

# Untangling The Divorce Knot in Australia:

Safeguarding Your Rights and  
Embracing New Beginnings

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## WHERE TO START?

When marriages become irreconcilable, they can end peacefully or create more hardship. This guide will walk you through the vital steps of divorce. If applicable, you will learn how to file for divorce and organise spousal maintenance.

We will explore how to cope emotionally post-divorce. It is crucial to re-establish your social life and adjust to co-parenting. The financial implications of divorce are also critical. We will look at tax and insurance considerations as well as retirement planning.

### *The Family Court and divorce*

The divorce process always involves the Court system. The Federal Circuit and Family Court of Australia has the jurisdiction to deal with divorce.

The Court's role in divorce proceedings can vary between cases. It has the essential function of processing divorce applications and providing divorce orders. Still, there are several other matters a Court may deal with either before or after a divorce order. These matters include:

- ◆ Assessing property settlements;
- ◆ Organising parenting orders;
- ◆ Determining child and spousal maintenance.

Australia adheres to the principle of no-fault divorce. This principle means that the reason for a marriage ending has no bearing on a divorce. All that's relevant is that the marriage has broken down irretrievably.



# PREPARING AND FILING A DIVORCE APPLICATION

Before applying for a divorce, check the Federal Circuit and Family Court's [website](#) to ensure your eligibility.

## APPLICATION CHECKLIST

- Register on the [Commonwealth Courts Portal](#);
- Select the Application for Divorce, fill out all sections and save it;
- Upload supporting documents, such as:
  - Marriage certificate;
  - Counselling certificate for marriages under two years;
  - Other applicable court orders.
- Print the application and sign the form, 'Affidavit for eFiling Application (Divorce)';
  - Sole applicants don't require their partner's signature;
  - Joint applicants must both sign any required Affidavits;
  - A qualified witness (e.g., Justice of the Peace) must witness the signatures.
- Upload the signed Affidavit;
- Download the Marriage, Families and Separation brochure;
- Submit the application and pay the filing fee;
- Select a date for the court hearing;
  - Sole applicants must attend the hearing if they have children under 18 years old;
  - Joint applicants only need to attend if they wish to.
- Sole applicants must now serve the divorce papers on their spouse.
  - You must serve the papers at least 28 before the hearing;
  - You must use a third party over 18 to serve the documents.

## SPOUSAL MAINTENANCE

If one spouse becomes financially insecure due to separation, they may be eligible for spousal maintenance. Payments can be in instalments or as a lump sum.

## ELIGIBILITY CHECKLIST

- ✓ One spouse cannot financially support themselves;
- ✓ The other spouse can provide financial support;
- ✓ A party can apply for maintenance at any time after separation;
- ✓ Time limits for spousal maintenance applications are;
  - ✓ Within one year of a finalised divorce;
  - ✓ Within two years of the end of a de facto relationship.
- ✓ Maintenance payments stop if the party receiving payments:
  - ✓ Remarries;
  - ✓ Improves their financial situation;
  - ✓ Significantly changes their parenting responsibilities.



## CALCULATING SPOUSAL MAINTENANCE

There's no equation for determining maintenance payments. The Court will consider various factors, including each party's:

- Expenses and earning capacity;
- Financial resources such as property;
- Caring responsibilities;
- Existing financial agreements;
- Future earning capacity.

## SPOUSAL MAINTENANCE APPLICATION CHECKLIST

You may apply for maintenance orders on your own. However, organising maintenance when creating a property settlement is often preferable. If the parties agree on maintenance, they can apply for consent orders:

- Download the Application for [Consent Orders](#);
- Fill out the relevant section on spousal maintenance;
- Both parties must sign the Statement of Truth;
- Submit the application through the Commonwealth Courts Portal.

If parties cannot agree, one party can seek maintenance orders through an [initiating application](#). Spouses must go through mediation and receive a Genuine Steps Certificate before seeking final orders.

