

**Family**Law  
Resolutions

# Navigating Separation

*Children, Property & Divorce*



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# Introduction



Separation can be difficult. Dealing with complicated legal applications and expensive legal fees can add further stress. At Family Law Resolutions, we help you to move forward with your divorce and property settlement applications with our fast, professional service and fixed fees.

This Family Law Resolutions Separation eGuide is designed to provide you with a general overview and information about the big issues faced by separated couples in Australia.

We know that with the right information and advice you can not only survive separation but move through the process with confidence and certainty.

At Family Law Resolutions, we have assisted thousands of Australians through separation, property settlements, parenting arrangements and divorce.

Our mission is to help you to finalise your separation in an affordable and stress-free way, so you can move on with peace of mind.

Family Law Resolutions can help you with:

- ✓ **Divorce**
- ✓ **Property settlement**
- ✓ **Parenting arrangements**
- ✓ **Consent Orders**
- ✓ **Court applications**
- ✓ **Advice and drafting**

Our specialised service and fixed fees allow you to complete divorce and property settlement applications from the comfort of your home, saving you thousands of dollars along the way.

Our team of experienced family lawyers help make the process as simple and pain free as possible.

- ✓ **Your personal family lawyer**
- ✓ **Expert advice and guidance**
- ✓ **Tailor settlement to your needs**

- ✓ **Legal rights and obligations explained**
- ✓ **Navigate the divorce and Court system**
- ✓ **Minimise costs**

Don't forget, you can always contact our friendly **Support Team** for further information if you have any questions along the way.

Kind Regards,

**Family|Law**  
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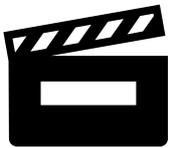
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# Chapter 1

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## Separation - The Big Issues

### What (and When) is Separation?



It is not always easy to work out exactly when a relationship has ended and a couple have “officially” separated. After all, separation often happens in stages.

While it’s not always straightforward, working out the date of separation is important and can affect your legal rights and options.

For example, is separation when a couple stop living together? What if one person considers the relationship has ended, while the other person doesn’t agree? Or is it only official when both parties agree the relationship is over?

In other cases, people end their relationship as a couple but continue living together for weeks, months or years, separated under the same roof. As you can see, there may be many factors to consider.

As a general guideline:

- For married couples, separation occurs when at least one or both of the parties considers that the marriage has broken down irretrievably. This means there is no reasonable likelihood you will get back together.
- For de-facto couples, separation also occurs when at least one or both of the parties considers the relationship is over and no longer wish to continue living together as a couple on a genuine domestic basis.

If there is disagreement about the date of separation, there are a range of factors that may be considered:



- Are the parties still living together?
- Are they sharing a bedroom?
- Is there an ongoing sexual relationship?
- Are they domestically independent? (cooking, cleaning, etc.)
- Are the parties financially independent?
- Is the separation public knowledge? (e.g. have friends, family, and government agencies been informed)

## The Big Issues: Parenting, Property and Divorce

These are the three most common legal issues faced by separated couples. Your circumstances will dictate whether one or all of these issues apply to you and your family.

### Parenting

If you and your former partner have children under the age of 18 you will need to agree on parenting arrangements after separation.

For most parents, their children are their number one priority, and it is one of the key things they wish to resolve following separation.



Sometimes this can be as simple as parents getting together and working these matters out over a cup of coffee.

Other times, parents may seek some outside support or assistance to help work out the parenting arrangements.

The reality is that even though the relationship has ended, you and your former partner will remain the only parents your children have for the rest of their lives.

## Property

A property settlement is the process of separating your financial affairs from your former partner on a final basis, in a legally binding way.

Property settlement provides each of you with peace of mind to move forward and be financially free and independent from one another.

If you have not yet finalised your property settlement, or you are not sure where to start, we recommend you [Contact Us](#) via our website to make a no obligation appointment.

We assist you with everything you need to resolve your settlement, including:

- ✓ **Reach a settlement agreement and save thousands in legal fees**
- ✓ **Formalise your agreement and make it legally binding**
- ✓ **Divide the assets and liabilities according to your agreement**

## Divorce

Divorce is the process of legally ending a marriage by making an application to the Court.

Divorce applications are predominately made to the Federal Circuit Court of Australia. If you live in WA, applications are made to the Family Court of WA.

To be eligible to apply for divorce you must first have been separated for at least 12 months and one day. In addition, at least one of the applicants must meet at least one of the following conditions:

- Regard Australia as their home and intend to live indefinitely in Australia
- Be an Australian citizen by birth or descent
- Live in Australia and have done so for that last 12 months (overseas holidays or trips are ok)

Visit [www.familylawresolutions.com.au](http://www.familylawresolutions.com.au) for more information about our Fixed Fee **Divorce and Property Settlement** packages.

