



Women's
Legal Service WA

DIVORCE

**A practical guide to assist people
with making an application for divorce**

PURPOSE

This information guide is designed to assist you with preparing an application for divorce in the Family Court of Western Australia pursuant to the *Family Law Act 1975* (Cth) and *Family Court Act 1997* (WA).

It is not intended to be legal advice and is provided as general information only.

Women's Legal Service WA accepts no responsibility for any loss suffered by any person who uses or relies on the information contained in this guide, or for any loss which may arise due to error or omission in the information. Specific legal advice from a lawyer should be obtained.

This booklet was prepared by the Women's Legal Service WA.

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WHAT THIS GUIDE WILL COVER

This information guide will help you to better understand:

- * when and how a divorce can be applied for;
- * options for filing a divorce application;
- * whether you must attend a court hearing and what to expect;
- * what happens once a divorce is granted;
- * other considerations; and
- * where to go for further assistance (including links to useful websites).

APPLYING FOR A DIVORCE

1. WHEN CAN A DIVORCE BE APPLIED FOR?

Before a divorce application can be submitted to or accepted by the Family Court, the following requirements must be met:

- * the marriage is a valid marriage;
- * you and/or your spouse have a connection with Australia;
- * you and your spouse have been separated for a minimum of 12 months and one day;
- * suitable arrangements are in place for the day-to-day care of any children under 18 years of age; and
- * you have been married longer than two years.

Valid Marriage

As set out in the *Marriage Act 1961* (Cth), the circumstances in which a marriage is considered invalid include where:

- * one party was already married to someone else;
- * one of the parties was not old enough to marry;
- * the parties are too closely related (there cannot be a valid marriage between parent/grandparent and child/grandchild or brother and sister);
- * consent to marry by one party was not real because:
 - * there was duress or fraud;
 - * there was mistaken identity;
 - * a party did not understand the nature of the ceremony being performed; or
 - * a party did not have the mental capability of understanding the nature and effect of a marriage ceremony; or
- * the parties were married outside of Australia and the marriage was not considered valid in the country of marriage.

Where parties were validly married overseas and the marriage would not be invalidated by one of the other considerations listed above, it will usually be considered valid in Australia.

If you have any doubts or questions about whether your marriage is valid, **seek legal advice.**

Connection with Australia

To be granted a divorce in Australia, you and/or your spouse must:

- * be an Australian citizen by birth, descent or grant of citizenship; or
- * regard Australia as your home and intend to live in Australia indefinitely; or
- * ordinarily live in Australia and have done so for the 12 months immediately before applying for divorce.

Minimum Period of Separation

The only ground for applying for a divorce in Australia is that the marriage has irretrievably broken down and there is no hope that you and your spouse will rekindle the relationship.

For this reason, spouses must have been separated for a minimum of 12 months and one day before a divorce application can be made.

Being 'separated' means that you and your spouse have lived separately and apart for the required time period. This will be obvious where spouses are living in separate houses, however, it is possible to still be separated while living under the same roof (see more detail below).

Spouses can also get back together for periods of up to three months without having to restart the separation period if they were to then re-separate.

For example: if a couple is separated for six months and gets back together for three months before separating again, they will only have to wait another six months to apply for a divorce. However, if the couple gets back together for longer than three months, they will have to wait the full

12 months after the re-separation to apply for divorce if they separate again.

Separation under One Roof

To be 'separated under one roof', at least one spouse must communicate to the other an intention to be separated.

Evidence of separation under one roof can include:

- * a change in sleeping arrangements (separate rooms);
- * a reduction in shared/family activities;
- * division of finances; and
- * telling other people that you are separated.

To prove to the Family Court that you were properly separated under one roof, you will need to file an affidavit with your divorce application.

The affidavit should explain why you continued to live under one roof after separation, what you intend to do to change the situation, arrangements for children under the age of 18 since you have separated, and which government departments you have informed of your separation (e.g. Centrelink).

If you are making a joint application, both you and your spouse will need to file an affidavit.

If you are making a sole application (by yourself), you and a witness will need to file an affidavit. This witness should be prepared to provide evidence at the hearing if required by the Family Court.

Arrangements for Children

If there are any children of the relationship who are under the age of 18 years, you will need to satisfy the Family Court that you and/or your spouse have made arrangements for the day-to-day care, maintenance and other aspects of their welfare, or that there is a good reason why you have not.

Length of Marriage

Where you have been married for less than two years, you and your spouse will need to attend counselling before you can apply for a divorce.

