

Family law: separation and divorce factsheet

Marrickville Legal Centre's [Family Law Service](#) answers common queries about separation and divorce in Australia. This factsheet contains legal information. It is not legal advice. The legal information is current as at 9 September 2022.

Separation – what happens when my relationship ends?

When you and your partner initially separate, you do not need to sign anything to confirm your separation. This is the case whether you are legally married or in a de facto relationship.

However, if you are legally married and you want to divorce your partner, there are some steps you will need to take.

Divorce

Divorce is a legal end to a marriage. The *Family Law Act 1975* (Cth) governs divorce in Australia. To be eligible to divorce your partner in Australia, you will need to meet the following requirements:

- legally married;
- separated for at least 12 months;
- marriage has broken down irretrievably;
- care living arrangements have been made for children of the relationship under 18 years of age;
- you, as the applicant:
 - are an Australian citizen, or
 - live in Australia and regard Australia as your permanent home, or
 - ordinarily live in Australia and have done so for at least 12 months before making the divorce application.

Have you been married for less than two years?

If the date of your marriage was less than two years before you are applying for divorce, you must attempt marriage counselling. Exceptions to this include where there are issues of domestic violence or you are unable to locate your spouse.

Key terminology for divorce

- **'Legally married'**
To meet the requirement of 'legally married,' you can have been married in Australia, or in another country. If you were married in another country, the marriage needs to be recognised in Australia.
- **'Separated for at least 12 months'**
You can meet this requirement even if you still live in the same house as your former partner for part or all of the 12 month period. An example is where you both still live in the same house to co-parent, but you sleep in separate bedrooms.
- **'Broken down irretrievably'**
This means that there is no chance of the relationship being repaired.

Divorce Process

1. Apply for a divorce order
 - Applications are made online via the Commonwealth Courts Portal (CCP)
 - You can make a sole application (by yourself) or a joint application (together with the other party to the marriage)
2. Serve your spouse the sealed Divorce application
 - 'Serve' your spouse means to give your divorce documents to your spouse to put them on notice that you are divorcing them
 - Your spouse may do nothing, or they may oppose the application
3. Attend divorce hearing
 - If the paperwork is in order and there are no issues raised by the parties or the court, the application is more likely to be granted
 - If the court identifies issues that are not able to be resolved on the day, the matter will be adjourned or dismissed to allow the parties time to rectify those issues

About the Service of Divorce application

Can I serve my spouse myself?

- You cannot serve your spouse yourself. You can have a family member or friend over 18 years of age serve your spouse, or pay the local sheriff or a process server to do it for you.
- You must serve your spouse at least 28 days before the divorce hearing if your spouse is located in Australia. If your spouse is overseas, you must allow 42 days.

What documents do I have to serve?

1. Sealed Application for Divorce
 - You must serve the 'sealed' version of your divorce application on your spouse.
 - This refers to the version of your divorce application with the Court seal which is emailed to you and available on the CCP after you have submitted your online application.
2. Acknowledgement of Service (Divorce)
 - If your spouse signs this document and returns it to you, you will also need to complete an Affidavit Proving Signature (Divorce).
 - If your spouse refuses to sign this document, the person who attempted service will need to complete an Affidavit of Service.
 - These forms can be downloaded from the Federal Circuit and Family Court of Australia's website: <https://www.fccoa.gov.au/fl/forms>
3. Any other sealed documents, if applicable
 - Examples: Application in Proceeding or Affidavit
 - If you and your former partner were separated under one roof, you will need to file the following:
 - If you are making a sole application, you will need to file an affidavit that explains to the court that there has been a change in the marriage despite the fact you and your former partner are still living together. An independent person such as a family member or friend should also file an affidavit about their knowledge of how your relationship has changed following separation.
 - If you are making a joint application, both parties will need to file an affidavit. If only one of you can do so, an independent person should also file an affidavit.
4. Federal Circuit and Family Court of Australia (FCFCA) brochure on Marriage, Families and Separation.

What if my spouse is in prison?

- If your spouse is in prison, special rules for service apply.
- You will need to know the name of Correctional Facility and your spouse's Master Index Number (MIN)
 - If you do not know this information, contact Corrective Services in the relevant state.
- You are not allowed to hand the divorce documents to your spouse yourself. You will need to mail the divorce documents to the person in charge of the Correctional Facility in which your spouse is located along with a letter requesting that person forwards those documents to your spouse.

What if I can't find my spouse to serve them?

- You can apply to the Court for a dispensation in service if you can prove that you have tried to find your spouse and have checked that they are not dead.
- You will need to provide evidence of your efforts to find your spouse, so keep a record of the dates, times and avenues through which you have attempted to locate them.

How much does it cost to apply for divorce?

It costs \$990.00 to apply for a divorce. However, you may be eligible for a reduced fee of \$330.00 if you hold certain types of [Government Concession Cards](#). You may also be eligible for a reduction in fees if payment of the full fee would cause you financial hardship.

For more information on the three part test for financial hardship, visit [Guidelines for reduced fee - divorce and decree of nullity application | Federal Circuit and Family Court of Australia \(fcfcoa.gov.au\)](#).

Contact

Need legal help? We can help. [Submit an enquiry online](#) or call us on 02 9559 2899.