



# Marriage, families & separation

## This brochure will tell you

This brochure provides information for married couples considering separation or divorce. It also includes information for people affected, or likely to be affected, by separation or divorce.

This brochure includes information about:

- the social and legal effects of separation
- the services provided to families by the Family Law Courts and by government, community and other agencies, and
- the steps involved in court proceedings.

## Legal advice

If you are considering separation or have separated, you should get legal advice. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also explain and help you reach an agreement with your former partner without going to court. You can get legal advice from a:

- ~ legal aid office
- ~ community legal centre, or
- ~ private law firm.

Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

## Separation

Separation is an upsetting experience for almost everyone involved. It is understandable that you may be stressed at this time. It is important for you and your children that you have support to help you through this difficult time.

When you separate, you and your former partner need to make important decisions about the future care of your children and how to divide your property, money and belongings. Working through these issues is often difficult and emotionally challenging.

Separation is also a stressful time for your children. They may experience a range of emotions that are difficult for them to deal with and talk about with you. They may also behave in ways that are unusual for them.

There are services in the community that can help:

- ~ you and your partner work through any problems in your relationship
- ~ you and your children adjust to separation or divorce
- ~ you and your former partner reach an agreement, and
- ~ you and your family adjust to and comply with court orders.

To find a community service near you:

- Go to [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au), or
- Call 1800 050 321

## Personal safety

If you have any concerns about your safety while attending court, please call 1300 352 000 before your court appointment or hearing. Options for your safety at court will be discussed and arrangements put in place. By law, people must inform a court if there is an existing or pending family violence order involving themselves or their children. More detail is in the fact sheet 'Family Violence - Important Safety Information'.

## Non-court based family services

People considering separation or divorce, and those affected by it, are encouraged to use services in the community to resolve issues. Community-based services that can help you and your family include:

**FAMILY COUNSELLING** – a process in which a family counsellor helps people deal with personal and interpersonal issues relating to families, relationships, marriage, separation and divorce.

**FAMILY DISPUTE RESOLUTION** – a process in which a family dispute resolution practitioner, independent of all the parties, helps people resolve some or all of their disputes with each other during and after separation and divorce.

**ARBITRATION** – a process in which parties to a dispute present arguments and evidence to an arbitrator, who makes a determination to resolve the dispute. You can get a list of arbitrators from the Family Law Section of the Law Council of Australia (details on back page).

If there is a history of family violence, it may not be appropriate to attend the services listed above. Speak to staff at the agency about your options and support services that are available.

### Confidentiality in non-court based family services

Generally, what is said during family counselling and family dispute resolution is confidential and cannot be used in court later. There are exceptions; for instance:

- ~ where there is a legal requirement to report a suspicion or risk of child abuse and violence or threats of violence, and
- ~ the Court may order that a family counsellor or family dispute resolution practitioner give evidence of an admission or disclosure of abuse made during a session.

**NOTE:** Meetings, discussions or other exchanges with arbitrators are not confidential, and may be used in court.

## Reaching an agreement

### What are the advantages?

Reaching an agreement with your former partner offers many advantages, such as:

- ~ you make your own decisions
- ~ you greatly reduce the financial and emotional costs of legal proceedings
- ~ your continuing relationship as parents, if you have children, is likely to work better
- ~ you are able to move forward and make a new life for yourself, and
- ~ you may improve communication with your former partner and be better able to resolve disputes in the future.

### Parenting plans

A parenting plan is a written agreement that sets out parenting arrangements for children. Because it is worked out and agreed jointly, you and your former partner do not need to go to court.

Unless a court orders otherwise, you and your former partner can agree to change a parenting order (made on or after 1 July 2006) by entering into a parenting plan. A parenting plan is not legally enforceable. It is different from a parenting order, which is made by a court.

For more information about parenting plans and how they work, see the fact sheet 'Parenting Plans'.

### Consent orders

A consent order is a written agreement that is approved by a court. A consent order can cover parenting arrangements for children as well as financial arrangements\* such as property and spousal maintenance (\*for married couples who are separated or divorced).

Consent orders have the same legal force as if they had been made by a judicial officer after a court hearing.

You and your former partner can apply for consent orders to be made without going to court. For more information or to get a Consent Orders Kit:

- go to [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)
- call 1300 352 00, or
- visit your nearest family law registry.

