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Caloundra | Sunshine Coast



The Complete Divorce Guidebook

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Navigate your divorce with confidence—
explore your options, understand joint vs. sole
divorce, and find clarity with our ultimate
guide to divorce in Australia.



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DIVORCE GUIDEBOOK

- You or your spouse must meet citizenship or residency requirements.
 - Foreign language certificates must be translated by a NAATI-accredited translator.
 - Couples must separate for at least 12 months before applying for divorce.
 - Couples can be separated under the one roof. They just need to provide enough evidence of their situation.
 - There are ways you can make cohabitation work.
 - Marriages under 2 years must go to marriage counselling.
 - It's easiest to apply for divorce together.
 - Sole application requires the respondent to be served with the divorce papers.
 - There are exceptions to standard service in special circumstances.
 - You don't usually have to attend court.
 - Focus on growth and renewal after divorce.
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Let's get started



Divorce Eligibility

Before you can start, you must check your eligibility for divorce.

You or your partner must meet one of these:

- You're an Australian citizen.
- Australia is your permanent residence. You will continue living in Australia.
- You've lived in Australia for the past 12 months.

If you're not a citizen, provide evidence of your residency. This can be:

- Your passport with a date of arrival.
- A current visa.

Marriage certificate

Have a copy of your marriage certificate. If you've lost it, you can request a replacement from the Registry of Births, Deaths and Marriages. An official marriage certificate with standard postage costs \$54.40.

Separation

Every married couple must be separated for at least 12 months before they can apply for divorce. There's no formal process for separation.

Separation occurs when the spouses stop living together as a couple. What does that mean?

Foreign marriage certificate

The Family Court requires your marriage certificate to be in English. If your certificate is in a foreign language, you'll need to get it translated. Authorised translators are certified by the National Accreditation Authority for Translators and Interpreters (NAATI). Use the NAATI's online directory.

The translator will return:

- Your marriage certificate.
- A translated certificate.
- An Affidavit Translation of Marriage Certificate. This shows the translator's qualifications to do the translation.



Divorce Eligibility

Separation under the one roof

Separating couples don't always have the means to maintain separate accommodation. The Court recognises this. It makes a distinction between living separately and living 'separate lives'. This allows spouses to continue cohabiting as long as they can show they no longer live as a couple. This requires more evidence. If you're living separately under the one roof, both partners must file an affidavit. The affidavit explains how the relationship has changed. The changes can be sudden or gradual. These are the sorts of things you might include:

- A change in sleeping arrangements. You and your spouse started sleeping in separate rooms.
- Less socialising as a family. You're no longer going on family outings with your spouse.
- Separating domestic duties. You and your spouse no longer do domestic duties for each other.
- Dividing finances. You've separated your finances.
- Social awareness. You've told your friends about the separation.

The affidavit needs to explain why you continued to cohabit and your future plans.

If you're applying as a sole applicant, you may get a second affidavit from another third party. This could be a friend or family member who knows your situation. They must only speak from their first-hand experience.



Divorce Eligibility

Making it work

Cohabiting can save both parties money. It can also get complicated. Here are some tips.

- Set boundaries. Define which bedroom and bathroom belong to each spouse. Schedule use of shared spaces like the kitchen. Don't intrude on each other's privacy without permission.
- Communicate. You don't need daily conversations. But take some time to talk about important things. Set a time every week or month to meet and discuss how the living arrangements are going.
- Organise finances. It's often easier to close joint accounts and have separate finances. If you rely on your spouse's income for financial support, it may be easier to keep the joint account.
- Divide expenses. Each spouse will have individual expenses, such as groceries. Other expenses are shared. These include utilities and home maintenance. The arrangements you agree to should be written down so both parties are clear on their responsibilities.
- Parenting responsibilities. Separation under the one roof can be confusing for children. Talk to your children about the new situation in a way that's appropriate to their age. Set out arrangements for routines like bedtime and breakfast. Decide if shared family outings will work.



Divorce Eligibility

Reconciliation

Can you reconcile during the separation? Yes. The Court wants people to reconcile. Let's say you reconcile for less than three months. You can resume separation without impacting your separation period. If the reconciliation is over three months, your separation period resets.

Less than 2 years

Marriages under 2 years have extra requirements before the spouses can get a divorce. The 2-year period is from the date of marriage to the date you apply for divorce.

Marriages under 2 years require the spouses to attend marriage counselling. Need help finding a counselling service? Visit <https://www.familyrelationships.gov.au/> or call 1800 050 321.

There are circumstances where one party may be exempt from this counselling.

