

# You and family law

*A short guide*



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**Disclaimer:** Legal Aid Queensland believes the information provided in this guide is accurate as at August 2015 and does not accept responsibility for any errors or omissions.

**What if English is my second language?**

If you would like this publication explained in your language, you can contact us through the Translating and Interpreting Service (TIS) on 13 1450. TIS will organise an interpreter in your language and will connect you to Legal Aid Queensland. This is a confidential and free service.



**Acknowledgment:** This guide has been adapted from the Victoria Legal Aid guide *You and family law – a short guide*.

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# About this booklet

## Who is this booklet for?

This booklet is for anyone who needs basic information on family law. It is for people who are thinking about separation or who have separated.

Family law covers all aspects of family relationships – breakdown, divorce, care of children, financial support of children and former partners, and property division. You will also find information here on ways to try to sort out your arrangements without having to go to court, and where to go for help.

## Legal words

To help you, we have explained some words in ‘Legal words and phrases explained’ at the front of this booklet. These words are also highlighted in **bold** the first time they appear in each section.

## What the law says

In Australia the law does not look at whose fault it is that the relationship broke down. The law’s main concern is what is best for the children. Where possible, children should have a relationship with each parent and other important people in their lives.

In dividing property the law looks at everything the couple owns and earns, and then divides these according to what it considers fair. It is not about who is right and who is wrong. It is about making arrangements for the future.

## Getting more help

Any relationship breakdown is stressful. It can be especially hard if there are children involved. You might also find it difficult to cope financially. Making decisions at this time is not easy, but there is help available. Getting legal advice and other support can help you understand what choices you have.

Talking to a lawyer does not mean you have to go to court, although lawyers can help you do this if you need to.

If possible, try to talk to your former partner about making arrangements for the future. If you can agree on a plan this can be better for everyone.

If you feel worried for your safety, intimidated, or feel that you cannot make decisions equally with your former partner you can get help.

You can get help to make an agreement from Legal Aid Queensland. Legal Aid Queensland clients and their families can be referred to our Family Dispute Resolution Service. A Family Relationship Centre or other dispute resolution service can also help, but they cannot give you legal advice. These community services can also refer you for other kinds of help with your relationship with your former partner.

See 'Domestic violence' at page 11.

Interpreters can be arranged for legal advice, family dispute resolution or court.

### **Contact Legal Aid Queensland:**

To speak to a client information officer call 1300 65 11 88.

You can get more detailed information about family law from our website [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

Also see 'Where to go for help' at page 30.

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# Legal words and phrases explained

**Abduction** – taking a person away without their permission or the children without permission.

**Arbitration** – where an independent person (an arbitrator) considers what each person has to say then makes a ‘binding’ (legally enforceable) decision. Arbitration can only be used in property disputes.

**Assets** – property that you own such as the family home, money, investments, inheritances, shares, superannuation, cars, jewellery and household items.

**Caveat** – a warning to other people that you have an ‘interest’ in property, for example you may have rights to the property in some way.

**Consent orders** – an agreement between you and another person which is approved by the court and then made into a court order.

**Contributions to a marriage or relationship** – things you and your spouse or defacto partner have given to a marriage or relationship, such as property, earnings, house renovations or gardening, child care, cooking and cleaning.

**Court order** – a document made by the court which sets out things that must happen, for example where the children live or how property is to be divided when a couple separates.

**Debt** – a debt is money that is owed to another person or organisation such as a mortgage, loans or credit cards.

**Defacto couple** – people who live together as if they were a married couple although they are not. This includes same sex couples.

**Divorce** – an order made by a court that ends a marriage.

**Domestic violence** – behaviour by a person towards a family member, or the family member’s property or an animal, that causes fear or concern for the family member’s personal wellbeing or safety. Also known as ‘family’ violence.

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**Domestic violence order** – a court order made under Queensland state law to protect a family member by placing restrictions on the behaviour of another family member.

**Extended family** – other family members such as grandparents, aunts, uncles and cousins.

**Family dispute resolution** – when a family dispute resolution practitioner helps people in a family sort out their disagreements with each other, before or after separation. Sometimes this is called ‘mediation’.

**Final order** – the final orders that the court makes in a court case. Once a final order is made, the case is over.

**Injunction** – a court order to stop someone from doing something, for example to stop property being sold or money being spent.

