

# LEAVING A RELATIONSHIP

wire



Funded by  
a grant from  
**Victoria Law  
Foundation**

## Introduction

The breakdown of a marriage or relationship can be a long and traumatic process. So deciding to leave can be difficult, even in an amicable separation, as the separation process can be emotionally draining and time consuming. You and your partner will have to decide on the future care of your children (if you have any), as well as how to divide your property, money, and belongings and how to deal with joint debt. This can become emotionally and financially drawn-out, so it is important to be prepared.

Getting support and information about your rights and options as early as possible can help you increase your control over the situation, and enable you to realistically plan for your future.<sup>1</sup>

If you have separated, or are thinking about separating from your spouse or partner, this booklet can be a useful a guide to help explain, under the **Family Law Act 1975 (Cth)**, the process of negotiating parenting arrangements for your child, applying for child support, and applying for parenting orders. In this booklet, a **parenting order** refers to **a set of orders made by a court about parenting arrangements for a child.**

This booklet looks at:

- steps you can take when you are planning to leave a relationship
- how to resolve parenting arrangements without going to court
- applying to court for parenting orders
- what happens at court.

**DISCLAIMER:** This booklet is intended as a guide only. Readers should not act on the basis of any material in this publication without getting legal advice about their own specific situation first. WIRE expressly disclaims any liability to any person that relies on the contents of this publication.

**MYTH:**  
*Marriage is for life.*

**REALITY:**  
It is estimated that one in three first marriages will end in divorce. Most people who separate have been married fewer than 10 years.<sup>2</sup>

1. Family Court of Australia fact sheet: *Marriage, families and separation*  
[http://www.familycourt.gov.au/wps/wcm/connect/1249df7a-9ff2-4806-9859-de50b250b221/BRMFS\\_0313\\_V4\\_web.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=1249df7a-9ff2-4806-9859-de50b250b221](http://www.familycourt.gov.au/wps/wcm/connect/1249df7a-9ff2-4806-9859-de50b250b221/BRMFS_0313_V4_web.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=1249df7a-9ff2-4806-9859-de50b250b221)

2. [http://www.sexualhealthaustralia.com.au/page/interesting\\_stats1.html](http://www.sexualhealthaustralia.com.au/page/interesting_stats1.html)

## Should I stay with my partner or leave?

**MYTH:**  
*Separating means that I have failed as a wife or partner.*

**REALITY:**  
Separation from a partner is not a sign of personal failure; it is a sign that the relationship has changed and you and your partner's needs and aspirations for the relationship may have changed.

Separation is when you, or your partner decides to stop living together as a couple. You do not need permission from your partner or from anyone else (such as a court) to separate. It is your choice.

However, making the decision to stay in a troubled relationship can be just as difficult as choosing to leave. Weighing up all the issues can be totally overwhelming, but ultimately you are the only one who can make the decision. It may be helpful to talk to someone you trust, or seek assistance from a counsellor to clarify your thoughts and sort out what you want to do. Whatever you decide, you are the only person who knows what is best for you, and this must be respected.

Consider carefully your legal, financial and housing situation as well as you and your children's safety when deciding whether to end a relationship. For example,

- If you have children, what will you tell them? What arrangements will you have to make for them?
- What is your current financial situation? How will separating from your partner affect that? Are you eligible for government assistance from Centrelink?
- Are you comfortable and safe where you are living? Do you need to find alternative housing?
- Even if you are on good terms and able to negotiate directly with your partner, it is important that you know your legal rights and get good legal advice. You can call Victoria Legal Aid 1300 792 387 for free legal advice and information, and the national Financial Counselling Hotline 1800 007 007 for free financial counselling, and both can help you find

low-cost options. WIRE can also assist you with finding your local financial counsellor, lawyer or community legal centre.

**MYTH:**  
Children need both parents, so it's better to stay together for their sakes.

**REALITY:**  
About half the people who divorce have children. What matters to children is that they are able to maintain quality relationships with both their parents, whether or not they continue to share a house with them.

## How married and de facto couples can legally separate

If you do decide to **separate**, there is nothing that you need to do and no document you need to sign to confirm that you and your partner are separated. You do not have to apply to a court, or complete any formal documents to say you are separated, aside from practical things such as notifying Centrelink and Medicare.

**A de facto relationship** is when two people who may be of the same or opposite sex, are not married but live together or have lived together as a couple on a genuine domestic basis. You **do not** need to go through any formal process (such as applying for divorce) to end a de facto relationship.

If you are **married** and you want to formally end the marriage, you will need to apply for a divorce. If you do decide to stay married, then this may affect your rights and responsibilities with property and your will. To re-marry, you must first divorce your ex-partner.

Australia has a 'no fault' divorce system, which means that to apply for divorce you just have to show that the marriage has irretrievably broken down. To prove 'irretrievable breakdown' of the marriage, you must be able to prove that you and your spouse have been separated for 12 months with

no likelihood of getting back together. If during that 12-month period you did get back together, but for no more than three months before separating again, then this does not mean that you have to start counting 12-month period again. You will still be able to apply.

To apply for a divorce you or your spouse must be either an Australian citizen or resident, but you can still apply for a divorce here in Australia even if you were married overseas. If your marriage certificate is in another language, then you will have to arrange for it to be translated.

**If you have been married for less than two years**, then you are ordinarily required to undergo relationship counselling before you will be permitted to apply for divorce.

**You can still apply for a divorce even if your spouse does not agree with it, or you can both apply for divorce together if you both agree.** If you are making a joint application then you may not need to attend a formal court hearing for your application to be granted. However, if you are making a sole application for divorce and there are children of the marriage under the age of 18 years or part of the family prior to separation, then you or the lawyer acting on your behalf must attend. This includes any children who may not be the biological children of both parties to the marriage, i.e. step-children or children from previous relationships.

**You can apply for a divorce without using a lawyer** by getting an Application for Divorce Kit from the Family Laws Courts website.