- Download and fill out an initiating application form;
- Fill out a financial statement to disclose your financial circumstances;
- Sign and submit the application through the Commonwealth Courts Portal along with the following:
  - A financial statement;
  - Genuine Steps Certificate.



## EMOTIONAL AND PSYCHOLOGICAL WELLBEING AFTER DIVORCE

Taking time to concentrate on self-care is crucial after a divorce. Self-care can take many forms.

### SELF-CARE CHECKLIST

- Exercise:** Exercise can improve your mental health as much as your fitness. It's also a great way to connect with friends.
- Start a new routine:** Changing daily habits and trying new things can help you to feel that you're starting a new chapter.
- Change your environment:** Your living space can hold painful reminders of the past. Redecorating can help you embrace a new life.

### *Professional help*

Deciding to talk to a therapist can be a difficult step to take. However, therapy can help you develop strategies to find closure and improve your emotional wellbeing. Seeking help isn't a sign of weakness. It shows your commitment to improving your circumstances and not dwelling on the past.

# BUILDING A NEW LIFE POST-DIVORCE

## PURSUE YOUR PASSIONS

- ✔ **Hobbies:** Perhaps there was a hobby you stopped making time for. Activities you enjoy keep your mind off painful memories.
- ✔ **Passion project:** Many people have something specific they want to achieve. It could be writing a book, getting fitter or pursuing a business idea. Post-divorce may be the time to revisit those goals.
- ✔ **New experiences:** Finding new things to enjoy can help you reimagine your life. Travelling or pursuing qualifications can open doors in your new life.

## *Developing a support network*

Many people withdraw socially after a divorce. This behaviour can lead to adverse effects on your mental and emotional health. Finding ways to reconnect is critical.

Developing a support network can reduce the loneliness that often accompanies divorce. A support network might include family, friends, a therapist and community groups.

## TIPS FOR SUCCESSFUL CO-PARENTING

- ❖ **Agree on a plan:** Parenting plans help structure co-parenting arrangements. When parents know what to expect of each other, they can feel more confident about the situation.
- ❖ **Be flexible:** Unforeseeable events can happen. Be understanding when circumstances force your ex-spouse to change an agreed plan.
- ❖ **Be supportive:** Support your child's relationship with their other parent. This helps your child feel that their part of a cohesive family.



# FINANCIAL PLANNING AFTER DIVORCE

It's essential to understand your financial position after divorce and budget accordingly.

## POST-DIVORCE BUDGETING CHECKLIST

- Account for all income streams;
- Determine your expenses;
- Reduce bills by looking at other providers;
- Research what government benefits you're eligible for.

## *Post-divorce retirement planning*

Property settlements can help you at retirement. The Court prioritises the parties' future needs when dividing property. Superannuation splitting laws permit parties to split super interests. A split enables a party to receive either a percentage or a set amount of the other party's superannuation balance. This can be a crucial feature in retirement planning.

## *Tax implications of divorce*

Child support and spousal maintenance are not taxable income. Also, assets in a property settlement usually qualify for the relationship breakdown rollover. This rollover defers the usual capital gains tax (CGT) payable on transferred assets.

The rollover may exempt your primary residence from CGT when you dispose of it. The exemption doesn't apply if you used the home for rent, business purposes, or for more than 2 hectares of land.

## *Insurance implications of divorce*

What happens to insurance policies largely depends on the provider. Sometimes policies are split between the parties or transferred to one person. Insurers may also only allow certain benefits in a policy to be transferable. You may also need to update your policy to reflect your changed circumstances.

## CONCLUSION

Divorce and associated actions like spousal maintenance have specific steps to follow. Also, ensure you have all the necessary supporting documents so your application is successful.

Be aware of any tax or insurance implications after your divorce. You may be eligible for concessions that reduce your money concerns. These considerations are essential for your long-term financial health.

What many people don't discuss is the necessity of self-care after divorce. Find ways to protect your emotional wellbeing and foster a reliable support network.

Contact Shanahan Family Law for an initial consultation so we can help take the stress out of divorce.