

Divorce: What You Need to Know

Article by Townsville Family Lawyer, Jodi Dingwall

5 August 2021

Lots of people get Divorced. Most people take marriage very seriously, so when a marriage comes to an end it can feel very sad and emotionally complex. There is some good news though! Down the track a bit, divorce can actually feel very liberating. And of course, as one door closes, there is opportunity for another (better door!) to open.

In this article, I have answered some of the common questions about Divorce.

How long does it take to get a Divorce?

You need to have been separated from your partner for a continuous period of 12 months before you can apply. Once this time has elapsed you can then file an 'Application' document to the Federal Circuit Court Registry. The court has Registries (or 'offices') all over Australia.

After the Application documents are filed, forms need to be *served* on your former spouse. The Court needs to be satisfied this has occurred so there are more forms (!) to verify *service*. The court will set a Hearing date to consider the Application. At the Hearing (which you may or may not need to attend depending on your situation) if the Divorce is granted, the court then issues your 'Divorce Order' which will be effective one month and one day after the Hearing date.

Depending on which Registry you file your Application in (as some are busier than others) you could expect it will take all up, **about four months** for your Divorce Order to be issued by the Court.

It could take longer if there are difficulties serving your Divorce Application on your former spouse.

In Australia, you are not able to remarry without producing a copy of your sealed Divorce Order.

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What Forms do I Need to Complete?

You can file your Application for divorce by yourself (this is called a *sole* application) or you can file the Application with your former spouse (this is called a *joint* application). Applications are filed online.

You will need to prepare and file the following forms:

1. Application for Divorce
2. Affidavit of e-filing (Divorce).

You must also file:

1. Your Marriage Certificate
2. and there may be other documents required to support your Application, depending on your circumstances.

Are there eligibility requirements to file an Application for Divorce in Australia?

Yes! To be eligible to file for Divorce, you **or** your former spouse must:

1. Have been born in Australia or have become an Australian citizen by descent; or
2. Be an Australian citizen by grant of Australian citizenship; or
3. Be lawfully present in Australia and you intend to continue to live in Australia (you need to have lived in Australia for a period of 12 months immediately before filing your Application - you may need to provide evidence of your stamped passport).

If you **or** your former spouse do not fall into one of the above categories than you are not able to file for Divorce in Australia.

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What does the Court need to be satisfied of in order to grant you a divorce?

Australia is a 'no-fault' jurisdiction. This means that the Court is not concerned about the reasons why you have separated from your spouse. You don't even have to disclose reasons to the Court.

The Court is only interested in and only needs to be satisfied that:

1. You have been separated for a period of twelve months; and
2. Your marriage has irretrievably broken down and that there are no prospects of reconciling; and
3. If you have children under the age of 18, that reasonable arrangements have been made for the care arrangements for your children (you do not need to have a formal parenting order or a parenting plan).

What if your separation period of 12 months was a bit disjointed?

The court usually needs to be satisfied that you have been separated for a continuous period of 12 months.

If you separated and then reconciled for a period of 3 months or more, the twelve-month period of separation 'resets' and starts again from the last date of separation.

What if you were separated but still living in the same house?

The court recognises that people can be separated while living 'under the same roof'.

In this situation, sometimes, an Affidavit (which is a sworn statement) may need to be filed to the Court. The Affidavit needs to provide information to the Court about the details of the separation. The Court needs to be sure that even though you have been living under the same roof, you were in fact separated.

The Affidavit may need to include evidence about ceasing sexual activity, sleeping in separate rooms, having different bank accounts, cooking your own meals and being open about your separation with friends and family.

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How much will it cost to file an Application?

The cost will depend on 2 factors:

1. Whether you file the Application yourself or whether you engage a solicitor.

It is not that expensive to engage a lawyer to prepare the documents and attend the Hearing (if that is necessary). Lots of people prefer this as it takes all the stress out the situation. If you can afford this, it is a great option. Lawyers charge different rates. It is good to ring around to get some quotes on fees that lawyers charge for this.

2. Whether you file a sole or joint divorce Application will also impact the cost.

If you file a joint Application the Application does not need to be served.

If you file a sole Application you will need to serve your former spouse with the Application. You cannot serve your spouse yourself. It is prudent to use a 'process server' to serve your Application as you will need to provide evidence to the court (in the form of an Affidavit) that your former spouse has indeed been served.

If you file a 'sole' divorce Application your out-of-pocket costs would be:

1. The Court's Filing Fee which is currently \$940. (8/8/2021 - This amount changes annually.)
2. Process Server Fees (if you file a sole Application) which is usually about \$150 depending on where your former spouse is living.

If you decide to engage O'SheaDyer Solicitors to represent you in your divorce, our professional fees would be:

Sole Application for Divorce with no children under 18.

Professional fee (fixed fee) \$1,100 inc gst (+ Court Filing fee \$940 and Process Server Fee – approx. \$150.)

Joint Application for Divorce with or without children under 18.

Professional fee (fixed fee) \$1,100 inc gst (+ Court Filing fee \$940 and Process Server Fee – approx. \$150.)

Sole Application for Divorce with children under the age of 18 years.

Professional fee (fixed fee) \$1,650 inc gst (+ Court Filing fee \$940 and Process Server Fee – approx. \$150.)

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**Note - Our professional fees are higher when you file a Sole Application and you have children under 18. This is because we will need to appear in Court before the Registrar for the hearing of your Application. If there are no children under 18 years or you file a joint divorce application, no appearance in Court is required.*

What is the effect of a divorce on your Will?

A divorce will revoke any provisions in your Will in favor of your former spouse including appointments as an executor or guardian. Other provisions for example, for children, may still apply.

Does a divorce include parenting and property arrangements?

No.

Your Divorce Application will lawfully end your marriage so that you can remarry. You will still need to make parenting and property arrangements with your former spouse.

Time Limits on Property matters.

It is very important to be aware that once your divorce becomes final (the Court issues you with your Divorce Order) a time limitation period starts to run.

If you need the Court to determine property settlement matters, an Application to Court in relation to property settlement matters **must be filed within 12 months of the finalisation of your divorce.**

If you file after the 12 month mark, you first need to obtain leave of the Court to proceed with your application. It is not guaranteed that the Court will grant you leave. Leave applications are determined by the Court on a case-by-case basis.

The important thing here is 'don't miss the date'! This is why it is important to see a lawyer! The court usually needs to be satisfied that you have been separated for a continuous period of 12 months.

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Where to from here?

Jodi Dingwall is a senior family lawyer at OSheaDyer Solicitors, Townsville. Jodi was Admitted in 2007 and has been practicing exclusively in Family law since 2014. Jodi is also a Collaboratively Trained Family Lawyer.

Everyone's situation is unique. We always recommend that people see an experienced family lawyer so you can discuss your situation and obtain customised advice about how this process specifically applies to you.

O'Shea Dyer Townsville has experienced lawyers who practice exclusively in Family Law

We offer first appointments with experienced family lawyers for \$220 - a low fixed fee, so that everyone can afford to obtain advice about their situation.

Call us on 4772 5155 to make an appointment. We would love to help you.