

# Applying for a divorce

How to get started



## DIVORCE FACTSHEET 1

# Before you start: Can I apply for a divorce in Australia?

Before you can apply for a divorce in Australia, you must meet certain requirements.

## 1. You or your spouse must be able to answer 'yes' to one of the following two questions:

**Q1** Are you an Australian citizen (by birth, descent, or by grant of citizenship)?

**Q2** Are you lawfully in Australia, do you intend to continue living in Australia, and have you lived here for the last 12 months continuously?

Note: If you are an Australian citizen currently living overseas, you must provide the court with an address for service in Australia.

## 2. You and your spouse must have been separated for more than 12 months with no possibility of getting back together.

If you have been separated for more than 12 months but living under the same roof for some or all of the 12 months immediately prior to filing for divorce, you can still apply for a divorce. However, you will need to provide additional documents. For more information, see *Factsheet 3: Separation under the same roof*.

## 3. If the date of your marriage was less than two years ago, you and your spouse must consider marriage counselling before you can apply for a divorce.

You can ask the Federal Circuit and Family Court of Australia (FCFCOA) for permission to apply for a divorce without getting marriage counselling if you have experienced violence or abuse or are unable to locate your spouse. You will need to include an affidavit explaining why you are not able to go to marriage counselling. An affidavit is a written statement of evidence. For information about how to write an affidavit visit:

[www.fcfcga.gov.au/pubs/preparing-affidavit](http://www.fcfcga.gov.au/pubs/preparing-affidavit).

## Getting started

To get a divorce, you will need to eFile an Application for Divorce on the Commonwealth Courts Portal at [www.comcourts.gov.au](http://www.comcourts.gov.au). You can choose to file either a sole application or a joint application.

If you are applying on your own (sole application for divorce)	If you and your spouse are applying together (joint application for divorce)
<ul style="list-style-type: none"><li>● You are the applicant and your spouse is the respondent.</li><li>● Only you need to sign the <i>Affidavit for eFiling (Divorce)</i> in the presence of an authorised witness (e.g. a Justice of the Peace [JP] or lawyer).</li><li>● You will need to serve your divorce documents on your spouse. For more information, see <i>Factsheet 2: Serving your divorce documents</i>.</li></ul>	<ul style="list-style-type: none"><li>● Both you and your spouse are joint applicants.</li><li>● Both you and your spouse must sign the <i>Affidavit for eFiling (Divorce)</i> in the presence of an authorised witness (e.g. a Justice of the Peace [JP] or lawyer). You do not need to sign at the same time or with the same authorised witness.</li><li>● Neither spouse needs to serve the divorce documents on the other.</li><li>● You do not need to attend the divorce hearing unless you choose to.</li></ul>

# Applying for a divorce

## How do I apply for a divorce?

Most people will need to complete and eFile an Application for Divorce online at [www.comcourts.gov.au](http://www.comcourts.gov.au). For detailed instructions see *Factsheet 4: Filing your divorce application online*.

To apply for a divorce online you will need:

- a computer or laptop (not a phone or tablet)
- a printer
- a scanner and
- a credit or debit card.

To apply for a divorce online, you will need to first scan and save your documents in a place where you can easily find them. When you have finished filling in your application online, you will be prompted to upload the required scanned documents.

If you are unable to use the online system, contact the [FCFCOA](http://www.fcftoa.gov.au) or a lawyer.

## What documents will I need to provide?

### Affidavit for eFiling (Divorce)

The affidavit forms part of the Application for Divorce. If you are lodging a sole application, only you need to sign the affidavit before a lawyer or a Justice of the Peace (JP).

If you are lodging a joint application, both you and your spouse must sign the affidavit before a lawyer or a JP. The affidavit can be signed by both parties at the same time or separately, but both signatures must be witnessed by a lawyer or JP. The signatures can be witnessed by the same lawyer or JP. Two separate affidavits (one for each party) can be uploaded together if you are unable to sign the same document. For information about how to write an affidavit visit: [www.fcftoa.gov.au/pubs/preparing-affidavit](http://www.fcftoa.gov.au/pubs/preparing-affidavit).

