

Understanding Annulments in Australia

When it comes to ending a marriage, most people think of divorce. However, in certain circumstances, an annulment might be the more appropriate option.

Before applying for an annulment, it is important to understand what an annulment entails, the grounds for obtaining one and the associated risks and benefits.

What is an Annulment?

An annulment is a legal declaration that a marriage is null and void. If an annulment is granted, the marriage is essentially ‘cancelled’ and treated as though it never happened.

This differs from a divorce, which is the legal end or dissolution of a valid marriage. Under the *Family Law Act 1975*, the Federal Circuit and Family Court of Australia and the Family Court of Western

Australia have the power to declare a marriage invalid.

Applying for an Annulment

An application for an annulment nullity can be made at any stage after the wedding has occurred whereas parties seeking to apply for a divorce must first demonstrate that they have been separated for a period of no less than 12 months. For this reason, annulments are often perceived as a fast and easy way to end a marriage. In reality, however, annulments are quite rare in Australia. This is largely due to the exceptionally limited eligibility criteria.

Parties can only apply for an annulment on the following grounds:

1. The marriage was not valid under Australian law: A marriage may be deemed invalid if it contravenes Australian law. This includes scenarios where the parties are in a prohibited relationship (i.e., a marriage between blood relatives or siblings), the marriage ceremony was performed by an unauthorised celebrant or minister, or if one party was already married to another person at the time of the marriage.
2. Underage marriage: If either party were underage at the time of the marriage and did not have the required consent from their parents or a court, the marriage can be annulled.
3. There was a lack of valid consent: If one party did not genuinely consent to the marriage, this could be grounds for annulment. This might include cases where:
    1. Consent was obtained under duress or fraud;
    2. One party was mistaken about the identity of the other party or the nature of the marriage ceremony; or
    3. One party lacked the mental capacity to understand the nature of the marriage.

The following grounds are not valid reasons to obtain an annulment:

1. Non-Consummation of the marriage;
2. Non-compatibility;
3. Domestic violence; or
4. Dishonesty not related to the identity of a party including dishonesty about a parties' intention to have children, or ability to have children.

There are several benefits to obtaining an annulment. For instance, an annulment treats the marriage as if it never occurred, which can simplify subsequent legal and financial matters. The annulment process may be less complex than a divorce, especially if there are no disputes over property or children.

There are also several risks associated with applying for an annulment, such as:

1. Evidencing your claim: Annulments require proving specific grounds, which can be challenging and emotionally demanding.

2. Cost and time: The Court process can be lengthy and costly, depending on the complexity of your case.
3. Uncertainty of outcome: There is simply no way to guarantee that the Court will grant an annulment, and the process might not resolve all issues related to property and children.

How can Andersons help?

If you believe you may qualify for an annulment, we suggest that you speak with one of our experienced **Family Law solicitors** who can help determine if you have a valid case. We offer compassionate, knowledgeable assistance to guide you through each step of the annulment process, ensuring that your rights and interests are protected. You can contact us on 8238 6666 or via email at enquiry@andersons.com.au

The information in this article is general in nature and was accurate at the time of publication. Laws and circumstances can change. For advice specific to your situation, please seek professional legal advice.