It is important to note that a divorce does not sort out issues relating to children or property – these arrangements must be made separately. **If you get divorced before you and your spouse have settled your property and finances, then you have 12 months in which to apply to Family Law Courts for property settlement.** See WIRE information booklet *Separation and Property* for details.

### Who stays in the family home?

You may be leaving the relationship, but do you need to leave your home? Sometimes when you decide to end a relationship, your partner can become angry and resentful. This can be even more of a problem if you want to stay in your home and have asked your partner to leave. If your partner does not agree, you may need to get legal advice so that you can see what options are available to you to remain in your home.

Deciding what you want both now and in the future is very important. If you own or are buying your own home, your long-term goal may be to buy your partner out and move back into your home later on. If you and your partner

own multiple properties, you may be able to live in separate properties as part of the property settlement. See WIRE information booklet *Separation and Property* for details.

If it is safe and comfortable to do so, you can still live in the same house as your ex-partner – ‘being separated under one roof’. The law recognises that separated couples can continue to live under the same roof but have separate lives. Being separated under one roof means that you may still have access to government assistance from Centrelink if you can show you live separate lives. It is important to get legal advice about how to go about this and whether you can negotiate this safely with your partner. This option may work well for some, but others may find it too emotionally trying even if the breakup was amicable. You need to decide what is right for you and your children.

If you are experiencing family violence, it is important to weigh up safety considerations for yourself and your children. Contact safe steps Family Violence Response Centre of Victoria 1800 015 188 about how your abusive partner or family member can be removed from your family home, so you can stay in your home safely. If you have fears for yourself or your children's immediate safety, then you should contact the police immediately on 000. For more information, read WIRE's information booklet *Family Violence: What you can do for yourself and your family*.

## What is family violence?

Sometimes, there can be a close connection between a relationship breakdown and family violence. Making sure that all family members, particularly children, are safe is a high priority for the court.

Family violence is defined in the *Family Law Act 1975* (Cth) as:

- assault
- sexual assault or sexually abusive behaviour
- stalking
- repeated derogatory taunts (putting you down)
- intentionally damaging or destroying property

- intentionally killing or injuring a family pet
- unreasonably denying a family member financial autonomy (such as withholding money or controlling household expenses)
- isolating family member from other members of their family, friends or culture, and
- unlawfully depriving a family member of their liberty.

**A child is exposed to family violence if they see, hear or otherwise experience the after-effects of family violence.** This can include seeing or hearing you being hit by the other parent, being present while the police or ambulance attend the home following a family violence incident, or seeing broken furniture after the incident. Exposure to family violence can cause a child to suffer serious psychological harm, and affect their long-term development and their personal relationships later on in life. **Family violence is also a form of child abuse.**

## What is child abuse?

The *Family Law Act 1975* (Cth) defines child abuse as:

- an assault (including sexual assault) of a child
- involving a child in sexual activity where the child is used as a sexual object, or there is an unequal power relationship between the child and the abuser
- exposing a child to family violence
- serious neglect of a child.

### ‘Failure to disclose’ offence

The offence for failure to disclose child sexual abuse to the police came into effect on 27 October 2014, and applies to all adults, not just professionals who work with children. **Any adult who believes that an adult has committed a sexual offence against a child in Victoria, must report to police**, unless they have a reasonable excuse for not reporting.

For details see ‘New criminal offences to improve responses to child sexual abuse’ at [www.dhs.vic.gov.au](http://www.dhs.vic.gov.au) <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/new-criminal-offences-to-improve-responses-to-child-sexual-abuse>

### Mandatory reporting in Victoria

In Victoria, the *Children Youth and Families Act 2005* section 182 (1) and 184 states that any teachers, principals, doctors, nurses, midwives or police who have reasonable grounds to believe that

- a child has suffered or is likely to suffer, significant harm as a result of physical injury or sexual abuse, and
- the child's parents have not protected or are unlikely to protect the child from such harm,

must report to Child Protection Services as soon as practicable.

For details, see the Fact Sheet on Mandatory Reporting Victoria by the

Centre for Excellence in Child and Family Welfare at

[www.cfecfw.asn.au/sites/default/files/Mandatory%20Reporting%202014.pdf](http://www.cfecfw.asn.au/sites/default/files/Mandatory%20Reporting%202014.pdf)

## What if I fear for my child's safety because of family violence or child abuse?

If you believe that your children are unsafe with your partner, due to a risk of family violence or child abuse, get urgent legal advice. You may consider applying for an **intervention order** on their behalf to protect them, or making a report to the Victorian **Department of Health and Human Services (DHHS)** or **Police**. **If you or your children's immediate safety is at risk, notify Police 000 or DHHS Child Protection Crisis Line 131 278 immediately.**

Calling either DHHS or the police may result in them taking action with serious consequences for you and your family. Therefore, it is very important that you **get legal advice** if you are unsure about making a report.

If you are concerned that your child has been sexually abused, call Child Wise National Child Abuse Helpline 1800 991 099 or contact your nearest Centre Against Sexual Assault for counselling and support. Visit [www.casa.org.au/contact-us/](http://www.casa.org.au/contact-us/) to find your closest centre.

## Getting my finances in order

Once you have decided to end your relationship, it is important to get organised. While this may seem daunting, it will actually help you feel more secure, emotionally and financially.

### Banking

If you have joint bank accounts, apply to change both signatures, or get legal advice about how to stop transactions from the account if you are concerned that your partner will take the money.

Set up your own individual account at a bank, credit union or community bank. Ensure that your pay or Centrelink benefits are paid into your own account that your partner cannot access. Change all your bank passwords and details, so your partner cannot access your current bank accounts. It may be useful to talk to your bank about how it can assist you.