### Marriage certificate

If you were married in Australia but do not have a copy of your marriage certificate, contact the Registry of Births, Deaths and Marriages on **137 788** or at [www.bdm.nsw.gov.au](http://www.bdm.nsw.gov.au).

If you were married overseas and your marriage certificate is not in English, you must have it translated into English by an authorised translating service. The translator will need to prepare an Affidavit – Translation of Marriage Certificate, which you should then scan and file with your marriage certificate.

To find an authorised translator, contact the National Accreditation Authority for Translators and Interpreters (NAATI) on **02 9267 1357** or at [www.naati.com.au](http://www.naati.com.au).

## Australian citizenship certificate or passport

If you were not born in Australia, you will need a citizenship certificate or visa paperwork that shows you are living lawfully in Australia. If you are not an Australian citizen, you must have been lawfully living in Australia continuously for at least the last 12 months, and provide evidence of this (e.g. passport showing date of arrival at least one year prior).

## Certificate from counsellor or affidavit

If you apply for a divorce within two years from the date of your marriage, you will need to include a certificate from a counsellor which says that you and your spouse have attended counselling and/or have considered the possibility of reconciling.

If you can't attend counselling, you will need to include an affidavit explaining why you are not able to go to marriage counselling.

## Is there any other information I need to provide?

You may need to give more information to the FCFCOA if:

- you are living overseas, cannot provide an address for service in Australia, and you wish to use your spouse's address as your address for service (both you and your spouse will need to provide an affidavit each with your application verifying that you are still separated and explaining why your address for service is the same).
- your name or your spouse's name is different from the names that appear on the marriage certificate.
- you are unable to get a copy of your marriage certificate or
- you do not know the address of your spouse. See *Factsheet 2: Serving your divorce documents*.

There may be other situations where you will need to provide extra documents. If you are not sure what information you need to provide, get legal advice.

## How do I pay for the divorce?

- You will need to pay the FCFCOA a fee. Courts accept Mastercard and Visa credit or debit cards.

You can ask the FCFCOA to reduce your fee if you:

- have a government concession card (e.g. a healthcare card or a pensioner concession card) or
- do not have a concession card, but you will experience financial hardship if you have to pay the court fees.

### If you have a concession card:

1. Answer 'yes' to the question at the beginning of the online form about a general reduction of court fees.
2. Scan and upload both sides of your pension card or healthcare card.

If you are doing a sole application, only you need a concession card.

If you are doing a joint application both you and your spouse must have a concession card.

If the court fees will cause you financial hardship:

1. Answer 'yes' to the question at the beginning of the online form about a reduction of court fees for financial hardship.
2. When prompted, complete the detailed form about your finances with information about your income, assets, expenses and debts.

If you are doing a joint application, you will both have to complete this form and must both be eligible to receive the fee reduction.

## Serving your divorce documents

'Serve' means giving a sealed (stamped) copy of the divorce documents to your spouse.

### Can I serve the documents myself?

If you are doing a sole application, you must arrange to have the divorce documents served on your spouse. **You are not allowed to personally hand the documents to your spouse.** If you are doing a joint application, you do not need to serve the divorce documents on your spouse.

For more information, see *Factsheet 2: Serving your divorce documents*.

### When do the documents have to be served?

If your spouse is in Australia, the documents must be served at least **28 days** before the divorce hearing date.

If your spouse is overseas, the documents must be served at least **42 days** before the divorce hearing date.

## Attending your divorce hearing

All divorce hearings occur electronically (usually via Microsoft Teams) unless you are otherwise advised. You will be notified of the method and details for the electronic hearing before your court date.

You must attend the divorce hearing if:

- you applied for a divorce on your own, and there is a child of the marriage under 18 years at the time you applied. This includes children living with you that you and your spouse treated as members of your family (e.g. foster child or a child from a previous relationship)
- your spouse has filed a *Response for Divorce*
- you have filed an affidavit to explain a situation such as separation under the same roof or where you have been married less than two years and unable to attend counselling.
- you are applying for an order for substituted service or dispensation of service.