Our friendly **Support Team** is also available to answer your questions.

## Other Important Issues

There are a range of other big issues which may also be relevant to your circumstances upon separation.

### Future planning

An important step after separation is to update existing legal documents to ensure your current wishes and intentions are reflected.

It is especially important to update documents that deal with future planning, such as:

1. Changing your Will
2. Revoking your Power of Attorney
3. Revoking your Advance Care Directives
4. Changing Superannuation Nominations

There are different laws in place in each State and Territory for most of these issues, as such we recommend obtaining further information and legal advice.

### Spousal maintenance

In some cases, a party can apply to the Court for an order to receive maintenance payments from their former partner.

A party to a marriage or de facto relationship may have a legal responsibility to financially assist their former partner if that person is genuinely unable to cover their reasonable expenses from their income or assets.

The amount of maintenance support will depend on the capacity of the person to pay.

## **Child Support and Centrelink**

For most of us, dealing with Government Agencies can be a bit like going to the dentist – you avoid it for as long as possible and don't look forward to it when you must.

Depending on your circumstances, it can be an important early step to contact the Commonwealth Department of Human Resources who oversee the Child Support Agency and Centrelink.

You may be entitled to receive one or more Centrelink payments and/or to receive Child Support payments from the other parent.

## **Health and safety**

Separation and all the issues that go along with it can cause immense strain on people and negatively affect their health.

It is important to prioritise the physical and mental wellbeing of yourself and your children throughout the separation process.

If you have concerns about your wellbeing, or are experiencing poor health, you should consult an appropriately qualified healthcare professional and counsellor as soon as possible.

Family and domestic violence is not okay and is not tolerated by the Courts. If you have concerns for your or your children's safety at any time it is important you contact police and obtain professional advice without delay.

## Chapter 2



# Dividing Property

## *Married and de facto couples*

After separation, most married and de facto couples need to sort out the financial side of the relationship, by going through a property settlement.

“Property settlement is the process of separating your financial affairs from your former partner on a final basis, in a legally binding way.”

Settlement gives separated couples peace of mind to move forward and be financially free and independent from the other party.

The process generally involves three main elements:

- ✓ Reaching a settlement agreement
- ✓ Formalising the agreement in a legally binding way
- ✓ Dividing assets and liabilities according to the binding agreement

## Formalising your settlement

It is important to 'formalise' property settlement once an agreement has been reached. This means documenting the settlement in a legally binding and enforceable way.

In Australia there are two ways to formalise your settlement:

- Property Consent Orders from the Family Law Courts
- Financial Agreement prepared by a private lawyer

It is important to remember that only settlements formalised in one of these two ways can be enforced and considered legally binding.

Having an enforceable agreement means you can apply to the Courts for legal protection if the other party does not comply with the terms of the settlement.

Without a binding settlement you are exposed to the possibility of your former partner making a claim against you in the future. This is not uncommon, and in some cases, claims have been made as long as 20 years after separation.

For more information regarding our **Property Settlement Consent Order** packages please contact us on 1800 357 000 or visit us at [www.familylawresolutions.com.au](http://www.familylawresolutions.com.au) and select Property Settlement from our service categories.

*Enjoy peace of mind and save thousands in legal fees!*

The benefits of legally formalising your settlement include:

- ✓ Fair division of assets
- ✓ Peace of mind
- ✓ Financial independence from the other party
- ✓ Legally binding and enforceable
- ✓ Protection from future claims
- ✓ Superannuation can be divided
- ✓ Stamp duty and Capital Gains Tax relief

### **What if we have already divided the property?**

We recommend separated couples have binding property settlement documents in place *before* dividing any significant property. That way both parties are legally protected prior to the sale or transfer of major items of property.

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However, you can still go ahead and formalise a legally binding settlement agreement, even if the property of the relationship has already been divided. This can be done in the same way and achieve the same legal protections.



## Property settlement laws

In Australia, State based laws are different in each State and Territory, while Federal laws are the same across the whole of Australia.

Family Law Courts and the Family Law Act are part of the Federal system, meaning that the same family laws apply across all States and Territories (except WA who have their own family court system).

The two main Family Law Courts are The Family Court of Australia (the FCA) and The Federal Circuit Court of Australia (the FCCA) are together known as:

- ***The Family Law Courts***

The main laws for property settlement are contained in the Family Law Act 1975. The Family Law Courts make property settlement orders for de facto and matrimonial relationships according to the laws in the Family Law Act.

People can seek court orders to resolve family matters, including property settlement.

This is done by completing and lodging an application to the closest Family Law Court Registry, located in each State and Territory.

## The 'clean break' principle

The Family Law Act requires that property settlement orders should be final, to avoid future proceedings between the parties. This means the law requires a 'clean break' between you and your former partner, with no continuing financial connections.