### Family home

If you have to leave the family home for any reason, you will not lose your interest in the home when you leave. If you are not listed on the title of the property, you can protect your interest by lodging a caveat with the Land Titles Office. A caveat is a document that any person with a legal interest in a property can lodge at Land Victoria. Once a caveat is lodged you will be notified of any attempts to dispose of the land, but you must take additional steps to protect your interest in the property. If you are notified, seek legal advice immediately. For details, visit [www.dtpli.vic.gov.au/property-and-land-titles/land-titles/dealing-with-titles/caveats-covenants-and-easements](http://www.dtpli.vic.gov.au/property-and-land-titles/land-titles/dealing-with-titles/caveats-covenants-and-easements)

If you think your partner may try to sell the family home before you have agreed on a property settlement, you should apply for an urgent property order from the court. **For more information about property settlement, read WIRE's information booklet *Separation and Property*.**

If you are renting your home, and you decide to leave, then you need to change the lease if it is in your name. Otherwise you can be held liable for any damage or rent that is outstanding. Contact Victorian Civil and Administrative Tribunal (VCAT) or the Tenants Union of Victoria for advice.

If you are leaving your rental home due to family violence, contact the Tenants Union before you leave, to find out what your options are regarding returning to, or ending the tenancy. If you plan to return to your rental home, hold on to your key. Returning your key to your real estate agent may make it more difficult for you to return to the property later.

## Wills

If you have a will with your partner nominated as a beneficiary, it is best to get legal advice on changing it. If you do not have a will, arranging to have one made will give you control over the distribution of your property and assets when you die. Otherwise your spouse or partner may have rights to inherit part of your estate if you die without making a valid will. The estate of a person refers to all the money and property owned by that person, especially at death.

The same applies for your superannuation and any insurance plans if you have nominated your partner as a beneficiary.

### Checklist of important documents

If for any reason you have to leave the home, it is best to take originals (or copies) of all your important legal and financial papers with you.

- ✓ passports
- ✓ birth and marriage certificate
- ✓ citizenship papers and visas
- ✓ driver's licence
- ✓ Medicare card
- ✓ bank books, ATM and credit cards
- ✓ bank statements
- ✓ last tax return and notice of assessment
- ✓ titles of ownership and property deeds
- ✓ partnership and company records
- ✓ details of joint and personal debts
- ✓ guarantees
- ✓ wills
- ✓ car registration and engine number (VIN)
- ✓ mortgage and property details e.g. council rates
- ✓ rental agreement
- ✓ Centrelink/Austudy number
- ✓ insurance policies e.g. home, contents, car and life
- ✓ superannuation details
- ✓ contact details for your accountant and lawyer
- ✓ immunisation records of your children.



## Am I entitled to receive child support?

All parents have a primary duty to care for their children. Child support is determined federally by the Child Support Scheme, which is managed by the **Department of Human Services Child Support Agency (CSA)**. Either parent can apply for a **Child Support Assessment** to determine how much child support is payable.

### How is child support assessed?

Who pays child support and how much depend on **each parent's income**, and **each parent's care percentage of the child**. If a parent provides a larger percentage of care than their percentage of total income, they will generally receive child support payments from the other parent. Visit <https://processing.csa.gov.au/estimator/About.aspx> to use an online Child Support Estimator.

### Child support and Centrelink: do I have to apply for child support?

Child support payments and family assistance are closely linked. The more child support you receive, the less Family Tax Benefit you may receive from Centrelink.

If you are receiving more than the base rate of the Family Tax Benefit Part A, and have a child in your care from a previous relationship, you must 'take reasonable steps' to obtain child support by taking the **Maintenance Action Test**. You can meet this test by applying for a child support assessment.

**Parents must apply for the assessment within 13 weeks from the time of separation.** Otherwise, the Family Tax Benefit can be reduced or stopped (except in special circumstances).

### How can I collect child support?

You can:

- 1) **Self-manage**
  - parents agree on amount of child support privately
  - parents arrange payment collection methods.
- 2) **Privately collect**
  - Child Support Agency determines amount of child support
  - parents arrange payment collection methods.
- 3) **Child Support collect**
  - Child Support Agency determines amount of child support
  - Child Support Agency collects it from the other parent.

The third option requires little direct communication with the other parent, and is recommended if there has been family violence. For details visit [www.human](http://www.human)

## Finding a new place to stay

### I've decided to leave, but where do I go?

Some women have families, friends or support networks they can turn to when they leave, at least for a short while; others may not. Finding a new place to live will be one of the most critical decisions you have to make.

You will need to consider your financial situation, and how different options will affect you. You may be entitled to financial help from Centrelink, and a financial counsellor can help you to budget for the additional costs that come with separation. Moving out of your home and away from your neighbourhood or community may also mean losing your local support networks, or having to change jobs or your children's schools.

For details on housing options in Victoria see the WIRE information booklets: *Dealing with a Housing Crisis — Needing help right now!* and *Finding Your Next Home — Looking past a housing crisis.*

### Housing options

- **Staying with trusted friends or family** can be a good short-term option while you work out what you want to do next.
- **Private rental** is the only immediate housing option available, and offers a wider range of locations and housing styles if you can afford it.
- **Share accommodation** can make private rental more affordable.
- **Income-tested rent assistance** is available to women on low incomes for private rental properties. Contact Centrelink for details about eligibility and how to apply.
- You may also be eligible for a **bond loan** through the Victorian Department of Human Services Office of Housing to help establish a private rental tenancy.
- **Public housing rental** is not a good immediate option, even for women in crisis. While it is possible to apply for housing as a priority, the application process is complex and waiting lists are extremely long.
- For women leaving violent relationships, **refuges** are safe places in secret locations that offer short-term accommodation. Contact safe steps Family Violence Response Centre for details.
- **Access Points** (housing) provide housing information and referral services to people in crisis, and some help establish and maintain housing. Each Access Point has a different approach to providing services and financial assistance. To find your local Access Point, contact WIRE.

## Who should my children live with?

If you have children, you will have to work out whom your children will stay with while you sort things out – with you, your partner or someone else. Practical considerations such as where you plan to live, your children's schooling, your work and your financial situation, can help you decide on the best option for you and your children. It is also important that you get legal advice about where your children should live and what arrangements can be made.

**Sharing the family home** Some separated couples take turns to live with their children in their family home, based on a shared care arrangement.

