

Family Law - Divorce

I want a divorce but don't have my overseas marriage certificate – What can I do?

In Australia, an application for divorce is made to the Federal Circuit Court of Australia (FCC).

To obtain a divorce, you need to satisfy the FCC of the following requirements:-

1. You have a valid marriage;
2. The FCC has the jurisdiction to deal with your divorce application;
3. You have been separated for at least twelve (12) months before you apply for divorce;
4. Your marriage has broken down irretrievably;
5. You have made appropriate arrangements for any children under eighteen (18) years of age.

For marriages that took place in Australia, evidence that it was a valid marriage is usually by way of a marriage certificate. Accordingly, when you lodge your 'Application For Divorce' form, you must attach to it a copy of your marriage certificate to show the Court that you have a valid marriage.

If you were married in an overseas country, you must satisfy the FCC that your overseas marriage is recognised as valid under Australian law by meeting the following requirements:-

1. Your marriage is recognised as valid under the law of the country where the marriage took place;
2. A marriage certificate or other record or entry of marriage was issued by an authority that is allowed to issue that certificate in that country;
3. The marriage is between a man and a woman;
4. You were both 18 years of age at the time of marriage. There may be some circumstances where the marriageable age is 16;
5. Neither the bride nor the groom was married (in such a way that is recognised as a valid marriage in Australia) to any other person at the time of this marriage;
6. Both bride and groom gave real consent to the marriage; and
7. The bride and groom were not in a prohibited relationship, that is, between a person and their ancestor or descendant of that person, between brother and sister (whether of whole blood or half blood).

Your marriage certificate from the country in which the marriage took place is good evidence to give the FCC to prove points 1 and 2. This may be difficult for people who do not have a marriage certificate and are unable to obtain a replacement copy from that country.

In such cases, the applicant for the divorce can prepare an 'Affidavit in Lieu of Marriage Certificate.' An affidavit is a formal statement that is sworn or affirmed. It must be in an appropriate form (*see samples below*)

The Affidavit must include evidence that demonstrates to the court that:

- A. The applicant has a marriage that is recognised as valid under Australian law
- B. The applicant has a reasonable explanation for why he/she does not have a marriage certificate to attach to the application
- C. The applicant has made sufficient and appropriate attempts to locate his/her marriage certificate
- D. The applicant has made sufficient and appropriate attempts to obtain a replacement copy of the certificate of marriage

Consider the following example:

Anna was married 25 years ago, pursuant to a civil marriage ceremony in her home country of Turkey. She migrated to Australia with her husband 10 years ago. Anna and her husband separated 18 months ago and she now wishes to apply for a divorce. Unfortunately, Anna lost her marriage certificate 5 years ago in a house fire. Anna wrote to the relevant Turkish authority requesting a copy of her marriage certificate, however by letter the authority advised that it could not locate her marriage certificate.

In this case, Anna will need to prepare an 'Affidavit in Lieu of Marriage Certificate' addressing the matters outlined above. We have prepared a sample *Affidavit in Lieu of Marriage Certificate* to show you what it looks like, using Anna's scenario (see page 4 of this fact sheet). See how Anna has provided evidence to satisfy the FCC of the matters outlined above.

The Court would advise Anna whether her Affidavit is sufficient, in her circumstances or give her further guidance of any further evidence she may need to provide.

Please note, there is no prescribed Court form called *Affidavit in Lieu of Marriage Certificate*. What you need to do is to obtain a blank Affidavit from the Federal Circuit Court and then change it to add the words *Affidavit in Lieu of Marriage Certificate*. Click [here](#) for a link to the Court's website.

Religious Marriage Ceremonies

If you were married pursuant to a religious ceremony in your home country and your marriage was solemnised (formalised) under the laws of your home country by way of a certificate, entry or a record, then you would need to provide a copy of that certificate, entry or record to the Federal Circuit Court of Australia when you apply for divorce. If a copy of that certificate, entry or record was not provided to you at the time of your marriage or you lost it, then like Anna above, you will need to provide an *Affidavit in Lieu of Marriage Certificate*. We have prepared a sample affidavit to cover this situation (see page 7 of this fact sheet).

