

Divorce in Australia

The Family Law Act 1975 established the principle of no-fault divorce in Australian Law. When granting a divorce the Court does not consider why the marriage ended and the only ground for divorce is that the marriage broke down and there is no reasonable likelihood that the parties will get back together.

The Federal Circuit Court of Australia has the jurisdiction or power to deal with dissolution of marriage (i.e. divorce) under Part VI of the Family Law Act 1975. The granting of a divorce does not determine issues of financial support, property distribution or arrangements for children. It simply recognises that the marriage has ended.

Can I apply for a divorce?

You can apply for a divorce in Australia if either you or your spouse:

- regard Australia as your home and intend to live in Australia indefinitely, or
- are an Australian citizen by birth, descent or by grant of Australian citizenship, or
- ordinarily live in Australia and have done so for 12 months immediately before filing for divorce.

You need to satisfy the Court that you and your spouse have lived separately and apart for at least 12 months, and there is no reasonable likelihood of resuming married life. It is possible to live together in the same home and still be separated.

Seeking legal advice

You can obtain legal advice to understand your rights and responsibilities before applying for a divorce or other applications in relation to a divorce. A lawyer can help explain how the law applies to your case. The Family Relationships Advice Line (FRAL) can help you with free legal advice and information about services available to assist anyone with family relationships issues, including information relating to family law proceedings. Call 1800 050 321 or if you are overseas +61 7 3423 6878. Court staff cannot provide you with legal advice.

How do I apply for Divorce?

To apply for a divorce you complete the online interactive Application for Divorce and pay the filing fee. For more information and to start your application see, [How do I apply for a Divorce?](#)

What a court considers in divorce applications

The Family Law Act 1975 established the principle of no-fault divorce in Australian law. This means that a court does not consider why the marriage ended.

The only grounds for divorce is that the marriage has broken down irretrievably. That is, that there is no reasonable likelihood that you will get back together. You must have been separated for at least 12 months and one day in order to satisfy the Court that the marriage has broken down irretrievably.

If there are children aged under 18, a court can only grant a divorce if it is satisfied that proper arrangements have been made for them.

What will a divorce cost?

There is a filing fee for divorce applications. Current fees are available on the fees page.

In some cases; for example, if you hold certain government concession cards or you are experiencing financial hardship, you may be eligible for a reduced fee. To be eligible for a reduced fee for a joint application, both you and your spouse must qualify for the same reduction. If only one spouse qualifies for the reduction, then the full fee applies.

More information about fee reductions can be found on the Guidelines for fee exemption, reduction and refund page on this website.

The Court does not set the fees payable. Court fees are set by Federal Government Regulations.

Can I oppose a divorce application?

If you have been separated for more than 12 months, there are few opportunities to oppose a divorce application. You can only oppose the divorce where:

- there has not been 12 months separation as alleged in the application, or
- the Court does not have jurisdiction.

If you do not want the divorce granted, you must complete and file a [Response to Divorce](#) and appear in person on the hearing date.

You need to set out the grounds on which you seek the dismissal in the Response to Divorce.

If you file a response, you should attend the divorce hearing. If you do not attend, the Court may decide the divorce application in your absence. If it is difficult for you to attend in person, you may ask the Court to appear by telephone.

What if the application has errors of fact?

If you want the divorce granted but disagree with the facts in the Application for Divorce, you may file a Response to Divorce.

You need to state which facts you disagree with in the Response to Divorce. The errors might, for example, be that dates of birth are incorrect or the details regarding the children are no longer correct. You do not need to attend the hearing.

When should I file the Response to Divorce?

If you want to file a Response to Divorce, you need to file it:

- if served in Australia – within 28 days of the application being served on you, or
- if served outside of Australia – within 42 days of the application being served on you.

You can electronically file (eFile) a Response to Divorce on the Commonwealth Courts Portal or file it at a family law registry.

See the How do I... Register for the Commonwealth Courts Portal and eFile a divorce page for more information.

Do I have to attend the divorce hearing?

No children under 18

If there is no child* of the marriage aged under 18 years, you are **not required** to attend the court hearing. This applies for both sole and joint applications.

Joint application with children under 18

If you have made a joint application, you and your spouse are **not required** to attend the court hearing (even if there is a child of the marriage aged under 18).

Sole application with children under 18

If you have made a sole application and there is a child of the marriage aged under 18 years, you (the applicant) **are required** to attend the court hearing unless circumstances prevent you from attending (see below).

