

Marriage in Australia for Foreign Nationals

Marriage of Foreign Nationals travelling in Australia

Couples who are travelling in Australia for whatever reason may also be married in Australia, but notice of the intention to marry must be made to a chosen Registered Marriage Celebrant at least a clear calendar month before the proposed date of marriage.

For this reason many couples make their arrangements with Philip Greentree, an *Authorised Civil Marriage Celebrant* by Email well before they leave home.

The form used to lodge that notice the *Notice of Intended Marriage* can be downloaded from this site, or I can post it to you. This form must be witnessed either by an Australian Consular Official or Diplomatic Officer, or by a Notary Public or a range of other people listed on the back of the Notice.

Notice of Intended Marriage The Notice must be posted in time to reach the Celebrant at least one clear calendar month before the planned date of the marriage.

Before the marriage ceremony, couples are required to show the celebrant their official birth certificates or extracts and/or passports which must show the date and place of birth. If either party has been married before, documentary evidence proving the termination of that marriage must also be produced. See Documents to be sighted by the Marriage Celebrant

No rights to remain in Australia are conferred by marriage in Australia, even for someone marrying an Australian citizen. For information about migrating to Australia, you should contact the Australian Consular Office in your home country.

Official Notice of Intention to Marry

Marriage Licences are not required, but notification of the couple's intention to marry must be provided to the Celebrant who will solemnise the marriage. This notice is given by lodging a form called the Notice of Intended Marriage with the celebrant.

Copies of the Notice can be obtained from Celebrants, or from the Registry of Births, Deaths and Marriages in each State or Territory. Alternatively, a copy of the Notice can be downloaded here.

The Notice must be lodged with the Celebrant not later than a clear calendar month before the date of the marriage ceremony, (eg for a marriage to be conducted on 18 August, the latest the Celebrant may receive the Notice is 17 July) however the Notice may be given to the Celebrant as early as 18 months before the intended date of the marriage ceremony. This

requirement applies whether the ceremony is performed by a Religious Celebrant, a Civil Celebrant, or at the Registry Office.

Information relating to the personal particulars of each party to the marriage, (plus information about their parents if available) is required on the Notice of Intended Marriage.

Download a Notice of Intended Marriage: You may download a copy of the Notice of Intended Marriage. This document is in PDF format. If you do not have Acrobat Reader installed on your computer, you will need to download and install a copy of that software first.

Documents to be sighted by the Marriage Celebrant

The Celebrant must sight each party's official birth certificate or extract of birth. An overseas resident, who was born in Australia and who does not have a birth certificate should be able to obtain one by making an application to the Registry of Births Deaths and Marriages in any State or Territory of Australia and paying the appropriate fee. Application forms are available from:

- the Registry Offices in each State or Territory
- on line at www.bdm.nsw.gov.au
- from a local courthouse
- from a government access centre
- from some post offices.

Applications can be lodged by fax, by mail, or in person.

If acceptable evidence of date and place of birth and identity is not provided, the Celebrant cannot legally conduct the marriage.

A person born overseas who does not have a birth certificate or extract, should make every effort to obtain one from his or her country of birth. In the event that this is not possible the Celebrant may sight a Passport issued by the government of an overseas country, provided it shows both date and place of birth. The Celebrant may also request additional proof of identity.

For cases in which it is impossible to obtain the relevant documents outlined above, the Celebrant will require a Statutory Declaration. This is a written legal Statement witnessed by the Celebrant as an Officer of the Commonwealth of Australia.

An intentional false Statement on a Statutory Declaration is a serious offence carrying a penalty of four (4) years imprisonment.

Apostille Stamps

Some couples from overseas countries, who marry in Australia, require an Apostille Stamp placed on an official copy of their Marriage Certificate. Certain countries require this before they accept an Australian marriage as a legal marriage.

If you have this situation your celebrant may be able to assist in arranging the formalities, usually for a fee. Alternatively you can organise it yourself.

This is how:

1. After the marriage ceremony, the Celebrant registers the marriage with the Registry of Births, Deaths and Marriages.
2. You then need to obtain a copy of your official marriage certificate from the Registry by making application and paying the appropriate fee.
3. The official marriage certificate must then be sent to the Department of Foreign Affairs and Trade (DFAT) in the capital city of the State or Territory in which you were married or to the Canberra office in the ACT with a request to have an Apostille stamp affixed to the marriage certificate. The processing fee is currently \$60.
4. The Department will post the Certificate back to your home country unless you request that it be returned to an address in Australia.

