



# **FAMILY LAW GUIDE**

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## Statement from our Managing Partner

Going through a rocky time in your relationship is hard enough, but when there are talks of separation or divorce, things can escalate quite quickly. Feelings of hurt, embarrassment and panic can cause anxiety and restless nights.

Several individuals will find themselves withdrawing from family and friends, hoping to avoid questions that could cause a breakdown or judgement, which can possibly lead to depression or irrational behavior that may affect the mental and emotional wellbeing of the separating couple and their children (if any).

This being said, we want to make sure anyone thinking about moving forward with a separation or divorce is provided all the information they need in order to process everything rationally, effectively, and smoothly.

**Jahan Kalantar**  
*Managing Partner*



## Statistical Facts



In 2019, 113,815 marriages were registered and 49,116 divorces were granted in Australia.



The average number of years a couple has been together before separation is 8.5 years per 2019 figures.



The average number of years a couple has been together before they divorce is 12.2 years in Australia.

As much as we don't want to have a "misery loves company" mindset, take comfort in knowing that you are not alone.

Divorce is normal if it means keeping you and your children safe and in a healthy situation physically, mentally, emotionally and spiritually.

Source: *Australian Bureau of Statistics*

## Separation Preparation Checklist

Here is a list of what you should do before you actually start legal processing of separation from your spouse or partner. This will allow you to put yourself in a mindset that looks at your divorce as a business transaction to limit the emotional roller coast it can turn out to be.

1. **Evaluate if your partnership is officially over.** Doing some soul searching if you are truly ready to part ways or if you want to save the relationship is the first step. Don't just act in the moment because that might hurt you down the line. If you can (and actually want to) save your relationship or marriage try couples counselling to move forward.
2. **Decide how to bring up separation with your partner.** You have the best insight on how your spouse will most likely react. If your intention is to get out of the relationship amicably and quickly, springing the idea of leaving in an abrupt manner might cause your partner to prolong the process in an act of resentment or vengeance.
3. **Speak with trusted services.** As mentioned above, you are not alone in going through separation -- you are not the first, nor will you be the last. Getting input from trusted counselors - mediators, friends or family members who have gone through a divorce, and professionals such as lawyers, accountants, psychologists, etc. will allow you to discern a better understanding of what to expect and how to deal with it.

## Separation Preparation Checklist

4. Understand the divorce avenues you can choose from. Divorce isn't as simple as signing a document and officially ending your marriage. You have to consider the situation and select the best avenue to work for you. For example, you can go through a DIY divorce, litigation, collaborative divorce, or mediation.

5. Evaluate the timing of your separation. This might not seem important, but considering the timing of when to get divorced can play a large role on the outcome of the separation. For example: Did one of you just lose your jobs?



6. Review your parenting and family routine. If you have children and pets, make a list of everything they need from activities, healthcare and their general wellbeing.

7. Create a co-parenting plan. Making sure your children's and pets' needs are still being covered by you and your partner, even after you separate is crucial in ensuring things go smoothly for them even if you and your partner might experience the opposite.

## Separation Preparation Checklist

8. **Plan for separation living arrangements.** Living the same living quarters with your partner during the separation is obviously not ideal, even more so after the separation. Plan for where you will both live and begin the transition as soon as possible.

9. **Assess your Legal Aid eligibility.** Do you know how this divorce will be paid? Do you have the means to pay legal fees? Find out how you can get legal aid and your payment options to go through the separation.

10. **Record your separation date.** Once you've spoken to your partner and (hopefully) agreed on your official date of separation, be sure to keep a record of this.



11. **Make a list of all your liabilities and assets.** You need to list out everything from loans, bills, houses, cars, businesses, and everything as detailed as possible as these will be divided among you and your partner. Consider how you might divide it fairly.

12. **Make a list of all your contributions to the relationship.** This list will consist of both your financial and non-financial contributions. Creating this detailed list will help in the divorce proceedings by allowing the mediator to understand the dynamics of the relationship and how to have a fair outcome.

## Separation Preparation Checklist

13. Evaluate your needs during and after the divorce. By considering your current expenses and anticipating your future needs, you'll be able to come up with a plan to meet these needs through the negotiations and on your own.

14. List your priorities and goals. Knowing what you want the outcome of the separation to be (who gets what) and why you want these things is critical in the preparation of negotiation. Understanding your why and what is most important for you will allow you to understand what you can let go as well.

