

How do I get my marriage annulled in Australia?

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Under the *Family Law Act* 1975 (Cth), the Family Court of Australia and the Family Court of Western Australia can declare a marriage invalid. This is formally referred to as a decree of nullity. Commonly, people would refer to a marriage annulment.

What is a Decree of Nullity?

A decree of nullity, often referred to as an annulment of marriage, is an order from the Court that has the effect of stating there was no legal marriage between the parties.

What is the difference between a Divorce Order and a Decree of Nullity or annulment of marriage?

A Divorce Order dissolves a legally recognisable marriage.

An order of Decree of Nullity voids a legally recognisable marriage.

The effect of a Decree of Nullity is that the marriage never existed – the order has a retrospective effect.

What you must demonstrate to obtain a Decree of Nullity?

To successfully obtain an order for a Decree of Nullity, you must demonstrate one of the following grounds exists:

- At the time the parties were married, one of them was married to someone else.

The parties are in a prohibited relationship. A prohibited relationship includes parties to a marriage are related by blood or adoption.

The parties did not comply with the laws in relation to the marriage in the place they were married.

Either party was not of a legal age to marry.

Either of the parties did not give their real consent to the marriage because:

consent was obtained by duress or fraud; or

one party was mistaken as to the identity of who they were marrying or the nature of the ceremony; or

one party was mentally incapable of understanding the nature and the effect of the marriage ceremony.

What grounds will not be recognised for Decree of Nullity

Contrary to popular opinion, the Court will not declare a marriage invalid for any of the following reasons:

Non-consummation of the marriage;

Never having lived together;

Family violence; or

Other incompatibility situations.

If a party to a marriage cannot establish grounds to obtain an order for a decree of nullity, they will need to obtain an order for divorce to legally end the marriage.

What must I do to obtain a Decree of Nullity?

To obtain a Decree of Nullity, a party must make an application to the Court with an affidavit setting out the facts relied upon to have the marriage annulled. You must also provide the Court with a copy of the marriage certificate.

A copy of the application and affidavit must be served on the other party in accordance with the Family Law Rules. Once the respondent has been served with a copy of your application, they may file a response to the application.

Following service of the application on the other party, and the application has been filed correctly with the Court, the Court will schedule a hearing date for your application.

If your application is successful and the Court grants an order for a Decree of Nullity, the order has immediate effect.

Get help from a family lawyer

Once you obtain an order for a Decree of Nullity (or a Divorce Order), you should seek legal advice from an experienced family lawyer regarding:

- parenting arrangements where there are children of the relationship; and
- property and financial matters.

At Meillon & Bright Legal, our team of lawyers have experience across all aspects of family law and can assist you with any queries you have in relation to any family law matter.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.