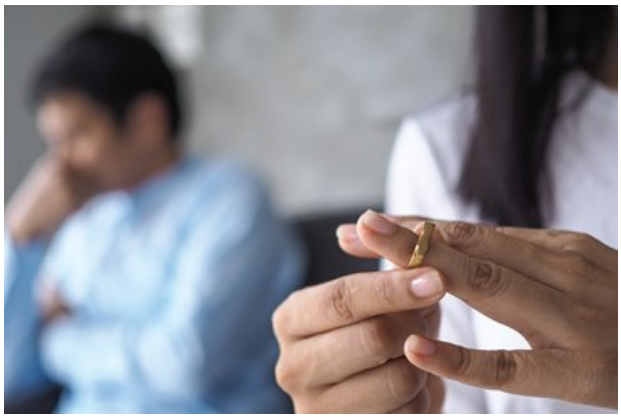


Annulment of marriage in Australia

Date: Monday August 21, 2023

E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

CALL US IF YOU'D LIKE A REFERRAL TO A FAMILY LAWYER: 02 9997 2111

An annulment of a marriage is not the same as a divorce. Annulment of your marriage is a legal declaration that there was no legal marriage between the parties, even though a marriage ceremony may have taken place. When there is a question about the validity of a marriage, the marriage may be declared invalid by the Federal Circuit and Family Court of Australia. This is known as a declaration of nullity or an annulment.

What is the process for having a marriage annulled?

Annulments in Australia are governed by *The Family Law Act 1975* (Cth), which means that in order for the Court to make a determination as to the validity of a marriage, an application will first need to be made to the Court.

You will only be able to apply for a decree of nullity if you or the other party:

are an Australian citizen, live in Australia or consider Australia your permanent home, or ordinarily live in Australia and have done so for at least 12 months.

When applying for a declaration of nullity, you will be required to file an Initiating Application together with an Affidavit outlining the facts you seek to rely upon to have the marriage annulled. There are however, limited grounds upon which the Court can deem a marriage invalid.

In what circumstances will a marriage be deemed invalid in Australia?

A marriage may be determined invalid by the Court on the following grounds:

- The parties were in a prohibited relationship (i.e., the marriage was between family members);
- One or both of the parties were already legally married at the time (bigamy);
- One or both of the parties were not of marriageable age;
- One or both of the parties did not give their real consent to the marriage; or
- The marriage is invalid under *section 48 of the Marriages Act 1961 (Cth).* (i.e., marriages not solemnised in accordance with the Act)

When won't marriage be declared invalid by the Family Court?

The Court will not declare a marriage invalid on the following grounds:

- Where consummation of the marriage has not occurred;
- Due to family or domestic violence;
- Where the parties have never lived together; or
- Any other reason in relation to incompatibility.

In circumstances like these, you can file an application for divorce instead. Divorce in Australia is a “no fault” system. This means that there is no requirement for one of the parties to be considered “at fault” for the relationship breakdown. The Court only requires that there is an irretrievable breakdown of the marriage in order to grant a divorce. See more details below regarding divorce.

What if I am not eligible to apply for a decree of nullity (annulment of marriage)?

If you are ineligible to apply for an annulment of marriage because you don't meet the grounds outlined above and you still wish to end your marriage, you will need to make an application for divorce.

The process for applying for a divorce in Australia is similar to applying for a decree in nullity in that you still need to satisfy the Court that you or the other party are an Australian citizen, live in Australia or consider Australia your permanent home, or ordinarily live in Australia and have done so for at least 12 months in order to be eligible to make an application to the court.

Unlike a decree of nullity, where there is no wait time required, to apply for a divorce in Australia, you can only make an application to the court once you and your partner have been separated for at least 12 months. This assists the court to be satisfied that the marriage has broken down irretrievably and that there is no likelihood of reconciliation.

As Australia has a no-fault divorce system, if you are applying for a divorce, you do not have to provide any information to the court for the reason/s behind the marriage breakdown. Provided that the court is satisfied that you have been separated for more than 12 months and there is no chance of reconciliation, your application will be approved, and the Order will become final one month and one day after the hearing of the application.

What do I do if I have been served with an application for nullity?

If you have been served with an Initiating Application seeking a declaration of nullity/annulment of marriage, and you do not consent to the application for nullity being sought, you will need to file a Response to Initiating Application and an affidavit. This should address your position with respect to the issues raised by the other party and the evidence that you seek to rely upon in opposing the application for nullity.

Get help from a family lawyer

As there can be serious legal consequences where an annulment of marriage has been granted, it is important to seek advice from an experienced family law solicitor before filing or responding to an application for nullity.

At E&A Lawyers, our experienced team of family law solicitors will be able to provide you with tailored legal advice and representation should it become necessary.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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This article 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 E&A Lawyers.