

How to Separate



and Protect what matters
most to you



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Thinking of Separating?

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Are you thinking of separating but finding it hard to make the decision? Are you worried about how your children will cope or whether you will be left with anything after your assets are divided? You're not alone.

The thought of a separation can trigger a range of emotions. You may be feeling hurt, angry or sad – or even a mixture of all 3. You may be losing sleep worrying about the financial strain living in two households will put on your budget. It's no wonder things can quickly seem overwhelming.

This booklet is designed to give you a helpful overview of the important things you need to know when going through a separation; or just considering making changes in your life.

We have some tips to follow that will guide you through this challenging time and help you protect what matters most to you.

Do you want the stress to stop so you can get back to focusing on what really matters? Read on and find out how you too can achieve this.



Separation Checklist

Suddenly found yourself on your own? Thrust into single life but not sure where to begin?

This information is for you.

Separation can be a very daunting time. You may find yourself having to do tasks that were previously taken care of by your partner. When your self-confidence is already at an all-time low, facing challenging tasks can seem close to impossible.

Apart from seeking legal advice, there are some practical steps you can take to ensure you are not overwhelmed by the separation process.

1. Mail

- Keep track of all incoming mail – If you are concerned your ex-partner may access your mail you may need to redirect it to a new post office box or to your new address if you have moved out. Further, you may wish to change your pin or password on your email and social media accounts. Remember devices such as laptops, ipad and iphones may be linked so check these are not automatically synced when connected to the internet otherwise your ex-partner may have access to any messages or mail you receive.
- If you change address details, be sure to advise all relevant authorities. These may include your child's school, banks, your accountant, superannuation funds, insurance companies, medical practitioners, government departments such as Centrelink, Medicare, the ATO, the Electoral Commission and the Department of Transport.





Separation Checklist

2. Bank Accounts

- If you don't already have an account in your name, you should consider setting one up so any money you earn after separation does not continue to be paid into a joint account. If you have your own account but your ex-partner knows your pin/passcode you may wish to change this.
- If you have joint bank accounts or mortgages, consider speaking to your bank manager about how you can ensure that money is not withdrawn without your consent. This may include freezing an account or requiring all parties to the account to sign to withdraw money.
- Make sure that any mortgages or other loans in your name continue to be paid after separation as failure to pay may affect your credit rating.
- If you have credit cards with a secondary card holder, you may need to consider cancelling the card or taking other steps to ensure that debt is not incurred by your ex-partner on a card in your name.

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3. Notify Centrelink

- If you are currently receiving Centrelink benefits it is important that you notify them of your change of situation and keep them updated from time to time such as if care arrangements concerning children change. Failure to notify Centrelink may mean that you continue to receive benefits you are not entitled to and end up with a debt you will be required to repay later down the track. Once you separate, you may also be entitled to benefits you were not previously entitled to so check your entitlement through Centrelink or with a financial advisor.

4. Manage your finances

- Do a budget – calculate your reasonable costs of living, including running two households. Separating can put a strain on even the best managed finances, so make sure you know when your bills are due and who will pay for these.



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5. Consider protecting assets

- If you have assets that you have contributed to that are not in your name or you are otherwise concerned that your ex-partner may dispose of assets, seek urgent legal advice on what can be done. This may include putting a caveat on real property or seeking an order (called an injunction) that certain property is not to be sold without your consent.

6. Review your Will, Enduring Power of Attorney, superannuation and insurance policies to make sure these still reflect your wishes.

- If you have a Will that provides for your assets to go to your ex-partner you may wish to review this following a separation. Married couples cannot be divorced until they have been legally separated for 12 months. Whilst a divorce may affect your Will, simply separating does not. Once you have separated, make sure your Will and Enduring Power of Attorney still reflect your wishes. Seek legal advice if needed.
- You may wish to change the beneficiaries of any insurance or superannuation policies in your name. If you have a self-managed superannuation fund check who has authority to act in relation to the fund and seek legal or accounting advice if necessary





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7. Organise paperwork

- If you have to prepare for a property settlement it is important that you know what assets, liabilities and superannuation you and your former partner have. Make sure you have copies of important paperwork such as bank statements, income tax assessments and returns, share certificates, superannuation statements, your marriage certificate, bills and other financial paperwork. It can save you a lot of time and money down the track if you have a copy of these when you separate.
- Property held with your partner may be held as “joint tenants” or “tenants in common”. If property is held as joint tenants your share will automatically pass to the other co-owner in the event of your death. Following a separation, you may wish to sever any joint tenancies so property is held as “tenants in common”. This way, if either party dies, their interest passes according to their will and not necessarily to the other co-owner.