**Interim order** – a temporary order made by a court which lasts until another order or a final order is made.

**Lawyer** – a person who can advise you about the law and represent you in court.

**Legally enforceable** – must be obeyed, by order of the court, for example a parenting or consent order.

**Location order** – a court order to find children who have been taken without permission and who cannot be found.

**Mediation** – where people meet with a trained mediator to discuss their differences and see if they can come to an agreement.

**Negotiation** – the process where you and your ex-partner, or your lawyers, try to sort out an agreement on your behalf.

**Parenting order** – a court order about children, for example setting out where the children will live and when they will see each parent or other significant people.

**Parenting plan** – a written agreement between parents or other people important in the children’s life, setting out arrangements for the children. This can include who the children will live with and who they will spend time with.

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**Property settlement** – how property will be divided between former partners. This is decided either by the people themselves, through their lawyers or when the court makes an order.

**Recovery order** – a court order to bring back children who have been taken or kept without permission.

**Relocate** – moving to another area, state or country.

**Separation** – when you stop living together as a couple, even if you still live in the same house.

**Witness** – a person who saw or heard something about your case (including yourself). They give this evidence in court.

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# Separation and divorce

## What is separation?

**Separation** is when you stop living together as a couple, even if you are still living in the same house. You do not need to get permission or your partner's agreement. If you are new to Australia or are worried about your residency, get legal help.

## How do I separate?

To separate you do not have to apply to a court or government organisation, or fill in any forms. You will not get a certificate saying you are separated. You will need to:

- tell organisations such as Centrelink, the Department of Human Services (Child Support and Medicare) that you are separated
- make proper arrangements for any children involved, and tell your family and friends
- sort out your financial affairs – work out how debts and loans will be paid, what to do about any joint bank accounts, what your superannuation or insurance entitlements are and change your will.

This will help if you need to prove you are separated. Also get legal help.

See 'Dividing your property' at page 26.

## Does one of us have to leave the family home?

It is your decision if you want to leave or maybe your partner has left you. If your partner has used violence or threats, you can get help to apply for a domestic violence order at a magistrates court. You can ask for an order that stops your former partner from living in the family home, or coming anywhere you live or work. Orders can also protect children.

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If you have a domestic violence order against you and it says you must not be at your home, then you must leave. You must do what the order says. Get legal and other help.

See 'Domestic violence' at page 11.

## **Do I lose my rights if I leave?**

If you do leave the family home, you will not lose your rights to the house or your things. You may also be able to return at a later time. It is best to think about your and your children's safety first, and also get legal help.

## **What should I take if I leave?**

If you do need to leave your home urgently, it is best to take all your legal and financial papers with you, such as:

- birth and other certificates
- wills
- passports
- visas
- bank and cheque books
- superannuation, tax and other financial papers
- personal things you are worried about leaving behind
- things you may need for yourself and your children if they are going with you.

If you apply for a domestic violence order, you can ask for the order to include that your personal property be returned to you.

## **Can I take the children with me?**

Yes, but remember the law says children have a right to a relationship with each parent as long as they are safe and it is in their best interests. If the move will make it more difficult for the other parent to see the children, you need to try to get the other parent's agreement first. If possible, get legal advice, even if you have your former partner's agreement.

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If you feel you or the children are at risk of being hurt, get help quickly. Call the police on 000. A domestic violence crisis service can also help you. Get legal help as soon as possible.

See 'Where to go for help' at page 30.

## What is divorce?

**Divorce** is the official ending of your marriage. Your partner does not have to agree, and the law does not look at whose 'fault' it is. De facto couples do not have to get divorced as they were never married. Couples in a registered relationship need to apply to the Registry of Births, Deaths and Marriages to end their relationship.

## Do I have to get a divorce?

No. However, if you or your former partner wants to remarry, you must be divorced.

You can make arrangements for children and property without being divorced. If possible try to make these arrangements soon after separation.

Tell organisations like Centrelink, banks, superannuation and insurance companies.

If you stay married this affects your rights and obligations with finances and your will.

See 'How do I separate?' at page 7.

Get legal and financial help, particularly before signing an agreement. If you do get a divorce, you must apply to the court for a **property settlement** within 12 months. Get legal advice.

See 'Dividing your property' at page 26.

