



Australian Embassy
The Philippines

Note N° 009/16

The Australian Embassy in the Philippines presents its compliments to the Department of Foreign Affairs and with reference to the Department's Note No 15-5434 dated 18 December 2015, the Embassy has the honour to provide the authenticated copy of the Australian Divorce Law.

The Australian Embassy in the Philippines avails itself of this opportunity to renew to the Department of Foreign Affairs the assurances of its highest consideration.



Australian Embassy
The Philippines

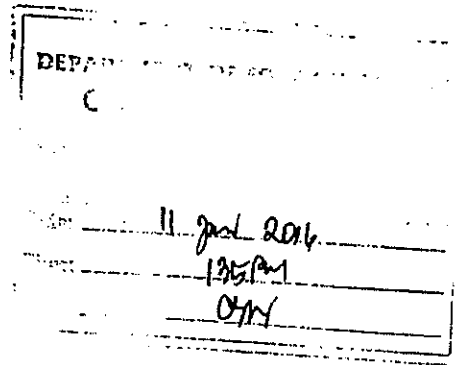
6 January 2016

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Information Technology, Communications
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25 JAN 2016

FOR THE DIRECTOR OF ITCRD:

ARTEMIO C. DEDIL



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JONATHAN A. HIPE
Signing Officer

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FOREIGN AFFAIRS
MANILA

No. 15-5434

The Department of Foreign Affairs presents its compliments to the Embassy of Australia and has the honor to request the Embassy for an authenticated copy of the present Australian Divorce Law to serve as reference of the Department for responding to requests in connection with cases involving recognition of divorce decrees issued by Australian Courts.

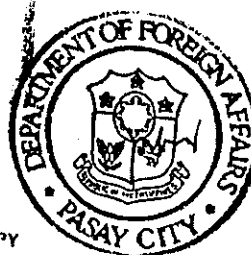
The Department of Foreign Affairs avails itself of this opportunity to renew to the Embassy of Australia the assurances of its highest consideration.

Pasay City, 18 December 2015

Embassy of Australia
Manila

Enclosure(s): a/s

CC: DFA - ASPAC



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OLA / DIV 4 / MLA 12 / 2015

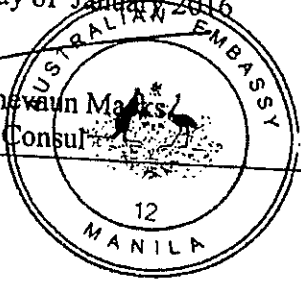


'I, Shevaun Macks, Consul of the Australian Embassy, having been duly authorised by the Secretary of the Department of Foreign Affairs and Trade DO HEREBY CERTIFY that the document attached hereto is a document issued by the Family Law Act".

"In so certifying, neither I nor the Embassy endorse, verify or make any statement as to the accuracy, truth, legality or otherwise of the contents of the document or the purposes for which the document may be used. Neither I nor the Embassy accepts liability for any loss damage or injury arising out of the use of, or reliance on, the document or its contents.

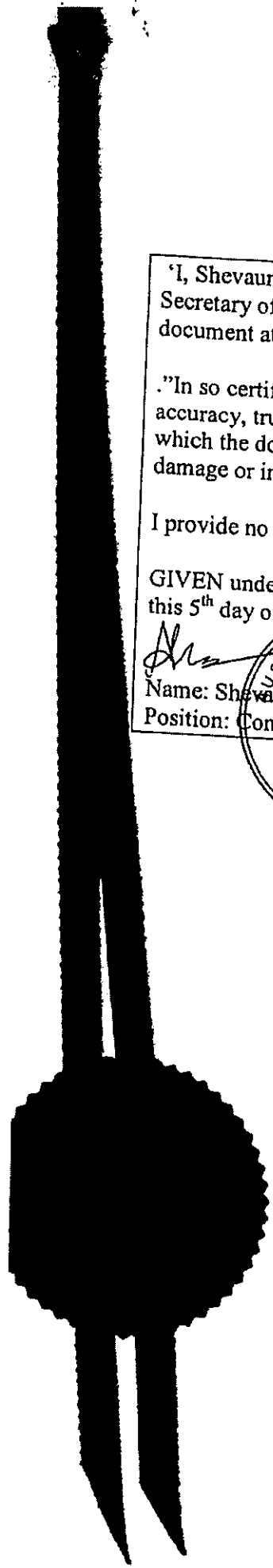
I provide no undertaking that I have read the contents of the document.