**MYTH:**  
*Women who don't live with their children after they end a relationship are bad mothers*

**REALITY:**  
*Families are not all the same, and although most mothers remain the primary carers of their children, this might not be the best way to go for all families.*

## Helping my children understand and cope with separation

Ending a relationship can be very stressful, particularly when children are involved. Seeking information, legal advice and support will help you make important decisions and parenting arrangements during a difficult time.

**MYTH:**  
*Children are irreparably damaged by family breakdown.*

**REALITY:**  
*Children are neither totally fragile nor absolutely resilient. You and your ex-partner can help your children feel more secure by not criticising each other or fighting in front of them.*

Ending a relationship can be very stressful, particularly when children are involved. Seeking information, legal advice and support will help you make important decisions and parenting arrangements during a difficult time.

What you can do to help:

- Make it clear that the separation is not their fault, and it is between both you and your partner.
- Ensure your children know you both still love them and that this will always be the case. Make it clear that it is good for your children to have ongoing relationships with both of their parents.
- Keeping in mind your children's age and level of development, talk openly with your children. Answer their questions honestly and, where appropriate, involve them in decisions that affect them.
- Encourage your children to talk to friends who have also gone through a separation.
- Try and limit the changes to your children's environment and daily routines.
- Maintain relationships with relatives and friends from both sides of the family.
- Try and establish a good working relationship with the other parent. While disagreements may be unavoidable at this time, do not involve your children in disagreements or use them as a 'messenger' or 'spy' between you and your ex-partner. You might consider seeing a counsellor to help you better manage your ongoing relationship with your ex-partner. However, this may not be helpful if you are experiencing family violence.

Read *Children and separation: a guide for parents* from the Family Law Courts website [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au). For age-appropriate resources and publications for your children, visit [www.familyrelationships.gov.au/BrochuresandPublications/Pages/ChildrenAndSeparationBooklet.aspx](http://www.familyrelationships.gov.au/BrochuresandPublications/Pages/ChildrenAndSeparationBooklet.aspx)

## My options regarding my children's care and upbringing

If your relationship ends, you may share the care and support of your children between you and your ex-partner by:

- **agreement** — a parenting plan (not legally enforceable) or consent order (legally enforceable)
- using a **family dispute resolution** service to help reach agreement
- **going to court** — apply for parenting order, if parents cannot reach an agreement outside of court.

### Same sex couples

Regardless of how children are conceived, the right of the child to know both biological parents is protected under the *Family Law Act 1975* (Cth). This can get complicated where there are biological and non-biological mothers and fathers involved. For details and to find LGBTIQ-friendly legal professionals visit Switchboard Victoria [www.switchboard.org.au](http://www.switchboard.org.au) or call 1800 184 527.

### Sorting it out without going to court

If you are able to reach agreement with your ex-partner about future parenting arrangements either by making a parenting plan or obtaining a consent order, you do not need to go to court. This not only allows you to make your own decisions and improve future communications with your ex-partner, it can also greatly reduce the financial and emotional costs of legal proceedings.

### Getting a parenting plan

A parenting plan is a written agreement that sets out parenting arrangements for children, and has to be dated and signed by both parents. Although a parenting plan is not legally enforceable, if you need to apply for parenting orders later on, the court will take the parenting plan into account when deciding what is in the children's best interests.

Parenting plans cover such things as:

- where your child will live
- how your child will have contact with other people such as the parent they do not live with

- allocation of parental responsibility
- where your child will spend holidays, birthdays and other significant days
- financial support
- how to change the plan and how you will both resolve disputes that might arise
- any aspect of the care, welfare and development of the child.

Parenting plans are not binding. Unlike parenting plans, parenting orders are made by the court and can be legally enforced with penalties for any breach. **You and your ex-partner can agree to change a parenting order** (made by the court) **by entering into a parenting plan** (a joint written agreement between you, not made by the court). See section on 'Parenting orders' on page 18.

You can seek assistance from a Family Relationship Centre or a family lawyer in drafting a parenting plan.

### Getting a consent order

A consent order is a written agreement that is negotiated between you and your ex-partner regarding parenting arrangements for the children. An application for consent orders is filed at the Family Court of Australia; once approved by the court, consent orders are legally binding and enforceable just like any other court order. Before making the orders, the court must be satisfied that the proposed arrangements are in the best interests of the children.

You and your ex-partner can apply for consent orders to be made without going to court hearings. To get an Application for Consent Orders Kit, visit [www.familycourt.gov.au](http://www.familycourt.gov.au) or your nearest family law registry or call 1300 352 000.

**Community services** (not court-based) are available to help you to resolve family issues at different levels:

- A **family counsellor** can help you (and your family) deal with personal and interpersonal issues arising from marriage, separation and divorce.
- A **family dispute resolution practitioner/mediator** is independent of all parties and can help you resolve some or all your disputes with each other during and after the separation/divorce process to make arrangements for property and children.
- An **arbitrator** assesses arguments and evidence presented by the parties and then makes a determination to resolve the dispute.

## Family Dispute Resolution

The family law system encourages parents to resolve their disagreements about children without going to court. If you and your partner cannot agree on arrangements between yourselves, then you may need to attend Family Dispute Resolution (FDR) and obtain a section 60I certificate before you can apply to court.

### What is FDR?

Family Dispute Resolution (FDR) includes counselling, mediation, arbitration and other types of conciliation. FDR is more likely to lead to an outcome that suits both parents, when both parents have control over the outcome and any agreements made. It is also cheaper, and less stressful than going to court. You may not need a legal representative, but it is a good idea to seek legal advice before using a FDR service or practitioner.

Family Relationship Centres can provide details about FDR services (e.g. Relationships Australia, LifeWorks or a Family Mediation Centre) and their locations. For details call the Family Relationship Advice Line 1800 050 321 or visit [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au)

### How does it work?

Once a parent has contacted a registered FDR service or practitioner for assistance, the service will then contact the other parent to invite them to participate. If both parties agree to participate in FDR, then an independent, trained FDR practitioner will meet with both parents and assess whether it is safe for FDR to proceed.

