



“Save the date!” – things to consider upon marriage

The date has been set and the invitations have been posted for your forthcoming wedding. The next few months will fly by in a rush of checklists and organisation - however, here are a few extra things for you to consider.

Eligibility for marriage

Age is an important criterion for marriage in Australia. People who are aged 18 years and over, and are not already married, are able to marry. Someone who is aged between 16 – 18 is able to marry, if their intended partner is at least 18 years of age. A person who is between 16-17 years of age must have the written consent of both parents or a Court order. Couples who are both under the age of 18 are ineligible to marry.

What if I am divorced or widowed?

If you have been previously married, it is essential that you are legally divorced before remarrying. Make sure that you

have a copy of your divorce certificate – to prove that the union has been officially dissolved. Remember that it takes one month from the date of your appearance at Court for your divorce to become final. You cannot marry until your divorce is finalised. If you have been widowed, it is also important to have a copy of the death certificate of your former spouse to prove that you are now free to marry again.

Marrying a partner from overseas

If you are marrying someone from overseas it is important to realise that marriage does not automatically allow an overseas spouse entry into Australia on a permanent basis.

Civil or religious?

Under Australian law, it does not make any difference if your marriage is officiated by a civil celebrant or a minister of religion. The important thing is to ensure that your officiating celebrant is registered, or that your minister of religion is officially authorised, to perform marriage ceremonies.

Sort out the paperwork

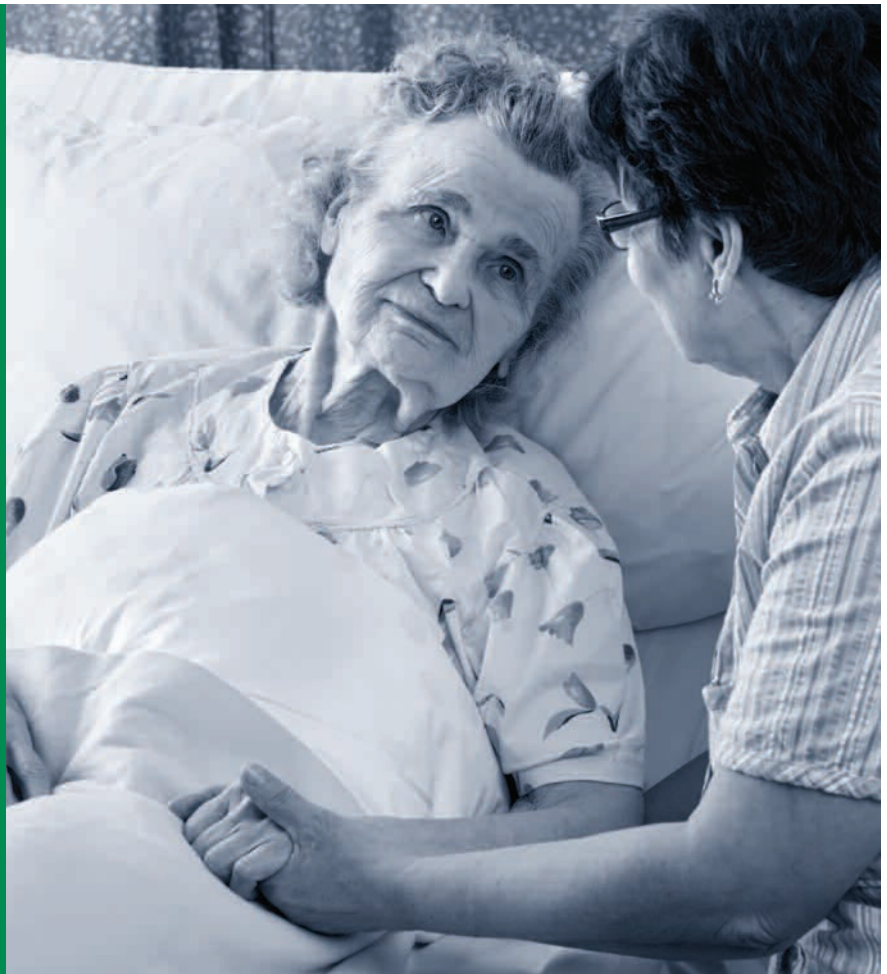
At least one month before the date of your wedding, you must complete a Notice of Intended Marriage form (NOIM). This must be lodged with your celebrant or minister. In order to complete this form you will need a copy of your full birth certificate – and, if necessary, your divorce certificate or the death certificate of your former spouse.

If required, our practitioners are able to assist with obtaining a divorce or evidence that you are divorced, or a copy of a death certificate of a former spouse.

For further information on this topic, please contact Randall Bradshaw at RBradshaw@tde.com.au

Changing your will on your deathbed

Despite the very best of intentions, sometimes people who are facing imminent death realise that they have either neglected to prepare or need to update their will. Sometimes, the circumstances leading up to their death might prompt people to change the terms of a previous will. This type of will is often referred to as a “deathbed will.” Due to their very nature, deathbed wills are frequently drafted at a time of great stress - needing to be prepared quickly.