# Going to court

If you cannot reach an agreement, you may consider applying to a court for orders. Going to court is often a stressful time for many people. It can also be expensive and time consuming. However, sometimes it may be the only way to deal with a dispute.

Even when a court application is filed, it is possible to reach an agreement, at any stage, without the need for a court hearing. In fact, a judicial officer is needed to make a final decision in only a very small percentage of cases started in court.

## Before you apply for parenting orders

The law is changing over the coming years to phase in a requirement for parties to attend family dispute resolution before they apply for parenting orders.

### Phase one 30 June 2006 to 30 June 2007

Parties intending to apply for parenting orders must follow pre-action procedures, which include attending dispute resolution, before filing an application with a court.

Pre-action procedures do not apply in some cases, such as those that involve family violence, child abuse or urgency.

For more information about pre-action procedures, see the brochure 'Before you file – pre-action procedure for parenting cases'.

### Phase two 30 June 2007 to 30 June 2008

Parties intending to apply for parenting orders must attend family dispute resolution and make a genuine effort to resolve the issue in dispute before filing an application with a court.

The requirement does not apply in some cases, such as those that involve family violence or child abuse.

In cases where parties are required to attend dispute resolution, the Courts cannot hear an application for a parenting order unless a certificate from an accredited family dispute resolution practitioner is filed with the application.

### Phase three 30 June 2008 and onwards

The requirements set out under phase two will apply to all new and existing applications for parenting orders.

## Before you apply for financial orders

In the Family Court, parties intending to apply for financial orders must follow pre-action procedures, which include attending dispute resolution, before filing an application.

Pre-action procedures do not apply in some cases such as those that involve family violence, fraud or urgency.

For more information about applying for financial orders in the Family Court, see the brochure 'Before you file – pre-action procedure for financial cases'.

In the Federal Magistrates Court, parties intending to apply for financial orders are encouraged to resolve disputed issues before filing an application. In most cases, parties will be ordered to attend family dispute resolution when an application is filed with the Court.

## Pre-action procedures

The aim of the pre-action procedures is to explore areas of resolution and where a dispute cannot be resolved, to narrow the issues which require a court decision.

Pre-action procedures are not required for applications for divorce or child support cases. In addition, they do not apply or are not appropriate in cases:

- ~ involving urgency
- ~ in children's matters involving allegations of child abuse
- ~ involving allegations of family violence
- ~ in financial matters involving allegations of fraud or where a time limitation is close to expiring
- ~ where there is a genuinely intractable dispute; for example, where one person refuses to negotiate, and
- ~ where there has been a previous application about the same issue or subject in the previous 12 months.

## Steps involved in court proceedings



- ▲ except applications for financial orders in the Federal Magistrates Court
- ❖ may include additional court appointments or hearings

Different steps may apply in some cases. You can get more information about particular court appointments and hearings from [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au), by calling 1300 352 000 or at your nearest family law registry.

# Going to court

## FAMILY CONSULTANTS

Family consultants are psychologists and/or social workers who specialise in child and family issues after separation and divorce.

Family consultants can help you and the Courts in many ways. They can:

- ~ help you and the other party resolve your dispute
- ~ assist and advise the Courts and give evidence about your case
- ~ write and provide a report to the Courts about your family, and
- ~ advise the Courts about the services provided to families by government, community and other agencies.

Their work with you is not confidential and may be used in court at a later date.

As appropriate, the Courts may also appoint a family counsellor or family dispute resolution practitioner. Communications with a family counsellor or family dispute resolution practitioner are confidential and may not be used in court.

For more information about family consultants, see the fact sheet 'Family Consultants'.

## CHILDREN AT COURT

Generally, courts are not an appropriate place for children. You should make other arrangements for their care when you come to court.

Sometimes children will need to attend court to speak to a family consultant or judicial officer. If this is your situation, you should check with court staff if any child care arrangements need to be made for the day.

## Compliance with court orders

When an order is made each person bound by the order must follow it. There are services in the community that can help you and your family adjust to and comply with court orders (see contact details on page one).

If the order is not complied with, you may file a court application. A court can make an order to enforce an existing order. A court may also make an order that discharges, varies or suspends the order or renews some or all of an earlier order, or adjourn the case to allow a person to apply for a further order that alters the existing order.

If a court finds a person has breached (contravened) a parenting order, it may impose a range of penalties. For more information about this, see the fact sheet 'Compliance with parenting orders'.