If it is safe to do so, then an FDR practitioner will organise mediation where both parents' views are heard and options for agreement are explored. Should either parent not feel safe being in the same room as the other parent, then the FDR practitioner can organise a 'shuttle' mediation where the parents are in separate rooms and have no direct contact with each other.

In the case of family violence, mediation is not recommended due to the power and control that one partner already has over the partner. If mediation is being sought by an abusive ex-partner and you feel intimidated, it is important to inform the FDR service and tell them what you need to ensure you and your children's physical and emotional safety.

At the end of the process both parents will receive a section 60I certificate, which will state that either:

- the matter is not appropriate for FDR
- one of the parties did not attend, or
- either or both parties did or did not make a 'genuine effort'.

Generally what is said during family dispute resolution or family counselling is confidential and cannot be disclosed to any other person, including the court. There are exceptions to this: disclosure may be necessary to protect a child from harm, prevent or minimise a threat to the life or health of another person such as family violence, report possible criminal offences, or damage to property. The court may also order that a counsellor or FDR practitioner give evidence of any admission or disclosure of abuse.

### Exceptions to attending FDR: family violence and child abuse

If there has been **child abuse** or **family violence**, or there is a risk of this occurring, then you can apply for an exemption from attending FDR before going to court. You also do not have to attend FDR if the matter is **urgent**, for example if a child needs to be protected or has been taken. For details visit [www.federalcircuitcourt.gov.au](http://www.federalcircuitcourt.gov.au), under 'Reports and Publications' and then under 'Family Law', and read fact sheet **Compulsory Family Dispute Resolution — court procedures and requirements**. For details visit [www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/publications/family-law/compulsory-family-dispute-resolution-court-procedures-and-requirements](http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/publications/family-law/compulsory-family-dispute-resolution-court-procedures-and-requirements)

## What if my ex-partner and I can't agree? Going to court

### Parenting orders

If you still cannot resolve issues around the care and welfare of your children, and family dispute resolution has not worked or is not appropriate, you can apply for a **parenting order**. A parenting order refers to a set of orders made by a court about parenting arrangements for a child after a hearing process.

Unless you already have current dealings with the Family Court of Australia, you can apply to the **Federal Circuit Court** for parenting orders. The Family Court of Australia and the Federal Circuit Court of Australia are separate independent courts but share jurisdiction in all family law matters. The Family Court deals with more complex matters such as international child abduction and child sex abuse. All other cases including child support, should be filed in the Federal Court Circuit which deals with less complex matters that are likely to be decided quickly.

Parenting orders can be made in the short term during court proceedings (**interim orders**), and in the long term once a final decision has been made (**final orders**). Parenting orders are legally enforceable, and penalties can be imposed if they are not followed.

When an order is made, each person bound by the order must follow it, which means taking all reasonable steps to ensure that the order is put into

effect. Even if the needs and circumstances of you, your children or your ex-partner change, **the order remains in force until a new parenting order or parenting plan changes it**. Some community services can help you and your family adjust to and comply with court orders.

Parenting orders may cover any of the following issues:

- who the child will live with
- how much time the child will spend with each parent and with other people such as grandparents
- the allocation of parental responsibility
- how the child will communicate with a parent they do not live with, or other people
- any other aspect of the child's care, welfare or development.

A parenting order can stipulate steps that both parties must follow before applying to a court to change an order. It can also state the process for resolving disputes that arise from the order. A parenting order may be altered if a parenting plan is agreed to by both parties in the future.

### Who can apply for a parenting order?

Any of the following persons can apply for a parenting order for a child:

- child's parents
- child
- child's grandparent
- any other person concerned with the child's care, welfare and development.

### Court process

1. Once an **Initiating Application** for parenting orders is filed, it will be set down for hearing.
2. The applicant will then have to **serve** (provide) a copy of the Initiating Application and supporting documents on the other parent and any other parties.
3. Those other parties will have to provide their own formal written **Response** and file it with the court and serve them on other parties.
4. At the first **court hearing** various **procedural orders** may be made, and all parties may be asked to meet with a **family consultant** (see pull out box).
5. The court can also make **interim orders** regarding
  - where the child will live,
  - the allocation of parental responsibility and

- whether the child will spend time with the other parent or any other persons before they make their final decision.
6. In some cases the Court can appoint an **Independent Children's Lawyer**, who helps the court to decide what arrangements are in the children's best interests.
  7. There can be further hearings in the interim. Once all evidence that the parties intend to rely on has been obtained, then the parties will have to prepare for a **final hearing**.
  8. At the **final hearing** all parties and their witnesses will have to give evidence, before the Judge makes a final decision.
    - Up until this point, the parties can still try to resolve the dispute by agreement and file **consent orders**.
    - If consent orders are not reached, then the Judge that is appointed in their case will make the **parenting orders** that they believe are in the children's best interests. This can mean that a parent will not necessarily be happy with the orders or decision made by the Judge.

Visit [www.familycourt.gov.au](http://www.familycourt.gov.au) to find out more about the steps involved for court proceedings — but note that these may vary depending on your case.

### What is a family consultant?

A family consultant is a psychologist and/or social worker who specialises in children and family issues particularly after separation. They can help resolve your dispute, give advice and evidence to the court about your case, provide a written report on your family to the court, and give recommendations and advice about available services for families. They may interview the different parties and other significant people in the children's lives; they may also talk to the children, and spend time with parents and children together. Anything said to a family consultant is not confidential and may be used in court at a later date.

## How does the court decide on a parenting order?

### 1. Best interests of the children

The court's most important consideration when making a parenting order is the best interests of the children. This means children having a meaningful relationship with both parents, and being protected from physical or psychological harm or from being subjected or exposed to abuse, neglect or family violence. Greater weight is given to the need to protect children from harm.