## How do I get a divorce?

You can apply for a divorce at the family law courts. You or your partner must be an Australian citizen or long term resident.

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You can still apply for a divorce if you were married overseas, or if you do not know where your partner is, as long as you live in Australia. If you are concerned your marriage might not be legal get legal help.

Contact the court for more information and a divorce kit, which has the forms you need.

There is a fee for applying for a divorce.

## **Do I need a lawyer to get a divorce?**

Most people apply without using a **lawyer**. You can decide if you want a lawyer to help you. You may need legal help to sort out arrangements for children or property.

## **When can I get a divorce?**

Your marriage must have broken down, with no chance of you getting back together. You must be separated from your partner for at least 12 months and one day. If you were married for less than two years extra conditions apply.

You can be living in the same house, as long as you live separate lives. You may have to prove this.

## **What if there are children of the marriage?**

The court will want to make sure proper arrangements have been made for the children, before allowing the divorce.

See 'Children' at page 21.

## **What happens if we get back together?**

You can become a couple again for up to three months in one period without affecting the 12-month separation period.

## **How long does it take?**

It will usually take several months for the divorce to become final. If your situation is complicated, it may take longer.

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# Domestic violence

## What is domestic violence?

Domestic and family violence is when you engage in the following behaviour with another person you are in a relationship with. It includes if you:

- are physically or sexually abusive, or
- are emotionally or psychologically abusive, or
- are economically abusive, or
- are threatening, or
- are coercive, or
- in any other way control or dominate a person you are in a relationship with and cause them to fear for their safety or wellbeing or that of someone else.

Examples of this type of behaviour include:

- injuring you or threatening to injure you – punching, strangling you, grabbing your throat, pushing, slapping, pulling your hair or twisting your arms
- repeatedly calling, SMS texting or emailing you, or contacting you on your social networking site without your consent
- damaging (or threatening to damage) your property, eg punching holes in the walls or breaking plates
- stalking or following you or remaining outside your house or place of work
- monitoring you (unauthorised surveillance) including reading your text messages, your email account, your internet browser history or your social networking site
- putting you down or making racial taunts
- holding you against your will
- forcing you to engage in sexual activities without your consent
- getting someone else to injure, intimidate, harass or threaten you, or damage your property
- threatening to commit suicide or self-harm to scare you
- threatening you with the death or harm of another person
- threatening to withdraw their care of you if you don't do something

- coercing you to give them your social security payments
- forcing you to sign a power of attorney to them against your will so they manage your finances
- threatening to disclose your sexual orientation to your friends or family without your consent
- preventing you from making or keeping connections with your family, friends or culture, including cultural or spiritual ceremonies or practices.

If another person does any of these things you can apply to a magistrate at a magistrates court for a domestic violence order. You do not have to have been physically injured to have experienced domestic violence.

No one has the right to hurt or threaten another person. These laws protect everyone who lives in Australia. If you are on a visa and there is domestic violence get legal help immediately.

Violent behaviour is against the law and you can take action to stop it. Help is available.

## **What can I do if there is domestic violence?**

Take action to make sure you and your children are safe.

You can:

- call the police on 000
- call a domestic violence service or other local community organisation; if you would like information about accommodation in a women's refuge call 1800 811 811
- get legal help
- apply for a domestic violence order
- apply for a temporary protection order
- ask the police to press charges against the person being violent
- get support from family and friends.

See 'Where to go for help' at page 30.

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## What is a domestic violence order?

A domestic violence order puts limits on the behaviour of the person who is being violent towards you. They must be well behaved towards you and anyone else named in the order. Once an order has been made, it is illegal for them to breach the order and they can't own a weapon or have a weapons' licence. The conditions outlined in a domestic violence order will vary from case to case, but could include conditions that stop a person from:

- coming to your workplace or home
- going near you, your relatives or friends (eg they might have to stay at least 100 metres away)
- living in the home they shared with you
- trying to locate you
- having any contact with you by telephone except for mediation or counselling
- going to places where your children frequently visit, like their school or kindy.

## Who can apply for a domestic violence order?

You can apply for a domestic violence order if you are experiencing violence in a relationship. Relationships covered by the law include:

- an intimate personal relationship (married, defacto, registered relationship, engaged, couple)
- a family relationship
- an informal care relationship (when one person is dependent on the other person for help in an activity of daily living like dressing and cooking for them).