8. Keep a diary

- Record all relevant information such as your separation date, time spent with children, conversations with your ex-partner or other communications. If communicating via text or email be sure to back up your information. There is nothing worse than recording numerous text messages on your phone only to lose these when a phone is broken or lost.

9. Medicare/Private Health Insurance

- Once you have separated you may wish to obtain separate cards with Centrelink and your Private Health Insurer. If you have changed details with Centrelink or your private health insurer, you should advise your ex-partner accordingly. Sometimes refunds from health providers are linked to a particular bank account, so be sure to check these details are still correct.
- If you have private insurance with your ex-partner, you will need to consider how you continue to pay ongoing premiums, whether you stay on the existing account, and whose account children will be covered by. New accounts may attract waiting periods. You may also need to obtain specialist advice on any tax implications of changes to your private health insurance.





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10. Check Loyalty and Store Cards

- Review any loyalty cards or store cards that you have such as Everyday Rewards or Frequent Flyers – check the balances and consider whether you need to remove your spouse from having access to the card. The balance may also need to be considered and split in a property division.

11. Contributions

- If you continue to make financial contributions after separation, ensure you keep documentary evidence of these. It may become very important in a property settlement and it can save a lot of time if a record is kept as you go, rather than trying to establish the history of these at a later point in time.

12. Social Media

- Be careful about posting comments through electronic media including facebook, twitter, google accounts and the like. Once these comments are in cyber-space they may be viewed by people you never intended including Judges, the other party and their lawyer. Don't use social media to vent or make critical remarks and don't send emails or make posts when you are angry or upset. If your matter goes to trial any comments may potentially be used as evidence against you. Try to keep any communications free from emotion. Stick to the facts and speak in the same way you would to a business or work colleague.

13. Children's schooling

- Ensure the school has details of both parents, so that any reports or other notices generally sent to parents regarding children can be sent to both parents.



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14. Consider whether to move or not to move

Whether to move out of the matrimonial home or the house that you have shared with your ex-partner can be a difficult one. You will need to consider things such as :

- How unhappy the situation will be if you stay and what the emotional toll on you will be;
- Are there children that will remain with you? If so, you may need to consider children remaining in a familiar environment close to their school, friends, etc.
- Keeping the family home may not be possible and you may need to consider moving into new accommodation that meets both your size and financial requirements. You will need to think about both the short and long term in case it takes a while for your property settlement to occur.
- Do you want to keep the house as part of your property settlement? If so, there may be a benefit in being the one to remain in the house.
- You will also need to consider whether it will be necessary to sell the house. If so, you may need to stay in the house to make sure it remains well presented for sale.
- Where one party has moved out of the home, check whether telephone and electricity accounts are in your name and change if required. You don't want the telephone or electricity cut off because you did not pay a bill because it was sent to the wrong person.





Separation Checklist

15. Look after yourself

- Separating is stressful but keeping active and eating healthy foods will help. Don't use alcohol, tobacco or illegal drugs to deal with your stress. Try to find time to do things you enjoy such as exercise, gardening, reading, listening to music, fishing etc. Concentrate on what you have control over and recognise the things you cannot control. Take the time you need to grieve and heal. If you are struggling don't hesitate to seek health from a medical practitioner or counsellor.
- Don't involve your children in the dispute with your ex-partner. The thing most likely to affect your children in any separation is conflict between their parents. Children can pick up a lot just from your body language, tone of voice, or from what you don't say. Certainly don't discuss adult issues with them or let them overhear conversations where you are saying bad things about your ex-partner.





Custody, Parenting Orders and Everything You Need to Know About Child Matters



Are you worried about how your children will cope with your separation? Are you losing sleep thinking about whether or not you will see your children as much? It's common to worry about how your separation will affect your family. Fortunately, there are some simple things you can keep in mind to minimize the distress.

After separation, the best arrangements for children are those where the children continue to have a loving and meaningful relationship with both parents. The age of children is very important in deciding what arrangements will work. Accordingly, arrangements may need to change over time to cater to the children's developmental stages.

Having a written agreement in place helps ensure both parents have a clear understanding about when they will spend time with their children. It also enables parents to be able to plan ahead. An agreement should consider normal routines, holidays and special days such as Christmas, Easter, Father's and Mother's Day etc. Each family is different, and any agreement should cater to your own family's particular situation.