15. Keep documentation of everything. Divorce and separation can bring out the worst in people, and you want to protect yourself and your children. Be sure to keep track of your lists, your legal documentation and actions or exchanges you are experiencing during and after the separation.





## Separation And Divorce

### Distinguishing Separation and Divorce

In legal terms, separation is where one spouse has communicated to the other spouse an intention to end their relationship. A separation requires the spouse to reflect actions to that effect.

Physically separating through leaving the joint residence reflects an intention to sever the relationship. However, the legal system in Australia also recognises that personal and financial circumstances can vary for each separating couple. Therefore, the law will also recognise a 'separation under one roof'. It is important to obtain legal advice when separating and remaining under the same residence to completely understand the ramifications.

To obtain a divorce in Australia, couples will only be eligible where they have separated from their spouse for a period of 12 months. Where there has been a failure to reconcile during this period, parties can complete a divorce application and file it with the court.



## No Fault System

We understand that not all divorce settlements will be amicable and one or both parties may harbour hostility or resentment. The law in Australia does not take into consideration the reasons for the breakdown of the marriage. As such, the causes of the breakdown are not relevant to whether a divorce will be granted.

The Family Law Act in Australia refers to a divorce as the irretrievable breakdown of the marriage.

## Mediation

Couples who have been married for a period of less than two years will need to file a counselling certificate prior to obtaining a divorce. The two-year period is calculated from the date of marriage until the date of applying to the court for a divorce.

A counselling certificate can be obtained through Relationships Australia and several other counselling providers. If you are unable to attend counselling, you will be required to file an affidavit with your divorce application.

If you have been married for longer than two years a certificate will not be required. However, mediation can still be pursued in good faith by both spouses.



## Custody Arrangements

### PARENTING PLANS

#### What is a Parenting Plan?

A parenting plan is a voluntary agreement that may be entered by separated or divorced couples that can outline:

- the daily responsibilities of each parent
- practical considerations pertaining to a child's life including who the child should live with, the amount of time spent with each parent and what school he or she will attend
- how the parents will agree and discuss important long-term issues relating to their children

It is important to note that a parenting plan is not legally binding and the terms and contents of the agreement can be changed at any time if both parents agree.

#### Who can make a Parenting Plan?

Both parents must sign a parenting plan under the **Family Law Act**. However, third persons, such as grandparents or step-parents can be included in a parenting plan.

In accordance with the **Family Law Act**, a parenting plan must be made in writing, signed and dated by both parents of the child. The plan must not be signed under any threat, duress or coercion.

A parenting plan is not legally enforceable and is therefore distinguished from a Parenting Order which is discussed in further detail below.

## **Court Ordered Parenting Plan**

Where the parties are in a dispute surrounding the current parenting plan and wish to establish a parenting order, the court will consider the terms of the current parenting plan if it is in the child's best interests. The court will also examine the extent to which both parents have upheld their obligations in relation to the welfare and upbringing of the child.

A court ordered parenting plan is legally binding on both parties.

The court in formulating a parenting plan for the child will consider the best interests of the child in accordance with the Family Law Act. Courts recognise that children have the right to bond with both parents and therefore except in circumstances of violence or abuse, the law presumes that it is in the child's best interest to spend an equal amount of time with each parent. However, the court will uphold the child's right to be protected from harm and thereby the safety of the child is the paramount consideration.



## CHILD MAINTENANCE



Child maintenance or child support can be sought through the Child Support Scheme.

Relevant considerations in assessing your eligibility to claim child support includes the following:

- the current and future care arrangements for your children
- the parenting plan or court ordered parenting arrangement reached by parents
- the child's place of residence
- the income of both parents

## BREACH OF PARENTING ARRANGEMENT

A breach of the parenting plan mutually agreed by the parties will not amount to any breach of contract or penalty. Both parents will be able to apply for a parenting order through the court to resolve the matter or reach an amended parenting arrangement.

A person contravenes an order, which has not been altered by a parenting plan, if they:

- a.intentionally fail to comply with the order, or
- b.make no reasonable attempt to comply with the order, or
- c.intentionally prevent compliance with the order by a person who is bound by it, or
- d.aids or abet a contravention of the order by a person who is bound by it.

