

# Divorce | Empower Family Law & Mediation

Canonical: <https://staging-empowerfamilylaw.yottadigital.net/divorce/>

## Details:

Services

## Divorce

Family separation and divorce are stressful events, and it helps to know exactly where you stand.

Obtaining a divorce is a separate legal process to dividing your property, sorting your finances, and deciding the arrangements for your children. A divorce order simply ends your marriage, it doesn't deal with property settlement, spousal maintenance or parenting arrangements, these are handled separately.

Am I eligible to apply for a divorce?

To apply for a divorce in Australia, you'll generally need to show:

You and your spouse have been separated for at least 12 months, with no reasonable likelihood of getting back together. This is the only ground for divorce in Australia; you don't need to prove fault on either side.

You can still be "separated" even if you continued living under the same roof for some or all of that time, for example for financial reasons or for the sake of your children, but you'll need to provide evidence of this to the Court, and we can help you prepare it.

You or your spouse regard Australia as home and intend to live here indefinitely, are an Australian citizen, or have lived in Australia for at least 12 months immediately before applying

Applying for Divorce

You can apply on your own (a sole application) or together with your former spouse (a joint application):

Sole application – you apply as the "applicant" and must formally serve the application on your former spouse (the "respondent").

Joint application – you and your former spouse apply together, and formal service isn't required.

Applications are filed online through the Commonwealth Courts Portal. In most cases you won't need to attend a Court hearing unless a hearing is specifically requested. Your divorce becomes final one month and one day after your hearing (or after your application is approved, if no hearing is required).

What about the children?

If you have children under 18, the Court needs to be satisfied that proper arrangements have been made for their care, welfare and development before it will finalise your divorce. This doesn't mean you need final parenting orders in place, but it's worth turning your mind to living, schooling and financial arrangements for your children early. We can help you put the right arrangements in place, whether informally, through a parenting plan, or through consent orders.

Time limits

Once your divorce becomes final, you generally have only 12 months to make an application to the Court for a division of your property. After that, you'll need the Court's permission to proceed, and this isn't guaranteed. It's important to get advice about your property and financial position well before this deadline, ideally before you apply for divorce at all, to ensure your interests are protected.

How we can help with more complex situations

Not every divorce is straightforward. We regularly assist clients with more complicated circumstances, including where:

You and your former spouse continued living under the same roof after separating.

You can't locate your former spouse and need to apply for substituted service, or to have service dispensed with.

Your marriage, or an earlier divorce, took place overseas.

You have questions about parenting arrangements or property settlement alongside your divorce.

Ready to talk it through?

At Empower Family Law & Mediation, we have the knowledge and experience to guide you through your separation and divorce, and to help you understand your options for parenting arrangements and property settlement. Please call us on (03) 7020 6542 to discuss your situation and what we can do for your family.

## **FAQ's**

Do I need my former spouse's agreement to get a divorce?

No. You can apply on your own even if your former spouse doesn't agree or doesn't respond, provided you can show you've been separated for 12 months and properly serve them with the application.

How long does a divorce take?

Most straightforward applications take around three to four months from filing to your divorce becoming final, though this can vary depending on the Court registry and whether a hearing is required.

Will I have to go to Court?

In most cases, no. Most applications, including sole applications involving children, are dealt with without a hearing.

What if I don't know where my former spouse is?

We can help you apply for substituted service (for example, by social media or through a relative) or, in some cases, ask the Court to dispense with service altogether.

Does a divorce automatically sort out property or parenting arrangements?

No, a divorce order only ends the marriage. Property settlement, spousal maintenance and parenting arrangements are separate processes, and different time limits apply, so it's worth getting advice on these at the same time.

Can I get divorced in Australia if I was married overseas?

Generally, yes, provided you meet the residency or citizenship requirements above. We can also assist if your marriage certificate is overseas or not in English.

## ***Speak with us***

Your first 30-minute consultation is free. Call (03) 7020 6542 or contact our team to discuss your circumstances and next steps.

Phone : (03) 7020 6542

Email : [info@empowerfamilylaw.com.au](mailto:info@empowerfamilylaw.com.au)

Let us be your voice in troubled times.

Contact Us

## **More Services**

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### ***What must be shown before applying for divorce in Australia?***

The marriage must have broken down irretrievably, demonstrated by at least 12 months and one day of separation before the application is filed. The parties do not both need to want the divorce. A sole applicant can proceed if the legal requirements, including proper service, are satisfied. Australian jurisdiction requirements must also be met. Separation can include a period under one roof, but additional evidence may be required to show that the marital relationship had ended despite continued residence in the same home. A short reconciliation may not necessarily restart the entire period, depending on its length and the statutory rules. Keep a clear record of the separation date and obtain advice if the date, living arrangement, citizenship, residence or overseas marriage documents create uncertainty.

### ***How does a sole divorce application and service process work?***

A sole applicant must arrange for the filed application and required documents to be served on the other party within the applicable timeframe. The applicant cannot personally serve the documents. Evidence of service is then filed. If the other party's location is unknown or ordinary service is impracticable, the applicant may need orders for substituted service or dispensation of service, supported by evidence of reasonable attempts to locate them. The other party's refusal to cooperate does not necessarily prevent a divorce, but service requirements cannot simply be ignored. Start early if addresses are uncertain or the other party is overseas. Keep search records, returned mail, communications and information from lawful enquiries. The steps depend on the facts, so use current Court guidance and obtain advice where service is likely to be contested.

### ***What does separation under one roof mean for a divorce application?***

A couple may be legally separated while continuing to live in the same home. The evidence should show that the marital relationship ended, not merely that the parties were temporarily unhappy. Relevant changes can include sleeping arrangements, finances, household activities, social presentation and communication of the separation to the other party and to family or friends. A supporting affidavit may be required, and evidence from another person may also be needed. The Court looks at the overall circumstances, so there is no checklist that guarantees acceptance. Keep contemporaneous records and explain why the shared residence continued, such as finances, housing availability or children. If the separation date is disputed, obtain advice because it affects eligibility to apply and may also matter in other family law issues.

### ***Does a divorce resolve property, maintenance or parenting matters?***

No. A divorce order ends the legal marriage; it does not divide property, determine parenting arrangements or automatically resolve spousal maintenance. Those issues use separate legal processes and can often be addressed before the divorce is final. Child support is also administered separately. The divorce date can trigger an important deadline: applications for property settlement or spousal maintenance by former spouses generally must be commenced within 12 months after the divorce takes effect. Waiting for the divorce before seeking financial advice can therefore compress the

available time. Review property, superannuation, wills, powers of attorney and beneficiary nominations as part of a broader post-separation plan, obtaining specialist advice where required.