



Critical Legal obligations 1: *Marriage under Australian Law*

The words spoken by couple who are marrying each other express both an intent and a promise to each other, but they are also a **legal commitment** under Australian law.
This paper explains the legal commitment you are making.

Marriage in Australia is governed by the [Marriage Act 1961 \(Cth\)](#).

A marriage is the union of a 2 people entered into voluntarily to the exclusion of others.

[What is the legal effect of marriage in Australia?](#)

Marriage in Australia has a number of legal consequences for the parties involved.

- It invalidates any previous wills unless the will clearly shows that marriage was planned.
- The amount of tax you pay changes once married; you must therefore notify the Taxation Office of your marriage.
- The dollar value of any health or welfare benefits you receive changes once you are married, so you should notify the Department of Human Services as soon as you can following your marriage. NOTE: It is a criminal offence to mislead or provide false information to the Australian Government about your entitlement to health or welfare payments.
- Traditionally, a female who married would adopt her new husband's surname, necessitating notification and the provision of documentary evidence of the marriage to numerous organisations and government departments. There is, though, no legal requirement to change your name. Instead, a person who marries is able to elect whether to change their name to adopt the other's surname. It is now becoming common practice for the male of the marriage to adopt the female's surname, or to hyphenate the two surnames. Where a party chooses to change their name, they should update their details on all forms of identification, and notify organisations and government departments as necessary.

To be considered a valid marriage in Australia, a number of legal requirements must be met.

- The ceremony must be performed by someone who is authorised to do so, such as a marriage celebrant or minister of religion.



- The ceremony must be witnessed by at least 2 other persons over the age of 18. They must watch the couple sign the marriage certificate, and must then sign it themselves.
- The parties must complete and submit a Notice of Intended Marriage. You can do so up to 18 months before the wedding, but it must be submitted no later than 1 month prior.
- The parties to the marriage must provide evidence of the place and date of their birth and the end of any previous marriages.
- The parties must sign a 'Declaration of no legal impediment to marriage' confirming they are an appropriate age and that there is nothing which would legally prevent their marriage.
- The marriage must be registered with the Registry of Births, Deaths and Marriages.

While persons getting married can make up their own vows, as part of the marriage ceremony, both parties must, at some point in the ceremony, state their intention to be lawfully married to the other person.

A marriage celebrant must also make particular statements in the hearing of the witnesses. They must declare that they are in fact authorised under Australian law to perform marriage ceremonies, and they must state the definition of marriage as set out in the Marriage Act 1961. They must also remind the parties of the solemnity of marriage and that it is a binding relationship.

To be married in Australia, both you and the other person must:

- not be currently married to another person;
- not be marrying a parent, grandparent, child, grandchild or sibling (including relationships resulting from adoption);
- be at least 18 years old (unless in certain circumstances where Court or parental consent has been granted);
- have an understanding of what a marriage means and be entering into the marriage voluntarily;
- provide a 'Notice of Intended Marriage' form to an authorised marriage celebrant or minister at least one month (but no earlier than 18 months) prior to your wedding unless there are exceptional circumstances (see: "Can I marry in the next month?" for further information);
- be married by an authorised marriage celebrant or minister;
- use the specific wording required by law during the ceremony; and
- produce original birth certificates or passports (or an English translation of the document) to your marriage celebrant or minister.