

HOW TO APPLY AND FILE FOR DIVORCE

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A divorce is the legal process of dissolving a marriage between a married couple. It is often confused with issues of property settlement and parenting but it is a separate process to both property settlement and parenting issues. So what do you need to do to get one.



Requirements before applying for a divorce in Australia

12 months separation

Australia does not have any fault based requirements for a divorce. The sole requirement for a divorce is an "irretrievable breakdown of the marriage". This breakdown is the only reason or requirement for divorce. This breakdown is established by you having been separated from your spouse for at least 12 months (this is usually a physical separation, but can include separation "under one roof").

Married less than two years

If you have been married for less than 2 years at the time you wish to apply for a divorce then you must do one of the following:

1. Attend counselling with a family counsellor to discuss the possibility of reconciliation with your spouse. Following the counselling, the counsellor will need to complete a counselling certificate setting out that the possibility of reconciliation was discussed with both spouses; or

Your divorce application – “how to get a divorce”

Where to get divorce application documents: A divorce application can be downloaded from the Federal Circuit Court website.

Joint Application or Individual Application: You can either apply individually or you can apply jointly with your spouse. If you apply individually you will need to arrange to serve the filed application on your spouse at least 28 days before the divorce hearing and then file an affidavit proving service.

Divorce with children. If you have children of the marriage under the age of 18 years you will need to include detailed information about the parenting arrangements and the care of the children in the application. If you have made an individual application then you will need to appear in court for the divorce hearing.

Do I have to go to the hearing? If your spouse objects to your application for divorce for example they dispute the date of separation, or if you are still living under the one roof then either you or your spouse should attend the hearing to answer any questions the court may have. You will also have to go to court if there are children under 18 years and the divorce application was made by you alone.

Frequently asked questions (FAQs) about divorce in Australia

Q. How long does a divorce take?

A. You are usually given a hearing date approximately 6 to 8 weeks after filing your application. At the hearing, if the court has no issues with your application they will grant a Decree Nisi Dissolution of Marriage. It then takes a further one month and



must meet in order to be granted a reduced fee, for example if you hold a government concession card or can prove financial hardship. You will need to fill out an exemption form which can be found on the Federal Circuit Court website.

Q. How can I best cope with divorce?

A. Divorce can be a stressful event for most people. We strongly recommend that you seek counselling support after separation.

Need Help?

If you are worried or confused about how to divorce then we can assist you. Call us on (07) 3221 4300 for an initial consultation.

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