## INDIGENOUS FAMILY LIAISON OFFICERS

The Court employs Indigenous family liaison officers in Darwin, Alice Springs and Cairns. The liaison officers provide Aboriginal and Torres Strait Islander people with information about the Court and may support and assist people in attending court events. If you wish to use these services, please tell the Court before your appointment or hearing. Other registries do not have Indigenous family liaison officers on site, but it may be possible for an Indigenous family liaison officers to contact you by phone.

## INTERPRETERS

If you need to contact the Family Law Courts, call the Translating and Interpreting Service on **13 14 50**. This is a free service.

If you need an interpreter to assist you at court, please tell court staff at least two weeks before your court appointment or hearing. They will arrange a professional and independent interpreter to assist you free of charge.

The Family Law Courts respect your right to privacy and the security of your information. You can read more about the Courts' commitments and legal obligations in the fact sheet 'The Family Law Courts and your privacy'. The fact sheet includes details about information protection under the privacy laws and where privacy laws do not apply.

## Other help available

### Family Relationship Centres

The Australian Government is setting up 65 new Family Relationship Centres across Australia. The Family Relationship Centres will:

- ~ provide information for families
- ~ help families access other services, and
- ~ provide confidential assistance for separating families; for instance, family dispute resolution.

For more information about Family Relationship Centres or to find a centre near you:

- Go to [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au) or call 1800 050 321

### Child Support Agency

The Child Support Agency (CSA) administers the Australian Government's Child Support Scheme and helps parents take responsibility for the financial support of their children after separation.

CSA has information available to support separated parents and their children. Some of the booklets include the *Me and My* series:

- ~ Me and my Kids—Parenting from a Distance
- ~ Me and my Money—Practical money ideas
- ~ What about Me?—Taking care of yourself
- ~ Me, my kids and my Ex—Forming a workable relationship for the benefit of your children, and
- ~ Me and my Changing Family—Moving Forward.

To contact CSA or order any of their free publications:

- Go to [www.csa.gov.au](http://www.csa.gov.au) or call 13 12 72

### Centrelink/Family Assistance Office

Centrelink and the Family Assistance Office can help with:

- ~ financial assistance
- ~ child care costs
- ~ finding a job.

If you already receive a payment from Centrelink, you should contact them to advise of any changes to your circumstances to ensure you receive your correct entitlement.

Ask for the booklet 'Are you separated or divorced?' which provides information on payments and services available that you may be eligible for as well as your rights and obligations.

To contact Centrelink/Family Assistance Office or to order any of their free publications:

- Go to [www.centrelink.gov.au](http://www.centrelink.gov.au) or [www.familyassist.gov.au](http://www.familyassist.gov.au) or call 13 61 50

## Family law registries

Both the Family Court and the Federal Magistrates Court (the Family Law Courts) deal with family law matters.

For more information about the Family Law Courts:

- Go to [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)
- Call 1300 352 000, or
- Visit a family law registry near you.

### AUSTRALIAN CAPITAL TERRITORY

Canberra ~ Cnr University Ave & Childers St  
Canberra ACT 2600

### NEW SOUTH WALES

Albury ~ 463 Kiewa St Albury NSW 2640

Dubbo ~ Cnr Macquarie & Wingewarra Sts  
Dubbo NSW 2830

Lismore ~ L2/29-31 Molesworth St Lismore NSW 2480

Newcastle ~ 61 Bolton St Newcastle NSW 2300

Parramatta ~ 1-3 George St Parramatta NSW 2150

Sydney ~ 97-99 Goulburn St Sydney NSW 2000

Wollongong ~ L1/43 Burelli St Wollongong NSW 2500

### NORTHERN TERRITORY

Alice Springs ~ Centrepoint Building Hartley St  
Alice Springs NT 0870

Darwin ~ 80 Mitchell St Darwin NT 0800

### QUEENSLAND

Brisbane ~ 119 North Quay Brisbane Qld 4000

Cairns ~ L4/104 Grafton St Cairns Qld 4870

Rockhampton ~ L4/Cnr East & Fitzroy Sts  
Rockhampton Qld 4700

Townsville ~ L2/143 Walker St Townsville Qld 4810

### SOUTH AUSTRALIA

Adelaide ~ 3 Angas St Adelaide SA 5000

### TASMANIA

Hobart ~ 39-41 Davey St Hobart Tas 7000

Launceston ~ Cnr Brisbane & George Sts  
Launceston Tas 7250

### VICTORIA

Dandenong ~ 53-55 Robinson St Dandenong Vic 3175

Melbourne ~ 305 William St Melbourne Vic 3000

### WESTERN AUSTRALIA

Perth ~ Family Court of Western Australia  
150 Terrace Rd Perth WA 6000  
08 9224 8222

