Ingleton had requested, when she first advertised in the paper, that her advertisement be placed under the heading "*Civil Celebrant*", but she had been told that the newspaper computerised classification program did not include that heading and did not allow the creation of new headings. It was for that reason that the advertisement was placed under the heading "*Marriage Celebrants*". The letter from the Midland Express concluded:

We are now able to create a classification for "Civil Celebrants" and from February 10, 2004 her advertisements will be placed under this heading.

Ms Ingleton was cross-examinationed as to why she did not think of placing her advertisement in any alternative part of the paper. Mr Swan asked why she did not advertise in the public notices. She explained that they were in quite different part of the paper, and too expensive. She said that her advertisement would not confuse people, as she always explains the position to people enquiring about her services, as soon as she speaks to them.

EVIDENCE AT THE HEARING

As well as Ms Ingleton's evidence, there was evidence from two people at whose marriages Ms Ingleton had participated as a civil celebrant. Dr Woolhouse was married in a service Ms Ingleton performed with an authorised celebrant. In Mr Singaram's case the formal marriage was celebrated on one day, and the ceremony had been conducted by Ms Ingleton a week later.

Ms Ingleton said that, since 1 July 2003, she has participated in five wedding ceremonies, and estimated that about eight couples who contacted her had decided to find another celebrant rather than have a joint or a split wedding ceremony.

Ms Ingleton said her purpose is to serve the parties to the marriage, and to empower them to have a personalised ceremony which will give them deep meaning and provide meaningful memories of the day of their wedding.

Dr Woolhouse is a general medical practitioner. She explained that she and her husband had intended to have a dual ceremony with an aboriginal spiritual elder and an authorised celebrant. She contacted Ms Ingleton to ask her to be the authorised celebrant, after she saw her entry on a web page. She was attracted by Ms Ingleton's theatre work. Ms Ingleton explained that she could not be a signing celebrant, so Dr Woolhouse contacted a number of authorised celebrants.

Dr Woolhouse and her husband had interviewed two authorised celebrants, but had not found one with whom they felt comfortable, when the aboriginal elder became unavailable.

Dr Woolhouse then rang Ms Ingleton again and asked her to do the wedding ceremony. When Ms Ingleton reminded her that she was not an authorised celebrant, Dr Woolhouse found an authorised celebrant to comply with the formal requirements of the Act, and arranged for Ms Ingleton to perform the ceremony because, "*she understood us...We wanted someone who could engage our energy*".

Dr Woolhouse said that none of the three authorised celebrants she and her husband approached expressed reservations about participating in a dual or joint ceremony with an unauthorised celebrant.

Mr Singaram is a business consultant. He said he met Ms Ingleton when they were both doing a training course in Workplace Harassment and Training in Castlemaine in 2003. He found out during the course that Ms Ingleton was studying to be a civil celebrant. When he and his wife were planning to get married, he asked Ms Ingleton about the option of having a marriage celebrant. She told them, in the first telephone call, that she could perform the ceremony, but she could not legally marry them. She suggested the two options of a separate ceremony with an authorised celebrant, or having a signing celebrant at the ceremony she performed.

At a subsequent meeting, Mr Singaram and his wife felt, at an emotional level, that they wanted Ms Ingleton to perform the ceremony. They decided to have a small wedding with an authorised celebrant and just Ms Ingleton and two witnesses in Melbourne, to meet the formal requirements of the Act, and then to have Ms Ingleton perform the ceremony in Castlemaine a week later, with their friends and family present.

Mr Singaram said it was an inconvenience to have two events a week apart, especially as he and his wife wanted to have the whole ceremony in Castlemaine. But their feeling for having Ms Ingleton bless their marriage was so strong that they were prepared to have the inconvenience of two events, one in Melbourne and one in Castlemaine, in order to have her perform their ceremony.

Mr Singaram said he and his wife wanted a very meaningful ceremony. When they met with Ms Ingleton to talk about their marriage they found that they could communicate with her, and she responded to their needs. He said she was "*upfront*", that she could not do the entire ceremony. He was impressed by that. He said the focus of their decision to have Ms Ingleton perform their ceremony was on their needs. She "*painted the picture*" so they could make informed choices really well.

Ms Ingleton acknowledged the inconvenience to a couple of having to deal with her and an authorised celebrant. She raised her concerns about that matter in a letter she wrote to the Attorney-General on 2 August 2003 (A2) explaining why she wanted to be registered as an authorised celebrant as soon as possible. As she made clear in the letter, she also wanted to bring her skills and training to marriage ceremonies, even before she was an authorised celebrant, in so far as she could legally do so.

Unfortunately, at the time the issue of Ms Ingleton's registration was considered by the Registrar, neither the Registrar nor her staff seem to have been aware that Ms Ingleton had advised the Attorney-General, by letter dated 2 August 2003, that she was advertising her services in precisely the way she was doing.

Ms Ingleton's letter to the Attorney-General was tendered in evidence (A2). Ms Ingleton wrote:

I am advertising my practice but cannot officiate at the legal document signing and have to get a registered celebrant to do this for me.

I live in Central Victoria. I have to go, with my clients (and their entourage if they wish them to be their witness's) over 100 kms to Melbourne to do the legalities. Usually this has to happen on the day before the wedding or two days before the wedding (the clients realise that this will be their official marriage date and as a lot of people choose to be married on a certain date- this can totally destroy their life long dream!).

May I remind you that the day before a wedding is an awful lot of pressure to be putting on a family to make these trips!

The respondent alleged, in paragraph 5(4) of her written submissions that Ms Ingleton displayed "*indifference to the confusion*" caused to couples by the need to have both her and an authorised celebrant solemnise their marriage, if they want to benefit from the skills and qualities she can

provide. The letter to the Attorney-General is evidence that she is clearly not indifferent to the inconvenience caused to couple.