GIVEN under my Hand and the seal of the Embassy
this 5th day of January 2016

Shevaun Macks
Name: Shevaun Macks
Position: Consul


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Family Law Act 1975

No. 53, 1975 as amended

Compilation start date: 1 July 2014

Includes amendments up to: Act No. 62, 2014

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Prepared by the Office of Parliamentary Counsel, Canberra

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Part VI Divorce and nullity of marriage

Section 48

Part VI—Divorce and nullity of marriage

48 Divorce

- (1) An application under this Act for a divorce order in relation to a marriage shall be based on the ground that the marriage has broken down irretrievably.
- (2) Subject to subsection (3), in a proceeding instituted by such an application, the ground shall be held to have been established, and the divorce order shall be made, if, and only if, the court is satisfied that the parties separated and thereafter lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of the filing of the application for the divorce order.
- (3) A divorce order shall not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

49 Meaning of separation

- (1) The parties to a marriage may be held to have separated notwithstanding that the cohabitation was brought to an end by the action or conduct of one only of the parties.
- (2) The parties to a marriage may be held to have separated and to have lived separately and apart notwithstanding that they have continued to reside in the same residence or that either party has rendered some household services to the other.

50 Effect of resumption of cohabitation

- (1) For the purposes of proceedings for a divorce order, where, after the parties to the marriage separated, they resumed cohabitation on one occasion but, within a period of 3 months after the resumption of cohabitation, they again separated and thereafter lived separately and apart up to the date of the filing of the application, the periods of living separately and apart before and after the period of

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Section 51

cohabitation may be aggregated as if they were one continuous period, but the period of cohabitation shall not be deemed to be part of the period of living separately and apart.

- (2) For the purposes of subsection (1), a period of cohabitation shall be deemed to have continued during any interruption of the cohabitation that, in the opinion of the court, was not substantial.

51 Nullity of marriage

An application under this Act for a decree of nullity of marriage shall be based on the ground that the marriage is void.

52 Court not to make divorce order where application for decree of nullity before it

Where both an application for a decree of nullity of a marriage and an application for a divorce order in relation to that marriage are before a court, the court shall not make a divorce order in relation to the marriage unless it has dismissed the application for a decree of nullity of the marriage.

53 Circumstances occurring before commencement of Act or outside Australia

A decree may be made, or refused, under this Part by reason of facts and circumstances notwithstanding that those facts and circumstances, or some of them, took place before the commencement of this Act or outside Australia.

55 When divorce order takes effect

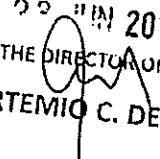
- (1) Subject to this section, a divorce order made under this Act takes effect by force of this section:
- (a) at the expiration of a period of 1 month from the making of the order; or
 - (b) from the making of an order under section 55A;
- whichever is the later.

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Section 55

- (2) If a divorce order has been made in any proceedings, the court of first instance (whether or not it made the order), or a court in which an appeal has been instituted, may, either before or after it has disposed of the proceedings or appeal, and whether or not a previous order has been made under this subsection:
- (a) make an order extending the period at the expiration of which the divorce order will take effect, having regard to the possibility of an appeal or further appeal; or
 - (b) make an order reducing the period at the expiration of which the divorce order will take effect if it is satisfied that there are special circumstances that justify its so doing.
- (3) If an appeal is instituted (whether or not it is the first appeal) before a divorce order has taken effect, then, notwithstanding any order in force under subsection (2) at the time of the institution of the appeal but subject to any such order made after the institution of the appeal, the divorce order, unless reversed or rescinded, takes effect by force of this section:
- (a) at the expiration of a period of 1 month from the day on which the appeal is determined or discontinued; or
 - (b) on the day on which the divorce order would have taken effect under subsection (1) if no appeal had been instituted; whichever is the later.
- (4) A divorce order does not take effect by force of this section if either of the parties to the marriage has died.
- (5) In this section:
- appeal*, in relation to a divorce order, means:
- (a) an appeal, or an application for leave to appeal, against:
 - (i) the divorce order; or
 - (ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or
 - (b) an intervention, or an application for a re-hearing, relating to:
 - (i) the divorce order; or
 - (ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or