Where a parenting order has been breached, a court can penalise someone for failing to comply with the order. Penalties which the court may award includes the following:

- a variation of the primary order
- order for non-compliant party to attend a post separation parenting program
- compensate for lost time
- require you to enter a bond
- order all or some of the other parties' legal costs to be borne by the non-compliant party
- order a compensation payment for reasonable expenses
- community service
- payment of a fine
- sentence of imprisonment

## Asset Division

### How is it Assessed?

Both the financial and non-financial contributions of each party will be assessed by the court in accordance with the Family Law Act. Where an agreement has been entered by the parties pertaining to the distribution of assets, the court has the power to amend the agreement where both parties have not sought independent legal advice or where it is just and equitable to do so in the circumstances.

When making an order for asset division the court will consider the following:

- the parties' respective contributions to the property
- the parties' future needs
- the welfare of any children borne from the partnership
- the value or effort exercised by the parties in refurbishing the property
- the income and assets of both parties

The court therefore undertakes a holistic approach to the division of assets and property to create a fair and equitable outcome for the parties.



## ESTABLISHING THE ASSET POOL



The first step to finalising property and asset matters arising from the marriage or partnership is to accumulate financial records pertaining to the value of the asset pool.

In such circumstances, both parties will be required to disclose their individual bank accounts, the value of any assets including properties they own, the value of any shares (if any) owned by the parties, and any other interest in a trust or business.

Where there is a mortgage or other debt owing by either party, disclosure is also required. Debt can take the form outstanding taxes to the Australian Taxation Office and credit card payments.



## WHAT CONTRIBUTIONS WERE MADE DURING THE RELATIONSHIP?

The second stage in finalising property and asset matters is to identify the contributions made by each party during the course of the relationship.

Contributions include both financial and non-financial input.

Financial contributions can incorporate the following:

- Salary, wages and bonuses
- Gifts
- Inheritance
- Stock ownership and dividends

Non-financial contributions can incorporate the following:

- Housework
- Maintaining the care and welfare of children of the relationship
- Renovating the family home



## WHAT ARE THE FUTURE NEEDS OF THE PARTIES?

The third stage in finalising asset matters is to formulate an understanding of each parties' future needs. The court will make an amendment to the property distribution formulated from the above steps to account for a party's future needs.

Relevant considerations to the assessment of an individual's future needs that the court will consider includes the following non-exhaustive list:

- the respective ages of both persons
- the health of the party
- the employment prospects and financial resources available to an individual
- the respective care and responsibility for children after divorce
- the length of the marriage

Where the court has determined that one parties future earning capacity is affected they may order the other spouse to pay spousal maintenance costs.



## Divorce FAQs

### Do I actually *need* a divorce lawyer?

If your ultimate goal is to get through a divorce as quickly and efficiently as possible with the highest successful outcome, then the answer is **ABSOLUTELY**.

Divorce can be a messy and complicated process. You don't want to spend your time and resources searching for things on your own. Engaging a lawyer who specializes in family law matters and has experience in divorce cases is the surest and fastest way to minimise any pain and confusion you'll experience through this process.

### How Much Will It Cost Me To Hire A Divorce Lawyer?

There is no exact price range for this as everything will depend on you and your ex's willingness to negotiate your settlement. If one or both parties are not willing to settle, then going to court will mean more time and money being spent to resolve the disputes. In addition, the kind of divorce you get (litigation, mediation, etc) also plays a factor. Furthermore where children are involved you may need to engage a children's lawyer. But to give you some idea of what it could cost:

-The price range for going to court can cost between \$3300 to \$25000 as this could last up to a year.

-Litigated divorces are more costly because it will include expert witnesses, filing fee costs, a barrister and other 3rd party fees. For a period of two to four years, you could be looking at a price range of \$30000 to \$150000.

## Divorce FAQs

### How Long Is The Process Of Divorce or Separation?

It usually takes between 6 to 18 months to go through the legal process, but it could be finalized within weeks if both parties come to terms of the separation emotionally and legally.

For simplicity and summation of the above requirements:

- You must be separated for a period of 12 months before you can file for divorce
- If you're in a de facto relationship, there is no formal requirement to separate, but you do have 24 months to finalize a property and financial settlement
- You can finalize your property, children and financial settlement without being legally divorced



## Divorce FAQs

### Do I Still Have The Right To Visit My Children if No Formal Agreement Has Been Drawn?

Yes. Visiting and caring for your child's emotional, physical and spiritual wellbeing during a separation is crucial to their health and future. As a parent, you still have the right to be there and show them how you prioritize them. If your ex gives you a difficult time, get some assistance or advice from a legal professional to assess your options.



