

Divorce and Domestic Violence

Your Rights and Responsibilities

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Applying for a divorce

When can I apply for a divorce?

- You must be separated for at least 12 months before you can apply for a divorce.

Do I need a lawyer?

- Many people represent themselves in their divorce application, but may still get advice from a lawyer. You may be eligible for representation through Legal Aid if you are in financial hardship and would experience difficulty in representing yourself. See contact details below.

How do I apply for a divorce?

- You will need to complete and submit (file) an Application for Divorce form with a copy of your marriage certificate to the court. Divorce applications are filed in the Federal Circuit Court. The application form is available as part of the **Divorce Kit** which contains useful information about how to apply for a divorce.

What does it cost to apply for a divorce?

- You will need to pay a fee to file a divorce application. If you are the holder of a current health care card or pension card or are experiencing financial hardship, you can apply to have the fee reduced. For current rates, see the Family Law Court website or call the National Enquiry Line.

The **Divorce Kit** and other information are available from the **Family Law Court website** www.familylawcourts.gov.au or by phoning the National Enquiry Centre on 1300 352 000

What are the requirements for a divorce?

Australia has a “no fault” divorce system which means that you do not have to provide reasons for applying for a divorce. For a divorce to be granted, the requirements are:

- proof of marriage (marriage certificate)
- that the marriage has completely broken down (shown by at least 12 months separation before applying for divorce)
- that appropriate arrangements have been made for the children or there are circumstances to explain why arrangements have not been made
- proof the divorce application has been “served” on your husband (explained below)
- you, or your husband, must have lived in Australia for the last 12 months, or be an Australian citizen.



What if I have lived in the same house as my husband for part or all of the separation?

- This is called “separation under the one roof” and can be included in the 12-month period of separation if you submit evidence (in an “affidavit”) confirming that you were no longer living together as a married couple. You should get legal advice.

What if I was married in another country?

- You can apply for a divorce in Australia if your marriage is recognised by the government of the country where you were married, and is recognised under Australian law.
- If your marriage certificate is in a language other than English, you will need to have it professionally translated.

Will it be a problem if I was only married for a short time?

- There are special requirements if you have been married for less than two years. Usually this involves seeing a counsellor, with your husband, to get a certificate. However there are exceptions where this is not possible or safe (for example, a history of violence or abuse). If this is your situation, get legal advice.

What contact do I need to have with my husband?

Does my husband have to agree to the divorce?

- No. Your husband does not need to agree to a divorce for the court to give you a divorce. You can complete and file the application by yourself (a “sole application”) or if you both agree to divorce, you can make the application together (a “joint application”).

Do I need to tell my husband about my divorce application?

- If you have filed a sole application, you have to show the court that the application has been given to (“served on”) your husband. You cannot do this yourself but must arrange for another person over 18 to serve the documents. Once the application has been served, you will need to file an Affidavit of Service with the court. The Divorce Kit contains information about this. You can also obtain a **Service Kit** from the Family Law Courts website or National Enquiry Centre (see contact details above). If you are unable to locate your husband get legal advice about applying for substituted service.

What should I do if my husband applies for a divorce?

- As long as your husband’s application meets the requirements for a divorce (see “What are the requirements for a divorce” above), the court will grant the divorce.
- You should seek legal advice if you have questions about anything in the divorce application. If there is something in your husband’s application you disagree with, for example the date of separation, you can file a response.

Do I need to go to court?

You need to go to court if:

- 1) It is your application AND: you and your husband have children under 18; and/or it has not been possible to serve the application on your husband, OR
- 2) Your husband has filed the divorce application AND you have filed a response.

In other situations you can attend court for the hearing if you wish.

You should speak to the Court staff if you are concerned about whether you will be safe at court.

Does my husband need to go to court?

- Your husband does not have to attend the hearing if it is not his application. However he may choose to attend.

What happens at the divorce hearing?

- Divorce hearings are usually heard by a Registrar and are very short. It is likely that the divorce will be granted on the hearing day as long as your application satisfies the **requirements for divorce** (see above). The divorce becomes final one month after it is granted. You will be mailed a divorce certificate.



Is there anything I need to do after I get my divorce?

- If you will need a property settlement, you must apply to the court within 12 months of your divorce becoming final. You will need to update your insurance policies, your superannuation, and your will.

For Legal Advice

Your local community legal centre: www.gails.org.au or call (07) 3392 0092

Your local Legal Aid office: www.legalaid.qld.gov.au or call 1300 65 11 88



Community
Legal Centres
NSW



Women's Legal Service

www.wlsq.org.au

Please note: This factsheet contains general information only. It does not constitute legal advice. If you need legal advice, please contact a solicitor. **Acknowledgement:** This resource was adapted by the Women's Legal Service in QLD. Originally developed by the National Association of Community Legal Centres, Community Legal Centres NSW and a number of community legal centres with the assistance of an Australian Human Rights Framework – Education Grant from the Australian Government. The flower artwork has been kindly provided by Sista Girl Yarnz Group in Campbelltown, New South Wales; a group of Aboriginal women who seek to support and empower women affected by domestic or family violence. **Last updated:** June 2014.



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