

What is marriage annulment and is it available in Australia?

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The Federal Circuit and Family Court of Australia has the power to grant a 'decree of nullity' (an annulment of marriage) under section 51 of the *Family Law Act 1975* *(Cth)*.

This section gives the Court the power to declare a marriage void under Australian law. In this blog, we look at the difference between annulment and divorce, who can get an annulment of marriage and how to apply for a marriage annulment in Australia.

What is a marriage annulment?

A marriage annulment (also referred to as a 'decree of nullity') is where the Court makes a finding that a marriage between the parties was not legal or that it is 'null and void'.

Annulment of marriage vs divorce

An annulment of marriage differs from a divorce in that where an annulment is essentially declaring the marriage was not valid and never existed in a legal sense, a divorce is the dissolution of a valid or legal marriage. With a divorce, the marriage was valid and existed but has now come to an end.

Marriage annulments are also more expensive to obtain and require more evidence than divorce does. While the parties need to be separated for at least twelve months before they can apply for a divorce, there is no separation period required to apply for an annulment.

You can read more about the grounds required to obtain a divorce in Australia here.

Additionally, if the Court grants a decree of nullity, it becomes effective immediately, whereas it takes one month and one day after a Divorce Order is made, for the divorce to come into effect.

It is important to recognise that in Australia, marriage annulments are not common and it is usually difficult to have a marriage annulled. The Court will generally only make this declaration in very limited and rare circumstances.

Grounds for an annulment of marriage

The circumstances in which the Court may declare a marriage invalid and grant an annulment are as follows:

1. One or both of the parties were already married when they entered the marriage in question;
2. One or both of the parties were under age at the time of entering the married and did not have the necessary approvals;
3. One or both parties were mistaken as to the identity of the other party or as to the nature of the ceremony performed (eg. they were not aware they were getting married);
4. The parties did not comply with the laws in relation to the marriage in the place/country they were married;
5. One or both of the parties were forced into the marriage under duress; or
6. The marriage in question was between people of a ‘prohibited relationship’ (eg. between relatives including adopted relatives).

To determine whether one of the above scenarios is relevant, the Court will need to test the evidence before it. This can be a lengthy and costly exercise, depending on the circumstances of the matter.

The Court will not declare a marriage invalid for other reasons, such as:

1. non-consummation of the marriage;
2. never having lived together;
3. family violence;
4. regret; or
5. any other incompatibility situation or perceived ‘fault’ of one of the parties.

These reasons are irrelevant as to whether or not a marriage is valid and as such, are not grounds for an annulment of marriage in Australia.

We recognise that there are many reasons, including religious or cultural reasons why a party may prefer to obtain an annulment rather than a divorce. While the Court may be sympathetic to the reasons why someone would want an annulment instead of a divorce, ultimately the Court is only concerned with whether the marriage is valid under the Australian family law.

Applying for an annulment of marriage

To apply for an annulment of marriage, you need to file an Initiating Application and an Affidavit setting out why you want an annulment.

You will need to provide sufficient evidence to the Court to allow them to make a determination that an annulment is appropriate in the circumstances, including setting out the facts you are relying on to have the marriage annulled and details of the type of marriage ceremony performed.

You will also need a copy of your marriage certificate (if applicable).

You can read more about the process of making an application for a decree of nullity via the Court's factsheet.

Effects of obtaining an annulment of marriage

Getting your marriage annulled may have significant flow-on effects in relation to other matters. It is important to seek legal advice before making any applications to the Court so that you are fully aware of the implications an annulment may have on other areas of your life.

Call for advice prior to making an application:: 03 8625 8957

Just like getting a divorce, obtaining an annulment of marriage does not do any of the following:

- Resolve parenting matters;
- Resolve property matters;
- Automatically amend or override Wills or Powers of Attorney; or
- Amend or override any insurance policies.

We recommend that you obtain legal advice in relation to the above to make sure your rights are being protected and you are meeting your legal obligations.

How a family lawyer can help

If you believe your marriage is invalid and you're seeking an annulment of marriage, contact us for a free initial consultation to discuss your options and eligibility.

We can assist in determining how likely an application for a decree of nullity may be in your circumstances and provide you with information as to what the roll-on effects of obtaining same may be, including all other aspects of your family law situation like parenting issues, property settlement and spousal maintenance.

Contacting Smith Family Law

03 8625 8957

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.