



Marriage, families & separation

This brochure provides general information about the social and legal effects of separation. It also brings together information about the services provided by the family courts and other government and community agencies.

The brochure *My family is separating – what now?* gives you further information about the services which can assist you. You can get a copy from any registry of the Courts or:

- www.familycourt.gov.au
- www.fmc.gov.au

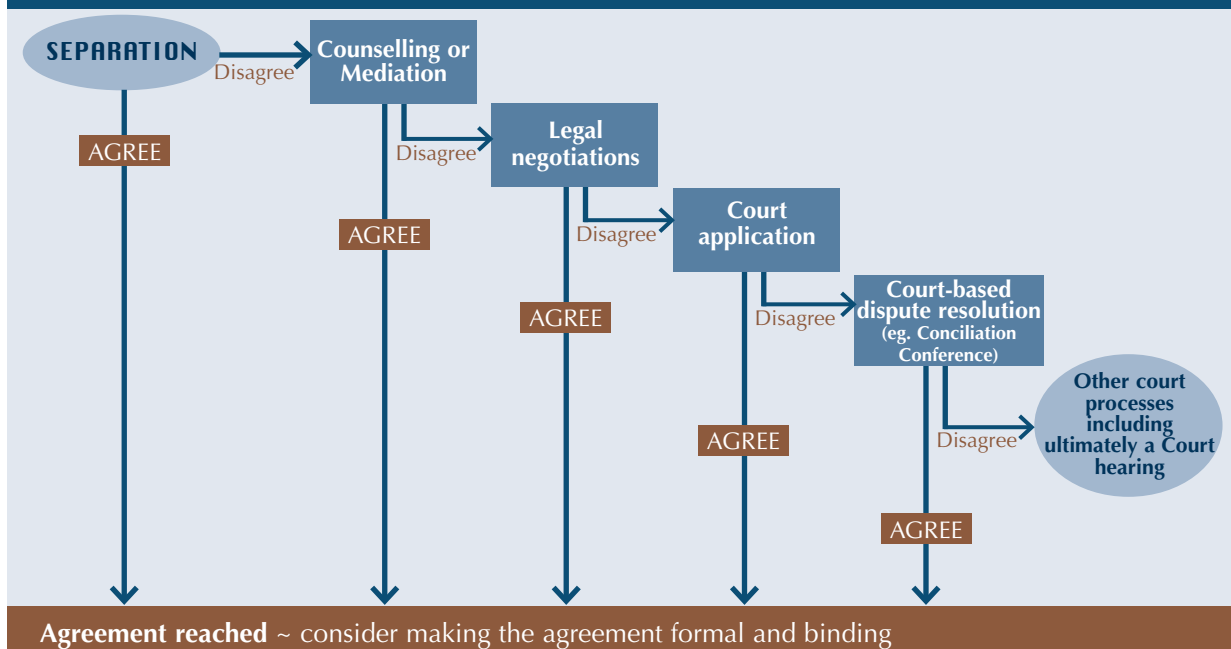
Separation

Separation is a stressful time for everyone, especially when children are involved. Both partners may experience a range of emotions, which include a sense of loss, grief, pain, anger and failure. It takes time to work through these feelings and readjust to all the changes that are happening in your life.

At the time of separation, you and your former partner will 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. If you and your former partner cannot reach agreement, there are a number of options available.

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 they may not be able to discuss this with you. They may also behave in ways that are unusual for them. You can obtain help about how to manage this from an approved counselling agency in your community. To obtain information about an agency close to you, please contact the Family Law Hotline on 1800 050 321 or one of the mediation services listed on the back of this brochure.

PATHWAYS TO AGREEMENT



Personal Safety

AT COURT

If you have any concerns about your personal safety while attending court please contact the Court **before** your mediation appointment or court hearing. The Court can arrange for you to attend by phone, videoconference or in a separate room.

You must also inform court staff if there is a family violence order in existence and provide a copy to the Court. If you do not tell the Court about a family violence order, the Court may unknowingly make an order which puts you and anyone else included on the order in danger.

