



FAMILY LAW FACTSHEET 5: DIVORCE

WHAT IS A DIVORCE

Divorce is when a Court officially ends a marriage. Once your Divorce is finalised you can remarry. The Courts in Australia do not need to consider why the marriage ended, you just need to satisfy the Court that you and your spouse have been separated for at least one year and there is no reasonable chance of continuing the marriage. Arrangements for property and children are made separately.

WHAT YOU NEED IN ORDER TO APPLY FOR A DIVORCE

- ✓ Separated for at least 1 year
- ✓ You or your spouse meet the Australian residency requirements
- ✓ You have made arrangements for any children

You cannot apply for divorce within the first 2 years of marriage unless you have a counselling certificate or the court's permission

APPLYING FOR A DIVORCE



Applying for a Divorce is done electronically on the Commonwealth Courts Portal <https://www.comcourts.gov.au>. Once you have prepared your documents, register online and complete the online application form. You will need to upload your marriage certificate and additional documents if required. The online application will need to be printed and signed by a witness. Along with the online application, an affidavit that states that you have filed the application online will also need to be printed and signed by a witness. If you are filing a joint application, both you and your spouse need to swear the affidavit. The final sworn copy then needs to be scanned and uploaded to the Commonwealth Courts Portal. There is an application fee to be paid but you may be eligible for a reduced fee if you meet certain criteria.

SEPARATION UNDER ONE ROOF

When you and your partner separate but continue to live in the same home, you will need to prove to the Court that you were separated at that time. The applicant(s) and a third party (family member, friend, neighbour) will need to file an affidavit which should include facts that show separation and the reasons for continuing to live together and how things changed after separation.

PROPERTY AND CHILDREN

A Divorce **does not** sort out issues relating to property, finances or children and you will need to make those arrangements separately. These arrangements are finalised by filing different applications. When applying for a divorce, you will need to satisfy to the Court that there are proper arrangements in place for children under 18. Ideally, parenting and financial agreements should be reached prior to the divorce to avoid lapsing timeframes and enable efficient processing of your divorce. If you and your partner cannot agree you should seek legal advice to help you apply for a Court Order. *See Factsheet 1 Parenting Arrangements and Factsheet 7 Property and Finances.*

Disclaimer: This factsheet provides general information and is not to be taken as legal advice. Published 2019.