The Assistant-Secretary, on behalf of the Attorney-General, replied to Ms Ingleton's letter of 2 August 2003. The Assistant-Secretary's letter of 25 August 2003 stated that it was written in response to Ms Ingleton's letter of 2 August 2003, but it made no reference to Ms Ingleton's advice that she was advertising her services and performing weddings with an authorised celebrant. The Assistant-Secretary did not indicate in any way that what Ms Ingleton was doing was inappropriate. The letter explained that the new system of appointment and regulation of marriage celebrants would take effect from 1 September 2003.

I am puzzled about the basis of the assertion, on behalf of the Registrar, that Ms Ingleton's *modus operandi* "does cause" confusion to couples. The Registrar stated in paragraph 9 of her decision (T24):

Nor have I addressed issues arising in relation to the particular marriage that was discussed by both you and Ms Foster. While there are issues in relation to that marriage that could well warrant further exploration they are not relevant to your application to be a marriage celebrant and so I have not considered them in making my decision. I have confined my consideration of the material before me to those issues essential to, and relevant to, your suitability for registration as a marriage celebrant.

If the Registrar did not take into account issues in relation to the particular marriage discussed in Ms Foster's letter, there was no material before her or before this Tribunal that Ms Ingleton's advertisement "does cause" confusion.

THE SUBMISSIONS

Ms Duffy and Mr Swan, quite correctly, agreed that, in order to consider whether Ms Ingleton is a "fit and proper person to be a marriage celebrant", it is necessary to bear in mind the duties and responsibilities of the function of a marriage celebrant, as well as the statutory criteria in s 39C(2) of the Act. They both referred to a passage in the reasons of Toohey and Gaudron JJ in *Australian Broadcasting Tribunal v Bond* (1990) 94 ALR 11 at 62:

The question whether a person is fit and proper is one of value judgment. In that process the seriousness or otherwise of particular conduct is a matter for evaluation by the decision-maker. So too is the weight, if any, to be given to matters favouring the person whose fitness and propriety are under consideration.

That passage should be considered, bearing in mind that their Honours Toohey and Gaudron JJ had explained earlier, at 56:

The expression 'fit and proper person', standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of 'fit and proper' cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

In this matter the conduct complained of is that Ms Ingleton, when she was a trained civil celebrant, but not registered as an authorised marriage celebrant under the Act, advertised her services as a civil celebrant for weddings, funerals, namings and personal rituals in the *Midland Express* in a column headed "Marriage Celebrants". By 28 October 2003, before any contact from the Registrar or her staff, she had removed the word "weddings" from the advertisement, but it was still placed in a column headed "Marriage Celebrants".

The case for the Registrar was not that it was unlawful for Ms Ingleton to advertise in that way, but that it could be misleading or cause confusion. For some reason, which was not explained at the hearing, the Registrar chose not to ask Ms Ingleton to amend her advertisement to remove the alleged confusion, but simply treated the advertisement as indicating that Ms Ingleton was not a "fit and proper person to be a marriage celebrant". The Registrar particularised her

concerns about that issue in paragraphs 17–19 and 21 of her decision (T24). As set out above in paragraph 7, those concerns were clarified in paragraph 5 of the written submissions of the respondent dated 7 July 2004. Each of those paragraphs must be considered against the evidence.

INSUFFICIENT UNDERSTANDING OF THE ROLE AND RESPONSIBILITIES OF A MARRIAGE CELEBRANT (PARAGRAPH 5(1) OF THE RESPONDENT’S WRITTEN SUBMISSIONS OF 7 JULY 2004)

The Registrar, in her reasons for decision, seemed to be of the opinion that it showed a misunderstanding of the Act for Ms Ingleton to advertise her services as a civil celebrant, and then to tell people who contacted her in response to the advertisement, that she was a civil celebrant, but did not have her registration yet.

It was not strictly accurate for Ms Ingleton to refer to the registration process, as *“obtaining a number”*, and it is understandable that the Registrar considered that it did not sufficiently recognise the responsibilities placed on the Registrar under the Act. The Registrar must be satisfied that a person is a *“fit and proper person to be a marriage celebrant”*. Registration is not automatic.

On the other hand, Ms Ingleton would have had no reason to consider that anyone would have considered her to be anything but a *“fit and proper person to be a marriage celebrant”*. *She was well qualified for the position she sought, she was formally qualified and also had other relevant qualifications, she was of very good standing in the community and her integrity and ethical standards were very high, as her references show.* She is a good communicator and she had relevant experience of ceremonies, dramatic skills and was a trained healer with an interest in spiritual and sacred matters. There was nothing to her discredit. She understood the concept of capping of marriage celebrants (s 39E of the Act), but, apart from that, she had a reasonable expectation that her registration would be approved

Although it was not the best choice of terminology, I find that the reference to *“not having her number yet”*, was a practical and convenient way for Ms Ingleton to explain to people who responded to her advertisement that, although she had passed a course as a civil marriage celebrant, she was not registered as an authorised marriage celebrant, and thus, there were certain matters related to the solemnisation of a marriage which she was not authorised to perform. Registration is often shown by citing a registration number, for example, when making a Medicare claim, it is necessary for the provider of a medical service to have a provider number. Similarly, registered companies have an ACN number, and must disclose it when invoicing goods or services for which GST is payable. Ms Ingleton’s reference in her letter (T12, p44) to not having her *“authorisation number yet”* was not misleading. She did not imply that she was an authorised celebrant. She used a concept which was easy for a lay person to understand. Ms Ingleton would have been better advised to use the words of the Act and say that she was not registered as an authorised celebrant yet. Her choice of terminology was practical, but less than ideal.

Bearing in mind the recognition the Act gives to a marriage being solemnised **by or in the presence of** an authorised celebrant, I do not consider that anything Ms Ingleton did, in respect of her advertisements, or her reference to not having her authorisation number yet, showed that she had insufficient understanding of the role and responsibilities of a marriage celebrant.

POOR JUDGEMENT AND DISREGARD FOR THE TRUTH DEMONSTRATED BY “PREMATURE AND PRESUMPTUOUS ADVERTISING” (PARAGRAPH 5(2) OF THE RESPONDENT’S WRITTEN SUBMISSIONS OF 7 JULY 2004)

I regret the choice of language in this ground. I consider that the use of the word “presumptuous” is inappropriate, as is the suggestion that the advertisement shows any “disregard for the truth”. There may have been some basis for concluding that advertising services as a civil celebrant for weddings, while not registered as an authorised celebrant, could demonstrate poor judgement.

However, I consider this argument cannot succeed in respect of Ms Ingleton’s advertisements. She advised the Attorney-General that she was advertising her services while waiting for registration. The Assistant-Secretary of the Department replied to her letter, on 25 August 2003, without any suggestion that her advertisement showed poor judgement. From late August 2003, Ms Ingleton was entitled to assume that that there was no problem about her continuing to advertise her services, as she had described in her letter of 2 August 2003.

Even in respect of advertisements placed earlier than 25 August 2003, I find:

- (i) The marriage celebrants reforms were not in place until September 2003;
- (ii) It was reasonable for Ms Ingleton to expect that, when the registration system commenced, she would soon be registered;
- (iii) Ms Ingleton was not intending or advertising that she would do anything that was not allowed by the Act. She always intended to comply with all legal requirements, and immediately told couples who contacted her that she would have to do so;
- (iv) The advertisements did not show poor judgement or disregard for the truth.

INDIFFERENCE TO THE CONFUSION AND INCONVENIENCE HER MODUS OPERANDI CAN AND DOES CAUSE TO COUPLES SEEKING A REGISTERED MARRIAGE CELEBRANT (PARAGRAPH 5(3) OF THE RESPONDENT'S WRITTEN SUBMISSIONS OF 7 JULY 2004)

I find, on the evidence of Ms Ingleton and her witnesses, that, as soon as she speaks to anyone who rings her about a wedding ceremony, **Ms Ingleton always makes it very clear that she is not an authorised celebrant.** She explains that, either she will have to perform the marriage in conjunction with an authorised celebrant, or the formal marriage and the ceremony she performs will have to be two separate events. Thus, I find her modus operandi creates very little confusion, but it does create some inconvenience to couples. However, if couples chose to use Ms Ingleton's services, they did so knowing that it would result in inconvenience. It was their decision that the benefit outweighed the inconvenience.

As I have found that Ms Ingleton's modus operandi complied with the Act, any confusion and inconvenience it caused resulted from the operation of the Act. It was not a matter of fault on the part of Ms Ingleton.

I have also found that Ms Ingleton was, at all times, aware of and concerned about the confusion and inconvenience the system caused to couples who wanted to benefit from her skills and qualities.

There is no evidence before me that Ms Ingleton has ever demonstrated indifference to the inconvenience her modus operandi causes to couples. Her letter to the Attorney-General of 2 to August 2003, specifically raised her concern about the inconvenience caused to couples who, if they wished to engage her services, also had to engage an authorised celebrant.

Nor do I find that Ms Ingleton's less than ideal description of the authorisation or registration process, as not having her authorisation yet, showed indifference to the confusion and inconvenience her modus operandi caused to couples.

AT BEST, INDIFFERENCE TO, AND, MORE LIKELY, CONTEMPT FOR, FORMAL LEGAL REQUIREMENTS, WHICH SHE SEEMS TO CONSIDER AS MERELY TECHNICAL OBSTACLES TO HER GETTING ON WITH WHAT SHE CONSIDERS TO BE THE REALLY IMPORTANT ASPECTS OF HER ACTIVITIES AS A "CELEBRANT" IN RELATION TO WEDDINGS (PARAGRAPH 5(4) OF THE RESPONDENT'S WRITTEN SUBMISSIONS OF 7 JULY 2004)

There is no evidence that Ms Ingleton displayed either "indifference" or "contempt" for formal legal requirements. Those words should not be lightly used by a person in the position of the Registrar, or her legal representatives. As I have pointed out a number of times in these reasons, the procedure Ms Ingleton adopted, of celebrating marriages together with an authorised marriage celebrant, complied with all "*formal legal requirements*" of the Act. Mr Swan did not point to any way in which it did not.

Ms Ingleton advertised that she was a civil celebrant for weddings and other ceremonies. From October 2003, the advertisement no longer mentioned weddings, but was still in the marriage celebrants' column. That does not demonstrate "*indifference*" or "*contempt*" for legal requirements. Ms Ingleton was a civil celebrant, she was entitled to celebrate or even solemnise weddings, so long as she did so in the presence of an authorised celebrant. She explained to potential clients that they would need to include an authorised celebrant in their marriage ceremony. **There was nothing improper or inappropriate in what she did.** The heading of the column in which the advertisement appears may have misled some people, but their misapprehension was quickly corrected, and they then had a choice whether to use Ms Ingleton and an authorised celebrant, or to use another celebrant, who was authorised, instead. **The letter**

from the Midland Express (T26 p80) explains that, right from the start, Ms Ingleton had sought a different column heading, but this had not been available in her local paper until February that year.

I regret the contention, on behalf of the Registrar, in paragraph 5(4) of the submissions of the respondent dated 7 July 2004, that Ms Ingleton “*more likely [had] contempt for the legal requirements of the Act*”. There is no evidence to support such a contention and it should not have been made.

I find, on the evidence of Ms Ingleton, Dr Woolhouse and Mr Singaram, that Ms Ingleton provides a service that matches the wishes and needs of the particular couple being married, and that, with the participation of an authorised celebrant, the ceremonies she plans and provides comply with the requirements of the Act.