Other best interests considerations the court takes into account include:

- any views expressed by the child (depending on age and maturity level)
- the child's relationship with each parent and with any other important person
- how involved each parent is in making major long-term decisions about the child
- how much time each parent has spent with and communicated with the child
- whether each parent has financially maintained the child or failed to do so
- how changing where the child lives or stays can affect them
- how practical or costly it will be for the child to see each parent, and how this will affect the child's right to have a relationship with them
- how much each parent and any other person can provide for the child's physical, emotional and intellectual needs
- the maturity, gender, lifestyle and background of the child and each parent
- the rights of Aboriginal or Torres Straits Islander children to enjoy their culture
- each parent's attitude to the child and their parental responsibilities
- any family violence involving the child or family member
- any family violence order that applies to the child or family member
- whether the order will mean less risk of everyone coming back to court, and
- anything else the court believes to be important.

### 2. Parental responsibility

The court must also apply **the presumption that both parents having equal shared responsibility of the child is in the child's best interests**. That means both parents must consult with each other before making major long-term decisions regarding the child.

This presumption may not apply if there are reasonable grounds to believe that a parent has engaged in child abuse or family violence.

If there is satisfactory evidence that it is not in the child's best interests for both parents to have equal shared parental responsibility, then the court can make orders for **sole parental responsibility** in favour of one parent.

### 3. Equal time

If the court does make an order for equal shared parental responsibility, the court will consider whether spending equal time with both parents is **in the child's best interests**, and **reasonably practicable**. If it is, then the court can consider making an order for child to spend equal time with both parents.

If the court makes an order for equal shared parental responsibility, **but not for equal time**, then the court has to consider whether spending **significant and substantial time** is in the child's best interests, and reasonably practicable.

**Substantial and significant time** is where the child spends time with the parent on weekdays, weekends and holidays. It must allow the parent to be involved in:

- the child's daily routine, and
- occasions and events significant to the child and parent.

### What happens if the order is not followed?

A court order is **contravened** when the conditions on the order are not followed by the person named on the order. However, courts do not automatically enforce parenting orders, so when parenting orders are not followed, you can:

- attend family dispute resolution,
- get legal advice, and/or
- apply to the court to change or enforce the orders – make a **contravention application**.

### Contravention orders

A person bound by a parenting order will have **contravened** the order if they:

- intentionally did not comply with the order, or
- made no reasonable attempt to comply with it.

Someone not bound by a court order can **breach** an order, where they have prevented compliance.

A person who has contravened an order may be able to raise a defence that they had a 'reasonable excuse' for doing so because

- at the time they did not understand the order, or
- they reasonably believed the contravention was necessary to protect the health or safety of a person (including the child).

In hearing a contravention application the court may decide that:

1. the alleged contravention has not been established
2. the contravention was established but there was a reasonable excuse for a contravention
3. there was a less serious contravention without reasonable excuse, or
4. there was a more serious contravention without reasonable excuse.

A person may have a reasonable excuse for contravening a parenting order. Some examples of reasonable excuses that may satisfy a court include:

- the person did not understand the obligations imposed by the order; or
- the person reasonably believed that the actions constituting the contravention were necessary to protect the health and safety of a person, including the person who contravened the order or the child; and
- the contravention did not last longer than was necessary to protect the above person or child.

When contravention without reasonable excuse has been established, the court may do any of the following depending on the level of seriousness:

- change the original order
- adjourn proceedings to enable an application for a further parenting order
- require the person's participation in post-separation parenting programs
- order the person to compensate the other parent for time lost with the child
- order the person to pay the other parent's legal costs and/or compensation
- place the person on a bond
- require the person to do community service
- order a fine, or
- sentence the person to term of imprisonment.

Where there are parenting orders in place that provide for a child to live with, spend time or communicate with a person, then the court can issue an arrest warrant if:

1. there are reasonable grounds to believe a person has contravened an order; and
2. there is an application before the court that the person has contravened the order; and
3. the court is satisfied that a warrant is necessary for the person to attend before a court.

If a party in any family law parenting proceedings cannot be located, then a court may make a **Location or Commonwealth Information Order**. This requires other people or organisations including government departments to give any information they have about where the parent and the child may be located.

If you or your partner fails to return the child to the other parent in breach of a parenting order, then a court may make a **Recovery Order**. This order authorises all officers of the Australian Federal Police and all state and territory police officers to find and recover the child. The order may also allow a search of any aircraft, vehicle, vessel or any other premises where the child may be found.

The penalties are listed in Division 13A in the *Family Law Act 1975* (Cth), see Family Law Court fact sheet **Parenting orders – obligations, consequences and who can help**. For details visit [www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/court-orders/parenting-orders-obligations-consequences-and-who-can-help](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/court-orders/parenting-orders-obligations-consequences-and-who-can-help)

### What if I think my child may be taken overseas?

If either parent wants to take their child overseas, both parents must provide permission and sign an Australian passport application if they have parental responsibility. If one parent refuses to sign, the other parent can apply to a court to have the passport issued. Australian courts do not have a say over foreign passports being issued by other countries' embassies.

If you are worried that your child will be taken overseas you need to get immediate legal advice. An urgent application to the court can be made for court orders to prohibit the child from leaving the country; this is called a **'family law or airport watch list order'**. For details see Australian Federal Police website: [www.afp.gov.au/policing/family-law/family-law-kit](http://www.afp.gov.au/policing/family-law/family-law-kit)

### Attending court

Going to court can be stressful and difficult. If you are not represented by a lawyer, you can get a non-legal support person to accompany you on your days in court, or explain to you how the court system works in person or over the phone, by calling Court Network 1800 681 614 [www.courtnetwork.com.au](http://www.courtnetwork.com.au)

Understanding how the court system works can better prepare you for court appointment and hearings. Read Victoria Law Foundation's publication **Victoria's legal system: An introduction to the legal system in Victoria**. [www.victorialawfoundation.org.au](http://www.victorialawfoundation.org.au)

**Worried about your safety while attending court?** Call Federal Circuit Court of Australia 1300 352 000 before your hearing or make an appointment so that safety arrangements can be discussed and put into place. By law, you must inform the court if there is an existing or pending family violence order involving you or your children. You should also ring safe steps Family Violence Response Centre or speak to your family violence worker on how you can stay as safe as possible.