To achieve this, settlements must involve a clear division of assets and liabilities. Property held in joint names will be sold or transferred to the sole name of one of the parties.

Please note however, the clean break principle does not include the legal obligation a parent may have to pay child support, which is separate to the property settlement process.

## 'No fault' divorce and settlement

'No fault' divorce was introduced under the Family Law Act in 1975. This means the Court does not consider who was at fault in the breakdown of the relationship. Instead, the Court focuses on whether there is no possibility that parties will resume their relationship.

Divorce and property settlement are separate legal processes. In property cases the Court will consider

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contributions made by each party but will not impose penalties for poor conduct in the relationship.

For example, a relationship that breaks down due to one party being unfaithful, would not result in the other party receiving a greater entitlement in the property settlement.

In exceptional cases, the Court may take into account the impact of abuse or domestic violence.

## What 'property' is included in settlement?

The term 'property' is very broad and includes just about any interests (assets or liabilities) in the sole or joint names of either party. In practice this means almost every kind of property can be included in the asset pool for division.

## Time limits

After separation, there is no minimum waiting period to apply for property settlement, and generally sooner is better than later.



However, it is important to be aware that there are time limits within which married, and de facto couples must apply for property settlement:

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- For married couples, there is a 1-year time limit from the date of divorce.
- For de facto couples there is a 2-year time limit from the date of separation.



### **Need more information and help with property settlement?**

Visit our website to book your free no obligation consultation call or contact our friendly team on 1800 357 000.

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## Chapter 3



# Parenting After Separation

### Family Law in Australia is Child Focussed

Family Law regarding parenting and children's issues in Australia is provided under the Family Law Act 1975.

It is a child focussed set of laws which puts the best interests of children as the paramount consideration in all cases.

This means that Family Court cases do not revolve around the rights of mums and dads. Instead, they are focussed on ensuring children's best interests are met to help them to be healthy, happy and safe and able to reach their full potential.

### Common Family Law Terms

Over the years there have been changes to the common terms and expressions used in Family Law in Australia.

Let's take a look at some notable changes, and the language that is currently used:

<b><i>Old terminology</i></b>		<b><i>Current terminology</i></b>
• Custody / Residence	=	Live with
• Access / Contact	=	Spend time with
• Contact	=	Communicate with
• Custody Order	=	Parenting Order
• Child Representative	=	Independent Children's Lawyer

## **Time with Each Parent and Children's Best Interests**

It's not always easy to know what the most suitable parenting arrangement for time between children and parents should be following separation.

Each child has individual needs and personality and each family situation is different. As a result, there is no single one size fits all 'best scenario' for children's care arrangements.

Parents will need to carefully consider what is in their children's best interests when putting forward a proposal for care arrangements.

### ***Children's best interests are considered as being met when:***

- ✓ Children are protected from physical harm, abuse, neglect or violence
- ✓ Parents fulfil their responsibilities for the care, welfare and development of their children
- ✓ Children have the benefit of meaningful relationships with both parents
- ✓ Children receive proper parenting to help them reach their full potential - physically, emotionally and academically

### **Decision Making After Separation**

Under the Family Law Act, when parents make decisions about major long-term issues regarding the care, welfare and development of their children, they are exercising 'parental responsibility'.

Parental responsibility entails all the decision-making duties, powers, responsibilities and authority which by law parents have in relation to children.

Each parent has parental responsibility for their child unless a Court orders otherwise.

When exercising parental responsibility, parents are encouraged and expected to make a genuine effort to consult with each other and reach joint decisions about any major long-term issues.

However, parents are not required to consult each other on minor day to day issues. How the other parent chooses to parent on a day to day basis when the child is in their care is up to them - so long as the children are safe, and their needs are being met.

While parental responsibility is usually shared equally, this may not apply if there are reasonable grounds to believe that a parent (or a person who lives with a parent) has engaged in abuse or family violence.

## Reaching Agreements about Parenting

From discussions around the kitchen table, to Family Dispute Resolution (mediation), to negotiating through lawyers, there are many ways to resolve issues and reach a parenting agreement.

So long as both of you are willing to make a genuine effort to remain child focussed and approach discussions in good faith, you are off to a good start.

Common options for working towards a parenting agreement include:

- ✓ 'Kitchen table' negotiations and agreements

- ✓ Family Dispute Resolution (community mediation services)
- ✓ Lawyer assisted mediation
- ✓ Collaborative legal practice
- ✓ Negotiations through a lawyer

## **6 common mistakes to avoid in parenting discussions:**

You will save time, stress and money if you avoid these common pitfalls:

1. Focussing on the other parent instead of the child
2. Conflict, anger and 'the blame game'
3. Refusing to compromise
4. Arguing for the 'principle' of the matter
5. Getting the child to be the messenger
6. Conflating financial issues with children's issues



## **Need more information and help with parenting arrangements after separation?**

Visit our website to book your free no obligation consultation call or contact our friendly team on 1800 357 000.

