

INVALID MARRIAGES

Many separated and divorced people wonder about their status within the Catholic Church. They, as well as single men and women thinking about marrying a divorced person, also wonder about the possibility of marrying in the Church.

The Church reaches out in support of people whose marriage has broken down, while upholding the permanence of a true Christian marriage. These two aspects of the Church's position are especially evident in the sensitive work of the Regional Tribunal of Queensland.

What is marriage?

There are many views regarding the nature of marriage. One popular notion regards marriage as simply an agreement which can be broken at will by either party. The Catholic Church holds marriage to be the intimate union of life and love between a man and a woman which is permanent, faithful and open to new life.

The Catholic Church maintains that when a man and a woman, who are free according to law, exchange consent, the agreement made is presumed to be valid and binding. The couple are bound by a bond that only death can break. For this reason, the Church cannot accept that a civil divorce frees the parties to enter a marriage according to the rites of the Catholic Church. Such freedom is only established if there is a Church declaration that the previous agreement was invalid.

What is an annulment?

An annulment, or more correctly a decree of nullity, is an official Church declaration which says that some of the necessary elements of a valid marriage agreement were missing at the time of the wedding.

A decree of nullity frees the parties to enter a marriage according to the rites of the Catholic Church once all other requirements of law have been fulfilled.

A decree of nullity does not mean that there was never any love between the parties, that they were lacking sincerity, effort or commitment. Nor does it mean that there was no marriage as generally understood by the community at large.

In Australia, a decree of nullity has no effect in civil law.

How does a decree of nullity differ from a divorce decree?

A divorce decree dissolves the bond recognised in civil law without questioning the validity of the agreement.

A decree of nullity declares that the bond of marriage, as understood by the Catholic Church, did not come into being because the agreement was invalid.

What can make a marriage agreement invalid?

A number of factors can affect the binding force of a marriage agreement. For example, both civil and Church law require a minimum age. Church law also requires a valid consent and the capacity to live out the marriage commitment. Accordingly, the annulment process investigates matters such as the intentions of the parties, their maturity, their freedom to act responsibly, their freedom from undue influence and pressures, as well as their capacity to undertake the essential obligations of marriage.

Who can approach the Tribunal?

Anyone who wants to clarify their marital status in terms of the law of the Catholic Church is welcome.

How does the Tribunal function?

The Tribunal gathers the facts of the matter from the documents presented and oral evidence. The Tribunal needs to know about the background and upbringing of each of the parties, their courtship, the story of their marriage and the story since the marriage.

The party seeking the decree of nullity gives evidence in a private interview with a member of the Tribunal staff. The other party to the marriage is invited to take part in an interview that is conducted in the same manner.

Every encouragement is given to both parties to participate as fully as possible.

Both parties to the marriage are invited to nominate witnesses who are willing and able to speak to the facts of the case. The witnesses are interviewed in the same manner as the parties to the marriage.

Must the other party be informed of the proceedings?

Yes. Justice demands that the other party knows of the proceedings and is invited to give evidence.

Is it now easier to get a decree of nullity (annulment)?

The factors that make a marriage agreement invalid have not changed. However, the insights of the human sciences over the past fifty years have broadened the basis on which Tribunal judges can declare that a marriage agreement is invalid.

How is a decision reached?

When there is sufficient evidence gathered, the Tribunal Judges make a formal decision. The parties to the marriage do not attend the judgment session. Advocates may represent them if appropriate.

The Defender of the Bond, a Tribunal official, always submits observations which uphold the teachings of the Church on marriage.

The decision of the Judges at the local level (First Instance) declares either that the marriage agreement is invalid (an affirmative decision) or that the evidence does not allow such a decision to be made (a negative decision).

What happens after the First Instance decision?

After an affirmative decision, the case is sent to the Appeal Tribunal for Australia and New Zealand.

If an affirmative decision is ratified, the marriage agreement is declared invalid and a decree of nullity issued. Otherwise, the presumption remains that the marriage agreement is valid and binding.

A negative decision can be appealed to the Second Instance at the request of either party to the marriage.

Is everyone who seeks an annulment successful?

No. Not everyone is successful. The Judges decide each petition on the evidence presented to them. Fulfilling the requirements of the process does not guarantee an affirmative

decision.

How long does the process take?

Sometimes it takes less than a year to complete, but at other times it may take considerably longer.

People should not make arrangements for the celebration of a marriage in the Catholic Church until the final decision has been given.

Who are the Tribunal Judges?

The Judges are priests, religious and lay people appointed to the Tribunal by the Archbishop of Brisbane. All have the necessary qualifications required by Church or Canon Law.

Does a decree of nullity mean children of a marriage are illegitimate?

No. Church law affirms that children of a marriage are always regarded as legitimate.

What if a person has been married more than once?

Each of the unions is considered separately.

Are there costs?

Yes. The Tribunal charges a standard fee, but genuine financial difficulties will not prejudice or hinder the processing of a petition.

Is it all worthwhile?

For most people it is. However, people are understandably disappointed when petitions are not successful. Although disappointed, many value the opportunity to tell their story to people who have received them in a professional, sensitive and pastoral manner.

The granting of a decree of nullity clears the way for the parties to enter a marriage within the Catholic Church. For those who have already entered another union, a decree of nullity allows that union to be recognised by the Catholic Church.

Before a couple marry or have their union recognised by the Catholic Church, careful preparation is strongly recommended.

The content of this pamphlet outlines the procedure followed in examining a marriage agreement presumed valid according to the laws of the Catholic Church.

Other procedures may be followed where either the husband or wife was not baptised, or where people married contrary to the laws of the Catholic Church.

Tribunal staff will help you in these matters.