

## Meeting the Criteria to be able to apply for divorce

### 1. You or your spouse must be

- i. An Australian citizen; or
- ii. Domiciled in Australia (regard Australia as your home indefinitely); or
- iii. Ordinarily resident in Australia, and have been in Australia for 1 year immediately preceding the application.

**and**

### 2. Separated for 12 months

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 ground 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.

The evidence that you can use to demonstrate that the marriage has broken down irretrievably may include: no longer living together, ceasing intimacy, separate financial arrangements, decreasing or ceasing contact with your spouse privately and publically.

### Calculating the 12 months

Sometimes couples live apart and then get back together several times when trying to reconcile. Some separation periods can be used in calculating the required 12 month period for divorce.

If you reconciled with your spouse for less than 3 months, you can use the separation period before the reconciliation to calculate the 12 months. If you reconciled for a period of more than 3 months, you cannot use the preceding separation period in calculations.

If you need help working out if you have been separated for 12 months, give us a call.

### Living under the same roof

If you were separated but living under the same roof, even for a small part of the period of separation, you need to satisfy the Court that you did in fact separate. This involves filing an **affidavit**. An affidavit is a sworn written statement setting out information which proves or disproves a fact. For the purposes of showing separation, statements may include information like: you lived in separate bedrooms, that there was no intimacy or sexual activity, that friends and family were aware that you were separated.

### Marriage of less than 2 years

If this applies to your marriage, you need to provide the court with a certificate from a family counsellor. To arrange counselling, contact Family Relationship Advice Line on 1800 050 321. If you are unable to do this, you need to file an application and an affidavit with the Court seeking permission not to attend counselling. This requires circumstances like being unable to locate your spouse or family violence.

### Children

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.

## Filing the Application

- **Joint Application:** This is an application you file with your spouse, where both parties fill the relevant section that applies to them.
- **Sole Application:** This is an application filed by one spouse, which is then served on the other spouse.
- **Necessary Documents:**
  - i. Prescribed form of application for divorce: See the Application for Divorce Kit on the Family Court website: <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/court-forms/diy-kits/kit-divorce-service>
  - ii. Copy of marriage certificate (if possible).
  - iii. Any other documents relevant to your application (e.g. citizenship certificate/copy of visa).

## Useful Contacts

### Legal Aid

General Enquiries

02 6243 3411

Free Helpline

1300 654 314

2 Allsop Street Canberra

GPO Box 512 Canberra 2601

### Family Relationship Advice

Helpline

1800 050 321

### ACT Magistrates Court

4 Knowles Pl, Canberra

### Family Court

Cnr University Ave &

Childers Street Canberra

## Complaints & Suggestions

If you have any complaints or suggestions about our services, please write to the Chief Executive Officer at our postal address.

### Interpreter

If you need an interpreter, please contact Translating and Interpreting Service (TIS) on 131 450.



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## Serving the Application

This is only required if a sole application has been made. As the sole applicant, once you have lodged the application, the Court will stamp or 'seal' the application. Once it has been sealed, you need to arrange for the sealed copy to be delivered or 'served' to your spouse.

Two methods:

- a. **By post:** along with a specific brochure (given to you by the court), an Acknowledgement of Service Form and other documents you filed with the Court except your marriage certificate. These documents are provided to you by the Family Court Registry.

Only use this method if you trust your spouse to return a signed Acknowledgement of Service form back to you. Your divorce cannot be completed if the Acknowledgment of Service is not signed and shown to the Court.

- b. **By hand:** You cannot do this yourself. You will need to find someone else, over 18 years to serve the documents for you. You need to provide your spouse the documents as listed under (a) above. The person serving the document will need to complete an affidavit to be filed with the Court.

Note that there are time limits for service. If your spouse is in Australia, you need to serve the documents at least 28 days before the hearing. If they are overseas, at least 42 days before the hearing.

## Fees

There are fees associated with lodging the divorce application with the Court. Currently, you will have to pay \$845 to lodge, unless you or your spouse qualify for a reduced fee.

## What is a hearing?

This is when the Court will decide whether to grant the divorce. You are only required to attend the Court hearing if

- a. You are a sole applicant and you have a child under 18; or
- b. Your spouse opposes the divorce application.

Note that the divorce is only finalised 1 month and 1 day after a divorce is granted by the Court.

## Property, Finances and Children

Orders regarding property, finances or children are separate from the divorce application. These orders can be made at any stage before or after the divorce is finalised. However, it is advisable to seek advice on these matters early as there are time limits. For example you only have 12 months to get orders regarding property after your divorce.

## What to Do After Finalising the Divorce

- Make arrangements for your will, superannuation and life insurance. It is presumed that a gift to a spouse is invalid after divorce.
- Seek advice regarding arrangements for finances, children and property.
- Contact your bank, landlord, utility provider, superannuation providers and/or life insurance providers.
- If possible, arrange to get financial advice to take stock of your assets and liabilities.