I find from the evidence of Ms Ingleton, Dr Woolhouse and Mr Singaram, that choosing the right marriage celebrant is a very personal thing. Sometimes a couple, like Dr Woolhouse and her husband, will telephone and even interview a number of authorised marriage celebrants, before finding one who is suitable, in terms of compatibility with their ideas. Sometimes a marriage celebrant will be unavailable on a required day. Some of the people (Ms Ingleton said eight couples) who telephoned Ms Ingleton lost interest in using her services as soon as she told them, in the first telephone call, that she was not a registered celebrant. Others, because they liked her energy, or her communication skills or her approach, chose to persevere with her. They did so knowing that their choice meant that, to comply with the formal legal requirements of the Act, they had to accept the inconvenience of using Ms Ingleton and an authorised celebrant, and having either a joint ceremony, or two separate ceremonies. Dr Woolhouse and Mr Singaram gave evidence that they were well satisfied with the decision they had made. **I find that Ms Ingleton gave them ceremonies which met all their expectations.**

ISSUE AS TO CODE OF PRACTICE

An issue arose during the hearing, which led to leave being given to the Registrar to lodge an affidavit as to the material sent to Ms Ingleton with her application package. The particular issue was whether she had been sent a copy of the Code of Practice for Marriage Celebrants (“the Code”). Further affidavits were lodged and leave was given to the parties to make further written submissions.

In submissions lodged after the hearing, the respondent relied on various matters relating to the Code. In the end, there were three versions of the Code before the Tribunal:

The version included in the Legal Manual for Australian Celebrants, studied by Ms Ingleton in her Celebrancy course in the first half of 2003 (exhibit SGI-1 to affidavit A6, and exhibit JW-1 to affidavit A7);

The version dated September 2003 proclaimed under the Regulations (exhibit SGD-5 to affidavit R7); and

The version dated November 2003, also proclaimed under the Regulations (exhibit SGD-2 to affidavit R6).

In many respects, the three versions use identical language, although there are some differences in layout, and in regard to the time to be allowed between ceremonies. The first version also contains an additional page entitled ‘*Advertising Guidelines for Marriage Celebrants*’, which was not included in the prescribed versions. As to most matters, the substance of the three versions was otherwise identical.

There was an issue as to whether Ms Ingleton received a copy of the Code with the application package sent to her in September 2003. Her evidence to the Tribunal expressed a doubt as to whether she had received it. The respondent, by leave, lodged an affidavit of Ms de Carle, sworn 15 July 2004 (R6), with an exhibit which purported to be a copy of the application package sent to applicants for registration in September 2003. In fact it contained a form of the Code printed in November 2003. When the lawyers for the respondent noticed their error, they lodged a further affidavit by Ms de Carle dated 20 July 2004 (R7) exhibiting the form of the Code in existence in September 2003.

A telephone directions hearing was convened at the request of the applicant’s lawyers on 23 July 2004. At that telephone directions hearing, Mr Swan apologised for the error made by Ms de

Carle in exhibiting the November version of the Code as a copy of what was included in the application packages posted to Ms Ingleton on 8 September 2003. Ms Duffy then explained that she was instructed that the problem with Ms de Carle's affidavit was that Ms Ingleton could not accept that a copy of the Code was sent to everyone who received an application package in early September 2003. Ms Duffy explained that she was instructed that Ms Ingleton had retained her package, except for the parts she had returned as part of her application, and that there was no copy of the Code in her package. Ms Duffy said that there were other people who were prepared to give evidence along similar lines. She asked if it was necessary for them to also file affidavits.

I indicated that it did not seem to me to be a crucially important matter. Ms Duffy suggested that Ms Ingleton could file a further short affidavit annexing her original application package. Ms Duffy offered to arrange for affidavits to be provided by the other two witnesses if that was required by the respondent.

Mr Swan responded that he did not see the issue as crucially important either. He said that the respondent had filed all it could and would like the applicant sworn on the matter, but would raise no further issue.

As discussed at the telephone directions hearing, Ms Ingleton filed an affidavit sworn on 29 July 2004 (A5). She exhibited all the materials she received in the application package, that she was not required to send back as part of her application. That material did not include a copy of the Code of Practice. She also said that one other person she named had told her she did not receive the Code, and that another had told her some of her application package was missing, but that she could not identify which parts, as she had obtained a copy of the missing parts from another applicant.

The respondent lodged supplementary submissions dated 5 August 2004. They surprised me in that they challenged the hearsay nature of the evidence as to the other two applicants, and complained about the respondent's inability to test that evidence by cross-examination. It was my understanding that Mr Swan, at the telephone directions hearing, had stated that he did not require sworn evidence from the other two applicants, who Ms Ingleton claimed supported her evidence that the Code was not sent with all application packages in early September 2003.

Secondly, Mr Swan submitted that, if I were to conclude that Ms Ingleton did not receive the Code, I should also conclude that she had made a false and misleading statement in her application. He relied on the assurance signed by Ms Ingleton, in her application to be registered as a marriage celebrant (T8, p26):

I give my assurance that I have read and understood the Code of Practice prescribed by the Marriage Regulations 1963 (the Regulations).

It was submitted in paragraphs 15 and 16 of the respondent's supplementary submissions:

The Applicant has made a statement in her application that is false and misleading in a material particular. If she is registered as a marriage celebrant, her making that statement may make her subject to disciplinary action pursuant to section 39I(1)(e) of the Marriage Act 1961 which could lead to her deregistration under section 39I(2)(d). In the circumstances, it is preferable to decline to register her in the first place.

Alternatively, at the very least, the inconsistency between her affidavit evidence and her signed declaration demonstrate a less than desirable level of care with regard to the truth and accuracy of statements she makes in respect of important issues. This constitutes an additional reason for finding that she is not a fit and proper person to be a marriage celebrant.

Those submissions led to a further telephone directions hearing, at which leave was given to Ms Ingleton to respond by lodging further affidavit material and further submissions.

Ms Ingleton, in her affidavit of 18 August 2004 (A6) explained that, as part of her course materials, she had read the form of the Code included in the Legal Manual for Australian Celebrants ("the Manual"). Her affidavit was supported by an affidavit of Dr Watson, the Dean of Studies at the College, who confirmed that the Manual, including the Code, had been sent to all students enrolled in Ms Ingleton's course. Both affidavits exhibited pages 55-57 of the Manual, which contained a copy of the Code which was not substantially different to that prescribed in the Regulations.

