

## LEGAL NOTES

### Weddings in Australia

There are far fewer requirements for a legal marriage in Australia than in most other countries, and these requirements are simple and straight forward but totally non-negotiable.

1. **The marriage must be performed by a celebrant or a minister of religion who has been authorised by the Attorney-General's Department.** (Section 41 of the Marriage Act)
2. **At least one of you must be over 18.**

Under Section 12 of the Marriage Act, if one of you is over 16 but under 18 you need a special court order before you can marry and the written consent of your parents. Two people younger than 18 cannot marry in Australia.

3. **Before** the ceremony can take place, under Section 42 of the Marriage Act

**You must give your celebrant a properly completed and witnessed Notice of Intended Marriage** (the celebrant is authorised to witness your signatures)

- This notice can be lodged by either the bride or the groom as long as the other person signs it before the wedding takes place.
- It can be witnessed by the celebrant or selected categories of officials including JPs and Police Officers (in Australia). If you are overseas an Australian Consular Official or a Notary Public may witness it.
- It can be lodged by scanning and emailing or by sending a copy as long as the original is given to the celebrant before the wedding takes place.

**Show your celebrant original documents that prove your identity and how any previous marriage ended.**

These documents must be issued by a government authority and include:

- Your birth certificate
- Your passport (if you are not an Australian citizen)

If you have been previously married Section 23B of the Act says you must produce an official:

- Divorce Certificate or Decree Absolute, OR
- Certificate of Nullity, OR
- Death Certificate of former spouse

You may also need to provide

- Copy of any Prospective Spouse (Fiancé) Visa, where applicable
- Statutory Declaration
- Change of Name Certificate (if you have changed your name by Deed Poll or Change of Name Register and do not have a newly issued birth certificate bearing details of the name change)
- Citizenship Papers
- Court Order (if either the bride or groom is under 18)
- Official translations of any document that is not in English

**PLEASE NOTE: If, for any reason, you are using a name that is different from that on your birth certificate, and you have not legally changed your name, then you must provide:**

- A Commonwealth Statutory Declaration about the change of name signed before a Justice of the Peace or other approved signatory, AND
- Your birth certificate showing your original name, AND
- Other identification (for example Driver's License) proving your use of the changed name.

**Sign the Declarations on the back of the Marriage Certificate**

- The Declarations do not have to be signed by the Bride and Groom at the same time
- The Celebrant must be present to witness the signatures

**At least a full month before the wedding and not more than 18 months ahead of that date**

**NB:** Please remember not to sign or date the form before you meet with your celebrant, or other official as your signatures need to be witnessed.

**Preferably at the time of lodging the Notice of Intended Marriage, but definitely before the marriage can take place.**

**NB:** The information on the Notice of Intended Marriage and your marriage papers must be accurately transcribed from these documents and agree with them in every particular.

**NB:** In this situation the law requires that your legal name as well as your assumed name appear on the marriage papers eg *Jane Julie Jones known as Brown*, and this is what will appear on your marriage certificate. Where there is time to do so, it is preferable to legally change your name before the wedding.

Generally not more than 2-3 weeks before the ceremony but can be signed immediately before the ceremony commences.

#### 4. During a civil ceremony

**Two witnesses over the age of 18 must be present for the whole ceremony.**

They need not be members of the bridal party or Australian citizens but they must

- be capable of understanding the nature of the ceremony
- be able to see and hear the vows being made

The celebrant must explain the nature of marriage by saying certain words as laid down in the Act before the vows are exchanged

**You must exchange vows using certain words** (NB in Australia "I do" response vows are not legal vows)

Where the celebrant is of the opinion that **either the bride or groom is not able adequately to understand English an interpreter must be present to translate the ceremony** and must provide a statutory declaration confirming their ability to converse in the language in respect of which he or she is acting as your interpreter. The bride or groom cannot act as interpreter. An interpreter may be required for pre-marriage meetings also..

Section 44 of the Marriage Act

You should keep the full details of contact details of the witnesses with your marriage certificate

Section 46 of the Marriage Act

Section 45 of the Marriage Act

Section 112 of the Marriage Act.

It is best to engage a professional interpreter

#### 5. After the ceremony

**The couple, two witnesses and the celebrant must sign 3 certificates immediately after the ceremony** (and in that order)

**The celebrant must forward the marriage papers to Births Deaths and Marriages within 14 days of the date of the marriage.**

Section 50 of the Marriage Act

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#### The law also allows you:

- to get married at any time of the day or night and in any place within Australia.
- to get married in a private place (eg your own home) as well as in public places.
- to be married in Australia without residency requirements as long as you have lodged the Notice of Intended Marriage with your celebrant within the required time period before the ceremony takes place.

#### But the law does not allow you to:

- Have a surprise wedding where the person being surprised is the bride or the groom (it is all right to surprise your guests)
- Have a second civil wedding if you are already married to each other (Section 113 of the Marriage Act) (it will have to be a renewal of your vows). You can however have a religious wedding under certain conditions.
- Have a pretend wedding (where your family and friends are led to believe it is a legal wedding when you cannot legally be married because you are already married (Section 113 of the Marriage Act), or are in a prohibited relationship, or are of the same sex).
- Get married over the internet or on the phone – the bride, groom, two witnesses and the celebrant **must** be in the same space at the same time and for the whole of the ceremony, including the signing of the marriage papers.
- Get married by proxy.
- Give less than the full month notice unless you have received permission from a Prescribed Authority in the Registry of Births Deaths and Marriages. Please note there is a formal process for this. Shortening of time is rarely granted and only in defined situations such as terminal illness or unexpected work transfer overseas. You will need to get a supporting letter from your celebrant.