

Divorce



Who is this booklet for?

The information in this booklet will help you if:

- you are married and live permanently in Western Australia, and
- you and your husband or wife ('spouse') have separated and you won't be getting back together.

What assistance can ALSWA provide?

ALSWA's Family Law Unit can help with divorce applications in limited circumstances where you cannot represent yourself. For example, you may not be able to read or write, or you may be very sick or a long distance from the family court. ALSWA may be able to help you complete your divorce application but will rarely be able to represent you in the Family Court. When you come to ALSWA for assistance, we will assess your circumstances and advise what level of assistance we can provide. It's important to note that ALSWA services are means tested (according to your income and assets), which means not every Aboriginal and Torres Strait Islander person is automatically eligible for assistance.

What is divorce?

Divorce is the formal ending of a marriage. In Western Australia divorce occurs by applying to the Family Court and receiving a divorce order. Generally, applications for divorce are handled by the Family Court of Western Australia. The Family Court is based in Perth but also sits in Albany, Broome, Bunbury, Geraldton and Kalgoorlie several times a year.

When can you apply for divorce?

Before you can apply for a divorce order you must have been separated and living apart from your spouse for at least 12 months and one day. It is possible to be separated while living under the same roof; however you'll need to give the Family Court extra information to prove your separation and you will need to attend the divorce hearing.

Being separated means that your relationship has broken down completely. You might have moved into separate homes or changed your sleeping arrangements, ended your sexual relationship, separated your money matters, stopped going on family outings together or stopped doing domestic jobs for each other.

If you've been married for less than 2 years, you'll also need to visit a family counsellor together to talk about the possibility of reconciling. If you don't visit a counsellor, you need to have the Family Court's permission to go on with your application.

Who can apply for divorce?

Either you or your spouse can make an application for divorce, or you can make a joint application for divorce together. A joint application is more straightforward but it doesn't suit everyone.

How do you apply for divorce?

To find out how to apply for divorce you should read the Family Court's 'Divorce Kit' which you can get from the Family Court or their website (details are at the end of this booklet).

What fee is there?

You must pay a filing fee to file a divorce application or half the filing fee each in a joint divorce application. In certain circumstances, you can apply for a reduced fee. Talk to the Family Court to find out how much this will be (contact details are at the end of this booklet).

Does your husband or wife need to consent?

You do not need your spouse's consent to apply for divorce. You can make an application by yourself even if your spouse doesn't want to get divorced. If your application for divorce is accepted by the Family Court your marriage can be ended even if your spouse doesn't want it to end.

What does your application need to include?

To make the application you have to complete a 'Form 3 Application for Divorce', which is in the 'Divorce Kit'. You can also get this form from the Family Court or from their website (details are at the end of this booklet).

What does your application need to include? (Continued)

There are some specific requirements you need to meet and documents you need to include with your application. For example, you'll need to provide information about the date of your marriage, details of your separation and the arrangements you've made for children in your family. This includes any children living in your household at separation who are still under 18 years old. The 'Divorce Kit' explains everything you need to include. You also need to provide a certified copy of your marriage certificate unless there is already one on the Family Court file.

What do you do when your application is ready?

When your application is ready you need to file it with the Family Court. This means you give your application to the Family Court with 2 photocopies of the application. The Family Court will then give you a court date for your divorce hearing and give you back 2 stamped copies of your application.

What if you make the divorce application without your spouse?

If you file the divorce application to the Family Court on your own then you need to organise for a copy to be given to your spouse. This is known as 'service'.

What do I need to do to serve the divorce application?

You need to make sure that a copy of the application, stamped by the Family Court, is personally delivered to your spouse along with the Family Court brochures provided by the court when you filed your application.

You cannot hand the divorce application to your spouse yourself

Instead, you can ask a friend to personally deliver it for you. Otherwise, you can organise a 'process server' - a person whose job is to officially serve documents on other people. A lawyer may be able to help organise a process server who will charge you a fee. You can mail the divorce application to your partner if you are confident that your partner will sign and return an "acknowledgment of service" form.

How do I prove that the documents have been served?

The person who serves the documents on your spouse needs to complete an 'Affidavit of Service' to prove that they served the divorce application properly. There are several requirements for this affidavit which are explained in the 'Divorce Kit'. You can seek legal advice or contact the Family Court for an explanation of the requirements. You may also need to sign and file an Affidavit of Proof of Signature or attach a photo of your spouse that was given to the process server.

