



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

# **DIVORCE PROCEEDINGS (FAM-DIVORCE)**

## Family Law Practice Direction

### **1. INTRODUCTION**

- 1.1 This Practice Direction applies to all family law proceedings seeking:
- (a) a divorce order;
  - (b) the extension or reduction of the period at the expiration of which the divorce order will take effect pursuant to section 55 of the *Family Law Act 1975* (Cth) (**Family Law Act**); and
  - (c) an application for rescission of a divorce order pursuant to sections 57 and 58 of the Family Law Act (**divorce proceedings**).
- 1.2 It is to be read together with:
- (a) the Family Law Act;
  - (b) the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (**Family Law Rules**); and
  - (c) Central Practice Direction – Family Law Case Management.
- 1.3 This Practice Direction applies to all proceedings commenced on or after 1 September 2021. This Practice Direction will also apply to all proceedings commenced prior to 1 September 2021, unless unfair or impractical to do so.
- 1.4 To the extent this Practice Direction is inconsistent with any act, regulation, rule or other legislative provision (whether or not expressly listed above), the act, regulation, rule or other legislative provision shall prevail.

#### ***Before a proceeding starts***

- 1.5 Parties to divorce proceedings are exempt from complying with the pre-action procedures in Schedule 1 of the Family Law Rules under rule 4.01(2)(a).

## 2. APPLICATION

### ***Where to commence***

- 2.1 A divorce proceeding must be commenced in the Federal Circuit and Family Court of Australia (**FCFCOA**) (Division 2).
- 2.2 Divorce proceedings cannot be commenced in the FCFCOA (Division 1).

### ***Parties to divorce proceedings***

- 2.3 A divorce proceeding may only be commenced by a party to the marriage.
- 2.4 An application must include all necessary parties: see Part 3.1 of the Family Law Rules.

### ***Making an application and documents to file***

- 2.5 An application for a divorce order is commenced by filing an *Application for Divorce* by one party (**sole application**) or both parties jointly (**joint application**).
- 2.6 The following documents must be filed with an *Application for Divorce*:
- (a) a copy of the marriage certificate; and
  - (b) if the marriage certificate is not in English:
    - (i) a translation of the marriage certificate in English; and
    - (ii) an *Affidavit – Translation of Marriage Certificate* by the person who made the translation verifying the translation and setting out the person's qualifications as a translator; and
  - (c) if the *Application for Divorce* is filed within 2 years from the date of marriage, a certificate from a family counsellor or other specified person or organisation certifying that the parties have attended counselling and/or considered reconciliation: see section 44(1B) of the Family Law Act.
- 2.7 If the applicant is unable to file a marriage certificate, the applicant must either:
- (a) file an affidavit addressing the following:
    - (i) why the marriage certificate is unable to be provided;
    - (ii) details about the marriage ceremony, including time, place and form;

- (iii) where appropriate, the requirements of a valid marriage in the place where the marriage ceremony took place; and
  - (iv) confirmation that the parties recognised one another, and were recognised by others as spouses following the marriage ceremony;  
or
- (b) provide the Judicial Registrar or Deputy Registrar with an undertaking, satisfactory to the Judicial Registrar or Deputy Registrar, to file the marriage certificate within a specified time.
- 2.8 Any other divorce proceeding (being any application for the extension or reduction of the period at the expiration of which the divorce order will take effect, and any application for rescission of a divorce order) is commenced by filing an *Application in a Proceeding*.
- 2.9 An applicant filing an *Application in a Proceeding* must file an affidavit setting out the facts relied upon in support of the orders sought.
- 2.10 The applicant must also pay the filing fee set by regulation (including any reduced fee). A Judge or Judicial Registrar may require a party to give an undertaking to pay a filing fee before accepting a document for filing.

***When an affidavit is required***

- 2.11 An *Affidavit for eFiling Application (Divorce)* is required to be filed by the applicant in a sole application, or both parties in a joint application, at the time of filing the *Application for Divorce*.
- 2.12 An affidavit is required to be filed with an *Application for Divorce* in the following circumstances:
- (a) the applicant is unable to file the marriage certificate (unless the applicant provides an undertaking to the satisfaction of a Judicial Registrar or Deputy Registrar to file the marriage certificate);
  - (b) the marriage certificate is not in English; or
  - (c) where the parties were living separately under the one roof for a period of time during the 12 months preceding the filing of the *Application for Divorce* (see fact sheet entitled 'Separated but living under one roof'); or

- (d) as may otherwise be directed by the Judicial Registrar or Deputy Registrar.

2.13 An affidavit is required to be filed with an *Application in a Proceeding* in all divorce proceedings.

2.14 Any affidavit filed must be in the proper form as outlined in rules 2.14 (Formal requirements for documents) and 5.08 (Limit on number and length of affidavits) of the Family Law Rules.

***Notifying the other party/parties***

2.15 A joint application does not need to be served.

2.16 In a sole application, the applicant must serve the following documents on the respondent in accordance with Division 2.6.4 of the Family Law Rules:

- (a) the *Application for Divorce* and supporting documents;
- (b) the [Marriage, Families and Separation brochure](#);
- (c) if service is to be effected by post within Australia:
  - (i) an *Acknowledgment of Service (Divorce)*; and
  - (ii) an envelope that is pre-addressed to the applicant's address for service and has the correct postage for the return of the *Acknowledgment of Service (Divorce)* to the applicant; or
- (d) if service is to be effected by hand, an *Acknowledgment of Service (Divorce)*.