## How do I get a domestic violence order?

You can apply for a domestic violence order at a magistrates court or get a police officer, lawyer or someone you trust to apply for you. You should get legal advice before applying for a domestic violence order.

You can get a free factsheet and guide about obtaining a domestic violence protection order from Legal Aid Queensland online at [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

## What happens when I apply?

### For urgent applications

If you believe your safety is at risk, and the normal application process won't protect you quickly enough, you can make an application for a temporary protection order. You'll go to court soon after you apply and it will be done before the respondent is told about your application. You will be given another date when you and the respondent will have to go to court to tell the magistrate about your situation. If you have a lawyer, they may be able to go to this court hearing for you.

### For non-urgent applications

After you've submitted your application, you will be given a date to go to court. The date and a copy of your application will be given to the respondent. The respondent can choose to agree to a domestic violence order being made, oppose your application or ask for another court date to give them time to get legal advice. If they disagree, another court date will be made for a hearing.

## What if the order is broken?

You should call the police immediately if the respondent breaks the conditions of the domestic violence order. The police will investigate and if it can be proved the order was broken, the respondent will be charged with breaching the domestic violence order, which is a criminal offence. They could also be charged with other criminal offences depending on the circumstances. It will help the police if you

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have proof the order was broken, like recordings of abusive telephone messages, diary entries you made about the violence and the names of family, friends and neighbours who witnessed the behaviour.

## **What if someone has applied for a domestic violence order against me?**

If someone has applied for a domestic violence order against you there are four options to consider. You can:

- Consent to an order being made. A consent order will only be made if you say you agree with the order in person, through a solicitor or in writing. You might want to agree to an order being made without admitting to the facts. This is called “consenting without admission”.
- Ask for the proceedings to be adjourned so you can get legal advice.
- Oppose the orders the aggrieved has asked for. If this happens, the court will give the aggrieved a hearing date.
- Do nothing (and not attend court).

If you agree to the orders being made, an order can be made by consent when the application goes before the magistrate. The order will usually remain in force for up to two years, or longer if there are special reasons.

If you ask to have the matter adjourned, the magistrate will normally adjourn it for four weeks to allow you time to get legal advice before the next court appearance. The magistrate may issue a temporary protection order to the person who applied until a further order is made or until the next hearing.

You should get legal advice before deciding whether you want to agree or disagree with the domestic violence order application or before asking for a hearing date.

If a domestic violence order is made, it may affect licences and other cards you hold including weapons’ and security licences. A copy of the actual domestic violence order application will be delivered to you by the police — read it carefully because it will explain when and where you have to go to court.

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## **Do I have to follow the conditions in the domestic violence order?**

Yes. You should try to follow the conditions set out in the domestic violence order or it may be difficult for the police to prove the other person has breached the order. For example, if the domestic violence order says they cannot telephone you, you should try not to telephone them either. If the domestic violence order stops them from coming within 50 metres of you, you should not come within 50 metres of them.

## **How long will the order last?**

When a magistrate makes a final domestic violence order they decide how long the order will last. The order will usually last two years but may last longer if there are special reasons. You may decide to apply to vary the order within that time to end it sooner. Get legal advice if you decide to apply to vary the order.

## **Can I change the order?**

You can apply to change the order. If you want to change the terms or conditions of the order, you must fill out an *Application to vary a domestic violence order* form, which is available from the court.

## **Will a domestic violence order affect my existing family law orders?**

The magistrate must consider any family law orders you have before deciding to make or vary a domestic violence order. If you have a family law order about your children, or if you have proceedings in the family law courts about your children you must tell the magistrate. A magistrate can consider changing your family law order if:

- the conditions in the order are in conflict with conditions in your domestic violence order, and
- the conditions in the order could make you, your children or anyone else named in your domestic violence application unsafe.

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For example, if your family law order allows the other person to come to your home to collect your children and these visits lead to verbal abuse, threats or any other act of domestic violence, the magistrate can vary the family law order to make the collection point away from where you live. The magistrate can also discharge or suspend your existing parenting order if they are satisfied it would be unsafe for you or the children to continue spending time with the respondent.

If you have a domestic violence order and you later apply to a family law court for a parenting order or an order about your children, you must tell the court about the domestic violence order. If there are any differences between a parenting order and a domestic violence order, the parenting order overrides the domestic violence order.

