



## Family law in Australia – separation and divorce

September 2013

This information sheet is for people who are unmarried and thinking about ending their relationship, or married and thinking about getting a divorce. It has information on what you need to do, your rights and responsibilities and where to get help.

### What the law says

If you have children, the law's main concern is what is best for them. This includes:

- protecting the children from violence or harm
- helping the children have relationships with both parents.

The law applies to all children whether the parents are married or not. It does not matter if you have never lived with the other parent or had a relationship with them.

The law does not make decisions about who is right or who is wrong but looks at making arrangements for the future.

### What is separation?

In Australia, separation is when you stop living together as a couple.

### Do I need anyone's permission to separate?

You do not need permission from your partner or the government to separate from your partner. It is your decision.

### Can we be separated and living under the one roof?

The law says you can still be living in the same house and be separated, if you live separate lives. You live separate lives if you do not spend time together socially any more, and you do not sleep together. Other things you need to do to show you are separated, are listed below.

### How do I show that I am separated?

You do not have to apply to a court or government organisation, or fill in any forms. Unless you apply for a divorce, you will not get a certificate saying you are separated.

You need to:

- tell government organisations such as Centrelink (social security), the Child Support Agency and Medicare that you are separated. It is important to tell these agencies quickly once you have separated because it might affect payments that you get, or that you are entitled to get.
- tell your bank, superannuation and insurance companies, if you have them and ask how much superannuation and insurance you have. This is to help separate your money from your former partner's and keep your financial details private.

- sort out your financial affairs – work out how debts and loans will be paid and what to do with any money you own together in the same bank account
- change your Will
- make arrangements about caring for the children. You may want to tell your family and friends, your children's carers or teachers, or a doctor or community worker.
- get legal help.



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

No. It is your decision if you want to leave or stay.

If you want to stay and make your former partner leave, you can apply to get a court order that says this. This is called a family law injunction order.

### What if I feel unsafe?

If you feel worried for your safety, feel intimidated or that you are unable to make decisions equally, you can get help.



If you or the children feel unsafe, you should call the police quickly on 000. It is the police's role to make sure you are safe and to help you if you are unsafe. Tell the police if you do not understand or speak English. They will get an interpreter.

You can also:

- call services that can give you support, legal help or accommodation
- apply for an order that stops your former partner from making threats, or from coming anywhere near where you live and work. The order can also protect children. This is called a family violence intervention order. See Victoria Legal Aid's publication 'Safe at home', on how to apply for an intervention order.

See the end of this information sheet for services that can help you.

Junxi and Chen have been married for 15 years. They have been fighting a lot about money, the children and Chen's relatives making trouble. Junxi begins to sleep in the children's room. They live separate lives.

Chen does not want to divorce. He says it will shame them in the community. Junxi is worried about the children seeing them fight. She thinks it's better for the whole family if they separate.

Junxi decides to separate. She talks to a social worker at Centrelink. He helps her tell Centrelink and Medicare that she has separated.

Junxi sees a lawyer at her local Victoria Legal Aid office. The lawyer gives her advice about sorting out bank accounts, staying in the family home if she wants to or finding other accommodation, and how to get child support. He refers her to a women's service that can give her extra support.

Chen contacts Victoria Legal Aid for advice. Because Victoria Legal Aid are advising Junxi they cannot advise Chen as well. But they can help Chen see a private lawyer if Chen is eligible for a grant of legal assistance. Or Chen can go to a community legal centre for help.

### 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 before you leave, if possible.

You can also legally protect your interest in the family home if your name is not on the title. This is called a caveat. A caveat is a written warning to anyone who checks the Certificate of Title of the property that you have an interest in it. If you do this, you will be notified of anyone attempting to register their interest or sell the property.

Talk to a lawyer about this. For more information on dividing property after you have separated, see our other family law in Australia information sheet, 'Family law in Australia – dividing property after you have separated'.

### Can I take the children with me?

Yes. It is best to think about your safety and the children's safety first if you are concerned about this. However, if you want to move away with the children and the move makes it difficult for the other parent to see them you need to try to get agreement first.

If you are afraid to try to get the other parent's agreement and are worried about your safety, talk to a lawyer and get other help.

### What should I take if I leave?

It is best to take all your legal and financial papers with you, such as:

- birth, marriage and other certificates
- Wills
- passports and visas
- bank and cheque books
- bank, superannuation, tax and other financial papers
- personal things that you are worried about leaving behind
- things you may need for yourself and your children.

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



### Can I get help with decisions about the children after separation or divorce?

You can get help to make arrangements with your former partner safely and equally, about the children.

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You may be able to use Victoria Legal Aid's family dispute resolution service, called Roundtable Dispute Management (RDM). There are other services that can help you do this. For more information on family dispute resolution, see our other Family law in Australia information sheet, 'The first step: getting help to reach agreement about the children'.

