



Ferrall & Co. Lawyers  
Caloundra | Sunshine Coast

# Safeguarding you with our Essential Divorce Checklist

PREPARED BY: ROWENA FERRALL  
LEGAL PRACTITIONER DIRECTOR



Divorce is a challenging time. The last thing you need is a complicated divorce proceeding to deal with. This checklist will provide you with a comprehensive step-by-step guide to ensure you can make a successful application the first time.

Let's get started.

## Step 1: Check Your Eligibility

### Residency requirements

If you were married overseas, you may still be able to get a divorce in Australia. But you should check that you are eligible first. To get a divorce, you or your spouse must satisfy at least one of the following criteria:

- Be an Australian citizen by birth, descent (one of your parents was an Australian citizen at birth), or by grant of Australian citizenship.
- Ordinarily live in Australia and have done so for 12 months immediately before filing for divorce.
- Regard Australia as your home and intend to live in Australia indefinitely.

### Separation requirement

You must have been separated for at least 12 months before applying for divorce. This demonstrates that the marriage has irretrievably broken down.

### Married for less than two years

If your marriage lasted for under two years, you must undergo mandatory marriage counselling before seeking a divorce.

## Step 2: Demonstrate Separation

There are various ways to demonstrate separation. Usually, only some elements are conclusive. The Court looks at the preponderance of the available evidence. Some factors that can contribute to proving separation are the following:

- Living at different addresses;
- Telling friends and family about the separation;
- Notifying government agencies like Centrelink;
- Maintaining separate social circles;
- Separating your finances.

### Separation under one roof

The Court recognises that some couples don't have the means to maintain separate residences. Therefore, it's possible to satisfy the separation requirement while living at the same address. You may need to provide additional evidence in this case. This may include:

- Ending any sexual relationship;
- Sleeping in separate bedrooms;
- Dividing domestic duties;
- Not eating meals together.

## Step 3: Gather the Necessary Documents

Depending on your situation, there are various documents you may need to gather.

### Marriage certificate

You must include a copy of your marriage certificate with your application. If you can't find it, you can request a replacement from the Registry of Births, Deaths and Marriages for a fee.

If your marriage certificate is in a language other than English, you must have it translated by a translator. The translator must be accredited by the National Accreditation Authority for Translators and Interpreters (NAATI). You can find a translator through the [online directory](#) on the NAATI website.

The translator will provide a certified translated copy of the marriage certificate and an Affidavit Translation of the Marriage Certificate.

### Counselling certificate

If you have been married for less than two years, you must include a certificate indicating you completed the mandatory marriage counselling with your divorce application.

## **Evidence of separation**

You may need to provide documentation proving your separation. This can include:

- Affidavit from the parties describing how they've handled separation under one roof;
- Third-party affidavits from friends and family;
- Evidence of closing joint bank accounts.

## **Proof of residency**

If you were married overseas, you might need to provide proof of residency, including:

- Copy of Australian passport;
- Australian citizenship certificate;
- Copy of a Visa Entitlement Verification Online check.

## Step 4: File the Application

It's now time to file the divorce application. The easiest way to apply is online. Here is the process:

1. Register on the Commonwealth Courts Portal.
2. Follow the prompts and select Application for Divorce.
3. Fill out the application form.
4. Upload any necessary supporting documents.
5. Print the application.
6. If filing jointly, both parties must sign the Affidavit for eFiling before a Justice of the Peace.
7. Upload the Affidavit for eFiling.
8. Download the brochure Marriage, Families and Separation.
9. Apply and pay the filing fee.
10. Select a court date. Joint applicants can attend the court hearing, but it is optional.

### Sole applicants

There are additional requirements if you seek a divorce as a sole applicant.

## Serving divorce papers

You must serve the divorce papers on your ex-spouse. You are not permitted to serve the papers yourself. There are different serving options, including:

- **Third-party service.** A friend or family member above 18 can serve the papers on the applicant's behalf.
- **Professional process server.** They are experienced in serving legal documents and can provide an affidavit of service as proof. The server must complete an Affidavit of Service by Hand.
- **Service by Post.** You should only use this method if you're confident your ex-spouse will sign an Acknowledgment of Service (Divorce). You will also need to complete an Affidavit of Service - By Post.
- **Serving your spouse's lawyer.** You may serve your spouse's lawyer if they're willing to accept service. They must complete an Acknowledgment of Service.

## Substituted service

Substituted service allows you to serve a third party you know will bring the notice to your spouse's attention. Such parties may include your spouse's friends, family or work colleagues.



## Dispensation of service

- If you can prove you have made all reasonable attempts to serve your spouse, you can request dispensation of service from the Court. If granted, you are free to attempt further to satisfy the requirement to serve your spouse.

## Court hearing

You may need to attend a court hearing if one of the following criteria applies to your circumstance:

- The sole applicant has a child of the marriage under 18 years old.
- You said you would like to attend the hearing.
- The respondent opposed the divorce with a Response to the Divorce application.

## Step 5: The Divorce Order

Once the Court is satisfied with the application, the divorce order will come into effect one month and one day after the application.

## Conclusion

In conclusion, navigating a divorce application can be challenging and emotional. However, understanding the step-by-step procedure can make this process more manageable. It's essential to approach this process with thorough preparation, clear understanding, and, when necessary, professional legal assistance.