



## What is a divorce?

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A divorce is the official recognition of the end of a marriage.

The only legal requirement for applying for a divorce is the 'irretrievable breakdown' of the marriage. The court does not take into account who is at fault for the marriage ending. It is only necessary to prove that you and your spouse have been separated for 12 months with no likelihood of getting back together.

Once your divorce is finalised, you can remarry.

Divorce is separate from property settlement, parenting matters, and child support/maintenance matters, although you do not have to wait for a divorce before dealing with these other issues.

You should get legal advice before applying for a divorce.

# How do I apply for a divorce?

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## How do I get a divorce?

When applying for a divorce, your former spouse doesn't have to agree to the divorce.

To apply for a divorce in the Federal Circuit and Family Court of Australia, you or your former spouse must:

- be an Australian citizen; or
- live in Australia and regard it your permanent home; or
- normally live in Australia and have lived here for at least 12 months before applying for a divorce; and
- have been separated for 12 months.

You can still apply for a divorce if you were married overseas, or if you don't know where your former spouse currently is, as long as you live in Australia.

## What if we have children?

If you and your former spouse have children under 18 (or children that were treated as members of your family during the relationship), then the court will need to make sure that proper arrangements have been made for the children before granting you a divorce.

The court will want to know things like:

- where the children currently live.
- how the children are financially supported.
- about their health and education.
- how they will continue to maintain a relationship with both parents and other important people in their lives.

It is not necessary to have parenting orders before applying for a divorce, but you will need to provide details to the court about the children's current circumstances and if you plan to make any changes to their circumstances.

## What if we have gotten back together or reconciled?

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After you separate, you and your spouse can get back together for up to 3 months without restarting the 12-month separation period required to apply for a divorce. For example, if you're separated for 5 months, get back together for almost 3 months and then separate again for 4 months, you'll be considered to be separated for a total of 12 months. But, if you were back together for 4 months and separated again, your separation period will restart, and you will need to be separated for a further 12 months.

# What if we have continued to live in the same home after separation?

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The court will consider you have separated once the marriage has broken down 'irretrievably' and there is no prospect of you and your former spouse getting back together.

If you and your former spouse stayed living together after separation but had separate lives, this is called 'separation under the one roof'.

You will need to prove to the court that you were, in fact, separated under the one roof.

The court will consider whether:

- you sleep in the same bed;
- you and your former spouse have a sexual relationship;
- how you share meals and domestic duties in a different way to when you were married;
- you share money and bank accounts;
- your family and friends think of you as separated;
- you socialise or go out together.

The court will consider all these matters in the context of your situation to determine if you were separated or not.

# What if I haven't been married for long?

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If you were married for less than 2 years, you can get divorced only if you and your former spouse agree to counselling. You do not have to attend counselling if special circumstances apply including when there is domestic violence and counselling is not safe.

If your former spouse refuses counselling, you can still get divorced.

### Can I apply for a divorce by myself?

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You can apply together for a divorce (joint application) or on your own (sole application). If making a sole application, you must 'serve' the other person with the divorce application. This means giving the other person the application and other relevant documents, so they know about the court proceedings. **You can't serve your former spouse personally, but you can:**

- ask a friend or family member to do it.
- pay for a professional process server to do it.
- post the divorce paperwork to them (but your former spouse will be required to post a document back to you acknowledging that they have received your divorce paperwork).

In all the above circumstances, you must complete certain court forms proving to the court the other person has been 'served'.

### What if I don't know where my former spouse is or if there is a domestic violence order?

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In certain circumstances, the court may still grant you a divorce if you are unable to serve your spouse. The court may allow you to serve your spouse in a different way other than personal service, for example, by emailing a copy of the divorce application to your former spouse. This is called 'substituted' service because you are substituting an alternative method for the normal process. The court usually expects you to make all reasonable efforts to locate and serve your spouse, but in some circumstances, they may excuse you from the requirement to serve the other party and this is called 'dispensing' with the need for service.

