

Divorce



FAMILY VIOLENCE LAW HELP

www.familyviolencelaw.gov.au

You can apply for a divorce in the Family Courts if you have been separated for 12 months and there is no chance of you and your ex-partner getting back together.

I have experienced domestic and family violence, can I get a divorce as soon as I separate?



No. You must be separated from your husband or wife for at least 12 months before you can apply for a divorce.

Do I have to get divorced?

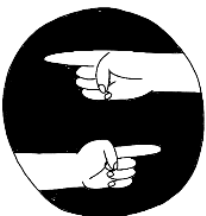


No. You can stay legally married, even though you have separated from your ex-partner.

You will need a divorce if either you or your husband or wife want to get married to someone else.

It's a good idea to let organisations know you have separated, see see this [Australia Post checklist](#) of services to update your details with.

What if my ex-partner doesn't want to get divorced?



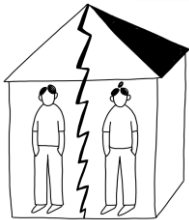
You do not need the consent of your husband or wife to get divorced. You just need to meet the requirements for a divorce

When does separation start?



Usually, separation starts when one person tells the other person they consider the marriage to be over and then stops behaving as a married couple.

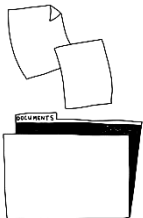
You can be separated even if you stay living together. See separation under one roof. You will need to give the court extra information if you apply for a divorce and are separated under one roof.



If you get back together for a short period of time and then separate again, you may still be eligible for a divorce. Get legal advice about how this affects the separation period needed for a divorce.

What needs to happen before I can get a divorce?

To get a divorce, you need to prove to the Family Courts that:



- you were legally married—you can prove this by providing your marriage certificate. If you don't have your marriage certificate, get legal advice
- your marriage has ended and there is no chance that you will get back together
- you have been separated for 12 months before you applied for the divorce
- either you or husband or wife are an Australian citizen, a permanent resident or have been living in Australia for at least 12 months before you applied for the divorce. You can apply for a divorce if you were married overseas
- if you have children, there are care arrangements in place for your children. This does not have to be a Parenting Order.



If you were married for less than 2 years, get legal advice.

Do I need a lawyer for a divorce?



No. You do not have to use a lawyer to get divorced.

If you are finding it hard to complete the Application for Divorce or are having trouble following the rules about how you give your husband or wife your application, you should get legal advice.

You may need a lawyer to help with making arrangements for children or dividing property.

What can I do if I can't find my ex-partner to give them my divorce application?



If you don't know how to find your ex-partner, you will need to get legal advice.

What do I do if I was married overseas?



You can still get divorced in Australia if you were legally married overseas, as long as you can prove the other things you need to get a divorce.

You will need to include a copy of your overseas marriage certificate with your application for divorce. If you don't have your marriage certificate, get legal advice.

If your overseas marriage certificate is in another language, you will need to get it translated using a [NAATI Certified Translator](#).

While we have tried to make the information here as up-to-date and accurate as possible, the law is complex and always changing. All legal problems are different. You should see a lawyer to get advice about your problem. Legal Aid NSW, National Legal Aid and the Commonwealth Attorney-General's Department are not liable for any errors or omissions, or for any loss or damage that arises from any person who relies on any information on this factsheet. This factsheet was developed in 2019.



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National Legal Aid