If you are worried about your and the children's safety, you can get a family violence intervention order. See 'What if I feel unsafe' on page 2. If you apply for an order, the judge who makes this can include in the order, that you are able to use family dispute resolution.

### Will it affect my residency?

Not necessarily. If you are separating and are not sure about your visa, get legal help.

### What is divorce?

Divorce is the legal ending of your marriage.

### Do I need to get a divorce if I want to end a de facto relationship?

No, if you are in a de facto relationship you do not need to get a divorce but in some cases you may need legal help to divide property or to make arrangements about the children.

### Do I need permission to get a divorce?

No. Your partner does not have to agree to the divorce. You do not need permission from the government.

The law does not look at whose 'fault' it is.

### Do I have to get a divorce?

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

You can make arrangements for children and property without being divorced. It is best to make these arrangements soon after separation, if possible.

Tell Centrelink, banks, superannuation and insurance companies.

If you stay married this affects your rights and responsibilities with finances and your Will.

Get legal help before signing any agreement. If you do get a divorce, you must apply to the court for a property settlement within a certain time after this.

### 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 a resident. You need to usually live in Australia and have done this for 12 months before applying for a divorce. There is a court cost.

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 that your marriage might not be legal, contact Victoria Legal Aid or a community legal centre.



### 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 a lawyer to help sort out arrangements for children or property if you cannot come to agreement with your former partner.

### Can I get help to apply for a divorce?

Yes. Some legal aid offices have free workshops that help you fill out divorce application forms. To find out more, phone 1300 792 387.

### 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.

### What if I was married for less than two years?

If you were married for less than two years, get legal advice on other rules about this.

You can be living in the same house if you wish to divorce. However you must have lived separate lives. You may have to prove this.

### What if we have children?

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

If you would like to know more about this, see the information sheet 'Family Law in Australia – after you have separated: making arrangements about the children'.

### What happens if we get back together, and then separate again?

You must be separated from your partner for at least 12 months before you can apply for a divorce. If you get back together once as a couple for up to three months and then separate again, this does not mean that you have to start counting the 12 months again.

Anh and Phuoc separated for three months, then got back together for two months, but now they have decided to separate again. They must be separated for a further nine months before they can apply for a divorce.

If you get back together as a couple for longer than three months, and later decide to separate, then you must start counting the 12 months again, starting from the second separation, before you can apply for a divorce.

Duc and Linda separated for three months, then got back together for four months before deciding to separate for the second time. They must wait twelve months from their second separation before they can apply for a divorce.

### How long does it take to get a divorce?

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

### Do I need to get a divorce before we do a property settlement?

No. You can apply for a divorce before you do a property settlement. However you must apply to do a property settlement within 12 months of your divorce being made final.

### Where to get help



#### If you need an interpreter:

Call the Translating and Interpreting Service for an interpreter to help you speak to any of the agencies in this section. Ask the interpreter to put you through to the agency you need. This is usually free.

Tel: 131 450



#### If you are deaf or have a hearing or speech impairment:

Use the National Relay Service to phone any of the agencies (including Victoria Legal Aid) in this section. This is free. For more information about the NRS visit [www.relayservice.com.au](http://www.relayservice.com.au)

**TTY users:** Call 133 677 and then ask for the phone number you need. Include the area code.

**Speak and Listen users:** Call 1300 555 727 and then ask for the phone number you need. Include the area code.

**Internet relay users:** Connect to [www.iprelay.com.au/call/index.aspx](http://www.iprelay.com.au/call/index.aspx) and then ask for the phone number you need. Include the area code.

### Victoria Legal Aid

#### Legal Help

Tel: 1300 792 387

Open Monday to Friday, 8.45 am to 5.15 pm

You can get legal information and help regarding separation, divorce, children, property and residency issues.

#### Roundtable Dispute Management

This service has trained dispute resolution practitioners that can help people reach agreements together about the children.

Tel: 9269 0500 or 1800 136 832 (if you live in the country).

[www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

For more information about families and the law, see our other Family law in Australia information sheets:

- Dividing property after you have separated
- The first step: getting help to reach agreement with the other parent
- After you have separated: making arrangements about the children.

For your nearest community legal centre:

Tel: 9652 1500

[www.communitylaw.org.au](http://www.communitylaw.org.au)

Family Relationship Centres and advice line

Tel: 1800 050 321 for locations of Family Relationship Centres, and other services that can help you reach agreement about the children

Family Court / Federal Magistrates Court

Tel: 1300 352 000 for information on the Family Law Courts. This number can be called 24 hours

[www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)

InTouch Multicultural Centre Against Family Violence

Tel: 8413 6800 or country callers 1800 755 988

[www.iwdvs.org.au](http://www.iwdvs.org.au)

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