AT COUNSELLING OR MEDIATION SERVICES OUTSIDE THE COURT

You should also tell the staff of these services if you have any concerns about your personal safety and provide a copy of any family violence order before your appointment so that appropriate arrangements can be made.

Dispute resolution

WHAT IS IT AND HOW CAN IT HELP?

The dispute resolution process can help you and your former partner to reach an agreement or provide information about children's needs. Dispute resolution processes are:

- mediation where a neutral person will help you and your former partner to identify the matters that you don't agree about and will help you to consider alternatives and, if possible, reach an agreement; and
- conciliation which is similar to mediation but the neutral person may give you advice about the possible outcome of your dispute.

Counselling can help you to deal with personal and family problems you may have as a result of the breakdown of your relationship.

CHILDREN'S MATTERS

You and your former partner can access counselling or mediation before making an application to the Court. If intending to file an application in the Family Court, you will most likely be required to follow a pre-action procedure before filing. **See page 3 'Pre-action procedure' for more information.** Organisations in your community that help resolve disputes are likely to be particularly helpful for separating parents as it may assist them to focus on the best interests of their children and to establish cooperative parenting arrangements for the future. These services are often targeted specifically at children's matters. They may be conducted by psychologists or social workers who are trained in helping separated couples make arrangements for their children.

In any event, separating parents may be required to attempt community based dispute resolution before seeking to commence proceedings in the Family Court. **See page 3 'Pre-action procedure' for more information.**

LEGAL ADVICE

If you are considering separation or have separated you should obtain legal advice about your legal rights and responsibilities in relation to children, property division, child support, spouse maintenance and other issues. Having a general understanding of the legal framework may assist you to reach an agreement that is practical and lasting.

You may decide that simply obtaining legal advice is enough, or you may choose to be represented by a lawyer. A lawyer can negotiate on your behalf or represent you in court. Even if you choose to represent yourself in court, you would find it of benefit if you have obtained some legal advice.

If you are looking for a lawyer who deals with family law matters, the Family Law Section of the Law Council of Australia or the Law Society in your State or Territory may be able to help. Contact details are on the back of this brochure.

Free advice may be available. You may be eligible for legal aid. To find out contact your nearest Legal Aid Office for advice. If you are of Aboriginal or Torres Strait Islander origin you can also contact your local Aboriginal and/or Islander legal service. Community legal centres may also be able to help you. Contact details are on the back of this brochure. If you live in a regional, rural or remote area, you may wish to contact the Regional Law Hotline (toll free 1800 050 400).

Court staff can give you some basic information about how the court operates but they can't give you legal advice or recommend a lawyer. Court staff can give you court forms and tell you about the services of the court but can't guide you or advise you what to do in your case.

Once you start court action, the Court will provide opportunities for you and your former partner to reach agreement about disputed matters. In most cases the Court will order that you attend counselling or mediation before it hears your case. If you are ordered to attend counselling or mediation, it will be conducted at the Family Court or a community based organisation.

Counselling and mediation sessions are conducted by people who are qualified under the Family Law Act or under the requirements of the Family Relationships Services Program to deliver mediation or counselling services. These professional people are trained in helping separated couples make arrangements for their children.

Children's Contact Services are another community-based service available to separated parents who need a neutral third party to facilitate children's hand-over arrangements and help with sharing contact times and provide supervision for contact should that be necessary.

PROPERTY MATTERS

Mediation is available at organisations in your community to help you to reach an agreement about the division of your property without you or your former partner having to make an application to the Court. To obtain information about an organisation close to you, please contact the Family Law Hotline on 1800 050 321 or one of the mediation services listed on the back of this brochure.

If intending to file an application in the Family Court, you will most likely be required to follow a pre-action procedure before filing. **See below 'Pre-action procedure' for more information.**

If you cannot reach an agreement through these procedures and you file an application with the Court, you will be further encouraged to try to reach an agreement before the Court makes a decision. You will be ordered to attend a conciliation conference, conducted by a Court lawyer (Registrar) or (in some Federal Magistrates Court cases) an experienced family lawyer external to the Court.

