

## **DIVORCE IN AUSTRALIA**

You can apply for a divorce in Australia if either you or your spouse:

- regard Australia as your home and intend to live in Australia indefinitely, or
- 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.

You need to satisfy the Court that you and your spouse 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.

### **What a court considers in divorce applications:**

The Family Law Act 1975 established the principle of no-fault divorce in Australian law. This means that 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 you will get back together. You must have been separated for at least 12 months in order to satisfy the Court that the marriage has broken down irretrievably.

### **Can property and parenting issues be dealt with prior to divorce?**

The granting of a divorce does not decide issues about property and maintenance or parenting arrangements for your children. If you want to make arrangements about these issues immediately after separation, and prior to divorce this can be done.

You can:

- make an agreement with your spouse and file it with a court, or
- seek orders from a court, where you and your spouse cannot reach an agreement.

For parenting cases, you also have the option to make a parenting plan. Please note that unlike court orders, a parenting plan is not legally enforceable.

If you want to apply for maintenance for yourself or a division of property, you must file a separate application within 12 months of the date the divorce takes effect. Otherwise, you will need the Court's permission to apply.

### **What is meant by separation under the one roof?**

It is possible for you and your spouse to be separated but to continue living in the same home during the 12 months before applying for divorce. This is known as 'separation under the one roof'. If this applies to your situation, you need to prove to the Court that you were separated during this time.

You need to prepare an affidavit to prove that there has been a change in the relationship, gradual or sudden, demonstrating that you and your spouse have separated. The Court also requires another person (not your spouse) to prepare an affidavit that contains as much information as is known to them about the separation.

This article contains general information only and is provided as legal advice. Professional advice should be taken before any course of action is pursued, or any information here is relied upon.

For advice about family law matters contact Tim Robinson, Christine Cowin, Richard Bartram, Adele Katzew or Jessica Caldwell on 9890 3321.



701 Station Street, Box Hill, Victoria 3128  
Tel : 03 9890 3321 Fax : 03 9898 4266  
email : [legal@robinsongill.com.au](mailto:legal@robinsongill.com.au)  
[www.robinsongill.com.au](http://www.robinsongill.com.au)