If you feel the children are at risk of physical or psychological harm from seeing or communicating with their other parent, get legal help and other support quickly.

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# Family dispute resolution

## What is family dispute resolution?

**Family dispute resolution** means trying to come to an agreement about your family arrangements, rather than going to court. Often this is done informally in the community – using family or other people to try to sort out arrangements. The term ‘dispute resolution’ describes different ways people try to come to an agreement, including **negotiation, mediation** and **arbitration**.

The people who offer these services are independent professionals. They are trained to help people sort through their problems and try to reach agreement.

Dispute resolution may or may not be confidential. Always ask.

## When can I try family dispute resolution?

You can try family dispute resolution at any stage, even before separation or after a court case has started.

## Do I have to go to family dispute resolution?

If you want **court orders** about children (**parenting orders**), you usually have to try family dispute resolution first. The court will tell you how to do this. If you want court orders about property, the court may get you to try family dispute resolution too.

You need to prove to the court you have tried family dispute resolution, or that it is not suitable in your situation, for example, if there is domestic violence. You may need a certificate from the family dispute resolution service that says this.

You can also apply directly to the court without a certificate if there has been domestic violence, child abuse or in urgent situations. Get legal advice.

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Going to family dispute resolution does not mean you have to come to an agreement. Do not feel forced into signing an agreement. You can still get legal help to make decisions. For example, you can get legal advice about what an agreement means before signing it.

## **If we make an agreement, must it be followed?**

You can make an agreement **legally enforceable** by asking the court to make it a **consent order**. Get legal advice on what the agreement means.

Some people find it helpful to have a **parenting plan**, which is a written agreement about the children. If your parenting plan was made after 1 July 2006, you can agree to change the arrangements yourself. You do not need to go to court. If you already have parenting orders, the parenting plan must be followed in the areas where it is different from the orders. An exception to this is domestic violence orders, which must always be followed.

See 'Children' at page 21.

## **What if there is domestic violence?**

Tell the family dispute resolution service if you are worried about your safety. Family dispute resolution services take **domestic violence** very seriously. They may only take on cases involving domestic violence if certain conditions are met. For example, there must be no domestic violence order that stops each person being involved in dispute resolution or counselling. They may be able to do conciliation or family dispute resolution with each person in a separate room or building, or over the phone.

## **What if my former partner refuses to go?**

Family dispute resolution cannot work unless each person involved agrees. If one person refuses to go, you may need the court to sort out your dispute. You will need to explain to the court you have asked for family dispute resolution, but the other person refused. If you are applying for a parenting order, the family dispute resolution practitioner can give you a certificate that says this.

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## **What if we try and it does not work out?**

If you have tried family dispute resolution and it has not worked, you then have the option of going to court.

If the other parent has applied to the court, you must be notified and you must go to court if you can. If you cannot go to court on a certain day, let the court know and get legal help.

Courts are not attached to the government, police or any other agency. Most cases are open to the public, unless the court says otherwise. The court will hear from each person involved and then make a decision. For more information on what going to court means, contact Legal Aid Queensland and the courts.

## **What does family dispute resolution cost?**

Some dispute resolution services are free. Others charge different rates depending on your financial situation. Contact the service directly and ask how much they charge.

## **How do I find out where family dispute resolution is offered?**

You can call Legal Aid Queensland on 1300 65 11 88. You can be referred to a range of services.

You can also call the Family Relationship Advice Line on 1800 050 321 or visit [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au) to find a Family Relationship Centre or other dispute resolution service near you.

More information on family law can be downloaded from our website at [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

# Children

## Does it make a difference if we were not married?

No. The Family Law Act applies to all children of all relationships.

## What is the best way to sort out arrangements for the children once we have separated?

If possible, try to come to an agreement with your former partner. If you can agree, then write this agreement down. This can form a **'parenting plan'**.

Legal Aid Queensland lawyers or our Family Dispute Resolution Service may be able to help. A Family Relationship Centre or other dispute resolution service can also help with parenting plans, but they cannot give you legal advice.

See 'Where to go for help' at page 30.

## Can grandparents and other family be involved?

Extended family can play an important part in children's lives. Where it is in the children's best interests, grandparents and extended family can be included in family dispute resolution, parenting plans or court orders. Try to work it out with those involved. Get legal advice.