PRIVILEGE

Generally what is said during mediation and counselling sessions is privileged (confidential) and can not be used in court later. There are exceptions. Some examples are:

- there is a legal requirement to report:
 - ~ suspicion or risk of child abuse
 - ~ violence or threats of violence; and
- the Court may order that a mediator or counsellor give evidence of an admission or disclosure of abuse made during a session.

You should also note that recording mediation or counselling sessions and conciliation conferences is not allowed.

ADVANTAGES OF REACHING AGREEMENT

Reaching an agreement with your former partner offers many advantages over going to court:

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

Pre-action procedure

The Family Law Rules 2004 require parties intending to apply to the Family Court to follow the pre-action procedure before filing an application to start a case. If you intend to ask the Family Court to make parenting orders or financial orders (property or maintenance) you are required, under the pre-action procedure, to follow a number of steps before filing an application. The pre-action procedure is aimed at helping people to resolve disputes quickly, without the need to file an application, in an effort to limit costs and avoid the stress of a court case.

EXEMPTIONS

There are a number of situations in which the Family Court accepts that it will not be possible nor appropriate for a person to follow the pre-action procedure. These include situations:

- involving urgency;
- (in children's issues) involving allegations of child abuse;
- involving allegations of family violence;
- (in financial cases) involving allegations of fraud;
- where there is a genuinely intractable dispute (for example, where one person refuses to negotiate).

The Family Court has two brochures about pre-action procedure – one for people contemplating applying for parenting orders, the other for people contemplating applying for financial orders. You should obtain the brochure relevant to you, either from your nearest registry or the Family Court's website:

- www.familycourt.gov.au

Going to Court

If you are unable to reach an agreement with your former partner through mediation or legal negotiations, you may consider making an application to the court. Going to court is often a stressful time for many people. It can also be expensive and time consuming. However, in some cases it will be the only option to end your dispute.

Even when an application is made to the Court it is possible to reach an agreement, at any stage, without the need for a court hearing. In fact, a judge or federal magistrate is required to make a final decision in only a very small percentage of cases started in court.

When an order is made, either by agreement between the parties or by the Court, both parties have a legal obligation to comply with the terms of the order. If the order is not complied with (breached), an application may be brought before the Court. If the Court finds a party has breached an order, it may impose a range of penalties including attendance at a parenting program, fine or imprisonment.

CHILDREN

Generally, the court environment is not an appropriate place for children so if you are attending court we encourage you to make alternative arrangements for the care of your children.

In some circumstances children are invited to participate in mediation by a mediator or by a Court Order. Children will need to attend for a family report interview. When children need to be involved in

mediation or report interviews a prior arrangement will be made with the mediator or report writer.

If children are required to attend on court premises, a family friend or relative would be of assistance to the children. Some Registries do provide child care, however, places are strictly limited. You should ring and book a place as soon as you know you will need one. In Registries where child care is not available, or there is no place on the day because of other bookings, and you need to bring your children, it is advisable that you bring a friend or relative with you to care for the children when you are not available.

INTERPRETERS

If you need an interpreter to assist you at court, please inform court staff well in advance of your mediation appointment or court hearing. The Court does not consider the assistance of a family member or friend appropriate and will arrange a professional and independent interpreter to assist you free of charge.

INDIGENOUS FAMILY CONSULTANTS

The court provides Aboriginal and Torres Strait Islander family consultants in some court registries. The consultants provide Aboriginal and Torres Strait Islander people with information about the Court and may also support people when coming to court. If you wish to use these services, please tell court staff before your mediation appointment or court hearing. Not all Registries have Indigenous consultants based there but all have access to them.

