



How to get a divorce in Australia

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When it comes to [divorce](#), Australia is now, since the implementation of the *Family Law Act 1975* (Cth), a “no-fault” jurisdiction. This means that there is no requirement for one party to be “at fault” for the breakdown of the marriage, for a Divorce Order to be made by the Court. In other words, the Court is not concerned with the reason for the breakdown of the marriage when considering divorce.

Other jurisdictions, such as in some States of the United States of America, continue to operate as “fault” jurisdictions. This means there is an onus on the parties to prove to the Court that one party is responsible for the breakdown of the marriage. Such reasoning can include; adultery, habitual drunkenness or insanity.

What are the requirements for divorce in Australia?

Because there is no requirement to prove fault, in Australia the process for divorce is relatively simple in most cases.

In Australia, the single ground for divorce is that the relationship has irretrievably broken down. The irretrievable breakdown of the marriage is demonstrated to the Court by 12 months of separation.

Therefore, you must demonstrate to the Court:

that you and your spouse have separated; and

that period of separation has lasted 12 months.

You must also satisfy one of the following requirements:

You regard Australia as your home and intend to live here indefinitely;

You are an Australian citizen or a permanent resident; or

You ordinarily live in Australia and have done so for the 12 months immediately prior to applying for divorce.

Further requirements if you have children under the age of 18

If you are applying for divorce and you and your spouse have children under the age of 18 years, you must also satisfy the Court that there are proper arrangements for the care, welfare and development of the children.

This does not mean that there must be [Court Orders](#) or a Parenting Plan in place. However, the Court must be satisfied that the children are cared for, and there are [parenting arrangements in place](#) for them. This is regardless of whether such arrangements are formal or informal, interim or final, agreed or in dispute between the parents.

Sole application versus joint application

You can either make a sole application for divorce or, with your spouse's agreement, a joint application for divorce.

If you make a sole application for divorce, you will need to arrange for the application to be served on your spouse and complete an Affidavit of Service. This proves to the Court that your spouse has been served and received proper notice of the Application.

If you make a sole application for divorce and have a child under the age of 18 years, you would also be required to attend a divorce hearing.

The benefit of making a joint application for divorce is that you will not need to arrange for service, and there will be no need for attendance at the divorce hearing. The Registrar will need to be satisfied that both parties to the application are aware of the hearing date (even though they are not necessarily attending) and agree to the facts outlined in the application. However, to make a joint application, both parties must agree to do so.

What is separation? Proving separation

Separation is most simply demonstrated by *physical* separation. The Court will be satisfied that the parties to a marriage are separated if they lived separately and apart for a continuous period of not less than 12 months.

However, separation can still be demonstrated in circumstances [where parties continue to live under the same roof](#) after deciding to end their marriage. This process is more complicated. You must demonstrate to the Court that whilst physical separation did not occur, the marriage had ended.

The Court will look at characteristics of the marriage before and after the date of separation and consider factors such as:

Did the parties continue to share a bedroom or bed?

Did the parties continue to socialise as a couple?

Did the parties inform family and friends of their separation?

When can I get divorced?

A party (or parties, in the case of a joint Application for Divorce) to a marriage can make an [Application for Divorce](#) 12 months and 1 day after the date of separation.

Interestingly, there is an allowance for the parties to have 1 period, of less than 3 months, of resumption of cohabitation. This allows for circumstances where the parties attempt reconciliation, but ultimately it fails. To avoid “resetting” the date of separation, the attempted reconciliation must be less than 3 months in duration. Further, there can only be one attempted reconciliation.

If you would like assistance with making an Application for Divorce or if you'd like to discuss your divorce with a lawyer or arrange an initial consultation, feel free to get in touch with our team.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.