What if I can't contact my spouse?

Sometimes service is difficult, especially if your spouse cannot be contacted. If this happens, the Family Court can make orders for special forms of service such as by post or public notice. You should get legal advice if you cannot serve your spouse.

Do you need to attend Family Court for your divorce hearing?

If you and your spouse have no children under 18 years old, you don't need to go to the Family Court on the court hearing date. The Family Court can deal with your divorce application without you there. You must ask for this on the application form.

If you and your spouse do have children under 18 years old, then you (and your spouse if you made a joint application) must attend the Family Court on your court hearing date. If the children are not in your care, you may have to give evidence about the arrangements you've made for them. You may have to get affidavit evidence from your spouse about the arrangements made for the children as well. This includes all children who were part of the household when you separated. If you live a great distance from all of the Family Court sittings then you may want to enquire about alternative arrangements such as being represented by a lawyer or appearing by telephone.

You will also need to attend Family Court if you have been living separated under the same roof.

When do you become divorced?

If your divorce application is successful then the Family Court will make an order called decree nisi. One month and one day after the decree nisi order is made by the Family Court, your marriage will completely end. This order is then described as being 'absolute' because you are then absolutely divorced. When this happens, you'll be sent a certificate of divorce from the Family Court.

The effects of divorce

There are some important legal effects that divorce has.

You'll need to make an application to sort out your property

You have 12 months from the day your decree nisi becomes absolute to apply to the Family Court for orders that deal with the property belonging to you and your spouse. If you don't do this within 12 months you might not be able to properly sort out your financial affairs. You should seek legal advice or talk to the Family Court about this application.

You'll need to make a new Will

If your marriage ended on or after 9 February 2008, your divorce will make any Will that you had invalid. So you'll need to make a new Will (see our 'Wills' booklet for information about making a new Will).

If your marriage ended on or before 8 February 2008, the divorce won't affect your Will. However, once your marriage has ended you may need to have a new Will prepared anyway, so that it doesn't authorise property to go to your former spouse if you'd prefer it to go to someone else instead.