Other help available

CHILD SUPPORT AGENCY

After separation, parents continue to be responsible for the financial support of their children according to their financial capacity. The Child Support Agency administers the child support scheme and helps separated parents take responsibility for the financial support of their children. To find out more information about the scheme, contact the Child Support Agency:

- **TEL 13 12 72, OR**
- **www.csa.gov.au**

CENTRELINK/FAMILY ASSISTANCE OFFICE

Centrelink can help with:

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

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

Ask Centrelink for the booklet 'Have you recently separated or divorced' which provides information on the range of payments and entitlements you may be eligible for, services that are available to you, and your rights and obligations. To contact Centrelink/Family Assistance Office:

- **TEL 13 61 50, OR**
- **www.centrelink.gov.au**

INTERPRETERS

If you need the assistance of a telephone interpreter to communicate with any of the agencies listed on pages 5 and 6, please telephone the Translating and Interpreting Service (TIS) on 13 14 50 and advise the operator of the name and telephone number of the agency that you wish to speak to.

- **TEL 13 14 50, OR**
- **www.immi.gov.au**

COURT REGISTRIES

Family Court and Federal Magistrates Court

Both the Family Court and the Federal Magistrates Court deal with family law matters. In most locations, registry staff provide information about court services and accept court documents for both courts.

- For further information about the Family Court visit www.familycourt.gov.au
- For further information about the Federal Magistrates Court visit www.fmc.gov.au
- The Federal Magistrates Court operates a toll free assistance line. For general enquiries call ☎ 1300 367 110.

SYMBOLS

- ◆ Family Court of Australia
- Federal Magistrates Court of Australia
- M Mediation services are available in this registry before any court action is started

ADELAIDE ◆ ●

☎ (08) 8205 2666
25 Grenfell St, Adelaide, SA 5000

ALBURY ◆ M (● FMC divorce applications only)

☎ (02) 6021 8944
463 Kiewa St, Albury, NSW 2640

ALICE SPRINGS ◆ ● M

☎ (08) 8952 8222
Centrepoint Building, Hartley St Alice Springs NT 0870

BRISBANE ◆ ●

☎ (07) 3248 2200 ☎ (07) 3248 2300 – mediation
119 North Quay, Brisbane, Qld 4000

CAIRNS ◆ ● M

☎ (07) 4041 2377
L-4/104 Grafton St, Cairns, Qld 4870

CANBERRA ◆ ●

☎ (02) 6267 0511
Cnr University Ave & Childers St Canberra, ACT 2600

DANDENONG ◆ ●

☎ (03) 9767 6200
53–55 Robinson St, Dandenong, Vic 3175

DARWIN ◆ ●

☎ (08) 8981 1488 ☎ (08) 8941 2933 – mediation
80 Mitchell St, Darwin, NT 0800

DUBBO ◆ M (● FMC divorce applications only)

☎ (02) 6881 1555
Cnr Macquarie & Wingewarra Sts Dubbo, NSW 2830

HOBART ◆ ●

☎ (03) 6232 1725
39–41 Davey St, Hobart, Tas 7000

LAUNCESTON ◆ ● M

☎ (03) 6334 2111
Crn Brisbane & George Sts Launceston, Tas 7250

LISMORE ◆ M (● FMC divorce applications only)

☎ (02) 6621 8977
29–31 Molesworth St, Lismore, NSW 2480

MELBOURNE ◆ ●

☎ (03) 8600 3777
305 William St, Melbourne, Vic 3000

NEWCASTLE ◆ ● M

☎ (02) 4926 1255 ☎ (02) 4926 4299 – mediation
61 Bolton St, Newcastle, NSW 2300

PARRAMATTA ◆ ●

☎ (02) 9893 5555
1–3 George St, Parramatta, NSW 2150

ROCKHAMPTON ◆ ●

☎ (07) 4921 2939
L-4/Cnr East & Fitzroy Sts Rockhampton, Qld 4700

SYDNEY ◆ (● FMC divorce applications only)

☎ (02) 9217 7111 ☎ (02) 9217 7333 – mediation
97–99 Goulburn St, Sydney, NSW 2000

TOWNSVILLE ◆ ● M

☎ (07) 4722 9333
L-2/143 Walker St, Townsville, Qld 4810

WOLLONGONG ◆ M (● FMC divorce applications only)

☎ (02) 4253 6200
L-1/43 Burelli St, Wollongong, NSW 2500

WESTERN AUSTRALIA

Family Court of Western Australia
☎ (08) 9224 8222 – Perth
☎ (08) 9224 8248 – mediation
150 Terrace Rd Perth, WA 6000