# Who else can help?

## Legal aid

### AUSTRALIAN CAPITAL TERRITORY

- [www.legalaid.canberra.net.au](http://www.legalaid.canberra.net.au)
- 1300 654 314

### NEW SOUTH WALES

- [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)
- 02 9219 5000 or 1300 888 529 (LawAccess NSW)

### NORTHERN TERRITORY

- [www.ntlac.nt.gov.au](http://www.ntlac.nt.gov.au)
- 08 8999 3000 or 1800 019 343 (country callers)

### QUEENSLAND

- [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)
- 1300 651 188

### SOUTH AUSTRALIA

- [www.lsc.sa.gov.au](http://www.lsc.sa.gov.au)
- 1300 366 424

### TASMANIA

- [www.legalaid.tas.gov.au](http://www.legalaid.tas.gov.au)
- 1300 366 611

### VICTORIA

- [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)
- 03 9269 0234 or 1800 677 402 (country callers)

### WESTERN AUSTRALIAN

- [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)
- 1300 650 579

## Law Societies

### AUSTRALIAN CAPITAL TERRITORY

- [www.lawsocact.asn.au](http://www.lawsocact.asn.au)
- 02 6247 5700

### NEW SOUTH WALES

- [www.lawsociety.com.au](http://www.lawsociety.com.au)
- 02 9926 0333

### NORTHERN TERRITORY

- [www.lawsocnt.asn.au](http://www.lawsocnt.asn.au)
- 08 8981 5104

### QUEENSLAND

- [www.qls.gov.au](http://www.qls.gov.au)
- 07 3842 5888

### SOUTH AUSTRALIA

- [www.lssa.asn.au](http://www.lssa.asn.au)
- 08 8229 0222

### TASMANIA

- [www.taslawsociety.asn.au](http://www.taslawsociety.asn.au)
- 03 6234 4133

### VICTORIA (INSTITUTE)

- [www.liv.asn.au](http://www.liv.asn.au)
- 03 9607 9311

### WESTERN AUSTRALIAN

- [www.lawsocietywa.asn.au](http://www.lawsocietywa.asn.au)
- 08 9322 7877

## Community Legal Centres

### NEW SOUTH WALES

- 1300 888 529 (LawAccess NSW)

### VICTORIA

- 03 9654 2204

### WESTERN AUSTRALIA

- 08 9221 9322

For referrals in all other states and territories contact the National Association of Community Legal Centres:

- [www.naclc.org.au](http://www.naclc.org.au)
- 02 9264 9595

## Aboriginal and Torres Strait Islander Legal Services

### AUSTRALIAN CAPITAL TERRITORY/NEW SOUTH WALES

Coalition of Aboriginal Legal Services

- [www.coalsnsw.com.au](http://www.coalsnsw.com.au)
- 02 9318 2122

### NORTHERN TERRITORY

Central Australian Aboriginal Legal Aid Service - Alice Springs

- 08 8950 9300 or 1800 636 079

North Australian Aboriginal Justice Agency - Darwin

- 08 8982 5100 or 1800 898 251

### QUEENSLAND

Aboriginal and Torres Strait Islander Corporation for Legal Services - Brisbane

- 07 3025 3888 or 1800 012 255

Aboriginal and Torres Strait Islander Community Legal Services – Townsville

- 07 4722 5111 or 1800 074 463

### SOUTH AUSTRALIA

Aboriginal Legal Rights Movement

- [www.alrm.org.au](http://www.alrm.org.au)
- 08 8211 8824 or 1800 643 222

### TASMANIA

Tasmanian Aboriginal Centre

- 03 6234 8311 or 1800 132 260

### VICTORIA

Victorian Aboriginal Legal Service

- [www.vals.org.au](http://www.vals.org.au)
- 03 9419 3888 or 1800 064 865

### WESTERN AUSTRALIA

Aboriginal Legal Services of Western Australia

- [www.als.org.au](http://www.als.org.au)
- 08 9265 6666 or 1800 019 900

## Law Council of Australia – Family Law Section

- [www.familylawsection.org.au](http://www.familylawsection.org.au)
- 02 6246 3788