Once you have attended counselling, you must file the counselling certificate with your divorce application.

If you do not think counselling is appropriate or there are other special circumstances, you can seek permission from the court to apply for divorce without attending counselling.

2. JOINT OR SOLE APPLICATION

An application for divorce can be made jointly or solely.

A joint application can only be made where you and your spouse both agree you want a divorce, as both of you will have to fill in, sign and file the one application form.

There are a range of situations where it will be more appropriate to make a sole application for divorce, such as where your spouse does not want to get divorced, where you do not have contact with your spouse due to safety concerns (e.g. where there has been domestic violence) or where you do not know where your spouse is.

If you do make a sole application for divorce, your spouse may be able to file a 'Response to divorce'. The purpose of this response may be to have the application dismissed or to challenge the facts alleged in your application.

However, the only grounds on which a spouse can oppose a divorce application is where one of the requirements listed above is not met (e.g. where you have not been separated for the minimum 12 months or the Family Court of WA does not have jurisdiction to decide the matter).

3. MAKING THE APPLICATION

eFiling

The Family Court of WA prefer for divorce applications to be filed (submitted) online through the Commonwealth Courts Portal.

To start your application, you will need to go to the Commonwealth Court Portal website (<https://www.comcourts.gov.au>) and register by clicking the 'Register Now' button. You should continue on to fill in your registration details and click 'Register'.

Once registered, select 'Start a new file' and then proceed to select which court your matter will be held, which is 'The Family Court of Western Australia' if you are in WA.

Continue on to complete Parts A to F of the online interactive Form. When filling out these parts, it is important that all the information you provide is accurate. You must also fill out every question otherwise the Family Court may not accept the application.

Where you are making a sole application, you must try to answer every question you can, however, you must not assume the intention of your spouse and if you really cannot answer a question, simply put 'unknown'.

If you do not understand a question, there is help provided to you as you move through the application.

Once you have completed each section and are happy with it, you need to save and validate. After you have completed the application, you can read your entire application by selecting 'Print preview'.

The next step is to upload any relevant documents (e.g. your marriage certificate, additional affidavits, etc.). Once you are happy with your application and everything is uploaded, select 'Lock and continue'.

The next step is to print a copy of your completed application and the Affidavit of eFiling, and swear them before an authorised witness (a Justice of the Peace or Lawyer).

There is a Justice of the Peace located at the Family Court of WA most days between 9:30am and 2:30pm. If you and your spouse are filing a joint application, both you and your spouse will need to sign the form and have your signatures witnessed.

After the application form and affidavit have been signed and witnessed, scan the signed copies and upload them to the Commonwealth Courts Portal.

To finalise your application, print the Marriage, Families and Separation brochure and select the check box.

You will be prompted to select the location where the application is to be heard (Family Court of Western Australia – Perth).

Lastly, you will need to pay the application fee (see the ‘Application Fees’ section for further information) and select a date and time for the divorce hearing.

You can then print the documents ready for service (required for sole applications only) or for your own records (joint application).

Hard Copy Filing

In the event you do not have access to a computer or the internet, or you would prefer to file your application for divorce in hard copy, you will need to attend the Family Court of WA Registry located at 150 Terrace Road, Perth and ask for the hard copy forms.

Once the application has been completed, as required for eFiling, you will need to get the application form signed before an authorised witness.

After signing, make two photocopies of the signed application form and any other supporting documents (e.g. marriage certificate, affidavit proving separation under one roof, affidavit of translation, etc.) before filing with the Family Court.

There are photocopying facilities at the Family Court, but you will be required to pay to use them and the machines only take coins.

You can then file the original and photocopies with the Family Court in person or by post. But remember you will need to pay the application fee at the time of filing. If filing by post you will need to complete the payment authorisation form (available on the Family Court website).

The original application documents are for the Family Court to keep, and the photocopies will be returned to you. One set is for your records and the other is for serving on your spouse (where necessary).

A hearing date will be allocated to you by the Family Court and the details will be in the top right hand corner of the filed application form.

Marriage Certificate

If you do not have a copy of your marriage certificate and were married in Australia, you can obtain a copy from the Registry of Births, Deaths and Marriages in the capital city of the state you were married in. The marriage certificate is not required to be an original certificate; it can be a copy of the original.

If you were married overseas and cannot obtain a copy of your marriage certificate, you will need to provide the Court with an Affidavit which gives details of your marriage and explains why you cannot get a copy of your marriage certificate. **Seek legal advice** if this situation applies to you.