**Childcare arrangements** When going to court, it is best to make separate childcare arrangements for your children on that day. If you cannot arrange separate childcare arrangements and have to bring your children with you, try to arrange for a friend or family member to attend with you so that they can look after them while you are in court or meeting with a lawyer.

**Interpreter service** Should you need an interpreter to assist you at court, inform the court staff **at least two weeks before** your court appointment or hearing. They will organise to have a professional and independent interpreter available for you at no charge. To access Translating and Interpreting Service (TIS) outside of court, call 131 450.

## Getting legal advice

Get as much information as soon as possible about your legal rights and entitlements, even if you believe your partner will take the separation well and do the right thing by you. Getting legal advice does not mean you are 'getting nasty' or trying to get more than your fair entitlement; it ensures that you are properly informed about your rights and entitlements.

Laws around separation are complex and, for most of us, quite confusing, so if you are considering separation or have separated, you should seek legal advice. A lawyer can help you understand your legal rights and responsibilities and explain how the law applies to your situation. A lawyer can also explain and help you reach an agreement with your former partner without going to court.

You may be able to get legal advice from:

- Victoria Legal Aid
- community legal centres, such as Women's Legal Service
- private law firms

Court staff can help you with questions about court forms and processes but cannot give you legal advice. Going to court can become expensive with court fees and lawyer's charges, and there is no guarantee on the

Before seeking legal advice, make sure you have everything you need to avoid unnecessary delays and expense:

- list all your sole and joint property, debts, income and contributions
- gather copies/originals of important documents.

See page 10 for 'Checklist of important documents'.

### Experienced financial abuse or family violence?

If you have experienced financial abuse or any other forms of family violence from your ex-partner, it is important that you inform any lawyer you have engaged, as your ex-partner may use the court process to harm you financially and emotionally. One common way of doing this is drawing out legal issues into a lengthy process to drain you of time, money and energy. If this is happening or you fear it may happen, speak to your lawyer about what they can do to limit that impact on you. You can also call safe steps Family Violence Response Centre or 1800RESPECT about staying safe and for support.

Some lawyers may not fully understand financial abuse or family violence; if you are concerned about your lawyer or are seeking an appropriate one, contact Women's Legal Service or WIRE for more information.

### Victoria Legal Aid

Victoria Legal Aid (VLA) can help you with legal issues including family breakdown, child protection and family violence, tenancy and debt. VLA runs a Legal Help phoneline and free clinics on specific issues. You can get information on family law matters from the Legal Help phoneline, regardless of your eligibility for legal aid or even if your ex-partner is receiving services from VLA.

VLA can also fund your legal representation by a private lawyer or a VLA staff lawyer, provided you meet their eligibility criteria. For details, visit [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au) or call 1300 792 387 (Legal Help phoneline).

### Community Legal Centres

Community Legal Centres (CLCs) are located across Victoria and provide free legal services to the public — particularly if you are facing economic and social disadvantage, are ineligible for legal aid and cannot afford a private lawyer.

Some CLCs are generalist and can assist you with a wide range of legal issues including family law, credit and debt and family violence. Others are specialists in certain legal areas, or only assist specific groups of people such as women, young people or people with disabilities. Each CLC has different eligibility guidelines as to who they can help, what legal issues they can help with and how much help they can provide.

To find a community legal centre near you, visit [www.fclc.org.au/find\\_a\\_clc.php](http://www.fclc.org.au/find_a_clc.php) or call (03) 9652 1500.

### Private lawyers – how to choose one

Private lawyers provide legal advice and representation for a fee. Engage a lawyer that you feel comfortable with and that you can afford. If you have experienced family violence or financial abuse, it is important to choose a family lawyer who understands and has experience dealing with these issues.

Shopping around will allow you to speak to different lawyers and compare their services and fees. It is important that the lawyer you choose

- listens to you and understands you
- provides information in a way you understand
- has your best interests at heart, and
- is clear about their costs.

The Law Institute of Victoria website offers guidelines on choosing your lawyer and preparing for your first appointment. Visit [www.liv.asn.au](http://www.liv.asn.au) or call their Legal Referral Service (03) 9607 9550.

**Legal fees** A lawyer's charges are made up of fees for professional services and disbursements — expenses paid for you by the lawyer, such as court fees for filing documents or paying barrister fees. When you first meet with a lawyer, you should ask what their fees are so there are no surprises. In Victoria lawyers must provide you with a 'Costs Disclosure Statement' if costs are likely to exceed \$750. This means giving you written information that explains how the estimated fees are calculated and your rights as a client. Even if the fees are under \$750 you have the right to request progress reports, reasonable information and a bill.

Lawyers' fees vary depending on the law firm and the legal work involved. Some lawyers may offer a free 30-minute initial consultation if you have been referred by the Law Institute of Victoria. Payment structures can also vary with different lawyers. Lawyers must use a costs agreement if your fees exceed a certain amount — a contract with you that sets out the fees you will be charged. If your lawyer does not provide you with a costs agreement you have the right to request one. See Victorian Legal Services Board and Commissioner website 'FAQs — Costs Disclosure' for details at <http://lsbc.vic.gov.au>

WIRE has a list of lawyers in Melbourne CBD that provide up to an hour of free consultation. For a referral, call WIRE 1300 134 130.

