



If you are married and have separated from your spouse, you may be considering an application for divorce - the legal process of ending a marriage.

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 Federal Circuit and Family Court of Australia (the **Court**) through the Commonwealth Courts Portal; the court website set up to receive court applications.

How can I get a divorce?

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 former partner must be an Australian citizen (by descent or grant) or have been living in Australia for the past 12 months;
2. **Valid marriage** – you must prove that you are married by providing a Marriage Certificate; and
3. **Marriage has broken down** – you must prove that 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.

Can I apply for a divorce by myself?

You can apply for a divorce by yourself (called a 'sole divorce application') or together with your former partner (called 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-partner to make a divorce application.

When can I apply for a divorce?

Other than the above, the Court requires that you and your former partner have been separated for at least 12 months before making a divorce application – this is called the 'separation requirement'.

You will need to provide additional information to the Court if:

- You and your former partner have been separated for 12 months and you still live together or did live together for a period during the separation; or
- You and your former partner reconciled (got back together) during the 12-month separation for more than three (3) months.

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

How much does a divorce cost?

Divorce applications can be expensive – to see the current cost, please go to Court website. This cost can be shared by you and your former partner or paid by one person. The cost normally increases annually.

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.

How does my ex-partner 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 former partner if you make a joint divorce application.

Service is the process of delivering or posting court documents to your former partner. While anyone can post service documents, there is a restriction on personal service. This restriction means that you cannot personally serve your former partner. Service is required before your matter can be heard by the Court.

You should seek legal advice if your former partner lives overseas or if you cannot find them to effect service.

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 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 Court 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 Court, such as information about living with your ex-partner 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 Court 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 1 month and 1 day after the hearing date – this means that you can re-marry only after this time has passed. Once the divorce order becomes final, the divorce order will be 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 former partner. It also means that you have 12 months from the date that your divorce order comes into effect to make an application to the Court for property orders, if required.

Any other steps?

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

A note about domestic, family and sexual violence

If there was domestic, family and sexual violence (DFSV) during your relationship – including emotional, psychological, sexual, financial, controlling and physical violence – this is an important consideration in family law matters. DFSV 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 DFSV, you should seek legal advice.

I need to provide extra information in my application – what do I need to include?

Separation under one roof

In the case of 'separation under one roof', your divorce application must also include two (2) affidavits (written statements) showing that you have separated by explaining actions such as:

- No longer sleeping in the same room;
- Having divided or separate assets and accounts;
- No longer doing household duties for each other; and/or
- Telling family and friends that you are separated and no longer socialising as a couple.

If you apply for a divorce alone, you and an independent person (such as a family member, friend, or neighbour) must each file an affidavit. If you apply for a divorce jointly with your former partner, you must each file a separate affidavit.

Reconciliation during separation

If you have reconciled for a period during your separation, you will also need to indicate the start and end dates of your reconciliation. If reconciliation was less than three (3) months, you can add up the time before and after the reconciliation to make up the 12 months separation. If you reconciled for over three (3) months, the 'clock' restarts.

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 Court – 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-partner.
10. If you are making a sole divorce application, you will need to serve your former partner **at least 28 days before the date of the divorce hearing (or 42 days if he/she is overseas)**. **Remember:** you can't personally serve your former partner yourself – consider getting a friend, family member or process server to effect service. 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 (1) month and one (1) day after the date of the divorce hearing from the Portal.

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

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