



TOP END WOMEN'S LEGAL SERVICE INC.

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Divorce

If you have separated from your spouse and are considering applying for divorce, this factsheet provides information about divorce and how to apply for a divorce.

What is the difference between divorce and separation?

While separation is the process of ending a relationship, divorce is the legal process of ending a marriage; it is only through a divorce application that you can legally end a marriage.

In Australia, divorce applications must be made online to the family law courts on the Commonwealth Courts Portal.

How can I get a divorce?

Are there any requirements to get a divorce?

In order to apply for a divorce, the Family Law Act 1975 (Cth) (**the Family Law Act**) states that the following grounds of eligibility must be met:

1. **Citizenship and/or residency** – you or your ex-spouse must be an Australian citizen (by descent or grant) or have been living in Australia for the past 12 months and intend on remaining in Australia;
2. **Valid marriage** – you must prove that you are married by providing a Marriage Certificate; and
3. **Marriage has broken down** and there is no reasonable likelihood that you will get back together.

If you were married overseas or if your marriage certificate is not in English, you should seek legal advice before applying for divorce.

Are there any requirements to get a divorce?

Other than the above, the family law courts require you and your ex-spouse to have been separated for at least 12 months before making a divorce application – this is known as the separation requirement.

You will need to provide more information to the family law courts if:

1. You and your ex-spouse have been separated for 12 months but you still live together or did live together for a period of the separation; or
2. You and your ex-spouse reconciled (got back together) during the 12-month separation.

You should seek legal advice about your divorce application if either of these apply to you.

When can I apply for a divorce?

You can make divorce application after you and your ex-spouse have been separated for at least 12 months.

How much does a divorce cost?

Divorce applications can be expensive – to see the current cost, please go to the Federal Circuit Court website. This cost can be shared by you and your ex-spouse, or solely paid by one person.

The cost of a divorce application can be reduced in cases of financial hardship or for people who are receiving help from a recognised service, such as TEWLS.

Can I apply for a divorce by myself?

You can apply for a divorce by yourself (known as a **sole divorce application**) or together with your ex-spouse (known as a **joint divorce application**). You can also ask a lawyer to help you do this, including TEWLS.

You **do not** have to agree with or seek permission from your ex-spouse to make a divorce application.

How does my ex-spouse receive a copy of the divorce application?

If you make a sole divorce application, you will have to comply with service requirements. You do not have to serve your ex-spouse if you make a joint divorce application.

Service is the process of delivering or posting court documents to your ex-spouse. You can not do this yourself – service must be done by someone else. Service is required before your matter can be heard by the family law courts.

You should seek legal advice if your ex-spouse lives overseas or if you cannot find them to effect service.

A note about domestic and family violence

If there was domestic and family violence (DFV) during your relationship – including emotional, psychological, sexual, financial and physical violence – it is important to consider in family law matters. DFV can affect any property settlements and parenting arrangements, if there are children of the relationship. If you or the children are at risk of being hurt, call the Police in an emergency on 000.

If you are experiencing or have experienced DFV, you should seek legal advice.



Will I have to go to court for my divorce?

When you make a divorce application, you will select a date for your application to be heard by the family law courts. This will be the day that your matter is in Court.

You must go to Court if you make a sole divorce application and there are children of your relationship under the age of 18. This is because the family law courts must ensure that there are proper arrangements for any children of your marriage. You may also need to attend if you have had to provide further information to the family law courts, such as information about living with your ex-spouse after you separated.

You are not required to attend the divorce hearing if you made a joint divorce application or if your children are over the age of 18.

When will I be divorced?

At the divorce hearing, the family law courts will make a decision about your divorce application. The Court will generally grant the divorce if they are satisfied that all necessary steps have been taken, however, the Court does have the power to adjourn or dismiss the application.

If the Court grants your divorce at the divorce hearing, the divorce order will become final one month and one day after the hearing date – this means that you can be re-married only after this time has passed. Once the divorce order becomes final, the Court will make the divorce order available through the Commonwealth Courts Portal.

What does the divorce order mean?

The divorce order means that you are no longer legally married to your ex-spouse. It also means that you have 12 months from the date that your divorce order comes into effect to make an application to the family law courts for property orders, if required.

Any other steps?

If you are divorced, then you are able to remarry.

Once you are divorced, it will also be important to change or update your will, and any other information, such as emergency contact information.

How to apply for a divorce – a step-by-step process

1. Register as a new user of the Commonwealth Courts Portal (www.comcourts.gov.au) and log-in to the Portal.
2. Select "Start a New File" under the Family Law eFiling tab.
3. Complete the application – you should save each step of the application before moving onto the next step.
4. After you have filled in all of the information, double-check that all of your details are correct. This is because you will be unable to change this information later. Then, select "Lock and Continue" and print the application.
5. Sign the Affidavit for eFiling Application (Divorce) section before an authorised person, such as a lawyer or justice of the peace. If a lawyer is acting on your behalf, they will need to complete the Lawyer's Declaration section.
6. Upload the completed signed document/s to the Portal, as well as any further documentation required, such as your marriage certificate, or if you are eligible, an application for fee reduction.
7. Complete the payment of the divorce application – this can be via debit or credit card.
8. Select the Court location and date that your application will be heard at the family law courts – if you live in Darwin or the Darwin area, you will select Darwin.
9. Print two copies of the sealed (stamped) copies of the divorce application, accessible through your profile on the Portal – one copy is for you and one copy is for your ex-spouse.
10. If you are making a sole divorce application, you will need to serve your ex-spouse at least 28 days before the date of the divorce hearing (or 42 days if he/she is overseas). Once the application is served, you will need to upload the service documents to the Portal.
11. If you are required to attend the divorce hearing, attend the divorce hearing on the selected date.
12. If your divorce is granted by the Court, you will be able to download your divorce order one month and one day after the date of the divorce hearing.

Do you need legal advice or information? You can contact TEWLS for a free appointment

Phone: 1800 234 441 or (08) 8982 3000 | Email: admin@tewls.org.au

Website: www.tewls.org.au | Address: 2/17 Lindsay Street Darwin