

Divorce without waiting for spouses with a final protection order

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Parties usually have to be living apart for two years before they can apply to the Court to dissolve their marriage and formally divorce. The aim of the new law is that victims will be able to move on without being tied to their abuser, with the purpose of reducing the harm caused by family violence.

The Family Proceedings (Dissolution or Marriage or Civil Union for Family Violence) Amendment Act 2024 creates an exception to this two year waiting period. If the person

applying for a dissolution has a final protection order (or a registered foreign protection order) against their spouse, they can apply right away.

Protection orders are made where they are necessary to protect against ongoing family violence, which includes physical, sexual, psychological, and financial abuse. Abuse can also be made up of a pattern of behaviour that – when looked at in total – causes harm, even if each individual act seems minor.

Victims of past family violence will generally not be able to get a protection order if there isn't evidence of ongoing abuse. In that situation, they would still need to wait the usual two years before being able to apply to end their marriage.

Once a marriage is dissolved, proceedings to divide relationship property need to be filed within one year. Usually that will mean at least three years from separation (because of the usual two year delay) but parties who divorce more quickly will have to be careful not to run out of time.

If you have questions or would like more info, please contact our family law team.