



# Marriage, families & separation

## This brochure will tell you

This brochure provides information for people considering, or 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 Court of Australia and the Federal Circuit Court of Australia 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 seek 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 can be 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 usually 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 the Court if there is an existing or pending family violence order involving themselves or their children. More detail is in the fact sheet 'Do you have fears for your safety when attending court'.

## 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 Australian Institute of Family Law Arbitrators and Mediators (AIFLAM):

- Go to [www.aiflam.org.au](http://www.aiflam.org.au)
- or call 02 6246 3758.

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 the 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 can offer 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 the 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 the Court.

For more information about parenting plans and how they work, speak to staff at a community-based service and/or get legal advice.

### Consent orders

A consent order is a written agreement that is approved by the Court. A consent order can cover parenting arrangements for children as well as financial arrangements such as property and spousal or de facto maintenance.

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 an 'Application for Consent Orders Kit':

- Go to [www.familycourt.gov.au](http://www.familycourt.gov.au)
-  **LIVE CHAT** on the website
- call 1300 352 000, or
- visit your nearest family law registry.

# Going to court

If you cannot reach an agreement, you may consider applying to the 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.

## Compulsory Family Dispute Resolution

Before you apply to the Court for a parenting order, including those seeking changes to an existing parenting order, you need to attend Family Dispute Resolution (FDR) and obtain a certificate from a registered FDR provider.

There are some exceptions to this requirement, such as cases involving family violence, child abuse, or urgency. For more information about these exceptions, see the fact sheet 'Compulsory Family Dispute Resolution - court procedures and requirements'.

For more information about FDR and how to locate a registered FDR provider:

- Go to [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au)
- or call the Family Relationship Advice Line on 1800 050 321.

NOTE: If you are required to provide a certificate and you fail to do so, the Court cannot accept your application.


## Pre-action procedures – Family Court

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

For more information about applying for parenting or financial orders in the Family Court see the brochures:

- ~ Before you file – pre-action procedure for financial cases, and
- ~ Before you file – pre-action procedure for parenting cases.

## Steps involved in court proceedings

- ① Pre-action procedures ▲
- ② Court application filed 
- ③ First court appointment or hearing
- ④ Child dispute services (see 'Family Consultants' on page four of this brochure)
- ⑤ Court based dispute resolution (financial)
- ⑥ Preparation for final trial or hearing ❖
- ⑦ Final trial or hearing

▲ only applies in Family Court

❖ may include additional court appointments or hearings

Agreement may be reached at any stage, with consent orders made and the case finalised.

Different steps may apply in some cases. You can get more information about particular court appointments and hearings from:

- [www.familycourt.gov.au](http://www.familycourt.gov.au)
- [www.federalcircuitcourt.gov.au](http://www.federalcircuitcourt.gov.au)
-  on the website
- by calling 1300 352 000
- or at your nearest family law registry.

## Commonwealth Courts Portal

Applications for Divorce (and certain accompanying documents) can be electronically filed through the Commonwealth Courts Portal ([www.comcourts.gov.au](http://www.comcourts.gov.au)).

For more information see the 'Commonwealth Courts Portal User Guide', available at [www.familycourt.gov.au](http://www.familycourt.gov.au) and [www.federalcircuitcourt.gov.au](http://www.federalcircuitcourt.gov.au)

## 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 Court in many ways. They can:

- help you and the other party resolve your dispute
- assist and advise the Court and give evidence about your case
- write and provide a report to the Court about your family, and
- advise the Court 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.

If appropriate, the Court may also appoint a family counsellor or FDR practitioner. Communications with a family counsellor or FDR 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.

If the order is not complied with, you may file a court application. The Court can make an order to enforce an existing order. The 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 the 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'.

### Interpreters

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.

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

## Other help available

### Family Relationship Centres

Family Relationship Centres:

- ~ provide information to help strengthen family relationships
- ~ 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

### Department of Human Services (Child Support) (DHS (CS))

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

DHS (CS) has information available to support separated parents and their children. Some of the online 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.

- Go to [www.humanservices.gov.au](http://www.humanservices.gov.au)

### Department of Human Services (Centrelink)

Centrelink 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 a parent or guardian?' which provides information on payments and services available that you may be eligible for as well as your rights and obligations.

To contact Centrelink or to order any of their free publications:

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

## Family law registries

Both the Family Court and the Federal Circuit Court of Australia (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 and Childers St  
Canberra ACT 2600

### NEW SOUTH WALES

Albury ~ Level 1, 463 Kiewa St Albury NSW 2640

Dubbo ~ Cnr Macquarie and Wingewarra Sts Dubbo  
NSW 2830

Lismore ~ Level 2, 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 ~ Level 1, 43 Burelli St, Wollongong NSW 2500

### NORTHERN TERRITORY

Alice Springs ~ Level 1, Centrepoin Building, Hartley St  
Alice Springs NT 0870

Darwin ~ Supreme Court Building, State Square  
Darwin NT 0800

### QUEENSLAND

Brisbane ~ 119 North Quay Brisbane Qld 4000

Cairns ~ Level 3 and 4, 104 Grafton St Cairns Qld 4870

Rockhampton ~ 46 East St (Cnr Fitzroy St)  
Rockhampton Qld 4700

Townsville ~ Level 2, Commonwealth Centre  
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 ~ Level 3, ANZ Building, Cnr Brisbane and  
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.act.gov.au](http://www.legalaid.act.gov.au)
- 1300 654 314 or 02 6243 3471

### 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

### QUEENSLAND

- [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)
- 1300 651 188 or 07 3238 3500

### SOUTH AUSTRALIA

- [www.lsc.sa.gov.au](http://www.lsc.sa.gov.au)
- 1300 366 424 or 08 8463 3555

### 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 0120 or 1800 677 402

### 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.com.au](http://www.qls.com.au)
- 07 3842 5842

### SOUTH AUSTRALIA

- [www.lawsocietysa.asn.au](http://www.lawsocietysa.asn.au)
- 08 8229 0200

### TASMANIA

- [www.lst.org.au](http://www.lst.org.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

- [www.legalaid.act.gov.au](http://www.legalaid.act.gov.au)
- 02 9212 7333 (Community Legal Centres NSW)

### SOUTH AUSTRALIA

- 08 8342 1800 (Community Legal Centres)

### VICTORIA

- 03 9652 1500 (Federation of Community Legal Centres)

### WESTERN AUSTRALIA

- 08 9221 9322 (Community Legal Centres Association)

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 Aboriginal Legal Service

- 02 8303 6699

### NORTHERN TERRITORY

Central Australian Aboriginal Legal Aid Service - Alice Springs

- 08 8950 9300 or 1800 636 079

North Australian Aboriginal Justice Agency - Darwin

- [www.naaja.org.au](http://www.naaja.org.au)
- 08 8982 5100 or 1800 898 251

### QUEENSLAND

Aboriginal and Torres Strait Islander Legal Service - Brisbane

- 07 4721 6346 or 1800 012 255

Aboriginal and Torres Strait Islander Community Legal Services - Townsville

- 07 4721 6346

### SOUTH AUSTRALIA

Aboriginal Legal Rights Movement

- [www.alrm.org.au](http://www.alrm.org.au)
- 08 8113 3777 or 1800 643 222

### TASMANIA

Tasmanian Aboriginal Centre

- 03 6234 8311

### 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

## Australian Institute of Family Law Arbitrators & Mediators (AIFLAM)

- [www.aiflam.org.au](http://www.aiflam.org.au)
- 02 6246 3758