If your marriage certificate is not in English, you will need to have a qualified interpreter make a translated copy of the certificate. Along with the translated marriage certificate you will need to file an Affidavit – Translation of Marriage Certificate, completed by the translator.

The affidavit will need to include information which:

- * states their qualifications to translate;
- * attaches a copy of the original marriage certificate;
- * attaches a copy of the translated certificate;
- * states that the translation is accurate; and
- * states that the attached copy of the marriage certificate is a true copy.

Application Fees

There is an application fee to be paid when lodging a divorce application (both online and by hard copy). The fees can be subject to change, so we recommend checking the Family Court website for the current amount.

As of 1 July 2018, the regular application fee is \$900.

However, if you and/or your spouse have a concession card you may be eligible to pay the reduced fee of \$300.

To be eligible to pay the reduced fee, you must either be making a sole application and using your own concession card, or where making a joint application, both you and your spouse have a concession card.

Fees can be paid in person at the registry or by post and payment must be made by way of bank card or cheque.

Serving your Spouse – Sole Applications

If you are making a sole application for divorce, you will need to serve your spouse with the application and any other relevant documents once you have filed or received them back from the Family Court. 'Service' means the delivery of court documents to a party after they have been filed and must be done in accordance with the rules of the Court.

There are two ways that you can serve documents on your spouse:

1. By posting them to your spouse's last known address (your spouse will need to send an Acknowledgement of Service form to the Family Court so this option is only appropriate if you are certain that your spouse will comply); or
2. Having another person deliver the documents to your spouse by hand.

Please note that you cannot personally give the documents to your spouse.

You can get a friend or family member over the age of 18 to personally deliver the documents, however, they will need to file an Affidavit of

Service evidencing that they served the documents. It is very important that they serve the documents correctly. If you choose this method of service it is recommended that you and the person serving view the 'Service Kit' on the Family Court website.

Alternatively, you can hire a process server to serve the documents on your spouse. A process server is someone who serves documents professionally so they will fill out all the paperwork required and you do not have to worry that they will not serve the documents correctly. All you have to do is provide the process server with the documents and pay the fee.

The documents that must be served on your spouse are:

- * a sealed (filed) copy of the application;
- * a copy of the Family Court brochure 'Marriage, Families and Separation'; and
- * copies of any other documents filed with your application (excluding your marriage certificate).

Where your spouse is in Australia, the documents must be served at least 28 days before the hearing date. Where your spouse is outside of Australia, the documents must be served at least 48 days before the hearing date.

If you have made all reasonable steps/attempts to serve your spouse but have been unable to (e.g. you do not know where they are), you can apply to the Family Court for 'substituted service' (serving the documents on a third person who will bring the documents to your spouse's attention) or 'dispensation of service' (not requiring you to serve the documents).

Updating the Family Court

It is important you keep the Family Court up to date with your personal details once you have filed your application. If you change your address after filing, you will need to file the form 'Notice of Address for Service' with the Family Court (found on the Family Court website).

If you have changed your name after filing, you will need to file the form 'Notice of change of name'. If you have changed your name to something other than your maiden or married name, you will need to provide evidence of the change of name.

4. ATTENDING COURT

When to Attend

The only circumstance in which you must attend the hearing is if you have made a sole application for divorce and there are children of the marriage under 18 years of age. However, you can choose to attend in any other circumstances if you wish (e.g. where you have made a sole application with no children under 18 or a joint application).

If you do not attend the hearing where you are required to, there can be adverse consequences for your application, such as the Family Court may adjourn (put off) or dismiss (cancel) your application if you do not attend.

The hearing will usually be held at the Family Court where you filed the application. However, if this will be difficult for you to attend, you can request that it be listed at a country circuit location which the Family Court visits (more information on the Family Court website) or you can ask to attend by telephone.

Safety Concerns

If you have concerns for your safety in attending in person, it is important to bring this to the attention of the Family Court as soon as possible. You can discuss your concerns with the registry as soon as you know the date you will be attending the Family Court, so arrangements can be arranged.

Examples of arrangements the Family Court can make are:

- * attending from an offsite location by telephone or video-link;
- * attending from an onsite location by video-link;
- * waiting in separate areas inside the Court;
- * using separate entry and exit points from the Court building; or
- * a security escort to and from the court event

You can also send a written request to the Court. The template letter can be found on the Family Court of WA website, use the 'search this site' bar and type in 'Personal safety measures request'.