If you were married pursuant to a religious ceremony in your home country and your marriage was not solemnised under the laws of your home country by way of a certificate, entry or a record, you can still make an application for divorce and provide an affidavit to explain your situation. The FCC will consider your affidavit and decide if your marriage is valid under Australian law. If it is valid, the FCC can grant a divorce. If the FCC determines it is not a valid marriage under Australian law, your relationship may be considered a “de facto” relationship and you may have rights under the *Family Law Act 1975*.

Translation

It is important to note that any documents (for example letters to and from overseas authorities) that you wish to give to the FCC to show the efforts you have made to obtain a replacement copy of your marriage certificate or entry or record that are not in English must be translated into English by a qualified translator at your expense. You may wish to contact Translating and Interpreting Service on 131 450 or National Accreditation Authority for Translators and Interpreters Ltd on 1300 557 470 to locate a qualified translator.

***The South West Sydney Legal Centre can assist
with inquires regarding divorce when no marriage certificate is available
and with family law issues more generally.***

South West Sydney Legal Centre can assist you with any questions or concerns.

Free Phone Advice 9601 7777

Tuesdays: 12.30pm to 2.00pm

Tuesdays: 4.00pm to 6.00pm

Thursdays: 12.30pm to 2.00pm

FEDERAL CIRCUIT COURT OF AUSTRALIA

File number:
COURT USE ONLY
Court Location
Court date
Court time

REGISTRY: PARRAMATTA

Names used in this sample Affidavit are fictional

ANNA MEEHA
Applicant Wife

SAMPLE

ROBERT MEEHA
Respondent Husband

AFFIDAVIT IN LIEU OF MARRIAGE CERTIFICATE

Name of deponent: ANNA MEEHA

Date sworn / affirmed:/...../.....

I, Anna Meeha of 1200 Moore Street, Liverpool in the State of New South Wales, Administration Assistant, make oath and say / affirm:

- I am the applicant wife herein.
- The husband and I attended at the Marriage Registry office at 123 Lisbon Street, in the city of Zile, Turkey on 28 May 1989 and we were married in accordance with a civil ceremony

Filed on behalf
of
Prepared by _____ Lawyer's code _____
Name of law
firm _____
Address for service in
Australia _____
State _____ Postcode _____
Email _____ DX _____
Tel _____ Fax _____ Attention _____

Warning: This fact sheet is for information purposes only and should not be relied upon as legal advice.

conducted by civil marriage celebrant Maria Anar. The husband and I exchanged our vows in the presence of my parents Jane Askar and Christopher Askar and the husband's parents Anastasia Meeha and John Meeha. The husband and I were issued with our marriage certificate after we both signed it.

3. There is one child of the marriage, Peter Meeha born on 1 January 1991.
4. On 5 March 1999, the husband and I together with our child migrated to Australia.
5. The husband and I separated on 20 November 2012 when the husband moved out of the former matrimonial home.
6. On 19 October 2009, we had a house fire at our former matrimonial home. Our marriage certificate was lost in the fire. Annexed hereto and marked with the letter "A" is a copy of the Incident Report issued by Fire Services NSW dated 10 November 2009 in relation to the house fire.
7. Following our separation, I contacted the authorities in Turkey in an attempt to obtain a replacement of our marriage certificate. Annexed hereto and marked with the letter "B" is a copy of my letter to the Marriage Registry Turkey dated 2 December 2012. Annexed hereto and marked with the letter "C" is a copy of their reply dated 4 February 2013 advising me that they cannot locate my marriage certificate.

Sworn / Affirmed by the deponent

at (place)

on (date)/...../.....

