

FAMILY LAW

PROMOTIONAL FEATURE

The role of gets in legal divorce

Michael Osrin from **Nicholes Family Lawyers** offers insight into how a Jewish get is recognised under Australian law and the process required to obtain one.

A “GET” is a document in Jewish religious law that serves to formally end a marriage and allows both parties to remarry freely. It must be given by the husband to his wife, with the wife’s support.

The get is a 12-line, handwritten document prepared by a professional scribe under the supervision of a rabbinic court (Beth Din) and signed by two witnesses. The document states that the husband willingly and unconditionally releases the wife from the marriage bond. A get does not assign responsibility or fault.

As long as both parties consent, detailed grounds for divorce are not required, although the couple may have the opportunity to briefly state such grounds if desired.

Is a get recognised under Australian law?

Australians who marry are subject to the provisions of the Marriage Act 1961 (Cth). When they want a divorce, they are subject to the provisions of the Family Law Act 1975 (Cth). In matters of marriage and divorce, observant Jewish Australians must take into account two different legal systems: not only the Australian legal system but also Jewish



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law. While Jewish marriage is recognised by Australian law, where the marriage is officiated by an authorised marriage celebrant, this is not the case for divorce. A get is not recognised under Australian law as a formal recognition of divorce, despite the significance it carries within the Jewish community. In light of this fact, members of the Jewish community who are seeking a get should consider simultaneously obtaining a divorce under Australian law.

Implications and complications

Complications can arise in the process of obtaining a get when one partner refuses to cooperate. This situation can leave the other partner unable to remarry legitimately under Jewish law. Despite obtaining a legal divorce under Australian law, a couple can still be considered married under Jewish law if a get is not provided. This may result in complications, including any children born subsequently being viewed – within the religious community – as the result of an adulterous union. Although the rabbinical courts in Israel have certain powers to issue

religious sanctions on parties who refuse to agree to the provision of a get, the Rabbinical Council of Australia and New Zealand is far more limited in its powers.

How have disputes been handled by the Australian legal system?

Disputes surrounding religious traditions and customs raise questions as to whether the Australian courts have the power to enforce these customs and religious laws. The approach by Family Court judges has changed over time. In certain cases, relief has been granted by the inclusion of “get-clauses” in orders imposed by the court. For example, in the older unreported case of *Gwiazda v Ber* (1982) the Family Court ordered the recalcitrant wife to appear before the Melbourne Beth Din so that the process for obtaining a get could progress.

However, recent case law demonstrates a growing reluctance of the court to intervene in religious matters.

In the case of *Idelsohn v Idelsohn* [2017] FamCA 398 the husband was seeking an order to force the wife to accept and effectively grant a get. The

court recognised the potential constitutional issues that could arise from making such an order, particularly in relation to the prohibition against making laws concerning religious practice, finding similar orders unconstitutional and therefore outside the court’s jurisdiction (s 116). The court has stated that if it were to make an order requiring the granting of a get this would essentially be elevating Jewish law to the status of civil law, which is prohibited by the Constitution. Further, if a get is obtained by duress it is void under Jewish law, so making an order compelling a party to give or receive a get would be nonsensical.

If you have any concerns or require specific legal advice regarding divorce matters, including the process for obtaining a get, please contact Nicholes Family Lawyers. We understand the nuances of religious considerations in divorce and can offer tailored advice to individuals within the Jewish community regarding the complex intersection between Jewish and Australian law. We also have expertise in all other areas of family law. Should you or someone you know require legal advice, please contact us at 9670 4122 or by email at reception@nicholeslaw.com.au



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Michael Osrin is a highly skilled family lawyer dedicated to guiding clients through a wide range of family law issues. With expertise in parenting matters, property settlements, and child protection cases, he is committed to delivering the best results for his clients.

Acknowledging the emotionally charged nature of family law disputes, Michael adopts a compassionate and dedicated approach, offering expert advice to his clients. His wealth of experience allows him to navigate these sensitive matters with skill, ensuring that clients receive the utmost support and guidance.

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