## What is a parenting plan?

A parenting plan is a written agreement, signed and dated by both parents, or people involved.

A parenting plan should include:

- where the children live
- who the children spend time and communicate with
- school or childcare

- medical issues
- religious or cultural practices
- financial support for the children
- how **parental responsibility** is to be shared
- how disagreements about parenting arrangements will be sorted out
- how those with **parental responsibility** will communicate with each other.

It is best to get legal help if you have children under 18 years.

## Do I need to go to court?

If you can agree, you do not need to go to court. If you want the agreement to be **legally enforceable** you can apply to the court for orders by agreement. These are called **consent orders**.

The family law system encourages people to try to agree, if they can. Family dispute resolution can be cheaper than going to court, and more flexible. You can still get legal help.

See ‘Family dispute resolution’ at page 18.

## What if there is no agreement?

If there is no agreement, you can apply to the court for a **parenting order**. You will have to go to family dispute resolution before you apply for a parenting order. There are some exceptions to this.

See ‘Family dispute resolution’ at page 18.

A parenting order can say where the children live, who they have contact with and other issues such as where they will go to school. The court’s main concern is for the children. The court will decide what is in the children’s best interests and will consider the children’s views. You will have to go to a court hearing.

Parents (including same-sex parents), grandparents or anyone concerned about a child’s welfare can negotiate parenting plans or apply for parenting orders.

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## Do the children have to spend equal amounts of time with each parent?

The law says parents have equal shared **parental responsibility** for their children unless the court orders otherwise. This does **not** mean children have to spend equal amounts of time with each parent although the court must consider this.

Think about what arrangements are in the children's best interests and what is reasonably practical. That may be equal time, substantial and significant time (which includes weekdays, weekends, holidays and special events) or some other amount of time.

It is best to think about the quality of care, providing a settled environment and working towards a plan where both parents feel satisfied the children's needs are being met. Every child has different needs.

You can get more detailed information about children and family law at [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

## Who has to financially support the children?

Every parent has a financial duty to support their children. The amount to be paid depends on:

- the income of each parent
- the amount of time each parent spends with the children
- the number and ages of children involved
- if either parent has a second family or families.

There are other factors which may affect your child support. It is important you get legal advice about how the law might affect you. Same-sex parents can also apply for child support.

You can get more detailed information about child support at [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

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## **What if my children do not want to visit their other parent?**

This will depend on the children's ages and if there are **court orders** about spending time with the parent. If the children refuse to visit, you still have a duty to encourage them as this is seen to be in their best interests.

If you believe spending time with the other parent puts the children at serious risk of physical or psychological harm get legal help quickly. The police and other authorities may also need to be told.

## **What if court orders for parenting time are not being followed?**

If the order is for you to spend time or communicate with the children and the children are being stopped from doing this, then the order is being broken. You should get legal advice about what you can do. If the children live with you and the other parent does not turn up to spend time with the children, you cannot make the other parent do this.

Get legal help to make sure court orders are being followed, or if you want to change an order.

## **What if the arrangements are not working?**

Over time things change and arrangements may need to be worked out differently. It is best to talk about this with the other parent and try to sort it out. If there are court orders these will still apply, even if your situation has changed.

Get legal help. Legal Aid Queensland lawyers or our Family Dispute Resolution Service may be able to help you work out a new arrangement. A Family Relationship Centre or other dispute resolution service can also help, but they cannot give you legal advice.

## Can I take my children interstate or out of the country?

Try to get written permission from the other parent. You may need this to apply for a passport for the children. Whether you get permission may depend on if you are simply travelling or planning to move (**relocate**). If you cannot get permission you may need to get a court order.

The law says children have a right to a relationship with both parents, and other important people in their lives. Moving a long distance away or interstate or overseas will affect these relationships.

If there are parenting orders, get legal help before doing anything that may break them. The court can make **location** and **recovery orders** to find and return children.

## What if children are not returned after seeing their other parent?

Even if there are no court orders you can still apply to the court to have the children returned. If there is an order that the children live with you, this does not mean the police automatically have the power to return them to you. You may need to get a court order to have them returned.