Interpreters

If you are attending the hearing and require an interpreter, you should contact the Translating and Interpreting Service on 13 14 50 at least one week before the hearing. The court staff will arrange an interpreter for you free of charge.

Court Etiquette

On the day of the hearing, you should arrive 15 minutes before your scheduled hearing time to make sure you know which courtroom your matter is being heard in. You can ask court staff for help if you are unsure.

You should bring all documents relevant to the hearing, including your application, service forms, affidavits and any other documents you may have filed. You do not need to bring your marriage certificate.

You are welcome to bring a person over the age of 18 to support you. They can sit in the viewing area at the back of the courtroom during the hearing. You should try not bring children with you to the Family Court, however if you have no other option, there is a Child Minding Service on Level 2 of the Family Court where you may be able to leave your children while you are in the courtroom.

Before entering the courtroom, turn off your mobile phone and take off any clothing that hides your face (e.g. sunglasses or hats) unless worn for religious reasons. You should not bring any food or drink into the courtroom.

When you enter the courtroom, you will need to give your name to the court officer assisting the judicial officer/registrar. When the judicial officer/registrar enters the room, you must stand and remain standing until they have sat down.

Once court is underway and the different matters are called, the Applicants will go up and sit to the right hand side of the bench and Respondents to the left.

You should stand when you speak to the judicial officer/registrars and sit when the other party is talking. It is also important not to interrupt anyone while they are talking. You will have your chance to respond to anything that is said.

You are free to leave the courtroom when your matter has been dealt with. If the judicial officer/registrars is still in the room, remember to bow as you exit.

5. DIVORCE ORDER & EFFECT

Divorce Order

A divorce order simply recognises that a marriage has ended and the marriage certificate is no longer valid. It does not determine issues of financial support, property distribution/settlement or arrangements for children (parenting orders).

The divorce orders will come into effect one month and one day after the Court date when the order was made.

Once the divorce order takes effect, the Family Court will prepare a divorce certificate that is evidence of the divorce. The divorce order/certificate will be uploaded to the Commonwealth Courts Portal and you can log in and print it off at any time.

Arrangements for Parenting, Property and Maintenance

After separation, it will be important to make arrangements for any children under 18, such as who they live with and how much time they spend with the other parent, and to deal with any property division and maintenance (payments from a spouse other than child support).

Where both spouses agree to an arrangement, this can be carried out or continued informally or a written agreement (Minute of Consent) can be

filed with the Family Court and made into formal orders. Where spouses cannot agree about these arrangements between themselves, they can apply to have the issues determined by the Family Court.

Arrangements for children can be made and changed any time after separation, including before and after a divorce.

Applications for property division and maintenance can only be submitted to the Family Court within 12 months from the date of the divorce order. After 12 months, a person seeking a court order for property or maintenance will need to seek the Family Court's permission to apply out of time.

To know your rights and options in sorting out parenting, property or maintenance issues, we recommend you **seek legal advice**.

Remarrying

You can re-marry as soon as the divorce order has taken effect.

However, in order to get re-married in Australia, you must file a notice of intention to marry at least one month before your proposed wedding date. For this reason, you should avoid setting a date to remarry until after you have received your divorce order.

Wills

The grant of a divorce order may have the effect of revoking or invalidating a Will.

To find out how your Will may be effected and to make sure that your Will reflects your current wishes, you should **seek legal advice**.

FURTHER INFORMATION AND RESOURCES

Additional information regarding divorces is available on the Family Court of WA website: <https://www.familycourt.wa.gov.au/>

A number of Community Legal Centres also provide assistance with divorce application matters for little or no charge.

Each centre has discretion as to the level of assistance they can provide and it may be in the form of legal advice, help to gather evidence in support and/or assisting to put an application together.

You can contact any of the following legal services to ask about making an appointment:

Women's Legal Service WA (08) 9272 8800
info@wlswa.org.au
445 Hay Street, Perth
PO Box 3182, East Perth WA 6892

Djinda Services (WLSWA) (08) 9200 2202
djinda@wlswa.org.au

Aboriginal Legal Service of WA 1800 019 900
www.als.org.au

Aboriginal Family Law Services 1800 469 246
www.afls.org.au

Legal Aid WA 1300 650 579
www.legalaid.wa.gov.au

**Community Legal Centres WA* www.communitylaw.net/clc-directory

You may also engage a private solicitor to assist you with an application, however they will usually charge you a set fee.

**There are a number of Community Legal Centres that service different locations across WA. Community Legal Centre's WA have a directory online of all of the services and the regions they cover.*