Issues of deathbed wills

From a legal perspective, there are two issues associated with deathbed wills. These are:

- **Undue influence:** This is where relatives or other people approach the will maker and attempt to influence them to create a will in their favour.
- **Testamentary capacity:** This is the ability of the will maker to formulate sound legal decisions. At the end of life this may be compromised, especially if the will maker is under medication, mentally incompetent, or is seriously ill.
- **Fraud:** This is where a person fraudulently induces the will maker to make his will in a certain way; usually by a beneficiary who would benefit from the fraud. The fraud by a person may be the representation of certain

facts to the will maker or to deceive the will maker about their character or conduct.

Handling a deathbed will

It is not uncommon for deathbed wills to be challenged by aggrieved potential beneficiaries. Therefore, it is most important that a deathbed will is handled by a lawyer competent in this field.

Our lawyers are experienced in this field and will respond promptly to your instructions, taking care to give legal effect to your intentions.

As initial requests to prepare a deathbed will often come from a relative or friend, we will take special care to assess your testamentary capacity.

If time allows, this may also require the involvement of your GP or medical specialist. In the event of a challenge to your will, we can represent your estate in court.

Realising your estate wishes

Creating, updating or revoking your will at the time of imminent death is not the optimal circumstance for effective estate planning. Therefore, we encourage all our clients to prepare a will and update it at least every 7 years, or when circumstances change.

However, should you or a loved one find themselves in a situation of needing or wanting to change your will on your deathbed, it is most important that you contact our offices for our immediate bedside attendance.

It is our duty to prepare a legally binding will, ensuring that your estate is distributed according to your wishes after your death.

For further information on this topic, please contact Annette Esposito on AEsposito@tde.com.au



Social media in the workplace

Each day millions of people ‘post’, ‘tweet’, ‘comment’, ‘tag’, ‘like’, ‘share’ or ‘poke’ information placed on social media sites by themselves or others. Although these sites offer valuable opportunities for business interaction and personal social networking, inappropriate use can result in serious legal consequences which infiltrate into the workplace. As social media becomes more popular, employers are discovering the difficulties and challenges that this brings to the workplace.

How can social media become an issue in the workplace?

Social media is an online conversation. Unlike a private conversation held between two individuals, comments made on social media have the ability to be communicated to untold numbers of people.

Social media has implications for a number of wide-ranging employment scenarios. These include issues relating to defamation of professional reputation, discrimination, harassment and bullying. The inappropriate use of social media can also have serious consequences for business confidentiality. As a result, social media its use and abuse is a growing area of employment law and litigation.

What should employers do?

As an employer, there are 3 things that you should do to safeguard your business and your employees from issues relating to social media.

1. Have a social media policy

Document a clearly worded, legally compliant social media policy. This should detail your expectations, what will not be tolerated and how breaches of the rules will be handled. Make sure your employees are aware that comments made on their home computers and privately owned smart phones outside of work hours can also fall within your policy. Ensure your social media policy is regularly reviewed, and where appropriate, updated. Consider including social media policy within your employment agreements.

2. Educate your workforce

Ensure that everyone in your workplace attends a training seminar detailing your social media policy. Include this as part of your induction programme for new employees, as well as something your current workers, contractors and casual staff also attend. Ensure that refresher courses in social media policy are timetabled within your internal training programme.

3. Manage by example

The best policies are the ones that your employees see in action. Make sure that your senior management “walk the talk,” illustrating correct behaviour when on social media sites.

How can TDE help?

For employers, social media is the new management challenge – requiring expert attention and control. Our practitioners can assist you with the drafting of social media policy, the management of your policy and, if needed, breaches by employees, including dismissal.

For further information on this topic, please contact Faten Awad on FAwad@tde.com.au



Philip Jones Consultant

In early April we were delighted to welcome Philip Jones as a new Consultant to the firm. Prior to joining TDE, Philip practised for 40 years under the firm name, Philip Jones & Co, in South Melbourne.

Philip has practised principally in the area of property law, commercial law and assisting clients with wills and estates and the administration of trusts.

Philip enjoys working with his clients, handling the complexities of their legal needs and has developed many close professional relationships acting for families - often across generations.

Outside of work, Philip enjoys maintaining and spending time on his fishing boat on Westernport Bay. He also enjoys travelling with his family.



Faten Awad Lawyer Litigation & Dispute Resolution

TDE is pleased to welcome Faten Awad to our Litigation & Dispute Resolution team. Faten will look after Louise Toulson's clients whilst she is on maternity leave.

Faten has a professional interest in alternative dispute resolution and is currently studying for a Masters in Commercial Law at Monash University. Experienced in immigration matters, she is a registered Migration Agent.

Outside of work, Faten is a keen runner and enjoys participating in fun runs.



Annette Esposito Lawyer Wills, Probate, Estates & Trusts

We have recently welcomed Annette Esposito to our Wills, probate, estates and trusts department. Annette is an experienced lawyer in estate planning, administration and estate-related litigation. She also assists clients with superannuation law, and with review, amendment and advice relating to self-managed superannuation funds.