### Do I have to tell the other party my address or contact details?

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If you have safety concerns or are in fear of your spouse knowing your whereabouts, you do not have to disclose your address or contact information, but you will still need to provide an alternate address on your divorce application. This could be a post office box, an email address or friend or relative's address.

### Is there a fee?

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You will have to pay a court filing fee when applying for a divorce. You can apply to the court to have this fee reduced if you hold a government concession card or if you can prove you are experiencing financial hardship.

### Do I need a copy of my marriage certificate?

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Yes. If you do not have a copy, you will need to obtain one, unless exceptional circumstances apply. If your marriage certificate is not in English, you will need to have it translated through a qualified interpreter. In most cases, you will need to pay a fee for an interpreter to translate your certificate and complete a court form.

### How do I apply for a divorce?

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Applying for a divorce occurs online through the Federal Circuit and Family Court of Australia. You can prepare the divorce papers and go to court yourself, or you can pay a solicitor to do it for you.

To apply online, you must first register for access to the Commonwealth Courts Portal. For more information, visit the [Federal Circuit and Family Court of Australia](#) website.

The website contains do it yourself kits – this gives you a step-by-step guide to filing and serving your divorce application and information about how to complete your application and other forms.

If you are unable to apply for a divorce online, you should contact the court for further information. They can give you a hardcopy application form.

### Do I have to attend court?

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If you are making a joint or sole application for divorce and there are no children under 18 (including children who were treated as members of your family), then you do not have to attend court.

If you are making a sole application for divorce and there are children under 18, you must attend court.

Divorce hearings are conducted over the phone, so you will not have to see your former spouse in person. If you are fearful of your spouse, you may wish to have a support person present or engage a lawyer. In certain circumstances, the court can also make special arrangements for your safety.

### What happens during the divorce hearing?

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If you meet all the requirements and the court is satisfied proper arrangements have been made for any children from the marriage, then your divorce will be granted, but is not yet final. The divorce order becomes final 1 month and 1 day after it's made, unless there's a good reason why the court shouldn't grant the divorce in that time. The date when the divorce order becomes final is the actual divorce date. The court can order a shorter waiting period between when the divorce is granted and when it becomes final in exceptional circumstances.

The court will issue you with a certificate of divorce which is available to download and print from the Commonwealth Courts Portal.

### Are there any time limits?

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Once your divorce is final there is a time limit of 12 months to apply to the court for property settlement or spousal maintenance.

### What if a party disputes the divorce application?

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A party may not want to get divorced if they don't consider the marriage is over or for religious or cultural reasons, but these are not sufficient reasons for opposing a divorce application. **You can only oppose a divorce application in Australia if:**

- you haven't been separated for 12 months (as alleged in the application); or
- there's no court jurisdiction (for example, if none of the parties live in Australia).

If your spouse files for a divorce and makes untruthful statements, then it is possible for you to respond to the divorce paperwork. For example, by clarifying the date of separation. However, a response is likely to have little effect on the proceedings if the court is satisfied that you have been separated for more than 12 months and all other grounds are met.

### Should I change my Will?

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In Queensland, divorce revokes that part of your Will that relates to your former spouse. After a divorce you should make a new Will to take into account your new circumstances. In fact, it is advisable to change your Will as soon as you separate to reflect your current wishes.



## What is separation?

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If you are unhappy in your marriage or relationship you can separate at any time you choose.

Separation occurs when at least one person makes the decision to separate, acts on that decision and tells the other person. The other person doesn't have to agree with your decision to separate.

If you or your children are at immediate risk of harm, contact the police. In an emergency call 000. If it is not urgent that you leave the home immediately, you should get legal advice about your rights before you separate.

# Separation and leaving home

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There are no legal requirements to separate. You don't need to fill in any forms, apply to a court or any government organisation to separate, but you may need to tell certain agencies like Centrelink, the Child Support Agency and Medicare that you have separated.

When you separate, it is best to get legal advice as soon as possible about your rights, including arrangements for children, child support and any property. If you're new to Australia or are worried that separation may impact your visa or residency, get legal advice.