The Family Law Act has changed significantly in the last 25 years. Terms such as “Guardianship”, “Child Custody” and “Access” are no longer used. Instead the Act refers to “parenting orders”.

Parenting Orders may deal with many things including:

- Who a child is to live with;
- The time a child is to spend with a person;
- How a child will communicate with another person; and
- The allocation of parental responsibility (This can involve day to day decisions or long term decisions).

It is not only parents who can apply for parenting orders. Grandparents and any other person concerned with the welfare of a particular child can apply for parenting orders in relation to that child.





What if we agree on arrangements?

You don't have to go to court about the arrangements for your children after separation. If you agree on arrangements, you can make a parenting plan or apply for consent orders approved by the Court.

A parenting plan is a written agreement that sets out parenting arrangements for children. It is not approved by a Court and therefore is not enforceable if a party does not comply with its terms. If one party breaches a parenting plan, and the parties are unable to reach a resolution about this, it may be necessary for one party to apply to the court for formal orders in relation to parenting matters.

A consent order is a written agreement that is approved by the Court and has the same legal force as any order made by a judge.

What if we can't agree on Arrangements?

If you can't reach your own agreement with your former partner, you may wish to consider mediation or counselling to help you resolve your dispute. It is best to see an accredited family dispute resolution practitioner.

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If you still can't reach agreement, you can apply to the Court for parenting orders. When you file your application, you will need to file a certificate from an accredited family dispute resolution practitioner stating you have made a genuine attempt to resolve the dispute before applying to Court. Exemptions apply in limited circumstances such as where there has been child abuse or family violence.



What does the Court take into account?

In determining children's matters, the Court must consider the best interests of the child as the paramount consideration.

The Court must also apply a presumption that it is in the best interests of the child for the parents to have equal shared parental responsibility (ESPR). (This is different to equal time. Basically, it means the parents both have a say in decisions about long term issues for the children. This includes things like major medical decisions, religion, the children's name and their education). This presumption can be challenged where there has been abuse, violence or there is evidence that satisfies the Court that it is not in the best interests of the child for the parents to have ESPR.

If the Court believes it is appropriate for the parents to have ESPR then the court must consider certain things set out under the Family Law Act. This includes considering whether the child spending equal time (sometimes known as shared care), or substantial and significant time with each parent is in the child's best interests and reasonably practicable.





Property Settlement

How to protect what matters most to you

Recently separated and not sure of your rights? Confused about what to do next? Working out how to divide your property following separation doesn't need to be like pulling teeth. If you want to get through the settlement process as quickly and painlessly as possible though, there is some important information you should know.

Will everything be split equally?

Many people mistakenly think that when they separate, property will be divided equally. This is not the case. The Family Law Act sets out what a court must take into account when considering whether to make an order for property settlement.

Family law courts follow a four step process. This involves:

1. Identifying the net assets and liabilities of the parties;
2. Determining the financial and non-financial contributions made by the parties to the net assets and liabilities;
3. Considering factors set out in the Act relating to the needs (current and future) of the parties. The Court then determines whether any adjustments need to be made as a result of these needs; and
4. Finally, the Court considers what orders would be just and equitable in all the circumstances of the case.

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Strict time limits apply in relation to property settlements. A settlement can be done at any time after separation, but no later than:

- 12 months after a divorce order becomes final; or
- Within 2 years of separation in the case of a de facto relationship.

After these time limits expire, a property settlement order can only be made with leave (permission) of the Court, which may be very difficult to obtain.



What if we agree about how our property is split?

It's great if you and your partner can agree on how to divide your assets. It is important however, that the agreement is properly drawn up and filed with the Court. "Handshake agreements" are not enforceable and one party may decide to change their mind later causing all sorts of problems.

If you and your former partner agree how you want to divide your property, you can file an ***Application for Consent Orders with the Court***. This doesn't mean you have to go to court. Rather, your agreement is filed with the Court and provided the Court is satisfied it is just and equitable, the Court will approve it. Your agreement is then binding and has the same force as any order made by the Court after a contested hearing.

It is not necessary for both parties to have Independent legal advice from a family law solicitor, but it is advisable that they do so.





Alternatively, agreements about property settlement can be included in a ***Binding Financial Agreement***. Both parties must have independent legal advice and very strict requirements apply. If these are not followed, there is a risk the agreement will be set aside if later challenged in Court.

Generally, Binding Financial Agreements are more expensive than an Application for Consent Orders due to these technical requirements. We generally recommend that a property settlement be finalized by way of consent orders rather than a binding financial agreement.