Signature of deponent

Before me:

Signature of witness

Full name of witness:

Qualification of witness:

[Alternative jurat for non-English speaking affidavit]

Sworn / Affirmed by the deponent through the interpretation of (name of interpreter) of (address of interpreter), (description of interpreter), the interpreter having first sworn that he / she had truly interpreted the contents of this affidavit to the deponent and that he or she would truly interpret to (name of deponent) the oath about to be administered to him / her.

at (place)
on (date)/...../.....

Signature of deponent

Before me:

Signature of witness

Full name of witness:

Qualification of witness:

I (name of interpreter) certify that I understand the English language and the (name of language used) language, and that I have truly interpreted to the deponent the contents of this affidavit and the oath or affirmation which was administered.

Signature of the interpreter (print name)

Date:/...../.....

Affidavit_FCC_0313.V1

FEDERAL CIRCUIT COURT OF AUSTRALIA

File number:
COURT USE ONLY
Court Location
Court date
Court time

REGISTRY: PARRAMATTA

Names used in this sample Affidavit are fictional

Maria Alberti
Applicant Wife

SAMPLE

Roberto Alberti
Respondent Husband

AFFIDAVIT IN LIEU OF MARRIAGE CERTIFICATE

Name of deponent: Maria Alberti

Date sworn / affirmed:/...../.....

I, Maria Alberti of 1200 Moore Street, Liverpool in the State of New South Wales, Administration Assistant, make oath and say / affirm:

1. I am the applicant wife herein.
2. The husband and I married in Spain on 28 May 1989 according to ABC faith. We married in XYZ church before an ordained priest.
3. The husband and I exchanged our vows in the presence of our family and friends including my parents Jane Diego and Christopher Diego and the husband’s parents Anastasia Alberti and John Alberti.

Filed on behalf
of
Prepared by Lawyer’s code

Name of law
firm

Address for service in
Australia State Postcode

Email DX

Tel Fax Attention

4. The husband and I were not issued with a civil marriage certificate as we had a religious ceremony.
5. At the conclusion of our religious marriage ceremony, the priest made a record of our marriage in the church's register in the presence of me, my husband and our witnesses.
6. To the best of my knowledge, belief and understanding, a religious ceremony performed by an ordained priest according to the ABC faith in a XYZ Church was recognised as a valid legal form of marriage ceremony in Spain.
7. Since our marriage on 28 May 1989, the husband and I lived together as husband and wife to the exclusion of others.
8. There is one child of the marriage, Peter Alberti born on 1 January 1991.
9. On 5 March 1999, the husband and I together with our child migrated to Australia.
10. The husband and I separated on 20 November 2012 when the husband moved out of the former matrimonial home.
11. Following our separation, I contacted the XYZ church in Spain in an attempt to obtain a record of our marriage in the church's register. Annexed hereto and marked with the letter "A" is a true copy of my letter to the XYZ Church dated 2 December 2012 together with an English translation of same by Patricia Jones sworn on 4 May 2013. Annexed hereto and marked with the letter "B" is a true copy of reply from XYZ church dated 4 February 2013 advising me that they cannot provide me with a copy of the church's register and same has also been translated by Patricia Jones.

Sworn / Affirmed by the deponent

at (place)

on (date)/...../.....

Signature of deponent

Before me:

Signature of witness

Full name of witness:

Qualification of witness:

[Alternative jurat for non-English speaking affidavit]

Sworn / Affirmed by the deponent through the interpretation of (name of interpreter) of (address of interpreter),
(description of interpreter), the interpreter having first sworn that he / she had truly interpreted the contents of this affidavit to the deponent and that he or she would truly interpret to (name of deponent) the oath about to be administered to him / her.

at (place)

on (date)/...../.....

Signature of deponent

Before me:

Signature of witness

Full name of witness:

Qualification of witness:

I (name of interpreter) certify that I understand the English language and the (name of language used) language, and that I have truly interpreted to the deponent the contents of this affidavit and the oath or affirmation which was administered.

Signature of the interpreter (print name)

Date:/...../.....

Affidavit_FCC_0313.V1