2.17 If the applicant in a sole application is unable to serve the respondent in accordance with the Family Law Rules, an applicant may apply to the Court for orders dispensing with service or to serve the document in another way: see rule 2.34 of the Family Law Rules. Such an application is to be made by filing an *Application in a Proceeding* with a supporting affidavit setting out the facts relied upon for the application.

2.18 Following service upon the respondent and prior to the hearing date, the applicant must file an *Affidavit of Service by Post (Divorce)* or *Affidavit of Service by Hand (Divorce)*, depending on the method of service used to serve the respondent. If the respondent is served by hand by a person who did not

know the respondent, the applicant must also file an *Affidavit Proving Signature (Divorce)* prior to the hearing date.

2.19 Parties should refer to the *Divorce Service Kit* for step by step instructions regarding service.

### ***What the Court will do next***

2.20 Upon filing the *Application for Divorce* and supporting documents, the Court will fix a date for the hearing as soon as practicable for the first Court event. If the *Application for Divorce* is eFiled, the applicant/s can choose the next available date on the Commonwealth Courts Portal.

2.21 The date fixed must be:

- (a) if the respondent is in Australia, at least 42 days after the application is filed; or
- (b) if the respondent is outside Australia, at least 56 days after the application is filed.

2.22 Divorce hearings are conducted by a Judicial Registrar or Deputy Registrar.

## **3. RESPONDING TO AN APPLICATION**

3.1 A respondent may:

- (a) acknowledge service by completing the *Acknowledgment of Service (Divorce)* and returning it to the applicant; and/or
- (b) request that the proceeding not be heard in the absence of the parties by filing and serving a written notice to that effect no later than 7 days before the date fixed for hearing; and/or
- (c) file a *Response to Divorce* if they wish to oppose the divorce order sought by the applicant or clarify anything contained in the *Application for Divorce*.

3.2 If a respondent is not opposing the divorce, no further documents should be filed, but the respondent should return the *Acknowledgment of Service (Divorce)* to the applicant.

3.3 A *Response to Divorce* must be filed:

- (a) Within 28 days after the *Application for Divorce* was served on the respondent, if the respondent is served in Australia; or
- (b) within 42 days after the *Application for Divorce* was served on the respondent, if the respondent is outside of Australia.

3.4 A *Response to Divorce* must be served on the applicant as soon as practicable after filing.

#### **4. ATTENDANCE AT HEARING**

4.1 Unless otherwise advised, all divorce hearings will occur via electronic means. Parties will be notified of the method and details for the electronic hearing in advance of their allocated Court date.

4.2 The Court may determine an *Application for Divorce* in the absence of the parties where:

- (a) in a sole application:
  - (i) a *Response for Divorce* has not been filed;
  - (ii) at the time of the divorce hearing, there are no children of the marriage within the meaning of subsection 98A(3) of the Family Law Act;
  - (iii) either the applicant or the parties have jointly requested that the proceeding be heard in the absence of the parties; or
  - (iv) the respondent has not objected to the proceeding being heard in the absence of the parties; or
- (b) in a joint application:
  - (i) the parties have jointly requested that the proceeding be heard in their absence; or
  - (ii) one party has requested the proceeding be heard in the absence of the parties and the other has not objected.

4.3 If neither paragraph 4.2(a) nor paragraph 4.2(b) applies, or the Court directs otherwise, the applicant must attend court or be represented by a lawyer.

4.4 If a *Response to Divorce* is filed:

- (a) the hearing must proceed in open court; and
  - (b) each party must attend court or be represented by a lawyer;
- unless the *Response to Divorce* does not raise any issues with respect to the Court's jurisdiction or power to make the order.

4.5 If when required to attend:

- (a) one party fails to attend the hearing either in person or represented by a lawyer, the other party may proceed as if their *Application for Divorce* or *Response to Divorce* was undefended; or
- (b) both parties fail to attend the hearing either in person or represented by a lawyer, the *Application for Divorce* and/or *Response for Divorce* may be dismissed.

***Failure to comply***

4.6 A failure to comply with this Practice Direction and any directions of the Court (including to correct any errors in documents filed with the Court) may result in the application being dismissed or stayed.

***When a divorce order takes effect***

4.7 A divorce order takes effect at the expiration of one month from the making of the divorce order, unless otherwise ordered by the Court: see section 55(1) of the Family Law Act.

**5. FURTHER INFORMATION**

- 5.1 For information on how family law proceedings are conducted in the FCFCOA, please refer to Central Practice Direction – Family Law Case Management.
- 5.2 Parties should also consult the FCFCOA website at [www.fcfcqa.gov.au](http://www.fcfcqa.gov.au) for further information about divorce proceedings.

The Honourable Justice William Alstergren  
Chief Justice (Division 1) | Chief Judge (Division 2)  
Federal Circuit and Family Court of Australia  
Date: 1 September 2021