Get urgent legal help if you think the other parent may take your children out of the country without your permission (**abduction**). You can take out orders to stop this happening. The courts have a 24 hour telephone number for these situations. Act quickly. If you have parenting orders call the Australian Federal Police or your local police station.

See 'Where to go for help' at page 30.

You can get detailed information about children and family law on our website [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

You can also call Legal Aid Queensland to order publications on 1300 65 11 88.

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# Dividing your property

## Does it matter if we were not married?

No. If you are in a **de facto** (including same-sex) or registered relationship you can apply for a property settlement and/or spousal maintenance under the Family Law Act.

## Can we come to an agreement?

It is a good idea to try to come to an agreement about property if possible.

An agreement can be made into a court order (called **consent orders**) which people must then follow. Agreements lodged with the court are more difficult to change (except by agreement). Even if both of you agree, the court will not make an order unless it is 'just and equitable', which means fair to both sides. The aim is to make orders that are final so you do not have to come back to court.

## Who can help?

You can get a lawyer to help you negotiate with your former partner. Even if you do not use a lawyer to help with negotiations, it is important you get legal advice before signing any agreement.

There are also **family dispute resolution services** that can help you sort out an agreement. A Family Relationship Centre may also be able to help if there are children involved as well as property, but they cannot give you legal advice.

A financial counsellor can help you with any financial difficulties.

See 'Where to go for help' at page 30.

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## When should I apply for a property settlement?

You can apply for a property settlement at any time after **separation**, but it is important to try to sort it out as soon as possible. Usually there will be debts to be sorted out, as well as assets to divide, so do not delay.

If you get a **divorce** you must apply to court for property orders within 12 months of the actual divorce date, or you need special permission. If you are in a defacto or registered relationship, you must apply within two years of the separation date.

## What property am I entitled to?

There are many things that must be considered in deciding who gets what property, especially if children need support. It may not matter whose name is on the document (such as a home title) or who bought an item or owes the **debt**. Even if you earn little or no money you can still have rights to property.

## What should the property settlement list?

The settlement should list:

- real estate, including the family home
- money held as cash or in bank accounts
- investments
- insurance policies
- inheritances
- shares
- superannuation
- jewellery
- any other assets
- any debts including mortgages, loans, credit cards and personal debts.

Property includes **assets** and liabilities owned individually, with another person or by a family trust or family company.

## How does the court decide who gets what?

There is a four-step process under the Family Law Act.

### Step 1

Identify and value all property of the relationship (including debts). This property can include things you got before or even after the relationship.

### Step 2

Take into account what each person has given to the relationship (**contributions**) including earnings, savings, gifts, inheritances or property owned before the relationship, improvements to property, and contributions as a home-maker and parent.

### Step 3

Consider the other factors set out in the law, including:

- how much money each person could earn in the future
- age and health of each person
- care and financial support of children
- responsibility for looking after other people
- the length of the relationship.

The law looks at all of these things in deciding what is a fair division. The law does not look at who left the relationship.

### Step 4

Once the court has considered the first three steps, it must decide exactly how the property is to be divided, that is, who gets what. It must then consider whether the way the property is divided is fair and reasonable in all the circumstances.

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## What if I leave the house – do I lose my rights to property?

No. If you leave the house, you do not lose your rights to a share of the house, or other property. But get legal help, if possible, before you leave. Also think about what you might want to take with you.

See ‘Separation and divorce’ on page 7.

## How can I protect my property?

Keep track of all assets and debts until financial arrangements are complete. You may want to take photographs, and other records. It may be possible to have a **caveat** put on a property title. A caveat is a warning to other people that you have an interest in the property.

You can also get court orders (**injunctions**) to stop property being sold or money being spent.

Act quickly and get legal help soon.

You can get detailed information about property and family law at [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

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# Where to go for help

## Legal Aid Queensland

### Legal information and publications

Legal Aid Queensland produces free publications about family law. Some of these are available in languages other than English. To order Legal Aid Queensland publications:

- visit [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)
- call 1300 65 11 88
- email [publications@legalaid.qld.gov.au](mailto:publications@legalaid.qld.gov.au)

### Legal advice

You can get free legal advice by calling 1300 65 11 88.

### Dispute resolution

You are always encouraged to try to sort out your family law dispute before, during or after you go to court. You may be eligible to apply for legal aid to attend a family dispute resolution conference run by Legal Aid Queensland, where trained professionals can help people reach their own agreements. For more information, call 1300 65 11 88.