Important contact details

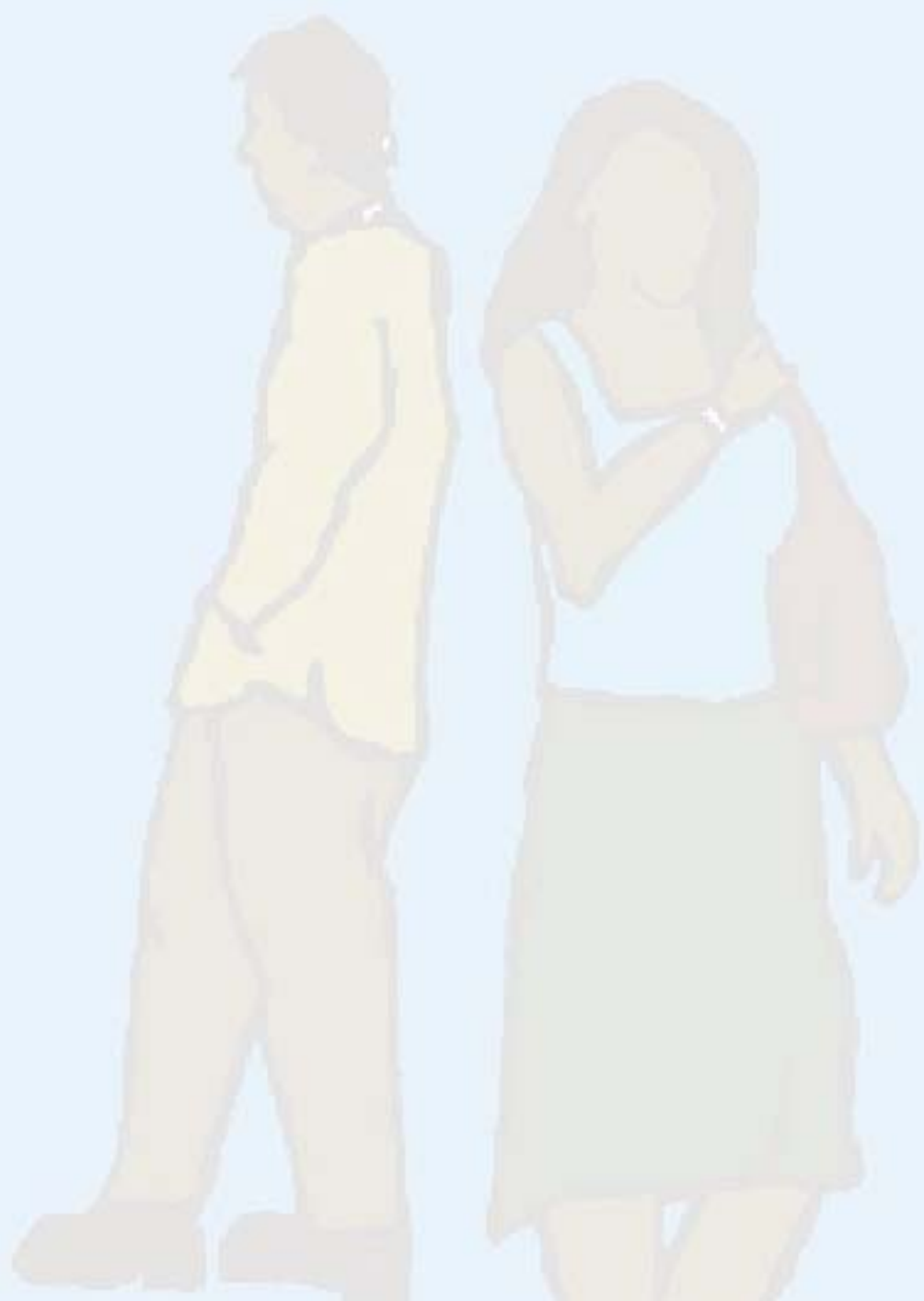
Family Court of Western Australia

Level 1, 150 Terrace Road, Perth, WA 6000

Ph: 08 9224 8222

Website: www.familycourt.wa.gov.au

Notes



Aboriginal Legal Service of Western Australia offices

PERTH (Head office)	Piccadilly Suites 7 Aberdeen Street (near McIver Train Station) PERTH WA 6000 Ph: 08 9265 6666 or Freecall: 1800 019 900
ALBANY	Shop 13 The Link, 24 St Emile Way (cnr Aberdeen Street) ALBANY WA 6330 Ph: 08 9841 7833 or Freecall: 1800 016 715
BROOME	1/41 Carnarvon Street BROOME WA 6725 Ph: 08 9192 1189 or Freecall: 1800 351 067
BUNBURY	Unit 7 Koombana Court, 141 Victoria Street BUNBURY WA 6230 Ph: 08 9791 2622 or Freecall: 1800 630 375
CARNARVON	58 Robinson Street CARNARVON WA 6701 Ph: 08 9941 1534 or Freecall: 1800 645 942
FITZROY CROSSING	Shop 7, Tarunda Shopping Complex FITZROY CROSSING WA 6765 Ph: 08 9191 5147
GERALDTON	73 Forrest Street GERALDTON WA 6530 Ph: 08 9921 4938 or Freecall: 1800 016 786
HALLS CREEK	Office 7, Halls Creek Community Centre, Thomas Street HALLS CREEK WA 6770 Ph: 08 9168 6156
KALGOORLIE	42 Maritana Street KALGOORLIE WA 6430 Ph: 08 9021 3666 or Freecall: 1800 016 791
KUNUNURRA	81 Konkerberry Drive KUNUNURRA WA 6743 Ph: 08 9168 1635
MEEKATHARRA	7 Main Street MEEKATHARRA WA 6642 Ph: 08 9981 1712
NEWMAN	Unit 2/20 Hilditch Avenue NEWMAN WA 6753 Ph: 08 9175 0764
NORTHAM	125A Fitzgerald Street NORTHAM WA 6401 Ph: 08 9622 5933 or Freecall 1800 442 015
ROEBOURNE	Harding Street ROEBOURNE WA 6718 Ph: 08 9182 1107
SOUTH HEDLAND	Unit 7 Lotteries House, Leake Street SOUTH HEDLAND WA 6722 Ph: 08 9172 1455 or Freecall: 1800 650 162

© Aboriginal Legal Service of Western Australia (Inc) 2012, all rights reserved.

Date of print: 2012

Disclaimer: The information contained in this publication is provided in good faith for information purposes only and does not constitute legal advice. The information is correct at the time of printing however the law may change at any time. The information is provided on the basis that all persons undertake responsibility for assessing the relevance and accuracy of the content. For legal advice please contact your nearest ALSWA office.

Funded by the Australian Government Attorney-General's Department.

Artwork by Peter Farmer design by Jason Hirst