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# Chapter 4



## Getting a Divorce

### Divorce in Australia

As noted above, divorce is the process of legally ending a marriage by making an application to the Court. It is a separate legal step to formalising property settlement or parenting arrangements.

Divorce applications are made to the Federal Circuit and Family Court of Australia. If you live in WA, you should lodge your application with the Family Court of WA.

### Eligibility to Apply

To be eligible to apply for divorce you must first have been separated for at least 12 months and one day.

In addition, at least one of the applicants must meet at least one of the following conditions:

- Regard Australia as home and intend to live indefinitely in Australia
- Be an Australian citizen by birth or descent
  - Live in Australia and have done so for that last 12 months (overseas holidays or trips are ok)

## 'No Fault' Divorce

'No fault' divorce was introduced in Australia under the Family Law Act in 1975. This means the court does not consider who was at fault in the breakdown of the relationship.

For example, a party does not have to prove bad behaviour to get a divorce. They only need to satisfy the eligibility criteria listed above.

## Joint or Sole Application?

If you and your spouse both agree to apply for a divorce together, you can submit a Joint Application for Divorce. To utilise this option, you and your spouse both need to sign the Application for Divorce.

There are some benefits to making a joint Application for Divorce, including:

- You do not need to formally 'serve' your spouse with the divorce application
- You do not need to attend the Court hearing, even if there are children of the marriage under 18 years

However, either spouse can choose to submit a Sole Application for Divorce, without requiring the other party to complete or sign the application.

If you apply on your own, the Court needs to be satisfied that you have provided a copy of the Application for Divorce and any supporting documents to your former spouse.

This is to ensure that he or she is aware that you have made an application to legally end the marriage. To do this, you must formally 'serve' your spouse with the relevant documents.

If there are no children of the marriage under 18 you will not need to attend the divorce Court hearing. However, if you file a sole application and have children under 18, you must attend the Court hearing.

## **Attending the Court Hearing**

Every person or couple who makes an Application for Divorce will have their application listed for a hearing at Court.

However, not every applicant will be required to attend the Court hearing. Certain divorce applications can be heard by the judicial officer, and a divorce order can be granted, without applicants being present.

Applicants are required to attend the Court hearing in the following circumstances:

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- If you have lodged a sole application and there are children of the marriage aged under 18
- If you have been unable to serve the divorce application documents your spouse
- If you were separated but living under the same roof as your spouse in the 12 month period before lodging the application
- You simply want to attend the hearing

Our **Divorce Packages** provide you with simple pricing options including fixed fees for Joint Applications for Divorce and Sole Applications for Divorce.

*Don't hesitate to contact us if you have any questions.*



## **Need more information and help with your divorce application?**

Visit our website to book your free no obligation consultation call or contact our friendly team on 1800 357 000.

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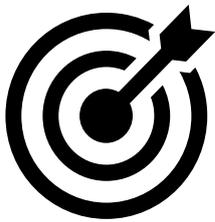
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## Chapter 5



### How We Can Help

At Family Law Resolutions, we know that separation can be difficult. Dealing with complicated legal applications and expensive legal fees can add further stress. We help you to move forward with your divorce and property settlement applications with our fast, professional service and fixed fees. Our most popular services include:



#### Property Settlement Consent Orders

Whether you are married or de facto, we can assist. Our family law team can help you to apply to the Court for a binding property settlement without the need for expensive legal fees. Want to divide superannuation as part of your settlement? We can help with that too.

#### Divorce Application (Joint or Sole Application)

Your divorce application is made simple with our straightforward process. We will prepare your divorce papers and lodge them with the Court without delay.

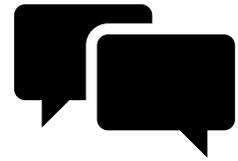


#### Parenting Consent Orders and Parenting Plans

We can assist you to formalise parenting arrangements including binding consent orders and legally recognised parenting plans. Our fixed fee pricing allows you to stay in control of your budget.

### **Friendly Support Team (24-hour response guaranteed)**

We provide friendly and fast support and information to ensure your application is correctly lodged with the Court - we want you to understand and feel confident in the process.



Founded by a team of passionate family lawyers, we have assisted thousands of Australians with the legal side of separation. Our products and services are professional, and affordable. Our fixed fees include:

- ✓ **Divorce**
- ✓ **Property Settlement Consent Orders**
- ✓ **Parenting Plans**
- ✓ **Parenting Consent Orders**

At Family Law Resolutions, we are proud to provide professional and affordable services for separated couples, including help and support with your queries along the way.

Our goal is to help you resolve the legal side of separation without expensive court battles. We look forward to hearing from you.

Kind regards,

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