

Getting a divorce in Australia

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E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

CALL US IF YOU'D LIKE A REFERRAL TO A FAMILY LAWYER: 02 9997 2111

In 1975 the Family Law Act established the principle of no-fault divorce in Australia. This means that there is no longer any requirement for one of the parties to be considered 'at fault' for the relationship breakdown. The court only requires that there is an irretrievable breakdown of the marriage, in order to grant a divorce.

An irretrievable breakdown of the marriage is demonstrated to the court by a period of separation of at least 12 months.

What is required for a divorce order to be made?

Grounds for divorce

You and your husband/wife must have been separated for at least 12 months as at the date of filing the Application for Divorce. If you and your husband/wife are living separately for the 12-month (or greater) period, then you do not need to prove anything further. If you have been separated, but are still living under the same roof, then the court will require evidence to satisfy itself that you have separated on a final basis.

Jurisdiction

Either you or your husband/wife need to satisfy one of the following requirements:

1. You regard Australia as your home and intend to live here indefinitely;
2. You are an Australian Citizen or Permanent Resident;
3. You ordinarily live in Australia and have done so for the last 12 months.

Proper arrangements for children

If there are any children under 18 at the time of the divorce hearing, the court must be satisfied before making the divorce order, that proper arrangements have been made for the care, welfare and development of the children.

Service of divorce papers

The court must be satisfied that the Respondent (the other party) to the application for divorce is aware of the proceedings. For further information on service, see our "How do I serve divorce papers in Australia?"

Sole application versus joint application

If your husband/wife agrees to counter-sign and file a joint application for divorce, then it will be an easier process than filing a sole application for divorce.

A Registrar is generally able to make a joint Divorce Order without the parties needing to attend court. This is in circumstances where the court can be satisfied that both parties are aware of the divorce hearing and agree to the facts in the application for divorce.

If your husband/wife does not agree to counter-sign and file a joint application for divorce, or it is your preference to file a sole application, then you can do so by ensuring compliance with points 1 – 4 above.

How do I get started?

You can either see a lawyer to have your application for divorce drafted and finalised or if you feel comfortable, you can represent yourself. Everyone's situation is different.

If you choose to use a lawyer, E&A Lawyers are committed to assisting you with your application for divorce in the most time-efficient and cost-effective way possible.

However, if you would like to represent yourself, you can start the process by registering your details with the Commonwealth Courts Portal and completing the application for divorce electronically. The Federal Circuit Court of Australia has a step by step guide to applying for a divorce which can be found here.

Get help from a family lawyer

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

02 9997 2111

info@ealawyers.com.au

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact E&A Lawyers.