



The Divorce process explained

The idea of divorce is well known, as is the established principle of no-fault divorce in Australian law, but less is known or understood about the mechanics surrounding what is actually done and the steps involved.

In this article we explain the process in simple terms.

Today in Australia a court does not consider *why* the marriage ended. The only ground for divorce is that the marriage has broken down irretrievably. That is, that there is no reasonable likelihood that the parties will get back together. A divorce may be obtained in either the Family Court of Australia or the Federal Circuit Court (or Federal Magistrates Court).

Separation

In Australia, the parties must have been separated for at least 12 months prior to applying for your divorce.

If the parties have separated but remained living under the same roof for any period (or are currently living under the one roof), they will need legal advice because there are further requirements that the Court will consider. Affidavit material will be required, not only from the Applicant but also a family member or friend who can corroborate that the parties were living separately under one roof.

Parties married less than two years who want to divorce must attend counselling with a family counsellor or nominated counsellor to discuss the possibility of reconciliation with their spouse, or if they have not attended counselling, seek permission of the Court to apply for a divorce.

Applying for a divorce

To apply for a divorce the parties must first satisfy the court that they have a valid marriage. A marriage certificate, with a sworn translation into English (if necessary) is needed. If no marriage certificate is available, the court may require the applicant to provide some alternate evidence of the marriage prior to granting divorce.

A person can apply for a divorce in Australia if either party regards Australia as their home and intends to live in Australia indefinitely, or they are an Australian citizen by birth, descent or by grant of Australian citizenship, or ordinarily live in Australia and have done so for 12 months immediately before filing for divorce.

In addition, they must satisfy the Court they have lived separately and apart for at least 12 months, and there is no reasonable likelihood of resuming married life. It is possible to live together in the same home and still be separated.

Arrangements for any Children

The court will **not** grant a divorce in Australia unless it is satisfied that appropriate arrangements for any children are in place. That does not mean those arrangements are formal, nor does it mean that there is no dispute, but rather that at the time of the divorce hearing, the children are being appropriately cared and provided for.

The Court hearing

As mentioned above the only ground for divorce is that the marriage has broken down irretrievably and there is no reasonable likelihood that the parties will get back together.

There are circumstances where the parties do not need to attend Court. The party applying for a divorce must attend the divorce hearing where they made the Application for divorce themselves and/or where they have children who are under 18 years of age.

If the parties do not have children under 18, or if they made a joint Application for divorce, they can both choose not to attend your divorce hearing.

A party can only oppose the divorce where there has not been 12 months separation as alleged in the application, or the Court does not have jurisdiction.

Divorce hearings are generally quite brief. The hearing is usually conducted by a Court official known as a Registrar. The Registrar may ask the applicant questions about the information in their Application or about the service of the Application on the other party.

Parties with legal representatives are heard first, and get out first. You are hopefully out of the court within 30 minutes rather than waiting for as long as 2 to 2 and a half hours if you are self represented.

Where young children are involved, the Registrar may ask about arrangements for the children, such as which parent they live with, how often they spend time with the other parent and how they are financially supported.

If the Registrar is satisfied that the grounds for divorce have been established and that the Application has been properly served on the other party (if your Application was not made jointly), the Court will grant the divorce.

The divorce order will become final one month and one day from the date of the hearing, at which time a *Divorce Order* will be sent to you and your former spouse (if they have provided their address).

What next?

It is important to note that the granting of a divorce does not decide issues about property and maintenance or parenting arrangements for the children.

If parties want to make arrangements about these issues they can make an agreement with their spouse and file it with a court, or seek orders from a court if they cannot reach an agreement. However it is prudent to seek advice from an experienced lawyer.

For people wanting to remarry they should not plan to remarry until the divorce order is finalised. In most cases, this is one month and one day after the divorce hearing. But do not assume the divorce will be granted at the first court hearing as there may be additional evidence required. So it is best to allow more time.

Summary

Whilst it is possible to act without legal representation when applying for a divorce, many people find that they do not have the time to devote to this process and prefer to undertake the process with a lawyer highly experienced in divorce law who can provide advice and assistance at any stage of the divorce process.

A Divorce application requires the completion of a number of documents including the divorce application, affidavit of service, acknowledgement of service, affidavit of proof of signature, and in some instances where the divorce was sought before the expiry of two years of marriage a further affidavit is required if a counselling certificate cannot be secured (due to the partner being overseas etc).

If you know someone who could benefit from this advice please suggest they contact us on 03 9387 2424 or email info@rrrlawyers.com.au today and see how we can help.