## Where do I go for help?

### Child abuse services

- **Child Protection Crisis Line** 131 278 / 1800 212 936 if your child is in immediate danger
- **Child Wise National Child Abuse Helpline** 1800 991 099 [www.childwise.org.au](http://www.childwise.org.au)
- **Kids Helpline** 1800 551 800 [www.kidshelpline.com.au](http://www.kidshelpline.com.au)
- **Office of Children's e-Safety Commissioner** [www.esafety.gov.au/esafety-information](http://www.esafety.gov.au/esafety-information)

### Child support and property issues

- **Department of Environment, Land, Water & Planning** See section on '*Property and land titles*' [www.dtpli.vic.gov.au/property-and-land-titles](http://www.dtpli.vic.gov.au/property-and-land-titles)
- **Department of Human Services (Centrelink)** — Parenting payments 136 150 | Report income 133 276 (131 202 multilingual) | Newstart allowance 132 850 [www.humanservices.gov.au/customer/dhs/centrelink](http://www.humanservices.gov.au/customer/dhs/centrelink)
- **Department of Human Services (Child Support)** — Applying for child support and changes to circumstances 131 272 Interpreting service 131 450 [www.humanservices.gov.au/customer/dhs/child-support](http://www.humanservices.gov.au/customer/dhs/child-support)
- **Medicare** 132 011 [www.humanservices.gov.au/customer/subjects/medicare-services](http://www.humanservices.gov.au/customer/subjects/medicare-services)
- **MoneySmart** Financial Counselling Hotline 1800 007 007 [www.moneysmart.gov.au](http://www.moneysmart.gov.au) (Australian Securities & Investments Commission)
- **Separated Parents** [www.humanservices.gov.au/customer/dhs/child-support-and-separated-parents](http://www.humanservices.gov.au/customer/dhs/child-support-and-separated-parents)
- **Parents' guide to child support** [www.humanservices.gov.au/customer/subjects/parents-guide-to-child-support](http://www.humanservices.gov.au/customer/subjects/parents-guide-to-child-support)
- **Tenants Union of Victoria** (03) 9416 2577 [www.tuv.org.au](http://www.tuv.org.au)

### Courts

- **Commonwealth Courts Portal** [www.comcourts.gov.au](http://www.comcourts.gov.au)
- **Court Network** 1800 681 614 [www.courtnetwork.com.au](http://www.courtnetwork.com.au)
- **Family Court of Australia** 1300 352 000 [www.familycourt.gov.au](http://www.familycourt.gov.au)
- **Family Court of Australia: Separation and Divorce** [www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/separation-and-divorce](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/separation-and-divorce)

- **Federal Circuit Court of Australia** 1300 352 000  
www.federalcircuitcourt.gov.au
- **International Social Services** 1300 657 843 www.iss.org.au
- **Online Application for Divorce Kit** (Family Court of Australia) www.family-court.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/court-forms/diy-kits/kit-application-for-divorce

### Family violence services

- **1800 RESPECT** 1800 737 732 www.1800respect.org.au
- **Domestic Violence Resource Centre Victoria** (03) 9486 9866  
www.dvrcv.org.au
- **safe steps Family Violence Response Centre of Victoria** 1800 015 188  
www.safesteps.org.au
- **SmartSafe: Technology Abuse and Your Safety** www.smartsafe.org.au

### Legal advice and mediation

- **Aboriginal Family Violence Prevention & Legal Service Victoria** (FVPLS Victoria) 1800 105 303 www.fvpls.org
- **Australian Institute of Family Law Arbitrators and Mediators (AIFLAM)** (07) 3117 0849 www.aiflam.org.au
- **Everyday-Law** www.everyday-law.org.au for reliable, easy-to-understand legal information in Victoria and the Law Help Directory for free/low cost legal help in Victoria
- **Family Law Registries (Victoria)** 53-55 Robinson St, Dandenong 3175  
305 William St, Melbourne 3000
- **Federation of Community Legal Centres Victoria** (03) 9652 1500  
www.communitylaw.org.au
- **Law Institute of Victoria** (03) 9607 9311 www.liv.asn.au
- **LawTermFinder** lawtermfinder.mq.edu.au
- **The Law Handbook** www.lawhandbook.org.au Victoria's practical guide to the law
- **Victorian Aboriginal Legal Service** 1800 064 865 www.vals.org.au
- **Victorian Civil and Administrative Tribunal (VCAT)** (03) 9628 9800 / 1800 133 055 (country callers only) www.vcat.vic.gov.au
- **Victorian Legal Aid** Legal Help phonenumber 1300 792 387  
www.legalaid.vic.gov.au
- **Women's Legal Service Victoria** (03) 8622 0600  
www.womenslegal.org.au

### Relationship services and parenting support

- **Council of Single Mothers and Their Children**  
Support Line (03) 9654 0622 (Melbourne metro) or 1300 552 511  
(outside Melbourne) www.csmc.org.au
- **Family Relationship Centres** Advice Line 1800 050 321  
www.familyrelationships.gov.au
- **Parentline Victoria** 132 289 www.parentline.vic.gov.au
- **Relationships Victoria** 1300 364 277 www.relationshipsvictoria.com.au

### Specialist support services

- **WIRE** 1300 134 130 www.wire.org.au for financial counsellors, transitional housing managers and counselling services in your area
- **Switchboard Victoria** 1800 184 527 www.switchboard.org.au
- **Translating and Interpreting Service (TIS) National** 131 450  
www.tisnational.gov.au

Funded by  
a grant from  
**Victoria Law  
Foundation**

The publication of this information booklet was made possible with a grant from  
the ??????????

© 2016 WIRE Women's Information



Helping women  
make the right  
connections

**Women's  
Information**

WIRE Women's Information  
and Referral Exchange Inc.  
Reg. No. A122  
ABN 98 957 157 895.

## Call **WIRE 1300 134 130**

for the cost of a local call (Telephone Interpreter  
Service available). Hearing-impaired women can use

LiveChat support [www.wire.org.au](http://www.wire.org.au)

or email [inforequests@wire.org.au](mailto:inforequests@wire.org.au)

.....  
**Drop in Women's Information Centre,  
372 Spencer Street, West Melbourne**

**Email [inforequests@wire.org.au](mailto:inforequests@wire.org.au)**

**Visit or chat online [www.wire.org.au](http://www.wire.org.au)**



Printed on 150gsm Maine recycled silk. Certified Carbon Neutral