Outside of work, Annette enjoys reading "the classics", watching movies and taking dance lessons.



Catherine O'Connor Practice Manager

Late last year we welcomed our new Practice Manager, Catherine O'Connor, to TDE. Catherine hit the ground running, overseeing our recent office renovation and refurbishment as her first major project.

As the Practice Manager, Catherine will oversee the administrative, finance and HR functions of the firm. Prior to joining TDE, Catherine has been in management roles for over 15 years with other legal firms and within the telecommunications industry.

Holiday homes - what to consider before you buy



For many people, the great Australian dream has extended to the purchase of a holiday home. This is illustrated by the terms “seachange” and “treechange” now being accepted in everyday parlance. However, before you purchase a holiday home, make sure you have considered the following issues:

Land tax

As a second property, your holiday home will not enjoy the exemption from land tax that your primary residence enjoys. Land tax is levied every year on land holdings with a total value of \$250,000 or more. The taxable value of your holiday home is determined by your municipal council and the rate of land tax payable varies, depending on the total value of your landholdings.

Ongoing costs

Aside from the usual costs of rates, insurance, utilities and the mowing man – holiday homes often require extra maintenance due to the more exposed nature of their location – often costing more than you would expect to maintain.

Nights in residence

Before you buy, sit down and realistically

calculate how often you will be able to visit your new bolthole. It could turn out that your beach house is a very expensive way to holiday!

Buying with family or friends

Buying a holiday home with family or friends is often fraught with danger. If you decide to purchase with others, document from the outset how you will share ownership. Detail how you will share the use and costs of the property, a list of “house rules” and work out what will happen in the event that one of you wants, or needs, to sell his or her share.

Rental pitfalls

Whether or not to rent is at the forefront of every holiday owner’s mind. It pays to do your figures to determine whether or not there is a financial advantage to holiday rental. Take into consideration costs such as cleaning, additional maintenance, real estate management fees – just to name a few. Be aware that some Victorian municipal councils now require paid registration of rented holiday homes accommodating more than 6 people.

Insurance

Read the fine print of the insurance policy on your holiday home. Some policies are null and void unless you are able to prove a minimum number of attendances at the

property within a defined time period (i.e. every 30-60 days).

Should you decide to rent, make sure your policy covers you for holiday rental. Inspect your holiday home regularly to ensure that everything is in good working order, especially smoke detectors, lights and all construction. Prepare a detailed condition report with photos and videos of the property and all contents. This can help with potential insurance claims, should they occur later on.

Price fluctuations

Holiday home values tend to fluctuate more than metropolitan property prices. In economic downturns, values of holiday homes are the first to drop and the last to pick up. This means that your treasured holiday home may not be worth what you paid for it in an economic slump. This could be a problem, if you are forced to sell at this point in the market cycle.

Our lawyers are happy to assist you with any queries in relation to holiday home ownership. Of course, we can also offer conveyancing expertise when you are buying or selling any form of property.

*For further information on this topic,
please contact Paul Webster on
PWebster@tde.com.au*



Office reception relocation

TDE has undergone an office relocation and refurbishment. The renovation has condensed our office space into one whole section of our floor, creating a modern and more collaborative working environment. A new wifi and communications system, featuring cloud-based IP communications, has been well received by the TDE staff.

The relocation of our reception area to the north-west corner of our office is central to the move. Our receptionist, Sylvia, looks forward to welcoming you to our repositioned and newly refurbished reception area on your next visit to our offices.

Farewell

In April we said farewell to Ines Kallweit, who has retired from the partnership for the second time. We thank Ines for her service to the practice and wish her well in her future endeavours.

Paul Webster will now be the Partner responsible for the Wills, Probate, Estates and Trusts department of the firm.

A new arrival

Congratulations to Louise Tolson from our Litigation and Dispute Resolution department and her husband Alex on the arrival of their first child, Hannah, in late March.

Business & Commercial Law

Paul Webster answers your legal questions.

Q I am in negotiations for a commercial lease for my business. Is there anything I should do before I sign the contract?

A Tenants are usually requested by agents to sign an agreement for lease or letter of offer before formal lease documentation is prepared. As these are often binding contracts, it is essential that tenants obtain legal advice before entering into them. Matters such as the zoning of the premises require investigation before a binding agreement is entered into. We protect tenants' interests by conducting the necessary searches and advising on the terms of the proposed arrangement. Ensuring at the outset that all is in order is time and money well spent.

Tolhurst Druce & Emmerson Working with individuals, families & business.



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Tolhurst Druce & Emmerson incorporates the firms of Gavan Duffy & King, Doyle & Kerr, Puglisi, Heffey & Pavlidi, Louis S Lazarus, and D Condon & Co. If you wish to change your contact details or no longer wish to receive this publication, please contact our office on (03) 9670 0700.

The information in this newsletter is not intended to be a complete statement of the law relating to the issues raised. Accordingly, no person should rely on this information without obtaining specific advice from lawyers.

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