



# GUIDE

A BRYANT MCKINNON RESOURCE

## DIY Divorce Guide



*This DIY Guide walks you through the process of finalising your divorce.*

*It is important to understand that "divorce" is the process that formally ends a marriage. It does not include negotiating property settlement, parenting arrangements or other matters.*

*If you are going through divorce or separation, we strongly recommend you seek legal advice, if only to ensure that you are armed with all the necessary information.*

*However, the bureaucratic process of filing, serving and finalising a divorce can usually be managed without racking up legal fees. This guide walks you through the process step-by-step.*

### Eligibility & Documentation Check List

It's important to ensure that you are eligible to apply for divorce and have all the necessary documentation, so before you start the process make sure you tick all the boxes below.

- I am an Australian citizen or have been living in Australia for at least 12 months with a valid visa
- My marriage has broken down with no likelihood of getting back together
- I have been separated from my partner for at least 12 months and 1 day
- I have a copy of my marriage certificate
- If married for less than 2 years you may need a counselling certificate: refer to this [fact sheet](#)
- If you have been living under the same roof while separated you will need an additional affidavit: refer to this [fact sheet](#)
- If the name you now use is different from your maiden or married name, you will need an affidavit explaining the name difference: refer to this [fact sheet](#)
- If you are unable to locate your ex-partner to serve them divorce papers you will need to apply to the court for an order to dispense with or substitute service: refer to this [fact sheet](#)

## Online or In Person

The Federal Circuit Court system is now set up to encourage people to file for divorce online. If you are comfortable with using a computer, we recommend that you file online. This guide assumes that you will be filing online. You will require access to the following:

- Computer with internet access
- Scanner
- Printer
- Mastercard or Visa for payment of filing fees

If you are uncomfortable using a computer or cannot access one it is still possible to complete the application form manually and file in person or by post with the nearest family law registry.

### *If you are filing manually:*

- [Click here](#) to access an Application for Divorce Kit which includes a copy of the Application for Divorce form
- [Click here](#) to locate the nearest Family Court. Not every court has a registry. Find your nearest court and then read carefully to determine appropriate registry for filing documents.

## Joint or Sole Application

You can apply for a divorce by yourself (sole application) or together with your ex-partner (joint application). The application is the same for both but the process is slightly different.

With a joint application, there is no need to serve divorce papers (step 5 below), and neither you nor your ex-partner needs to attend court, unless you have special circumstances (see step 6 below) or requested to do so.

With a sole application you are required to serve documents on your ex-partner (step 5 below). If you have children under 18 or in other special circumstance (see step 6 below) you will need to attend court.

