



Nullity or Divorce?

Nullity and Divorce are quite different. Divorce is the dissolving of a valid marriage following a period of at least 12 months separation of the parties. A Nullity is an Order of the Family Court that the marriage never existed.

When is a marriage legally valid?

To be legally married in Australia a couple including a same sex couple must:

- not be married to someone else
- not be marrying a parent, grandparent, child, grandchild, brother or sister
- be at least 18 years old, unless a court has approved a marriage for a party aged 16 - 18
- understand what marriage means and freely consent to it
- use specific words during the ceremony; and
- give written notice to their authorised celebrant within the required time frame of their intention to marry.

What is a declaration of nullity?

A declaration of nullity is a finding that there was no legal marriage between the parties, even though a marriage ceremony may have taken place. It's very rare and quite difficult to nullify a marriage in Australia as there are only very limited circumstances in which the Family Court will grant such an Order. On average only about 25 applications for nullity are made to the Family Court each year and of these less than 50% are granted.

What grounds constitute a decree of nullity?

The Family Court of Australia may only declare a marriage invalid on the following grounds:

1. One or both of the parties was already married to someone else at the time
2. One or both of the parties were under age and did not have the necessary approvals
3. One or both of the parties were forced into the marriage under duress
4. The parties were too closely related to be allowed to marry
5. The parties did not comply with the formal requirements for a valid marriage; or
6. One or both of the parties did not give their real consent to the marriage.



What grounds won't the Court consider?

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

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

Making an application for Nullity

Making an application for a decree of Nullity is not subject to the 12 months separation period that applies to divorce and is commenced by filing an Initiating Application in the Family Court. A sworn affidavit supporting the Application and details of the type of marriage ceremony performed must be filed with the Application as well as a copy of the marriage certificate. The affidavit must include detailed evidence establishing the grounds on which the Application for Nullity is based.

Once lodged a copy of the Application must be served on the other party to the marriage (respondent). A Response to a nullity application can be filed by the respondent to the application if they intend to oppose it and if so, their Response must also be supported by an affidavit setting out any facts the respondent relies upon in opposing the application. If the Court grants a decree of nullity, it becomes effective immediately and the marriage never existed

If you want more information about Nullity, Divorce or any Family Law issue please contact our Family Law specialists, [Oliver Hagen](#) or [Ken Gray](#) on 02 4731 5899 or email familylaw@batemanbattersby.com.au.