WHO ELSE CAN HELP

Legal Aid Offices and Commissions

www.nla.aust.net.au

Adelaide	☎ (08) 8463 3555 or 1300 366 424
Brisbane	☎ (07) 3238 3444 or 1300 651 188
Canberra	☎ (02) 6243 3411 or 1300 654 314
Darwin	☎ (08) 8999 3000 or 1800 019 343 (country callers toll free)
Hobart	☎ (03) 6236 3800 or 1300 366 611
Melbourne	☎ (03) 9269 0234 or 1800 677 402 (country callers toll free)
Perth	☎ (08) 9261 6222 or 1300 650 579
Sydney	☎ (02) 9219 5000 or 1300 888 529 (LawAccess NSW)

Community Legal Centres

The numbers listed below are Representative Community Legal Centre organisations within each state/territory. They will provide referrals to a Centre in your area.

Australian Capital Territory	☎ (02) 6257 2931
New South Wales	☎ (02) 9318 2355
Northern Territory	☎ (08) 8952 4055
Queensland	☎ (07) 4721 5511
South Australia	☎ (08) 8342 1800
Tasmania	☎ (03) 6223 2500
Victoria	☎ (03) 9654 2204
Western Australia	☎ (08) 9221 9322
National Association of Community Legal Centres	☎ (02) 9264 9595 www.naclc.org.au

Law Societies and Institutes

Australian Capital Territory	☎ (02) 6247 5700
New South Wales	☎ (02) 9926 0333
Northern Territory	☎ (08) 8981 5104
Queensland	☎ (07) 3842 5888
South Australia	☎ (08) 8229 0222
Tasmania	☎ (03) 6234 4133
Victoria	☎ (03) 9607 9311
Western Australia	☎ (08) 9322 7877

Law Council of Australia – Family Law Section

☎ (02) 6246 3788 or

~ www.familylawsection.org.au

FAMILY LAW HOTLINE

☎ 1800 050 321

FAMILY LAW ONLINE

www.familylaw.gov.au

Aboriginal and Torres Strait Islanders Legal Services

NSW ~ Sydney Regional Aboriginal Corporation Legal Services

☎ (02) 9318 2122

NT ~ Katherine Regional Aboriginal Legal Aid Service

☎ (08) 8972 1133

NT ~ Central Australian Aboriginal Legal Aid Service

☎ (08) 8952 2933

QLD ~ Aboriginal & Torres Strait Islanders Corporation for Legal Services

☎ (07) 3221 1448

SA ~ Aboriginal Legal Rights Movement

☎ (08) 8211 8824

TAS ~ Tasmania Aboriginal Centre

☎ (03) 6234 8311

VIC ~ Victoria Aboriginal Legal Service

☎ (03) 9419 3888

WA ~ Aboriginal Legal Services of Western Australia

☎ (08) 9265 6666

Family Relationships Organisations

The following organisations represent counselling and mediation agencies. They can give you information about agencies in your community.

Centacare

☎ 1300 138 070
www.centacare.org.au

Family Services Australia

☎ 1300 365 859
www.fsa.org.au

Relationships Australia

☎ 1300 364 277
www.relationships.org.au

The Family Court of Australia and your privacy

The Family Court of Australia treats your right to privacy and the security of your information, seriously. As a Court, it is an 'agency' for the purposes of the *Privacy Act 1988*, although the Act only applies to the Court when it deals with matters of an administrative nature.

The Family Court of Australia collects information to exercise its jurisdiction under law. Although this information does not fall under the *Privacy Act*, other laws protect it. Under the Rules of Court, only a very limited range of people, including the parties, may inspect case files. The *Family Law Act* also restricts the reporting of proceedings before the Court. Finally, improper disclosure by Court staff of personal information would be a serious disciplinary matter.

The Family Court of Australia also collects information for administrative purposes. This information may be used and disclosed for purposes related to the administration of the Court, for example where services are obtained from third parties. Personal information held by the Court is securely stored. It is not usually disclosed except in the circumstances mentioned above or as required legally.