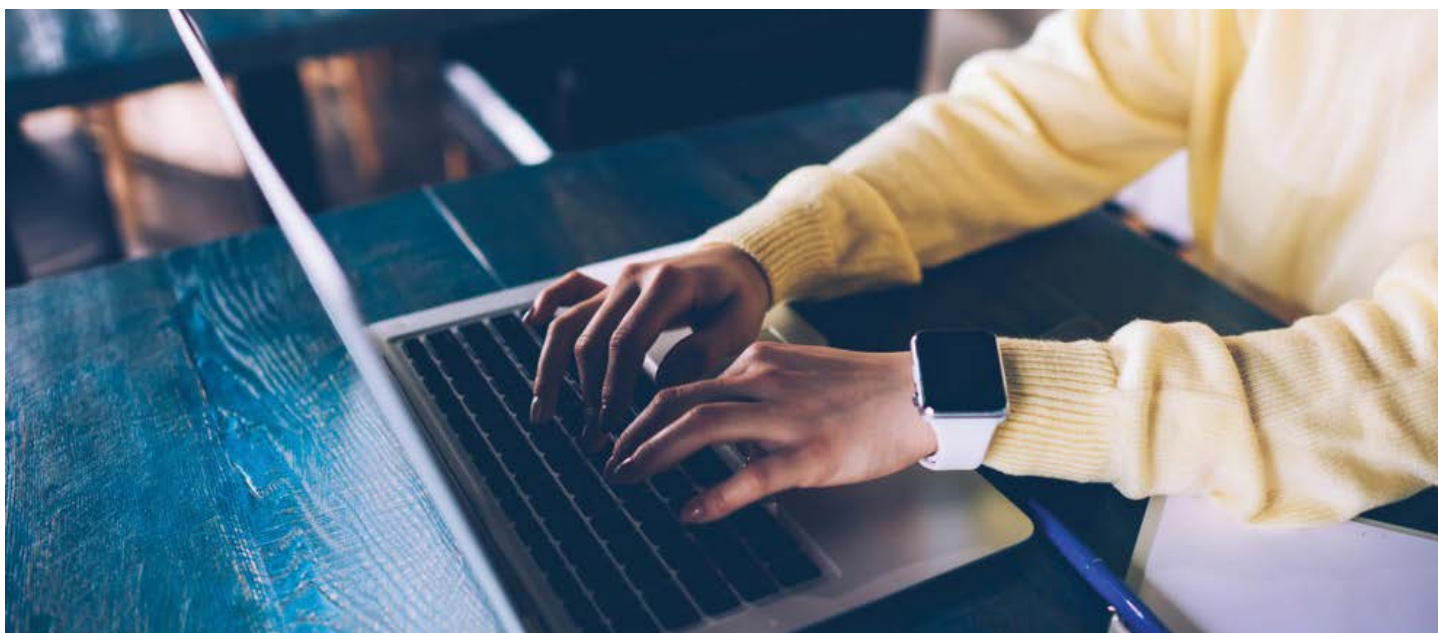
## Filing Fees

The Court charges a fee for filing your application. As of February 2020 that fee is \$910.

You may be eligible for a reduced fee, currently \$305. If you are filing a sole application only you need to be eligible for the reduced fee. If you are filing a joint application, both you and your ex-partner must be eligible for a reduced fee. Refer to the [Guidelines for Fee Reduction](#). You will need scanned copies of concession cards or other documents as evidence.

If you are not eligible for a reduced fee, but the full fee will cause you financial hardship, you can apply for the reduced fee based on financial hardship. [Click here](#) to access the application form.

If applying online the filing fee is payable using Mastercard or Visa. If you are applying in person or by post, the fee can be paid by cheque or money order.



## Step 1: Register on the Commonwealth Courts Portal

- To register go to [www.comcourts.gov.au](http://www.comcourts.gov.au) and click Register Now.
- Complete the registration details, including setting up your password and click Register.

[Click here](#) to view a video that walks you through how to register and navigate the Commonwealth Courts Portal.



## Step 2: Complete Application for Divorce & Upload Supporting Documents

- Once you have registered on the Commonwealth Courts Portal, login and select “Start a New File”.
- Tick the box to confirm you are filing on your own behalf and select Continue and Confirm.
- Tick the box to confirm you understand and agree with the eFiling obligations then select Confirm.
- Select Application for Divorce from the drop-down box, then Continue.
- Select Federal Circuit Court of Australia (unless you are a resident of Western Australia), then Continue.
- Add a title and description. This is to enable you to easily find the application after you’ve saved it. There are no rules about naming. Click Create, then OK to submit.
- Answer questions in Part A to Part F. Save and validate each part as you go. You can go back and forth between these sections and make changes.

- Once you are satisfied with your responses and have a green tick beside each part you are ready to proceed.
- You will be prompted to upload any required documents. At minimum this will be a scan of your marriage certificate. Depending on how you answered the questions in Part A to F you may be prompted to upload additional documentation. *Note only PDF files up to 10mb are currently accepted.*
- Once you are satisfied with your responses and have uploaded all necessary documents, select Lock and Continue. You will be unable to make changes once you have locked the application. It will be deleted after 90 days if there is no activity.