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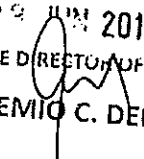
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Section 55A

- (c) an application under section 57 or 58 for rescission of the divorce order, or an appeal or application for leave to appeal arising out of such an application; or
 - (d) a review by the Family Court of Australia of the making, by a Registrar or a Judicial Registrar of that Court, of:
 - (i) the divorce order; or
 - (ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or
 - (iii) an order determining an application under section 57 or 58 for rescission of the divorce order; or
 - (e) a review by the Federal Circuit Court of Australia of the making, by a Registrar of that Court, of:
 - (i) the divorce order; or
 - (ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or
 - (iii) an order determining an application under section 57 or 58 for rescission of the divorce order; or
 - (f) a review by the Family Court of Western Australia of the making, by the Principal Registrar, a Registrar, or a Deputy Registrar, of that Court of:
 - (i) the divorce order; or
 - (ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or
 - (iii) an order determining an application under section 57 or 58 for rescission of the divorce order.
- (6) For the purposes of this section, where an application for leave to appeal, or for a re-hearing, is granted, the application shall be deemed not to have been determined or discontinued so long as:
- (a) the leave granted remains capable of being exercised; or
 - (b) an appeal or re-hearing instituted in pursuance of the leave is pending.

55A Divorce order where children

- (1) A divorce order in relation to a marriage does not take effect unless the court has, by order, declared that it is satisfied:

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Part VI Divorce and nullity of marriage

Section 56

- (a) that there are no children of the marriage who have not attained 18 years of age; or
- (b) that the only children of the marriage who have not attained 18 years of age are the children specified in the order and that:
 - (i) proper arrangements in all the circumstances have been made for the care, welfare and development of those children; or
 - (ii) there are circumstances by reason of which the divorce order should take effect even though the court is not satisfied that such arrangements have been made.
- (2) Where, in proceedings for a divorce order in relation to a marriage, the court doubts whether the arrangements made for the care, welfare and development of a child of the marriage are proper in all the circumstances, the court may adjourn the proceedings until a report has been obtained from a family consultant regarding those arrangements.
- (3) For the purposes of this section, a child (including an ex-nuptial child of either the husband or the wife, a child adopted by either of them or a child who is not a child of either of them) is a child of the marriage if the child was treated by the husband and wife as a child of their family at the relevant time.
- (4) For the purposes of subsection (3), the relevant time is the time immediately before the time when the husband and wife separated or, if they have separated on more than one occasion, the time immediately before the time when they last separated before the institution of the proceedings in which the divorce order was made.

56 Certificate as to divorce order

- (1) If a divorce order takes effect, the Registry Manager of the court by which the order was made must prepare and file a memorandum of the fact and of the date on which the divorce order took effect.

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Section 57

- (2) If a divorce order has taken effect, any person is entitled, on application to the Registry Manager of the court by which the divorce order was made, to receive a certificate signed by the Registrar of that court that the divorce order has taken effect.
- (3) A certificate given under subsection (2) is, in all courts (whether exercising federal jurisdiction or not) and for all purposes, evidence of the matters specified in the certificate.
- (4) The regulations may provide for the establishment of central records of decrees made under this Act and for the notification of decrees to the appropriate marriage registering authorities of the States and Territories.

57 Rescission of divorce order where parties reconciled

Despite anything contained in this Part, if a divorce order has been made in relation to a marriage, the court may, at any time before the order takes effect, upon the application of the parties to the marriage, rescind the divorce order on the ground that the parties have become reconciled.

58 Rescission of divorce order on ground of miscarriage of justice

If a divorce order has been made in proceedings but has not taken effect, the court by which the divorce order was made may, on the application of a party to the proceedings, or on the intervention of the Attorney-General, if it is satisfied that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence or any other circumstance, rescind the divorce order and, if it thinks fit, order that the proceedings be re-heard.

59 Re-marriage

If a divorce order under this Act in relation to a marriage has taken effect, a party to the marriage may marry again.

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