



Divorce in Australia



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➤ The No Fault Principal

Divorce in Australia follows the no fault principal, which was established by the [Family Law Act 1975](#). This means that the court does not need to know the reason for the divorce, just that the marriage has broken down irretrievably.

➤ When can I apply for a divorce in Australia?

To apply for divorce in Australia, you and your spouse must have [separated](#) at least 12 months ago. In addition, one of you must be an Australian citizen, or must regard Australia as their home and be living in Australia. If you have been married for less than two years you will also have to participate in counselling to discuss the possibility of reconciliation, prior to making the divorce application.



➤ How do I apply for a divorce in Australia?

You can apply for a divorce in Australia by filing an application [online](#), or by completing the necessary forms and posting them to a [Family Law Registry](#) for filing. You will need to send:

- an [Application for Divorce](#) form which has been signed and sworn or affirmed by a [lawyer](#), [Justice of the Peace](#), or an accepted witness. You must include the original document and two photocopies.
- a photocopy of your marriage certificate. This does not need to be sworn, affirmed or certified.
- all other documents you think might be relevant to your application, such as a certificate of your citizenship or a photocopy of your visa. You should include three copies of each document in your application.



Can I apply for a divorce as the sole applicant?

If the divorce application is made by you alone as a sole applicant, you will have to serve a copy of the application on the other party. You, the applicant, will have to provide evidence to the court that the application has been served and received by the other party. This is normally done by filing an [Affidavit of Service](#) with the Court.

The other party may then file a [Response to Divorce](#) if they disagree with any of the information provided on the application or if they oppose the divorce. There are very few opportunities to oppose the divorce unless the parties have not been separated for 12 months or if the court does not have jurisdiction.

If the other party does not oppose the divorce then they do not have to attend the hearing. You, the applicant, will also not have to attend the hearing if there are no children under 18 and you have filed the Affidavit of Service providing evidence that the application has been served.



Difficulties with service

If you do not know the location of your ex-spouse or have difficulty serving the divorce application, you will have to apply to the court through your divorce lawyer for substituted service or dispensation of service.

Substituted service allows you to serve the divorce application on a family member who has contact with your ex-spouse or at their place of work. The dispensation of service is granted only in specific circumstances as it means that a divorce will be granted without the other party being made aware that the hearing is taking place.

If you were [married overseas](#) and now live in Australia, you can still apply for divorce in Australia. You must supply a copy of the marriage certificate along with an English translation, if applicable. Either you or your ex-spouse must be an Australian citizen, or one of you must have resided in Australia for longer than 12 months and intend to live here permanently.



How long until the divorce is granted?

The divorce is normally granted one month and one day after the hearing. If you are planning on remarrying you should wait until the divorce has been granted before making preparations. Not all divorces are finalised at the first hearing. In some situations the court will require further proof of the date of separation, or that adequate arrangements have been made for any **children** under the age of 18.



Will the divorce resolve my children and property issues too?

The granting of a divorce does **not** deal with issues about **property** or make formal **parenting orders**. These must be dealt with separately to the divorce application.

Decisions about **property and custody issues** can be done any time after **separation** and up to 12 months after the divorce has been granted.





Everyone's situation is different...

Where you go from here depends on your own situation as everyone has their own individual priorities and has demands on their life that they need to deal with.

This information guide points you in the right direction as to what options might be available to you so you can get the outcome that you need - options that many of our clients are not aware of before talking to us.

If you would like some personal advice on your particular situation and would like to talk directly with a lawyer in your local area who is also a specialist in family law, then please call our lawyer hotline on **1300 636 846 (Free Call, No Obligations).**

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1300 636 846
7am to Midnight, 7 Days

Call now on

1300 636 846

and speak direct with a Family Lawyer to get your divorce questions answered. You can also request a callback at gotocourt.com.au/family-law

When you call the hotline you will speak directly with a lawyer. Your conversation will be treated with the strictest of confidentiality and sensitivity. At the end of the call you will have some clarity on the steps you need to take next and how you can have the best chance at an outcome that will ensure you and your children are looked after.

Scan this QR code to find more details about family law:

