

# How do I get a divorce if I was married overseas or don't have my Marriage Certificate?

## The basics of divorce in Australia

When you get divorced, you are asking the Court to legally end your marriage. "Getting divorced" does not decide parenting or financial arrangements between spouses. In Australia, an application for divorce is made to The Federal Circuit and Family Court of Australia (the Court).

To get a divorce, you need to prove to the Court that:

- ❑ you have been validly married for at least 2 years.
- ❑ the Court has jurisdiction (which means the court has the power to deal with your divorce application). This only happens if at least one of the spouses have a connection to Australia.
- ❑ you have been separated for at least 12 months.
- ❑ your marriage has broken down permanently.

For marriages in Australia, a Marriage Certificate is good evidence of a valid marriage. When you lodge your [Application For Divorce](#), you will be asked to upload a copy of your Marriage Certificate.

**Disclaimer:** This factsheet gives general information only. It is not legal advice. If you have a legal problem, always get advice from a lawyer. This information accurate as of October 2022.

## Overseas marriages

If you were married overseas, you are able to get a divorce in Australia. However, your marriage must be a "valid marriage", meaning:

1. Your marriage is valid in the country it took place.
2. Neither of you had a valid marriage recognised in Australia with another person at the time of the marriage
3. Both of you were at least 18 years old at the time of marriage (or 16 years old in exceptional circumstances)
4. Both parties consented to the marriage (that is, you willingly agreed to marry and were not forced through fraud or duress)
5. You were not related by family (a 'prohibited relationship' for marriage)

### Other evidence you might need for divorce:

Depending on your situation, there may be other things you need to prove to the court, such as:

- whether proper arrangements have been made for any children of the marriage under 18 years old
- that you have genuinely been separated under the same roof
- that you have attempted counselling if you have been married less than 2 years.

You should always get independent legal advice about your situation.

For the definition of a "**valid marriage**" see See the [Marriage Act \(1961\)](#), especially Parts III & VA

## Documents and evidence you need for divorce:

**Option 1:** The best evidence of a valid marriage is your overseas Marriage Certificate or some other record issued by the relevant Authority. This includes evidence of religious ceremonies, for example, from a Priest or Imam.

**Option 2:** If you cannot get a copy of your overseas Marriage Certificate or other record of marriage, you can prepare an Affidavit in Lieu of Marriage Certificate.

## How to complete an Affidavit for divorce (Option 2):

There is no court form called Affidavit in Lieu of Marriage Certificate. You need to:

- get a blank Affidavit from the Court
- add the words “Affidavit in Lieu of Marriage Certificate” to it.

[Download a copy of a blank Affidavit and find out more about Affidavits.](#)

In the Affidavit, you must:

- explain why you cannot provide a Marriage Certificate
- give details about the marriage ceremony, including time, place and form
- where appropriate, list the requirements of a valid marriage in the place where the marriage ceremony took place; and
- confirm that the parties (you and your partner) recognised one another, and were recognised by others as spouses (a married couple) after the marriage ceremony.

The Court's [Family Law Practice Direction: Divorce proceedings](#) explains in more detail what information you need to include in the Affidavit.

### **Example: Anna wants to get divorced but lost her Turkish Marriage Certificate**

Anna married 25 years ago in Turkey. She migrated to Australia with her husband 10 years ago. Anna and her husband separated 18 months ago, and she wants to apply for a divorce.

Unfortunately, Anna lost her marriage certificate in a house fire. Anna wrote to the Turkish marriage authority asking for another copy of her Marriage Certificate. They responded saying they could not locate her marriage certificate.

### ***Example continued...***

Anna had a lawyer prepare an Affidavit in Lieu of Marriage Certificate to tell the Court about her situation. We have attached the Affidavit in Lieu of Marriage Certificate for Anna, to show you what it looks like.

Next, the Court will tell Anna whether her Affidavit is enough to grant her a divorce. Or they will give Anna instructions about further evidence she needs.

[Download and example of a completed Affidavit for divorce with no marriage certificate](#)

## **Your must arrange to translate documents that are not in English**

If your Marriage Certificate is not in English, the Court requires you to provide an [Affidavit— Translation of Marriage Certificate](#).

You will need to pay an accredited translator to:

- complete this document (Affidavit – Translation of Marriage Certificate)
- attach to it the original Marriage Certificate
- attach to it and a certified translation of the Marriage Certificate
- also provide their qualifications as a translator.

You will need to pay the translator to translate the Marriage Certificate and to complete the Affidavit of translation. Costs of this may vary. Please contact these services to find a qualified translator:

- [Translating and Interpreting Service \(TIS\)](#): 131 450 or <https://www.tisnational.gov.au/>
- [National Accreditation Authority for Translators and Interpreters Ltd](#): 1300 557 470 or <https://www.naati.com.au/>

## **Where can I get legal support?**

For people living in Liverpool, Fairfield and Bankstown LGAs, we can support you to get a divorce. We can also help with other family law issues, such as parenting arrangements and property division.

### **Free legal advice over the phone:**

Call on Tuesdays and Thursdays between 11:30am and 1:30pm

Phone: (02) 9601 7777

Email: [info@swwslc.org.au](mailto:info@swwslc.org.au)

You can also contact [LawAccess](#) for legal help in NSW: 1300 888 529

Visit the Court's website for [more information about divorce](#).