



How to apply for a divorce when your former partner is overseas

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In Australia, the process of getting a divorce is often quite simple and straightforward. However, complications can arise. For example, what happens when your former partner is overseas? In this article, we will discuss the additional considerations and/or issues that arise when applying for a divorce when your former partner is overseas.

Before we explore some of the issues related to a former partner being overseas, if you believe your divorce will be straightforward, you may find the following resources helpful:

- [Divorce eligibility in Australia](#);
- How to apply for a divorce in Australia; and
- the Family Law Courts [Divorce Service Kit \(do-it-yourself kit\)](#).

Joint Application for Divorce

If you and your former partner are in contact and both agree to obtain a divorce, you can prepare and file a Joint Application for Divorce. To file a joint application, both you and your former partner will need to sign the '[Affidavit for eFiling Application \(Divorce\)](#)' in the presence of an appropriate witness.

Joint Application for Divorce – witness options when your former partner is overseas

In Australia, a witness for a Joint Application for Divorce would be an Australian lawyer or a Justice of the Peace.

However, if your former partner is residing overseas, they will need to attend upon a Notary Public or seek assistance at their closest Australian Consulate.

A Joint Application for Divorce cannot be signed electronically, meaning the person residing overseas cannot engage an Australian lawyer or Justice of the Peace to witness their signature via a video conference. If attending upon an appropriate witness is not practical for the person residing overseas, then the person living in Australia should consider applying for a Sole Application for Divorce.

Sole Application for Divorce

If you file a Sole Application for Divorce (on your own), you will be required to serve the sealed divorce documents on your former partner (or their Australian lawyer). The Court needs to know that your former partner has knowledge of the application and the divorce hearing.

You will always need to serve the following documents:

- The Application for Divorce;
- Affidavit for eFiling Application (Divorce);
- Your marriage certificate;
- The prescribed court brochure '[Marriage, Families and Separation](#)'; and
- [Acknowledgement of Service \(Divorce\)](#).

You will also need to serve any other documents filed with your Application for Divorce, such as supporting Affidavits, evidence of citizenship etc.

Timeframe for service of an Application for Divorce

The timeframe for service of your Application for Divorce is different when your former partner is overseas.

The application must be served on your former partner **at least 42 days** before the Divorce Hearing (as opposed to 28 days when your former partner is in Australia).

How do I demonstrate that the divorce service requirements have been satisfied?

If your former partner agrees to obtain a divorce but cannot attend upon an appropriate witness to make a Joint Application for Divorce, they may be willing to accept service of a Sole Application for Divorce.

In that case, you can email/post the Sole Application for Divorce documents to your former partner (or their Australian lawyer). Your former partner (or their Australian lawyer) can then sign and return the Acknowledgement of Service (Divorce).

You will then need to complete the following documents and file all service documents with the Court prior to the Divorce Hearing:

- [Affidavit of Service by Post \(Divorce\)](#); and

- [Affidavit Proving Signature \(Divorce\)](#).

What if I cannot serve the divorce documents on my former partner?

This is a common problem that arises when a former partner is overseas. Your former partner may be avoiding service, or you may not be able to locate them.

In these scenarios, the divorce process becomes more difficult. If your former partner was in Australia, you could seek the assistance of a family member, friend, or professional process server to personally serve the divorce documents on your former spouse. However, this may not be possible where your former partner is overseas.

You will need to prepare and file an [Application in a Proceeding](#) together with a supporting Affidavit.

When your former partner is avoiding service of divorce documents

Where your former partner is avoiding service, you will need to make an application for Substituted Service. This is where the Court allows you to serve the application electronically (via email or a social media account), by post (at your former partner's last known address) and/or on a third party (who will bring the application to the attention of your former partner).

When your former partner cannot be located

Where you are unable to locate your former partner, you will need to make an application to Dispensation of Service. This is where the Court will allow a Sole Application for Divorce to proceed without the requirement to serve the divorce documents on your former partner.

The Court must be satisfied that you have taken all reasonable steps to locate your former partner but failed, or that substituted service is not an option in your circumstances.

The Court may make an order dispensing with service with or without further conditions. Examples of conditions could include:

- posting the documents to your former partner's last known address (whether that be in Australia or overseas);

- sending the documents via email or social media; or
- sending the documents to their family members or friends.

Your supporting Affidavit (that you file with your Application in a Proceeding) should outline all steps taken by you or your lawyer to locate your former partner. The Court website provides a [helpful list of ways in which you can attempt to contact your former partner](#).

Once filed, your Application in a Proceeding will generally be listed for a hearing on the same date and time as your Divorce Hearing.

Attending the Divorce Hearing

Divorce Hearings are generally conducted by telephone, making it easier for a person who is overseas to attend the hearing.

However, you and/or your former partner may need to attend the hearing if:

1. there are children under the age of 18; or
2. where you have made an Application in a Proceeding for Substituted Service or Dispensation of Service.

If the person residing overseas does not want to (or is unable to) attend the divorce hearing, they can engage an Australian Lawyer to attend on their behalf. In some matters, the party's attendance may be excused altogether.

In these scenarios, you or your lawyer should attend the hearing as the Court may request further information from you.

If you have made an Application in a Proceeding as you have been unable to serve the divorce papers, it is extremely unlikely that the Court will grant your Application for Divorce at the first hearing. The Court will generally list your matter for another hearing on a later date and direct you to take additional steps to serve the divorce documents on your former partner.

Once the Court is satisfied, amongst other things, that you have taken any additional steps, your Application for Divorce will be granted.

Get help from a family lawyer

If your former partner is overseas and you need assistance with the divorce process, contact one of our lawyers for a free consultation to discuss how we can help you. We are also able to assist with financial settlements and parenting arrangements where your former partner is overseas.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.