If a property settlement involves a superannuation split, any proposed order or agreement must be served on the Trustee of the Superannuation Fund. This is to ensure the Trustee has no objection to the proposed superannuation split. It is unusual for the trustee to have an objection, but there is technical wording that has to be used so it is best to get legal advice if you are thinking of splitting superannuation.





Applying for a Divorce – What You Need to Know

Have you been separated for a while and now want to formally divorce?

You have probably heard that these days nearly half of all marriages end in divorce. More couples are applying to the Court to dissolve their marriage than ever before. The process may seem simple, but it's important you fully understand the divorce process. A divorce can also affect your rights to a property settlement, spousal maintenance, or your will.

When can I get divorced?

You can apply for a divorce when you and your former spouse have been separated for over 12 months. This is the only ground for a divorce, however if you have been married less than 2 years, counselling must also be attempted before the court will grant a divorce.

If you have children, the Court will need to be satisfied that proper arrangements have been made for the children. If you are involved in Court proceedings regarding your children or their support, this doesn't necessarily mean your divorce won't be granted. The Court will just need information about this.

If you do not have children, you can choose not to attend Court when the Court decides your application for a divorce. If you have applied for a divorce and have children, you will need to attend Court unless you file a joint application with your former partner.



When are we officially separated?

Separation occurs when one party forms the intention to end the relationship and communicates this to the other person. Generally, one person will move out of the family home or residence. It is possible to be separated, but still living under one roof. If the separation is not clear, the Court may require further information about your living circumstances at the time of separation.

If I move out of the home will this affect my rights?

No. Your rights to a property settlement or the children's rights to have a meaningful relationship with you are not affected if you move out of the family home. It is always best however to try to reach agreement about what will happen before moving out of the family home provided it is safe to do so. If you are thinking about moving out, we suggest you seek legal advice before doing so.





What is the difference between a divorce and property settlement?

A divorce is the legal end of your marriage. A property settlement is the division of your assets, liabilities and financial resources. A property settlement can be done at any time after separation. You have to be separated over 12 months before you can apply for a divorce.

Generally, it is best to arrange your property settlement before your divorce. This is because once you are divorced, you only have 12 months to file an application for property settlement. After this time, you have to apply for permission of the Court to bring an application. This may not be allowed unless special circumstances exist.

Should I make a new will?

A divorce may affect your will or Enduring Power of Attorney. We suggest you seek legal advice about your particular circumstances.





Domestic Violence – When Life is Never Easy

Are you caught in a cycle of ongoing physical or emotional abuse? Have you been isolated from friends or family? Not sure where to turn?

Being in a tumultuous relationship can rock your self-confidence, and impact your entire family both physically, financially and emotionally. Many people (even those closest to you) will often not understand what you are going through.

If you have experienced domestic violence you will understand it's not only about being fearful of your physical safety. It can also affect your psychological and emotional wellbeing. Often those closest to you know exactly how to hurt you the most - be it by threats of violence, saying derogatory things about you or criticising your role as a parent.

Generally, domestic violence is about a perpetrator trying to control another person. This can occur slowly and subtly over time; or it can occur from one significant incident where the perpetrator makes his or her intentions very clear.





My partner blames me – was it somehow my fault?

Domestic violence is never ok. It is a breach of basic human rights. It is common for a perpetrator to use intimidation, fear or financial control to manipulate his/her victim. A perpetrator will often tell a victim that what they are doing is their fault. This is just another form of manipulation or control. Perpetrators can become very experienced in using these tactics to destroy the self-confidence of their victim.

What are the types of domestic violence?

Domestic violence can take many forms including physical, verbal, emotional, and financial. [Our blog](#) contains more information about behaviours that constitute domestic violence.

What is the effect of domestic violence on children?

Children who witness domestic violence can develop serious problems. For example, children can become withdrawn, develop behavioural problems, develop low self-esteem or their education can suffer. Some children will start copying the behaviour of the perpetrator or think that such behaviour is acceptable. The good news is that there are many services that can help if you think your child is or has been affected by domestic violence.



Need help?

Are you in a relationship, or have you been in a relationship where you just want the bad behaviour to stop so you can have peace in your life? You will understand that being in such a relationship doesn't necessarily mean it's easy to leave. Many victims find themselves so caught in a cycle of violence that the easiest way to "find peace" is to do what will upset the perpetrator the least.