- Missing spouse. You can't force your spouse to attend counselling. If they don't make themselves available for counselling sessions, you can apply to the Court to proceed with the divorce. You should document your attempts to contact and invite them to counselling.
- History of domestic violence. The Court doesn't expect you to attend counselling with your spouse if there's evidence of domestic or family violence.

You need to attach an affidavit explaining why you can't attend counselling. Provide evidence of why you're exempt.



Divorce Eligibility

Missing spouse

What did you do to contact them? This may include:

- Copies of emails you sent to their last known email address.
- Phone records of your attempts to contact their last known phone number. Include any voicemails you left.
- Written statements from third parties you contacted, such as your spouse's family or friends, confirming you tried to contact them.
- Reports from a private investigator showing they tried to find your missing spouse.

Family violence

Provide evidence of family violence.

- Police reports of domestic violence incidents.
- Copy of a Domestic violence Order or equivalent court order from another state.
- Medical records from a doctor or other health provider detailing domestic violence injuries.
- Statements from a psychologist or social worker documenting domestic violence.



Divorce Application

You can apply for divorce with your spouse or by yourself. Each has its own requirements.

Joint application

It's easiest to apply jointly. Here's the process for a joint application.

1. Create a Commonwealth Courts Portal account.
2. Select 'Application for divorce'.
3. Give it a title. The application will be deleted after 90 days of inactivity.
4. Complete parts A to F. Each heading will turn green when you've completed it.
5. Attach required documents. This may include affidavits, proof of residency, etc.
6. Lock and continue. You can't change anything once you've locked the application.
7. Print the application.
8. Sign the Affidavit for eFiling Application (Divorce) in front of a Justice of the Peace. In a joint application, both parties sign. In a sole application, one signature is required.
9. Attach the signed affidavit.
10. Download the brochure Marriage Families and Separation.
11. Submit the application and pay the filing fee. The fee is \$1100 as of 1 July 2024.
12. Choose a court date. All divorces get a court date, even if you don't need to attend.



Divorce Application

Sole application

A sole application has extra requirements.

Serving the application

Once you've submitted the application, it must be served on the other party. You must serve the following:

- A sealed copy of the Application for divorce. Attach the notice of application for divorce.
- A sealed copy of the Affidavit for eFiling.
- A copy of the Marriage, families and separation brochure.
- An Acknowledgment of Service (Divorce).
- Any other documents filed with your Application for divorce.

There are different ways to serve divorce documents.

Service by post

Only serve by post if you're sure your spouse will sign and return them. In addition to the other documents, include:

- Instructions for your spouse to sign the Acknowledgment of Service. Tell them to keep the copy of the divorce application.
- A stamped self-addressed envelope for the return of the Acknowledgment of Service.

Complete the Affidavit of service – by post and attach the signed Acknowledgment of Service. Sign the affidavit in front of a Justice of the Peace.



Divorce Application

Substituted service

The Court may allow you to serve a third party who will bring the application to the respondent's attention.

Dispensation of service

You can proceed with a divorce application without serving your spouse if the Court grants you dispensation of service. You must prove you've exhausted all reasonable attempts to contact the respondent. Detail this in an affidavit.

Court hearing

You only need to attend a court hearing if you're a sole applicant with children under 18 or the respondent files a response to the application. Hearings are done electronically. There are other circumstances where you should attend the hearing.

- **Missing spouse.** Attend the hearing if you need substituted service or dispensation of service.
- **Special circumstances.** Attend to provide additional evidence for a separation under one roof. It's also advisable if your marriage is less than 2 years.



Post-Divorce

Once your divorce is granted, it'll be official in one month and one day. Your new life has begun. Everyone adjusts to post-divorce life in their own way.

- Emotional adjustment. You've left a significant relationship. Leave time to grieve. You'll experience many emotions. You can feel anger and sadness but also relief. You made a big step toward a new life.
- Support network. This could be a support group or a strong circle of friends. Take time for yourself. But don't cut off friends and family.
- Financial health. Assess your financial situation. Pursue possibilities for child support or spousal maintenance. Set a budget and update documents such as wills and power of attorney.
- Stay positive. Set yourself small goals. These add up. This is a growth opportunity.



Conclusion

Sometimes, a divorce is necessary. We know clients can feel daunted by the prospect. Our years of experience has given us deep insight into managing divorce. This is your ultimate guide.

Navigate your divorce with confidence—discover your options, understand the differences between joint and sole applications, and gain clarity with our ultimate divorce guide.

Contact Us Today



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Let us guide you through your family law journey with expert care and support.