### ***If you have children under 18:***

Part F of the application requires you to provide details of all parenting arrangements, including housing, education, before and after school care, children’s health and financial support, for all “children of the marriage” under 18 years of age. It is important to answer this question carefully and thoroughly.

A “child of the marriage” includes:

- any child of you and your ex-partner, including children born before the marriage or after separation
- any child adopted by you and your ex-partner
- any child who was treated as a member of the family prior to your separation, including step children and foster children.

## Step 3: Print Sign & Witness Application

- Once locked you will be able to print your application form.
- The Affidavit for eFiling Application (Divorce) now needs to be signed before a lawyer or Justice of the Peace (JP).
- If you are lodging a sole application only you will need to sign in front of a lawyer or JP.
- If you are lodging a joint application both you and your ex-partner will need to sign in front of a lawyer or JP. It is not necessary to sign the Affidavit at the same time, but both signatures must be witnessed by a lawyer or JP.

## Step 4: File & Select a Court Date

- Upload the signed Affidavit for eFiling Application (Divorce). You only need to upload the affidavit. It is not necessary to upload the entire application.
- You will be prompted to download the brochure Marriage Families and Separation. If you have filed a sole application you will need this document when you serve divorce documents on your ex-partner (step 5).
- You will be prompted to submit the application and pay the filing fee.
- Then select the state and location where you want your divorce to be dealt with.
- You will then be prompted to select a court date. Every divorce must go before the court but you may not be required to attend (see step 6).

[Click here](#) to view a video that explains how to serve divorce papers. [Click here](#) for a step-by-step written guide on how to serve divorce papers.



## Step 5: Serve Documents

If you have filed a sole application for divorce you must now “serve” a copy of the application and other documents on your ex-partner (referred to as the respondent). “Service” is the formal process of ensuring that all parties in a court case have all relevant documents. If you filed a joint application this step is not required.

The following documents need to be formally served on your ex-partner:

- Copy of the Application for Divorce
- Copy of the brochure [Marriage Families and Separation](#)
- Copy of any other documents your filed with your application, except your marriage certificate
- [Acknowledgement of Service \(Divorce\)](#) – this form must to be signed by your ex-partner and returned to you to acknowledge receipt of documents

The documents must be served on your ex-partner at least 28 days before the court hearing if your ex-partner is in Australia, and at least 42 days if not in Australia.

You can serve documents by post, by hand or to your ex-partner’s lawyer (if they will accept service).

Do not serve documents by post unless you are confident that your ex-partner will return a signed Acknowledgement of Service to you. If they fail to do so the Court will consider that documents have not been served and will not grant your divorce.

You cannot serve documents by hand yourself. You need someone over 18 to do this for you: a friend, family member or professional process server.

If you are unable to locate your ex-partner you can request to substitute (ie serve the documents on someone else) or dispense with service. [Click here](#) for more information.

### *Consider a Professional Process Server*

Service of documents can be the most complex part of finalising a divorce, and is the most common reason that divorce fails to be granted. If you do not expect your ex-partner to fully cooperate, we recommend that you seriously consider investing in a professional process server to serve your documents. It avoids getting your friends or family involved and ensures that service will be done legally, preventing problems once you get to court. Fees are generally between \$120 and \$150.

## Step 6: Court

Every divorce must go before the court but it is not always necessary to attend.

It is necessary to attend court if you have filed a solo application and have a child under 18 years ago. You will also need to attend court if you have requested dispensation of service because you cannot locate your ex-partner or if you are required to provide additional affidavit material to explain exceptional circumstances such as separation under the same roof or married less than 2 years.

## Step 7: Finalising Divorce

Once your divorce has been granted by the Court, it will be finalised in one month and one day unless a special order is made by the court to shorten that time. Your divorce order will be available for download from the Commonwealth Courts Portal one working day after the order has been finalised.