



Applying for a decree of nullity

This fact sheet is for people who need information about applying to the Family Court for an order that a marriage is a nullity, described in the *Family Law Act 1975* as a 'decree of nullity'.

What is a decree of nullity?

It is an order which has the effect of saying that there is no legal marriage between the parties, even though a marriage ceremony may have taken place. (See Section 51 of the *Family Law Act 1975* and Sections 23 and 23B of the *Marriage Act 1961*).

What grounds constitute a decree of nullity?

The Court may declare a marriage invalid on the following grounds:

- At the time the parties were married, one of them was married to someone else.
- The parties are in a prohibited relationship.
- 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,
 - one party was mistaken as to the identity of who they were marrying or the nature of the ceremony,
 - one party was mentally incapable of understanding the nature and the effect of the marriage ceremony.

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

- Non-consummation of the marriage
- Never having lived together
- Family violence or
- Other incompatibility situations.

See *Marriage Act 1961* (Cth) of the *Family Law Rules 2004* for more information on what grounds a party may apply for a decree of nullity.

What form should I file?

An application for a decree of nullity should be filed using the *Initiating Application (Family Law)* form.

When filing, you need to include:

- three copies of the completed *Initiating Application (Family Law)* form
- a copy of the marriage certificate, unless this is already on file, and
- an affidavit (a sworn or solemnly affirmed statement) stating the facts relied on to have the marriage annulled, and details of the type of marriage ceremony performed. See Rule 4.29 of the Family Law Rules.

How do I serve the application?

If you are the applicant, you will have to serve the papers on the respondent to the application. The application must be served as soon as practicable by special service. More information on special service can be found in the Family Court of Australia's *Service Kit*.

With your application, you must also serve a copy of the court brochure *Marriage, Families and Separation*, an *Affidavit of Service* form and an *Acknowledgment of Service* form.

What is filed in response?

A *Response to Initiating Application (Family Law)* form may be filed by the respondent to the application. This must be supported by an affidavit setting out any facts the respondent relies upon in opposing the application or if they say that the Family Court does not have the jurisdiction to hear the application.

How much will the application cost?

There is a filing fee for an application for a decree of nullity. Details of the current fee can be found in the brochure *Court Fees* available at your nearest family law registry or by visiting www.familylawcourts.gov.au.

In some cases Court fees do not apply; for example, if you hold certain government concession cards or you can demonstrate financial hardship.

Additional Information

- If the respondent is in Australia, the Court will give a hearing date that is within 42 days of the application being made. If the respondent is not in Australia, the hearing date will be at least 56 days after the application is made.
- Making an application for a decree of nullity is not subject to the 12 month separation period that applies to divorce.
- When the Court grants a decree of nullity, it becomes effective immediately.
- Where a decree of nullity has been made, you should obtain legal advice regarding parenting and financial matters.

Legal Advice

You should seek legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities and explain how the law applies to your case. A lawyer can also help you reach an agreement with the other party without going to court. You can seek legal advice from a legal aid office, community legal centre or private law firm. Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

Personal Safety

If you have any concerns about your safety while attending court, please call 1300 352 000 before your court appointment or hearing. Options for your safety at court will be discussed and arrangements put in place.

By law, people must inform a court if there is an existing or pending family violence order involving themselves or their children. More detail is available in the brochure *Do you have fears for your safety when attending court?* available at registry offices or www.familylawcourts.gov.au

More Information

For more information, including access to any of the legislations, forms or publications listed in this fact sheet:

- go to www.familylawcourts.gov.au
- call 1300 352 000
- or visit a Family Law Registry near you.

FAMILY LAW REGISTRIES

AUSTRALIAN CAPITAL TERRITORY

Canberra ~ Cnr University Ave and Childers St
Canberra ACT 2600

NEW SOUTH WALES

Albury ~ Level 1, 463 Kiewa St Albury NSW 2640

Dubbo ~ Cnr Macquarie and Wingewarra Sts Dubbo
NSW 2830

Lismore ~ Level 2, 29-31 Molesworth St Lismore NSW 2480

Newcastle ~ 61 Bolton St Newcastle NSW 2300

Parramatta ~ 1-3 George St, Parramatta NSW 2123

Sydney ~ 97-99 Goulburn St Sydney NSW 2000

Wollongong ~ Level 1, 43 Burelli St Wollongong NSW 2500

NORTHERN TERRITORY

Alice Springs ~ Level 1, Centrepoint Building, Hartley St
Alice Springs NT 0870

Darwin ~ 80 Mitchell St Darwin NT 0800

QUEENSLAND

Brisbane ~ 119 North Quay Brisbane Qld 4000

Cairns ~ Level 3 and 4, 104 Grafton St, Cairns, QLD 4870

Rockhampton ~ 46 East St (Cnr Fitzroy St)
Rockhampton, QLD 4700

Townsville ~ Level 2, Commonwealth Centre, 143 Walker St
Townsville Qld 4810

SOUTH AUSTRALIA

Adelaide ~ 3 Angas St Adelaide SA 5000

TASMANIA

Hobart ~ 39-41 Davey St Hobart Tas 7000

Launceston ~ Level 3, ANZ Building, Cnr Brisbane
& George Sts Launceston Tas 7250

VICTORIA

Dandenong ~ 53-55 Robinson St Dandenong Vic 3175

Melbourne ~ 305 William St Melbourne Vic 3000

WESTERN AUSTRALIA

Perth ~ Family Court of Western Australia
150 Terrace Rd Perth WA 6000
08 9224 8222