### Do I Still Have To Pay Child Support If I Can't or Don't See My Children?

Yes. As a parent, you do have a responsibility to make sure your child is provided for financially.

In assessing the payment of child support, an important consideration is the amount of time the child spends with each parent.

## Divorce FAQs

### Can I Make Big Purchases While Going Through The Process of Separation?

You can, but we advise to hold off on this until your separation or divorce is official as adding more assets and/or liabilities during the divorce process entitles your ex-partner to a potential claim. Unless it is a matter of urgency, it is best to wait until everything has been settled.

### Can I Keep And Protect My Business?

Transparency is key, so if you want to keep and protect your business, you must ensure that your ex-partner is removed from the business. By allowing them to see the financials and everything happening in the business, you can more easily come up with an agreement.



## Divorce FAQs

### I Don't Want To Separate From My Partner - What Can I do?

Where there is a prospect of reconciliation, you can exhaust all options to try and mend the gap with counselling and consistent guidance. However, it is best to consider whether both parties are willing and open to resolving any differences and disputes in the relationship.



### Will I Survive This Separation?

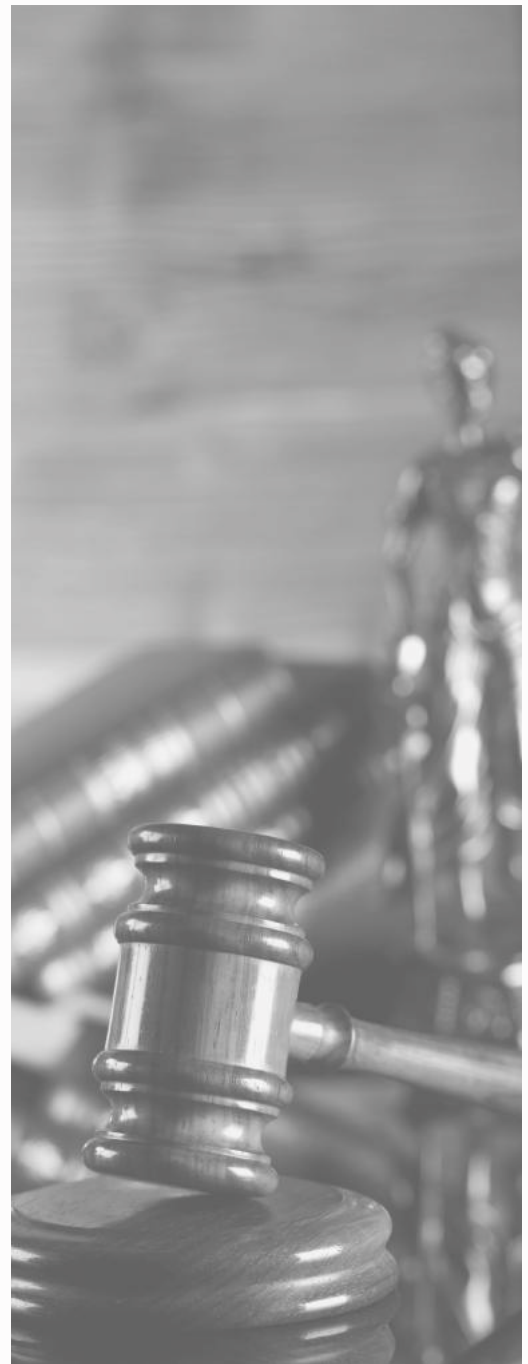
A separation can often be your chance to make things better for you, your children, and your future. Having the right support will make this process easier, and selecting a divorce lawyer who will be your champion during the process can help you get what you deserve.

## About Executive Legal

Executive Legal houses a team of experienced and empathetic practitioners that offer quality legal service to their clients. Each member of our team aims to make the world a better place, one case at a time. We take each case seriously and ensure that our clients make the right legal decisions for their personal priorities and subjective circumstances.

Our team can handle various cases including issues with property selling or purchasing, criminal or commercial disputes of all complexity. Executive Legal lawyers work hand in hand with their clients to deliver the best outcome in any given situation.

Executive Legal is a law firm that cares. We connect our their clients to give them the best professional experience during what is often a difficult or troubling time. We understand that legal problems are also people problems, and often involve looking beyond the paperwork. Our connection with our clients distinguishes us from other surrounding firms. It is our mission to provide quality and compassionate legal services. We are passionate about finding legal solutions for people in need.



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