## Other legal services

### Aboriginal and Torres Strait Islander Legal Service

Visit [www.atsils.org.au](http://www.atsils.org.au) or call (07) 3025 3888.

### Community legal centres

Visit [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au) or call 1300 65 11 88 to find services in your area.

### Private solicitors

Visit [www.qls.com.au](http://www.qls.com.au) or call the Queensland Law Society on (07) 3842 5842 for names of solicitors who specialise or who are accredited in family law.

## **Federal Circuit Court of Australia**

Visit [www.federalcircuitcourt.gov.au](http://www.federalcircuitcourt.gov.au) or call 1300 352 000.

## **Family Court of Australia**

Visit [www.familycourt.gov.au](http://www.familycourt.gov.au) or call 1300 352 000.

## **Magistrates courts**

Look in the White Pages under “Queensland Courts” for your local court or visit [www.justice.qld.gov.au](http://www.justice.qld.gov.au)

## **Other support services**

### **DV Connect – Womensline**

Visit [www.dvconnect.org.au](http://www.dvconnect.org.au) or call 1800 811 811 (24 hours a day, seven days a week).

### **DV Connect – Mensline**

Visit [www.dvconnect.org.au](http://www.dvconnect.org.au) or call 1800 600 636 (seven days a week).

### **Immigrant Women’s Support Service**

Visit [www.iwss.org.au](http://www.iwss.org.au) or call (07) 3846 3490 (Domestic Violence Program) or (07) 3846 5400 (Sexual Assault Program).

### **Relationships Australia**

This organisation also offers counselling and family dispute resolution.

Visit [www.relationships.org.au](http://www.relationships.org.au) or call 1300 364 277.

### **Family Relationship Services**

The government’s Family Relationship Services provide online information, drop-in centres and a free telephone advice line. You can access a wide range of services, including family dispute resolution through these organisations.

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

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## **Centrelink**

Call 13 61 50 (*Family Assistance Office*) or  
131 202 (*Multilingual Line*).

## **Department of Human Services (Child Support)**

Visit [www.humanservices.gov.au/customer/information/child-support-website](http://www.humanservices.gov.au/customer/information/child-support-website) or call 131 272.

## **Department of Communities – Child Safety and Disability Services**

Visit [www.communities.qld.gov.au/childsafety](http://www.communities.qld.gov.au/childsafety)  
or call 13 74 68.

## **Emergency services**

### **Police (emergency)**

Call 000.

# Your local Legal Aid Queensland office

## **BRISBANE**

44 Herschel Street  
BRISBANE Q 4000

## **BUNDABERG**

3<sup>rd</sup> Floor, WIN Tower  
Cnr Quay & Barolin Streets  
BUNDABERG Q 4670

## **CABOOLTURE**

Ground Floor, Kingsgate  
42 King Street  
CABOOLTURE Q 4510

## **CAIRNS**

Level 2,  
Cairns Square  
42-52 Abbott St  
CAIRNS Q 4870

## **INALA**

Level 1  
Inala Commonwealth Offices  
20 Wirraway Parade  
INALA Q 4077

## **IPSWICH**

Level 7, 117 Brisbane Street  
IPSWICH Q 4305

## **MACKAY**

Ground Floor  
17 Brisbane Street  
MACKAY Q 4740

## **MAROOCHYDORE**

Ground Floor, M1 Building  
1 Duporth Avenue  
MAROOCHYDORE Q 4558

## **MOUNT ISA**

6 Miles Street  
MOUNT ISA Q 4825

## **ROCKHAMPTON**

Ground Floor  
35 Fitzroy Street  
ROCKHAMPTON Q 4700

## **SOUTHPORT**

Level 2,  
7 Bay Street  
SOUTHPORT Q 4215

## **TOOWOOMBA**

1st Floor  
154 Hume Street  
TOOWOOMBA Q 4350

## **TOWNSVILLE**

3<sup>rd</sup> Floor Northtown  
280 Flinders Street  
TOWNSVILLE Q 4810

## **WOODRIDGE**

1st Floor, Woodridge Place  
Cnr Ewing Road & Carmody St  
WOODRIDGE Q 4114



1300 65 11 88

[legalaid.qld.gov.au](http://legalaid.qld.gov.au)



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