## Can we be separated but living together?

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You're separated once you stop living together as a couple. You can still be separated but live together in the same house. This is called 'separation under the one roof'.

If you are applying to Centrelink, you may need to prove to them that you are in fact separated under the one roof. They will consider whether:

- you sleep in the same bed;
- you and your former spouse have a sexual relationship;
- how you share meals and domestic duties in a different way to when you were married;
- you share money and bank accounts;
- your family and friends think of you as separated;
- you socialise or go out together.

No single factor is determinative.

## Do I or my ex-partner have to leave our home?

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You may not have to leave, even if your ex-partner refuses to leave the home (or owns the home in their sole name). If you leave your family home you do not lose your right to make a legal claim to the home or other property, but you should get legal advice about how you can protect your interest in the home.

## What if my ex-partner and I can't agree on who should leave the home?

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In most cases, you and your ex-partner can decide who will leave the home. If you can't agree, you can apply to a court to seek that you have the sole use and occupation of the home, forcing the other person to leave the home. If your ex-partner has been violent towards you, you may be able to seek a domestic violence order including an 'ouster' condition which forces the other person to leave.

These types of orders are only made in special circumstances, and you should get legal advice before applying for this type of order.



### What if my ex-partner and I are living in a rental property?

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If you are renting your home and the lease is in your ex-partner's name, and you are experiencing or have experienced domestic violence, you may be able to apply to be recognised as the tenant instead of your ex-partner. It may also be possible for the lease to be changed to one of the party's name with the consent of the owner of the property. You should get legal advice about the best options for you.

### What if I am named on the home loan?

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After separation, you will continue to be responsible for rent or mortgage payments if you are named on the home loan. If the loan is in joint names, both parties are legally responsible for payments regardless of who is living in the property. It is important to consider your financial position when planning to move. If you have decided to leave, you may be able to make arrangements with the mortgage lender regarding payments. It may be possible to apply to a court to seek that your partner be solely responsible for repayment of the mortgage, however it is important to legal advice.

### After I have left, can I go back to the house to collect my belongings?

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You have the right to your personal possessions. If the house is owned jointly or is in your name, you can go back to the house. You should consider whether there is potential for violence from your partner.

If the locks have been changed you should get legal advice about how to get your belongings. It is not advisable to break into a house, even if your name is on the title or lease.

If the house is in your partner's name, you should get legal advice before going back to the house and collecting your belongings.

If you think there is a possibility of violence or harassment when you attend the house, the police can accompany you to remove your personal possessions. The police are there only to protect you from violence or harassment, and they will not carry things from the house for you. If there is a dispute between you and your partner about who owns what, the police will not assist you.

If there has been domestic violence, you may be able to seek a domestic violence order including a condition that allows you to return to the house to collect your belongings either with or without the police attending with you.

# What can I take when I leave?

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## Identification, documents, money

It is a good idea to take money and at least three forms of identification with you when you leave. You will need the original documents as photocopies are not usually acceptable.

Identification is important as you need identification to apply to Centrelink, to open new bank accounts or even to join a library.

## If possible, take the following with you:

- Current Australian Passport, yours and your children's
- Birth certificate or birth extracts, yours and your children's
- Bank books and cards including those for joint accounts
- Driver's licence (showing a current address)
- Car registration papers (showing a current address)
- Credit cards (showing name and signature of holder)
- Marriage certificate
- Health care cards
- Citizenship papers
- Title Deeds to any property that you and your partner own
- Tax file number
- Documents related to both business and personal finances (including a copy of any financial agreement, superannuation details, mortgage or bank loan documents, tax returns and assessments, and insurance policies)
- Your Will

## You may also need:

- Any available cash
- Car and house keys
- Your address book
- Jewellery
- Personal items, such as photographs and anything of sentimental value
- The children's special possessions

# What if I don't have a place to stay?

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If you need to go to a refuge, telephone DV Connect on **1800 811 811**.

This is a toll-free call available 24 hours.

To access a hostel, call the Homeless Hotline on **1800 474 753**.

To obtain public housing, contact or visit your local **Housing Service Centre**.