The supplementary submissions of the applicant dated 18 August 2004 referred to those

affidavits (A5, A6, and A7) and submitted that Ms Ingleton did not receive a copy of the Code with the application package sent to her on 8 September 2003, but that a version of the Code was in existence prior to its inclusion in the Regulations from 1 September 2003. The applicant submitted, at paragraphs 6 – 8:

At the time of signing the declaration on 13 September 2003, the Applicant was familiar with the version of the Code of Practice that was included in the manual.

Any confusion on the Applicant's part in relation to the correct version of the Code of Practice at the time of signing the declaration **should not lead to a conclusion that the Applicant's "application for registration was known by the marriage celebrant to be false or misleading in a material particular"** (Section 39I(1)(e) of the Marriage Act 1961) or constitute a reason for finding that the Applicant is not a fit and proper person to be a marriage celebrant.

The submissions made by the Respondent in paragraphs 15 and 16 of its supplementary submissions are inappropriate and inflammatory and should be disregarded by the Tribunal.

By leave, the respondent filed further submissions dated 27 August 2004. Mr Swan in those submissions pursued the issue of Ms Ingleton having signed the declaration (T8, p26). He submitted that it *"contains a misstatement of considerable significance"*.

I am troubled by the tone of the respondent's further submissions on this issue. They seem to be attempting to give a quite inappropriate weight to an issue which was not in the Registrar's mind at the time of the decision under review, and which arose only incidentally during the hearing, and which Mr Swan said at the telephone directions hearing on 23 July 2004, that the respondent did not see as crucially important.

Of course, if a serious matter as to integrity or character, such as alleged criminal conduct, had come to light during the hearing, that would have been a relevant issue to rely on in this proceeding, even though it was not considered by the Registrar. However, reliance on the fact that Ms Ingleton, when making her declaration (T8, p20) on 13 September 2003, was aware of the Code only in the form published by the Australian Government in early 2003, rather than the form in force from 1 September 2003, **I consider to be pedantic and to distract from the relevant issues.**

I find it quite ironic that the respondent has placed such weight on Ms Ingleton's reliance on the Code as published by the Australian Government in early 2003, rather than the form in force in September 2003, **in a proceeding where an affidavit which contained a similar incorrect statement was affirmed by a Senior Legal Officer and lodged on behalf of the respondent. Ms de Carle, in her affidavit affirmed on 15 July 2004, in paragraphs 7 and 9, affirmed that the package exhibited as SGD-2 was sent to Ms Ingleton on 8 September 2003. That was not correct, as the exhibit included a copy of the Code published in November 2003.**

No aspersions were cast by the applicant or her legal advisors on Ms de Carle. They accepted that she had made an error and did not object to her lodging a further affidavit correcting her error (R7).

Mr Swan, in his further submissions of 27 August 2004 (footnote 8), attempted to characterise the inaccuracy made by Ms Ingleton as *"substantially more significant"* than that made by Ms de Carle. They seem to me to be of similar significance. **Perhaps one should be able to expect a higher standard of accuracy and attention to detail from a Senior Legal Officer, providing an affidavit in a contested legal proceeding, than from a recent graduate applying for registration in the first batch of applicants under a registration scheme which had only commenced that month.**

In paragraph 15 of the respondent's further submissions lodged on 27 August 2003, the respondent submitted:

The respondent also submits that that issue [as to the Code] should not distract the Tribunal's attention from the original concern of the Respondent, as outlined in previous oral and written submissions, that the Applicant's misleading advertising of herself as a marriage celebrant when she was not registered as a marriage celebrant, and the uncertainty, inconvenience and confusion thereby created, provide a sound basis for upholding the decision not to register her as a marriage celebrant. An inaccurate declaration concerning the Code of Practice would simply provide further support for affirming the decision under review.

I agree with the sentiments in that paragraph. However, as the issue of the inaccurate declaration was raised by the respondent, I must deal with it.

I find, on the balance of probabilities, that Ms Ingleton's application package did not include a version of the Code. I base that finding primarily on Ms Ingleton's evidence that she retained the material sent to her in the application package, which did not need to be returned to the Registrar, and that the material does not include any version of the Code. I also give some weight to the hearsay evidence in Ms Ingleton's affidavit of 29 July 2003, that one other named applicant said she had not received the Code with her package in September 2003, and another knew some part of the package was missing but could no longer remember which part. The respondent decided not to require affidavits from those other two witnesses, as the issue was not of crucial importance. In those circumstances, it is appropriate to place some weight on the hearsay evidence (s 33(1)(c) AAT Act), as supportive of Ms Ingleton's evidence. **That evidence is consistent with the fact that the respondent's first attempt to put before the Tribunal a complete version of the application package sent to Ms Ingleton on 8 September 2003, did not include the September 2003 version of the Code, but substituted a later version.** The evidence did not explain why, if the September 2003 version of the package always included a copy of the Code, it was not readily available as a complete package when Ms de Carle swore her affidavit of 15 July 2004. There was no evidence as to when the September 2003 version of the Code was delivered and unpacked.

Thus, having found that Ms Ingleton did not receive a copy of the Code with her application package, I must consider the submission that she made a false and misleading statement or undertaking, when she made the declaration in her application (T8, p26) and that, accordingly, she is not a *"fit and proper person to be a marriage celebrant"*.

After giving it the careful consideration required, I have decided that the signing of the undertaking by Ms Ingleton, when she had not received the Code in the application package, does not show that she is not a *"fit and proper person to be a marriage celebrant"*.