Substituted service means you are unable to serve your spouse in the usual way but can serve them in a different way. Dispensation of service means you are unable to serve your spouse at all. For more information see *Factsheet 2: Serving your divorce documents*.

If you are granted an order for substituted service or dispensation of service, you may not have to attend the divorce hearing.

If you do not attend the divorce hearing and the court needs more information from you, they will write to you and give you another date to go to court. You must go to court on this date.

## What do I need for the hearing?

When you attend the divorce hearing, make sure you have all your documents with you, including a copy of your application and supporting documents. You should be in a quiet and secure space free of interruptions or distractions and have your microphone muted until you are required to address the court. If there are any problems with your application, you may be referred to a Legal Aid duty lawyer, who should be able to help you over the phone.

## If English is not your first language

Interpreters are generally not provided by the court for divorce hearings. You will need to arrange for a person to attend with you who can translate for you and help you to understand the court process.

## When does the divorce become final?

If the court grants the divorce, it becomes final one month and one day after the hearing date. After that time, you can download the divorce order from the Commonwealth Courts Portal. You cannot remarry until the divorce becomes final.

For instructions on how to download the divorce order, see *Factsheet 4: Filing your divorce application online*.



# Need help?

## LawAccess NSW

LawAccess NSW is a free information service run by Legal Aid NSW. Anyone who has a legal problem in NSW can contact LawAccess NSW for legal help.

Click on the Chat with us button at [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au) or call **1300 888 529** between 9am and 5pm, Monday to Friday (excluding public holidays).

## Early Intervention Unit

The Early Intervention Unit is a Legal Aid NSW specialist service resolving family law issues before they get serious. They provide free family law services at courts and community organisations throughout NSW.

Call **1800 551 589** or visit [www.legalaid.nsw.gov.au/my-problem-is-about/my-family-or-relationship/parenting/early-intervention-unit](http://www.legalaid.nsw.gov.au/my-problem-is-about/my-family-or-relationship/parenting/early-intervention-unit).

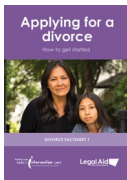
## The Federal Circuit and Family Court of Australia (FCFCOA)

You can get further information about court processes, forms, publications and Do-It-Yourself kits on the FCFCOA website [www.fcfcga.gov.au](http://www.fcfcga.gov.au). You can also visit [www.fcfcga.gov.au/enquiries-hub](http://www.fcfcga.gov.au/enquiries-hub) to speak with someone via live chat or submit an enquiry. If your matter is urgent or requires time critical intervention, call **1300 352 000**.

## Public libraries

Public libraries have computers and scanners. You will need to make an appointment. See [www.nswnet.net/libraries](http://www.nswnet.net/libraries).

## There are five factsheets in the divorce series:



Factsheet 1  
**Applying for a divorce**  
How to get started.



Factsheet 4  
**Filing your divorce application online**  
How to eFile your divorce application on the Commonwealth Courts Portal.



Factsheet 2  
**Serving your divorce documents**  
How to give your divorce documents to your partner.



Factsheet 5  
**Serving divorce documents when your spouse is in prison**  
Special rules for giving divorce documents to your partner when they are in prison.



Factsheet 3  
**Separation under the same roof**  
How to apply for a divorce if you've been living with your partner while separated.

This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on **1300 888 529**.



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Order brochures online at: [www.legalaid.nsw.gov.au/ways-to-get-help/publications-and-resources](http://www.legalaid.nsw.gov.au/ways-to-get-help/publications-and-resources)

For more information, visit: [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

### Do you need help to contact us?



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am–5pm) and ask for LawAccess NSW.

### Do you find it hard to hear or speak?



If you are deaf, or have a hearing or speech impairment, contact us through the [National Relay Service \(NRS\)](#). Ask for LawAccess NSW on **1300 888 529**.

