

Are you getting divorced?

Getting divorced can be very stressful and seem pretty complicated.

Legal Aid ACT runs free legal information sessions on getting a divorce. If you would like to attend one of these sessions, contact Legal Aid ACT or visit the website for further information.

Legal Aid ACT

www.legalaidact.org.au/events

Phone: 1300 654 314

Firstly, to apply for a divorce, you need to meet certain criteria.

Meeting the Criteria to apply for a divorce

1. You or your spouse must be:

- An Australian citizen; or
- Domiciled in Australia (consider Australia as your home indefinitely); or
- An ordinary resident in Australia. This means that you must be in Australia for 1 year immediately before the application.

AND

2. Be separated for 12 months:

Divorce can only occur if the marriage has broken down **irretrievably**. There must be no reasonable likelihood that you will get back together.

You must have been separated for at least 12 months and one day for the Court to be satisfied that the marriage has broken down irretrievably.

You can use the following evidence to prove that your marriage has broken down irretrievably:

- No longer living together
- Stopped being intimate
- Separate financial arrangements

- Less or no contact with your spouse privately and publically.

The Court will not consider why the marriage ended or who was at fault.

Calculating the 12 months

Sometimes couples live apart and then get back together several times when trying to reconcile. Some separation periods can be used in calculating the required 12 month period for divorce.

Legal Aid ACT

If you need help working out if you have been separated for 12 months, contact us.

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Were you living under the same roof?

If you were separated but living under the same roof, even for a small part of the period of separation, you need to satisfy the Court that you did in fact separate.

This involves filing an affidavit, which is a written statement to be used in court as evidence. The affidavit will need to state that:

- You lived in separate bedrooms
- There was no intimacy or sexual activity
- Friends and family were aware that you were separated.

Were you married for less than 2 years?

If this applies to your marriage, you need to provide the court with a certificate from a family counsellor.

Family Relationship Advice Line

Phone: 1800 050 321.

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If you are unable to do this, you need to file an application and an affidavit with the Court seeking permission not to attend counselling. You will need to provide a reason.

Children

If there are children under 18 involved, a court can only grant a divorce if it is satisfied that proper arrangements have been made for the children.

Applying for divorce

To apply for divorce, you must complete an application. You can take the following steps in applying for divorce:

Filing the Application

- a. **Joint Application:** This is an application you file with your spouse. Both parties fill the relevant section that applies to them.
- b. **Sole Application:** This is an application filed by one spouse, which is then served on the other spouse.
- c. **Necessary Documents**
 - i. The application is completed online through the eFiling portal
 - ii. Copy of marriage certificate (if possible).
 - iii. Any other documents relevant to your application (e.g. citizenship certificate/copy of visa).

Serving the Application

'Serving the application' is a requirement that you provide a copy of the application to the people

impacted by it. This is only required if a sole application has been made.

If you are a sole applicant, the Court will stamp or 'seal' the application once it has been lodged. After this, you need to arrange for a copy of the application to be delivered to your spouse.

Fees

There are fees associated with lodging the divorce application with the Court. Currently, you will have to pay \$900 to lodge, unless you or your spouse qualify for a reduced fee.

Property, Finances and Children

Orders regarding property, finances or children are separate from the divorce application. These orders can be made at any stage before or after the divorce is finalised.

However, it is advisable to seek advice on these matters early as there are time limits. For example you only have 12 months to get orders regarding property after your divorce.

What happens next?

There will then be a hearing at the Court. This is when the Court will decide whether to grant the divorce.

You are only required to attend the Court hearing if:

- You are a sole applicant and you have a child under 18;

Or

- Your spouse opposes the divorce application.

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Note that the divorce is not finalised immediately. It is finalised 1 month and 1 day after a divorce is granted by the Court.

What to Do After Finalising the Divorce

- Make a new _will
- Check your superannuation and life insurance
- It is presumed that a gift to a spouse is invalid after divorce
- Seek advice regarding arrangements for finances, children and property
- Contact your bank, landlord, utility provider, superannuation providers and/or life insurance providers.