I find that Ms Ingleton read and understood the Code contained in the Manual. The Manual said the Code was published by the Australian Government. I consider it was reasonable for her to give the assurance at T8, p26 on the assumption that the Code which she had read and understood was that referred to. The differences between that version of the Code and the version prescribed in September 2003 are few. The Attorney-General did not seem to regard them as significant when he spoke at the Launch of the Marriage Celebrants' Reform on 3 September 2003. He said (R5, p8):

Code of Practice

52. You will now have to abide by a Code of Practice.

53. The Code was subject to extensive consultation over a considerable period of time so its contents should already be familiar to you.

I find that Ms Ingleton was entitled to assume that the contents of the Code were already familiar to her and to sign the assurance. I find that the respondent has not established, by reason of this matter, that Ms Ingleton is not a *"fit and proper person to be a marriage celebrant"*.

Paragraph 15 of the respondent's submission of 5 August 2004 gives rise to further concerns. By suggesting that, because Ms Ingleton's false statement *"may make her subject to disciplinary action... which could lead to her deregistration"*, ***"it is preferable to decline to register her in the first place"*, the Registrar seems to be making a threat to deregister Ms Ingleton if she succeeds in this application. That is clearly inappropriate for the holder of a statutory office such as the Registrar.**

Further, unless the Registrar has already made up her mind as to the result of any deregistration proceedings, they could not be said to make it *"preferable to decline to register her in the first place"*. **If the implication in the submission is that the Registrar has already made up her mind to take action under s 39I(1)(e) of the Act, that may give rise to an issue as to bias. It certainly would indicate a lack of respect for the pending decision of the Tribunal.**

Further, paragraph 15 of the respondent's submission overlooks the question of the appropriate considerations to take into account in exercising a discretion to de-register a person. As explained by Stephen J in *Green v Daniels (1977) 13 ALR 1*, a discretion must be exercised in accordance with the appropriate statutory criteria and a decision maker must not preclude him or herself from attaining the requisite state of satisfaction (see also *Guse v Comcare (1997) 49 ALF*

288).

The Act, in s 39I(e) empowers the Registrar to take disciplinary action on the basis of a false statement in an application for registration only if the marriage celebrant's application "was known by the marriage celebrant to be false and misleading in a material particular".

The High Court in *Murphy v Farmer (1988) 165 CLR 19* considered the meaning of the word "false" in s 229(1)(i) of the *Customs Act 1901*. The question was whether a statement was "false". The statement was incorrect, but the person who made it, believed it to be true. The majority of the Court, Deane, Dawson and Gaudron JJ, considered that the word "false" in s 229 was ambiguous. Their Honours explained that it could be read as "purposely untrue", or simply as "incorrect". Having regard to the fact that s 229(1)(i) was properly to be seen as "penal" or "quasi-penal" in character, the Court held that it should be construed as requiring *mens rea*. In *Murphy*, the High Court made it clear that a statutory provision which has "penal" consequences should not be construed as permitting liability to be established without some form of *mens rea*, at least in the absence of express statutory provision to the contrary.

Under s 39I of the Act, the Registrar may only take disciplinary measures against a marriage celebrant in certain circumstances. One of those circumstances is that the Registrar is satisfied that marriage celebrant's application for registration was "known by the marriage celebrant to be false or misleading in a material particular". The particular must be material to the issue whether or not the marriage celebrant should be registered as an authorised celebrant, bearing in mind the role of a registered marriage celebrant. There would be many issues to be considered before the Registrar could properly decide to take disciplinary measures against Ms Ingleton, if she succeeds in this application. **The fact that the legal representatives for the Registrar in this proceeding have, in my view improperly,** raised the possibility that the Registrar may do so, cannot be an appropriate matter to take into account under s 39C(h) of the Act as relevant to whether Ms Ingleton is a "fit and proper person to be a marriage celebrant".

FINDINGS AS TO WHETHER MS INGLETON IS A FIT AND PROPER PERSON TO BE A MARRIAGE CELEBRANT

To return to the original concerns of the Registrar which relate to the advertisement, the Registrar's further submissions of 27 August 2004 described the advertisement as "misleading advertising of herself as a marriage celebrant" and claimed that "the uncertainty, inconvenience and confusion thereby created provide a sound basis for upholding the decision not to register [Ms Ingleton] as a marriage celebrant".

If Ms Ingleton had advertised herself as a "registered marriage celebrant" when she was not, that would tend to show that she was not a "fit and proper person to be a marriage celebrant". But she never did that. She did advertise in a column headed "marriage celebrants", but she never in the advertisements described or represented herself as either a "registered marriage celebrant" or even a "marriage celebrant". She carefully used the description of "civil celebrant", which she is entitled to use. The first advertisement did include the term "weddings", as well as "namings, funerals, personal rituals..." (T3, p10). The advertisement that was current at the time Ms de Carle wrote to Ms Ingleton again described Ms Ingleton as a "civil celebrant" and did not mention weddings.

I find Ms Ingleton did not engage in any "misleading advertising of herself as a marriage celebrant", or misrepresent herself as a "marriage celebrant". Nor, as explained in paragraphs 90 to 107, do I find that there is any blame attributable to Ms Ingleton for any uncertainty, inconvenience or confusion created by her practice of participating in wedding ceremonies as a civil celebrant.

Even if there were something potentially misleading about the advertisement with or without the word "weddings" being placed under the heading "Marriage Celebrants", it was only done because no other option was suggested by the newspaper at the time. The misunderstanding would have been clarified in the first telephone call anybody made in reference to the advertisement. **Ms Ingleton had written to the Attorney-General advising that she was advertising her services as a civil celebrant for weddings, and the reply to her letter from the Assistant Secretary did not alert her to the fact that this may be considered by the Registrar (whether rightly or wrongly) to be inappropriate.** Further, the practice which Ms Ingleton adopted of performing a marriage ceremony in the presence of and with an authorised celebrant is specifically recognised in the Act.