If there is no Response to Divorce, the other party is not required to attend, although they may do if they wish.

If a respondent has completed and filed a Response to Divorce, but does not oppose the application, he or she does not need to attend the hearing.

If a respondent has, in a Response to Divorce, opposed the application, the respondent **must appear in person** on the hearing date.

* A child of the marriage includes:

- any child of you and your spouse, including children born before the marriage or after separation
- any child adopted by you and your spouse, or
- any child who was treated as a member of your family prior to your final separation; for example, a step-child or foster child.

What if I can't attend the hearing?

If it is difficult for you to attend in person, you may ask the Court to appear by telephone. You must complete a Telephone/Video link attendance request form setting out the reasons why you are requesting to attend by telephone/video link. See Rule 25.11 of the Federal Circuit Court Rules 2001.

We are getting divorced – will decisions about future arrangements for our children, property and maintenance be made at the same time?

The granting of a divorce **does not** decide issues about property and maintenance or parenting arrangements for your children. If you want to make arrangements about these issues you can:

- make an agreement with your spouse and file it with a court, or
- seek orders from a court, where you and your spouse cannot reach an agreement.

For parenting cases, you also have the option to make a parenting plan. For more information about parenting plans, go to www.familyrelationships.gov.au or call 1800 050 321.

If you want to apply for maintenance for yourself or a division of property, you must file a separate application within 12 months of the date the divorce becomes final. Otherwise, you will need the Court's permission to apply.

More information can be found under Parenting and Property & Finance on this website.

I have applied for a divorce, is it safe to set a wedding date for my new marriage?

You should not make firm plans to marry on a specific date until the divorce order is finalised. You may, however, complete and lodge a Notice of Intended Marriage with an authorised celebrant before the divorce order is finalised.

If you intend to remarry, you must lodge the Notice of Intended Marriage with an authorised marriage celebrant at least one month before the date the marriage is solemnised, and comply with other requirements of the Marriage Act 1961. The authorised celebrant must sight a copy of the divorce order before the wedding can take place.

In most cases, the divorce order takes effect one month and one day after the divorce is granted. You should not assume the divorce will be granted at the first court hearing. For example, you may be told at the hearing that you need to provide more information.

What is meant by separation under the one roof?

It is possible for you and your spouse to be separated but to continue living in the same home during the 12 months before applying for divorce. This is known as 'separation under the one roof'. If this applies to your situation, you need to prove to the Court that you were separated during this time.

More information can be found in the publication Separated but living under the one roof.

We want to divorce but have been married less than two years. We understand we have to do certain things, what are they?

If you have been married less than two years you will need to file a counselling certificate. To obtain a certificate you will need to attend counselling. To arrange counselling contact the Family Relationships Advice Line (FRAL) on 1800 050 321. If you are unable to attend counselling with your spouse you will need to file an affidavit as outlined in the fact sheet.

The two years are calculated from the date of the marriage to the date of applying to the Court for a divorce. You and your spouse must also have been separated for at least 12 months before applying for a divorce.

More information can be found in the publication Have you been married less than two years.

I married overseas – can I get a divorce in Australia?

If you were married overseas, you can apply for a divorce in Australia if either you or your spouse:

- regard Australia as your home and intend to live indefinitely in Australia are an Australian citizen or resident, or
- are an Australia citizen by birth or descent
- are an Australia citizen by grant of an Australia citizenship
- ordinarily live in Australia and have done so for 12 months immediately before filing for divorce.

You must provide the Court with a copy of your marriage certificate. If your marriage certificate is not in English, you need to file an English translation of it, and an affidavit from the translator.

See the [Affidavit translation of marriage certificate](#) form.

I got divorced overseas – is it recognised in Australia?

You can apply for a divorce overseas. Australia will recognise a divorce if it was effected in accordance with the laws of that country – refer to s.104 (7) of the Family Law Act 1975.

Related Information

- [How do I apply for a Divorce?](#)
- [How do I serve a divorce?](#)
- [Register for CCP and eFile an application for divorce](#)
- [Proof of divorce](#)
- [Response to Divorce](#)
- [Marriage equality in Australia - Attorney-General's Department.](#)

Divorce is the official ending of a marriage. When a divorce order is made final you can remarry.

- The only requirement for a divorce is the ‘irretrievable breakdown’ of the marriage. This is proved by the husband and wife having been separated for 12 months with no likelihood of getting back together.
- Your partner does not have to agree to the separation, however they need to know that you think the marriage is over.
- The court does not consider whose fault it was that the marriage broke down.