If you need assistance to get out of a relationship, or just want more information on your rights, come and see us. We can provide you with a range of options so you can choose the best path forward for you. Remember you are never alone. If you need more information you can be assured all appointments with us are strictly confidential and your safety is our number one concern.





Child Support - The Good, the Bad and the Ugly

Separated with children? Overwhelmed trying to understand the complexities of Child Support? Frustrated trying to deal with the Child Support Agency?

If you are separated and have children, at some point you will have to consider how each parent is going to support your child/children. Whilst this may seem daunting there is some basic information we can give you that will help you navigate through the maze.

How much child support do I pay and what does it cover?

Two parents can agree between themselves how much each parent will pay by way of child support and what this is to cover. This is called a private agreement. You don't have to make a formal written agreement but it is advisable you do so. If there is no written agreement in place and one person changes his/her mind, your verbal agreement is not enforceable. We can help you draft a child support agreement that works for you. We also have more information about child support agreements on our website.





How is Child Support Calculated?

If you don't agree on how much support each parent should pay, either parent can apply to the Child Support Agency (CSA) for a child support assessment.

Child support is calculated using a complex formula. The formula is based on things such as:

- the age of the child/ren,
- how many children you have,
- the average taxable income of each parent, and
- the time (normally the number of nights) each parent cares for the children.

In some circumstances, other factors can be taken into account such as the cost of a parent having contact (eg if one parent lives out of town), or the cost of private school fees.

The amount you receive or pay under a child support assessment is not necessarily directly related to the actual costs of supporting your children. If you prefer to pay child support based on the actual costs of raising your children, it is best to negotiate a private agreement.

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To work out how much you may be entitled to receive or pay under a child support assessment, you can use the online calculator on the [Department of Human Services website](https://www.human-services.gov.au/child-support/).

Once you have a child support assessment, you can opt to pay/ receive the amount privately, or you can ask the child support agency to collect the amount for you. If you are on Centrelink benefits and entitled to receive child support, the amount of child support you receive may influence how much Centrelink you are entitled to.



My income changes constantly. How do I know what I should pay?

Calculating child support can be very difficult when one parent does not have a constant income. This may occur when one person is in business or works casual hours where income varies regularly. If you are in business you may find it preferable to negotiate a private agreement based upon the actual costs of caring for your children. Come in and see us for further information.

What if the other parent doesn't pay?

If the person you are entitled to receive child support from does not pay, you should let the Child Support Agency know. Centrelink assumes you are getting the correct amount and your Centrelink benefits will be adjusted accordingly. The Child Support Agency can bring enforcement proceedings on your behalf to recover outstanding child support.

Family and Domestic Violence - In situations involving domestic violence you may be exempt from applying for child support or you may be eligible for special assistance. Speak to us if you need further information.





What if one parent does not live in Australia?

If one parent is not a resident of Australia, different rules may apply. In this situation, we recommend you see us for further legal advice.

I have an assessment, but my circumstances have changed.

If your circumstances change you should let the child support agency know as it is possible the change will affect the amount of child support you are entitled to receive or pay.

I am caring for a child that is not my biological child. Am I entitled to child support?

If you are caring for a child, but you are not the child's parent (eg. you are a grandparent or relative) you may also be entitled to receive child support. In this instance, we recommend you come and see us for further legal advice about your rights.



What next?

You're now at the point where you probably have more questions than when you started. You may realise you have issues that are not going to go away. It's time to find out exactly where you stand. Rarely do these situations get better simply by giving it time.

It's important that you understand your rights and obligations so you can make the decisions that are best for your future. We recommend you consult with us for an initial consultation. The appointment runs for up to an hour and during this time you will be able to ask as many questions as you like. During your appointment we will get a very good understanding of your situation and your desired result

You will leave the meeting better informed and you will have a better understanding of what you should do next.

If you have difficulty getting to our office, we can conduct appointments over the phone or by skype. If business hours are a problem, ask us about our out of hours, appointments.

The cost is \$330 and payments can be made pay by cash, credit card, eftpos or electronic transfer.

Not every consultation ends in a divorce or separation; but spending time with experienced family lawyers will remove the confusion or conflicting stories you may be hearing from others. Now is the time to find out the truth about your situation, and consider a timetable that will allow you to move on with your life.

After your initial consultation there is absolutely no obligation for you to retain us as your solicitor or go ahead with a divorce or separation.

To make an initial consultation simply call us on :

40311044

or email us at:

info@rdlawcairns.com.au

We hope you do. We're looking forward to assisting you and your family move forward with your life.



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