I am aware that, in the only other decided matter on this issue *Re Siipola-Fortunaso and Registrar*

of *Marriage Celebrants* [2004] AATA 946, delivered 13 September 2004, the Tribunal seems to have taken a more critical view. However, it seems that the applicant in that case had described herself as a “*marriage celebrant*” before she was registered. Thus, that matter is distinguishable on the facts. Further, the matters are distinguishable because of the evidence establishing that Ms Ingleton always complied with the Act, by performing either joint ceremonies with an authorised celebrant, or ceremonies separate from the formal marriage. Also, in *Siipola-Fortunaso*, there was an issue to conflict of interest and other financial benefit under paragraphs 39C(2)(e) and (f) of the Act.

The Tribunal in *Siipola-Fortunaso* said, at paragraphs 34 and 35:

She knew there was no guarantee she would be accepted. She allowed herself to be influenced by the narrow and ultimately irrelevant desire of meeting an advertising deadline in the Yellow Pages. That lapse in judgement on its own would be enough to suggest she might not scrupulously observe the legal formalities associated with the role, or communicate the seriousness of the obligations to the parties.

I think the Registrar was right to regard the premature advertisement as a matter that ought to be considered pursuant to s 39C(2)(h). It was a major error in judgement, and it is enough on its own to effectively disqualify the applicant. The applicant is not being punished for the mistake; rather, the public interest is being protected from someone whose judgement has been called into question.

I regret that I cannot agree with that analysis. I would not hold that a premature advertisement, even if it did describe an applicant as a “marriage celebrant” was enough **on its own** to disqualify the applicant. I consider it is one matter which should be weighed in the balance with all the other relevant considerations under s 39C(2) of the Act, to decide whether “overall” the material establishes that a particular applicant is not a “*fit and proper person to be a marriage celebrant*”.

As the extracts from *Bond* in paragraphs 86 and 87 of these reasons show, the test of being a “*fit and proper person to be a marriage celebrant*” requires firstly, consideration of the nature of the activities of a marriage celebrant, and, secondly, consideration of whether improper conduct has occurred, and, thirdly, a balancing of the weight to be given to any improper conduct against the weight to be given to any matters favouring the person whose fitness and propriety are under consideration.

As to the first consideration, I find that the role of a marriage celebrant is to devise and perform a marriage ceremony which complies, before, during and after the solemnisation of the marriage, with all the requirements of the Act. The ceremony must be meaningful to the couple and meet their needs and wishes and expectations. It should recognise the serious nature of marriage in terms of commitment of the parties to each other for life, and to any children. The ceremony on the day must include vows which comply with s 45(2) of the Act. It should proceed smoothly and efficiently so as to give the couple a joyful and solemn start to their marriage and leave them with happy memories of the occasion. If the parties so desire, it should have a spiritual or sacred component.

I find that Ms Ingleton has a good understanding of the significance of marriage and of the need for a marriage ceremony to be personal and meaningful to a couple. She also understands that it is important for a couple to make vows that are significant for them, and that say what is in their hearts. She understands that the ceremony should mark the significance of the day and meet the needs and expectations of the couple. It should provide lasting memories of their important day. Because of her work in the creative arts, she is able to help a couple plan a marriage ceremony that suits them, and that will meet their needs and expectations. I find that Ms Ingleton explains that marriage should not be entered into lightly, and that there will be difficult times, but that guidance and support will be available. She explains to the couple the social, cultural and legal significance of marriage and the marriage ceremony and refers to those matters, in an appropriate way, as part of the ceremony. I find, from the evidence of Dr Woolhouse and Mr Singaram, that Ms Ingleton provides her clients with a ceremony that meets their particular needs and leaves them well satisfied with their decision to have her participate in their marriages.

As to the second consideration, I find there is very little blame, if any, to be attached to Ms Ingleton placing her civil celebrant advertisement in a column headed “*marriage celebrants*”. It does not raise a significant concern as to whether she is a “*fit and proper person to be a marriage celebrant*”. I also find that her less than ideal choice of words in explaining to couples that she did not have her authorisation number yet is not the sort of conduct which weighs against the

characterisation of her as a *"fit and proper person to be a marriage celebrant"*.

The respondent's submissions dated 5 August 2004 also relied on an inconsistency between Ms Ingleton's affidavit of 29 July 2004 (A5) and her recollections as to the Code in her evidence at the hearing. That inconsistency and confusion is now satisfactorily explained by the further affidavits A6 and A7. I do not find that Ms Ingleton's evidence, when asked to recollect in July 2004, precisely what papers she had seen when completing her application for registration in September 2003, gives any reason to find that she would adopt a less than desirable level of care and attention to legal requirements, in her activities as an authorised marriage celebrant.

Nor do the matters relating to either the advertisement or the Code give any reason to doubt that Ms Ingleton, when registered as an authorised marriage celebrant, would comply with s 39G of the Act. I find that Ms Ingleton would conduct herself in accordance with the Code as set out in Schedule 1A of the Regulations. Ms Ingleton's practice in preparing for marriage ceremonies, as described by her and her witnesses in evidence, complies strictly with the Act and with the requirements of the Code, even though, she is not yet an authorised celebrant. The evidence gives no reason to doubt that she would, as an authorised celebrant, continue to take care to comply with all the requirements of the Act, the Regulations and the Code.

The third consideration is that of balancing the negative and the favourable considerations. Sometimes a negative consideration may outweigh all positive considerations, for instance a criminal conviction for a crime of dishonesty, sexual impropriety or violence. In this matter, the adverse factors are so minor, that they have little weight. **I find there has been no lack of integrity, or any dishonesty or indifference to clients' needs or failure to comply with the Act.**

I see no relevance to this matter in the authorities cited by Mr Swan in paragraphs 27 – 33 of the respondent's submissions. They speak of *"defaults and derelictions"*, *"punishment"* or *"discipline"*, and *"conviction of an offence"*. Nor do I find that Ms Ingleton has been guilty of any *"instance of serious lack of honesty"*. I accept that the test of whether a person is *"a fit and proper person to be a marriage celebrant"* is there for the protection of the public. I find there is nothing in Ms Ingleton's current practice from which the public requires protection. It is not necessary to protect the public from making one telephone call to find out the sort of service Ms Ingleton can currently offer. Once she is an authorised celebrant, the public will not even need to be protected from wasting a telephone call, if they do not want a split or a joint ceremony.