Further details can be obtained from the Department of Foreign Affairs and Trade

Waiting Time

In certain circumstances, the statutory period of notification between lodging the Notice of Intended Marriage with the Celebrant and the solemnisation of the marriage can be shortened. This period is currently not less than a clear calendar month.

Only a prescribed authority has the power to shorten this time and he or she must be satisfied that the particular circumstances justify doing so.

Prescribed authorities are located within the offices of Births, Deaths and Marriages and in many local courthouses in each State and Territory.

The Celebrant can assist you to find the prescribed authority nearest to you. Shortening of time is not lightly granted, and must be supported by appropriate evidence. For example, if one of the parties to the marriage, or a close family member, is terminally ill, a letter to that effect is required from that person's medical practitioner.

NOTE: If it might reasonably be considered that a

couple has had sufficient time to lodge the Notice of Intended Marriage, but has failed to do so, a shortening of time will not be granted. Consult a Celebrant or the local office of Births, Deaths and Marriages for further information.

If Previously Married

The Celebrant must sight details of the termination of any previous marriage.

- If a party has been divorced, the Celebrant must sight the court papers showing the Decree Absolute, or the Certificate of Divorce.
- If widowed, the Celebrant must sight the Death certificate, (or in the case of a missing person presumed dead, a coroner's or police report.)
- If a marriage has been annulled, the Celebrant must sight the annulment papers.

Divorce Documents: A divorce is granted in two steps in Australia. The Decree Nisi is granted first, followed by the Decree Absolute or Certificate of Divorce one month later.

A Notice of Intended Marriage can be lodged with a Celebrant in the 12 months separation period, but the Marriage Ceremony cannot proceed until a Decree Absolute or Certificate of Divorce is produced to the Celebrant.

Migration & Visas for Australia

Here are some frequently asked questions about the migration process as it applies to spouses.

Q: Who can provide advice about migration and visa questions?

A: The Migration Act and Regulations restrict the provision of advice and assistance in relation to migration and visa matters to persons who are registered by the Migration Agents Registration Authority.

In addition, due to conflict of interest limitations, marriage celebrants are not permitted to advise, assist or representing clients in relation to immigration matters. It is not an offence, however, to pass on information produced by a third party, as long as the person does not give substantial comment on, or explanation of, the information.

Q: What visas may an overseas national be eligible to apply for on the basis of a relationship with an Australian citizen or permanent resident?

A: Specific visas are available for de facto partners (with a minimum of 12 months cohabitation), married partners and engaged

partners

finer up to \$100 000.

Q: Does marriage to an Australian permanent resident or citizen automatically entitle an overseas national to residence in Australia?

This section was prepared by Sarah Gillis & Associates for the Australian Federation of Civil Celebrants

A: No. As well as providing evidence of the marriage, married partners must provide evidence that they are in a genuine and continuing relationship.

Disclaimer: the questions and answers provided in this section are of a general nature only and do not substitute for obtaining specific professional advice by a registered migration agent.

Q: Does a Spouse visa entitle the holder to permanent residence immediately?

In certain circumstances, it may be possible to make application to the Family Court to shorten the period of time between the Decree Nisi and Decree Absolute.

A: In most cases, a Spouse visa is granted for an initial period of two years. At the end of that period, upon production of evidence of a continuing genuine relationship, the visa holder may be granted a permanent residence visa.

Q: What constitutes a marriage for migration purposes?

A: A marriage must be solemnised according either to the laws of Australia or the laws of another country. Such marriages will be lawful and valid for the purposes of a visa application. Refer Part VA of the Marriage Act.

Q: Can a couple, who have been married overseas, have a further marriage ceremony conducted in Australia?

A: No. Where the marriage solemnised overseas was lawful and valid, a second marriage ceremony cannot be conducted in Australia. Refer to section 113 of the Marriage Act. A viable alternative is to have your celebrant perform a renewal of vows ceremony in place of the marriage ceremony.

Q: How can an overseas engaged partner come to Australia to marry his / her fiancé(e)?

A: The overseas partner may apply for a Fiancé(e) visa to travel to Australia. The couple must marry within a period of nine months for the overseas partner to be eligible to apply for a Spouse visa. Other visa options may also be available to the overseas partner.

Q: What documents are an engaged couple required to provide in order to lodge a Fiancé(e) visa application?

A: Relevant to marriage celebrants, the overseas partner is required to submit a valid Notice of Intended Marriage.

Q: What are the penalties for assisting in a sham marriage for migration purposes?

A: Depending upon a person's involvement, penalties can range from two years imprisonment to ten years imprisonment with