

### Family Mediation

Family dispute resolution services are available at any time during a relationship, as well as before, during or after a separation or once a court case has begun. Mediation services can be free, or at cost, depending on a client's financial situation.

Family dispute resolution can be used:

- if you want to apply to court for parenting orders about arrangements about the children
- to resolve financial issues such as property settlement, spouse maintenance or child support.

If agreement is reached it can be made legally binding by applying to the court for consent orders.

Parties must attend family dispute resolution where there's a child under 18, or a dispute as to children, before a divorce is granted. Mediation isn't used where there's family violence.

The process: The party who wants mediation contacts a service, the service then contacts the other party and explains mediation and asks if they will take part. Mediations can be via shuttle (parties in different rooms) or on the phone and can take four or five hours or more. If the other party won't take part then you get a certificate to show the court you've tried mediation.

Community workers:

- can explore parenting plan options with the client
- can assist clients get to appointments
- can assist Legal Aid clients with their Client Assessment Form before they see a lawyer
- can't go in to the mediation but can be there at the breaks.

### Domestic Violence Protection Orders

A protection order can be applied for online or in person at a Magistrates Court, by the client, a lawyer, friend, family member or by the police.

An urgent temporary order can be asked for. The court clerk will arrange for a copy of the application and any temporary order to be delivered to the respondent by local police.

Protection is the primary need. Orders can have different conditions. An order continues until a date the court says, and is usually for five years. An application can be made to court to vary or revoke an order.

Family violence includes physical abuse, threats, damaging property, extreme control over finances, stopping contact with family/friends, repeated extreme verbal abuse.

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Details of the steps to apply are on Legal Aid's [website](#).

*Community workers can:* help clients get legal advice; link clients with domestic violence support; help clients get assistance with filling in Protection Order applications; let the court registry know an interpreter is needed.

## Separation - Child arrangements

If both parents agree as to the arrangements with their children they can do:

- **Parenting plan** – informal written agreement between parents setting out care arrangements. Not binding in law. Can be changed at any time by making another written agreement. Can be used for Child Support Agency and Centrelink.
- **Consent orders** – written agreement (or parenting plan) approved by the court. Has legal effect.

If parents disagree as to the arrangements:

- **Parenting Order** - apply to the court for a Parenting Order. Must first (unless there's violence) try family dispute resolution. Complex and takes a long time.

## Separation - Child Support

Child Support is a payment made by one or both parents to the other to help with the cost of looking after the children.

If parents can't reach their own agreement, the government agency, Child Support, has a process to determine what's fair. It's best to get Child Support to collect as it is their role to chase up any non-payment.

Child Support gives support by calculating, collecting, and transferring child support payments. You can [object](#) to a Child Support assessment but must do so within 28 days of receiving the decision letter.

Child Support starts from the date you apply. It's not backdated like Centrelink payments are. So it's best if you apply as soon as possible.

## Overseas marriages

Australian law recognises an overseas marriage if it was lawful in that country and it would have been lawful in Australia.

An overseas marriage is invalid in Australia if: there was no real consent; one party was already married, or under the Australian marriage age (18, or 16 to 18 with a court's consent); or if the couple was too closely related (ancestor, descendent or sibling). Australian law allows same-sex marriages.

An original or certified copy of an official marriage certificate is proof of that overseas marriage. If a marriage certificate can't be obtained then a detailed affidavit needs to be made explaining why, and why the marriage was lawful in that country.

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## Divorce

A divorce needs 12 months separation – living separately and apart for at least 12 months with no reasonable chance of getting back together. You don't have to prove someone was at fault. If you reconcile for less than three months that will extend the 12 month period. If you reconcile for more than three months the period will have to start again. You can be separated even if still 'under one roof' but need to show the Court the separation has been clearly communicated and that usual marriage activities (social, economic, domestic) have ended.

Generally, people married overseas can get divorced in Australia if one of them is a citizen or permanent resident or ordinarily lives here and has done so for 12 months or more before the start of the court process.

### Divorce process:

- get legal advice
- after 12 months separation complete joint or sole divorce application ([online](#) or hard copy)
- need to have marriage certificate
- file papers at the court registry
- serve documents on ex-partner (if sole application)
- Court grants divorce and it takes effect one month after that.

If married for less than two years, you and your spouse have to do counselling (unless there's a risk of violence) and then file a counselling certificate with divorce application.

### When you need to go to court for divorce

- when you have filed a sole application and there is a child of the marriage under 18 or you indicate in the application that you wish to attend (unless there are special circumstances such as a risk of violence)
- if you can't serve documents on your ex-partner and have applied for substituted or dispensing of service
- if you need to give extra affidavit material to explain to the Court, for example, separation under the same roof/ married less than two years
- where there are disputes as to child arrangements. But if both parents agree and put details in a parenting plan or consent order you don't need to go to Court
- You can ask the Court to appear by telephone if it is difficult to attend.

If you make a joint or sole application and there are no children under 18 that were part of the family before separation, there is no need to attend Court.

## Property settlement

Property settlement – is about dividing assets and maintenance of the partners through:

- informal agreement – not recommended as it is not legally binding (even if written)

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- financial agreement – is binding in law. Can be made before (pre-nuptial), during or after relationship. Must have lawyers certificate.
  - consent orders – parties agree and it's approved by the Court as fair.

It's best to try to reach agreement about how to divide property without going to Court. Family Dispute Resolution Services can help if you can't agree.

There are time limits – must finalise any agreement about property settlement or spousal maintenance or start an application for property settlement, within one year of date divorce takes effect or within two years of end of a de facto relationship.

## KEY LEGAL SERVICES FOR FAMILY LAW CASES

People should access legal advice early so as to be clear on their legal rights and responsibilities

[Legal Aid Phone Advice and Information](#) – 1300 65 11 88

[Domestic violence duty lawyer](#)

In Magistrates Courts in major centres, lawyers provide free:

- legal information and advice to applicants and respondents
- help with filling out forms and documents for court on the day
- advice on whether to apply for ongoing Legal Aid representation.

[Child protection duty lawyer](#)

In Magistrates Courts in major centres, lawyers provide:

- legal services to unrepresented parents involved in child protection matters in court that day
- legal advice and help with some documents; the service is offered one day per week at these Magistrates Courts.

[Family law duty lawyer](#)

For people representing themselves In Brisbane Family and Federal Circuit Courts the family law duty lawyer:

- can provide free legal advice
- in special cases, represent people in court for adjournments, short procedural mentions or help with negotiations about consent orders for children or property matters
- can't take on contested hearings or represent people at a trial.

[Legal Aid information](#) pages and [publications](#)

[Legal Aid offices](#) are around the state. Legal Aid provides a range of support for domestic violence and family cases.

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## Domestic Violence Services

[Key Help Lines](#) – directory of domestic violence support services in Queensland.

## Family Relationship Centres

[Family Relationship Centres](#) provide information and confidential advice for families at all stages, focussing on mediation to enable parenting arrangements outside the Court system.

[Family Relationships Online](#) provides all families, whether together or separated, with information about all family relationship issues,

## Interpreters

Legal Aid provides free interpreters.

If a duty lawyer for respondents has no access to an interpreter, they can approach the Legal Aid duty lawyer to use the Legal Aid TIS code.

If an interpreter is needed in court, the court will arrange this.

Free interpreting is available for the parties in Family Court cases (1300 352 000).

Mensline (1300 78 99 78) will call back through TIS if an interpreter is asked for.

*This Fact Sheet is legal information, not legal advice.*

*Clients should always be referred to a registered migration agent/lawyer for specific advice.*