On the other hand, there are many favourable considerations. Dr Woolhouse and Mr Singaram made it very clear that there are great benefits to the public in Ms Ingleton being registered as an authorised celebrant. They gave her glowing testimonials. On their evidence, I find that the public disadvantage in not registering Ms Ingleton as an authorised celebrant would be great. The sort of skills, empathy and spiritual energy she can bring to a wedding ceremony as an authorised celebrant, should be an option which couples can choose, without having the inconvenience of either a joint ceremony with two celebrants, or two occasions, one for a formal marriage and the other for a spiritual and meaningful ceremony of their choice.

Ms Ingleton has a most impressive group of nine referees from many walks of life. They include a former State Governor, a Minister of Religion, a doctor, a lawyer, a Professor of Architecture and the Director of the Victorian College of the Arts, a University Senior Lecturer, a Vice President of the Myer Foundation, an eminent philanthropic foundation in Victoria, and a marriage celebrant. They speak of Ms Ingleton's integrity, ability and community involvement and her pro bono work for charitable causes. The referees refer to her teaching of young people and how she seems to relate well to people in many different fields. They speak of her compassion and her communication and personal skills. Ms Ingleton has demonstrated academic ability in obtaining her architecture degree and in having the relevant qualifications to be a marriage celebrant.

In *Bond*, Toohey and Gaudron JJ said at 56:

...in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

Similarly, character and reputation, when they are described very positively by a number of impressive referees may work in the opposite way, to reassure a decision-maker that a person is a fit and proper person to undertake the activities in question. I find that the nine references as to Ms Ingleton's character and reputation are so positive that they ground an expectation that she

is a *"fit and proper person to be a marriage celebrant"*.

If there is any element of wrongdoing or misunderstanding as to the placing of the advertisement, which I doubt, bearing in mind Ms Ingleton's letter to the Attorney-General of 2 August 2003, I find that the positive aspects of Ms Ingleton's personality, reputation, professional training, skills and abilities far outweigh that minor wrongdoing or misunderstanding.

I do not propose to deal further with all the assertions in paragraphs 51 to 92 of the respondent's submissions. I consider that they have been adequately covered in my findings. Further, if the respondent had been aware of Ms Ingleton's letter of 2 August 2003, I expect that some of the assertions may have been omitted or differently expressed.

Paragraph 74 of the respondent's submissions of 7 July 2004, raises a concern about Ms Ingleton collecting personal information without being authorised to do so. That concern appears to have been adopted by the Registrar from Ms Foster's letter. I find, on the basis of Ms Ingleton's evidence and that of Dr Woolhouse and Mr Singaram, that she does make prospective clients aware very early in the first telephone call that she is not an authorised celebrant. Thus, if people decide to use her services, they are not *"unwittingly"* disclosing personal information to her because they think they are disclosing it to an authorised person. They are disclosing information to her because they want her to be fully informed so that she can give them information and guidance to enable them to choose or compose a marriage ceremony that will meet their needs and expectations.

I find, taking into account all the matters discussed above, that none of the matters relied on by the Registrar, as showing that Ms Ingleton is not a *"fit and proper person to be a marriage celebrant"*, have been made out. I find that Ms Ingleton is, and at all relevant times has been, *"a fit and proper person to be a marriage celebrant"* under s 39C(1)(c) of the Act. I find further that she is exactly the sort of person to whom the Attorney-General was referring in his speech at the launch of the marriage celebrants' reforms, when he said the first object of the reforms was (R5, paragraph 16):

[O]pening the doors to marriage celebrancy to a greater number of appropriate applicants to enable talented and dedicated members of the community to influence and continue to improve the style, content and dynamism of celebrancy.

I find Ms Ingleton is talented and dedicated to being a marriage celebrant, and that her approach to celebrancy, based on her many skills and interests, does improve the style, content and dynamism of celebrancy.

CONCLUSION

I was not addressed as to the effect of any finding that Ms Ingleton is a *"fit and proper person to be a marriage celebrant"*. Under s 39D(4) of the Act, such a finding must result in a decision setting aside the decision of the Registrar and substituting a decision that Ms Ingleton be registered as a marriage celebrant.

I see that s 39J(1) and (3) of the Act deal with that situation. They provide that the capping of the number of marriage celebrants, in s 39E of the Act, does not apply to a decision by this Tribunal, on review of a decision not to register a person as a marriage celebrant on the ground that she was not a fit and proper person to be a marriage celebrant. Those subsections provide, so far as relevant:

39J(1) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Registrar of Marriage Celebrants:

- (a) not to register a person as a marriage celebrant (unless a ground for the decision was that the Registrar would breach section 39E by registering the person); or
- (b) to suspend a person's registration as a marriage celebrant; or
- (c) to deregister a marriage celebrant.

...

(3) The Registrar must take such action as is necessary to give effect to the Tribunal's decision (even if doing so at the time the action is taken would cause a breach of a limit under

section 39E).

The decision under review will be set aside. In substitution, I will decide:

(i) Ms Ingleton is, and at all material times has been, a fit and proper person to be a marriage celebrant under s 39C(1)(c) of the Act; and

(ii) Ms Ingleton is to be registered as a marriage celebrant, with effect from 14 January 2004, pursuant to ss 39D(4) and 39J(3) of the Act.

I certify that the 166 preceding paragraphs are a true copy of the reasons for the decision herein of Senior Member Dwyer.

Signed: Josephine McKay

Associate

Date/s of Hearing 8 July 2004

Date of Decision 6 October 2004

Counsel for the Applicant Ms A Duffy

Solicitor for the Applicant Holding Redlich Lawyers

Counsel for the Respondent Mr M Swan

Solicitor for the Respondent Australian Government Solicitor