


# Divorce Guide for Men



You Matter

A photograph of a person's legs from the knees down, wearing blue denim jeans and brown leather shoes. They are walking on a light-colored paved path. The background is a bright, out-of-focus green lawn and some trees. A large teal semi-transparent rectangle is overlaid on the left side of the image, containing white text.

Separation and divorce can be painful both emotionally and financially. You cannot eliminate all the difficulties that separation will cause but, with proper advice, you can manage the damage.

Separation can be one of the most stressful, demanding and exhausting times in your life. Your life as you know it can be torn apart. Communication with your ex can be difficult and sometimes impossible. What you thought was a secure financial base may be no longer. During this time, the ability to make good, logical and reasonable decisions is vital. The decisions you make and your conduct, what you say and do, can make a huge difference to your future and the future of your children.

Despite your emotions being up and down, you must think carefully, be level headed and prioritise what is important to you, and what is in the best interest of your children. You will need to make many decisions and these decisions may affect you in future years.

# Do's

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- ✓ Keep a level head at all times. Stop and take a breath before acting.
- ✓ Use common sense.
- ✓ Walk away from arguments.
- ✓ Follow every Court Order in detail – even if you disagree with it.
- ✓ Make your children and good parenting a high priority.
- ✓ Avoid giving your ex any ammunition that they can use against you in the future.
- ✓ Be careful and thoughtful, and make rational and reasonable decisions. Remember that all comments you make on social media can be used against you.
- ✓ Try to keep possession of important private property or assets that you wish to retain.
- ✓ Always be civil to your ex, especially in SMS and emails.
- ✓ Show that you are reasonable and responsible.
- ✓ Keep a written journal, and log dates, times and details of every communication with your ex and the children. Keep all emails and text messages; Regularly upload and save the text message in case your phone is lost. Keep detailed records of your spending including money you give to the children, use for household expenses and for personal items.
- ✓ Be clean of illicit drugs and limit alcohol intake– stop completely if possible and seek any necessary assistance for any abuse or misuse issues.
- ✓ Contact one of the experienced Family Lawyers at Leach Legal who will give you advice specific to your circumstances. Each case is different, and an outcome achieved by someone you know (even if their circumstances were similar) is not necessarily reflective of the outcome you will achieve.

# Don'ts

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- ✗ Breach a Family Violence Restraining Order or any other Court Order.
- ✗ Threaten your ex in any way, including verbally or through social media.
- ✗ Speak angrily about your ex in front of your children. Avoid telling your children about how you feel towards your ex. Never use your children as middlemen to communicate messages between you and your ex.
- ✗ Leave behind important personal property that you may need or want later.
- ✗ Behave in a hostile or irrational manner or engage in behaviours that will undermine your credibility with a Judge or Magistrate even if your ex might behave in such a way.
- ✗ Post hostile messages or any posts about your ex or your family law experiences on any social media sites.
- ✗ Leave the state or country with your children without the consent of the other parent or legal guardian. This is viewed very seriously by the Court and may cause you serious complications in any future parenting proceedings.
- ✗ Sign any document that could possibly constitute an agreement without first discussing this with your Family Lawyer.
- ✗ React or respond to your ex's anger.

# Legal Lingo

You should become familiar with the various legal terms that you will likely be hearing as you progress through the separation process. Here are some that you may come across:

**Applicant:** the partner who files an application in the Court first, starting the Court process.

**Court Respondent:** the other partner to the proceedings who is then required to file a Response to the application.

**Parties:** the Applicant and Respondent.

**Service:** the legal process of providing notification of a legal proceeding to the other party by giving them copies of Court documents.

**Irretrievable Breakdown:** the only ground or basis for the dissolution of marriage (divorce).

**Parenting Plan:** this is a written agreement which is signed and dated by both parties that deals with arrangements for care of their children. The agreement can include child support. It is not legally enforceable, but the Court are required to take any Parenting Plan into consideration when making Parenting Orders.

**Property:** all assets, such as real estate, superannuation or personal property, that either party own either individually, together or with anyone else.

**Financial Resource:** an asset or entity which may not have a tangible value or may not be owned by either of the parties, but by which a party obtains a benefit.

**Child Support:** money paid from one party to the other to contribute to the financial support of the parties' children.

**Trial:** final Court appearance before a Judge or Magistrate. Evidence is given to the Court to determine the factual basis for the Orders that the Court intends to make. A Trial can deal with property, children and in certain circumstances child support and spousal maintenance.

**Interim Hearing:** this is a hearing that deals with immediate limited matters or procedure. There can be several Interim Hearings before a matter proceeds to Trial.

**Appeal:** an application for a re-hearing on an error of law.

**Mediator:** a neutral third party that facilitates a conference between the parties (with or without legal representation) and tries to help the parties reach an agreement without the need for Court proceedings. Parties can mediate at any time.

**Spousal Maintenance:** the legal obligation for a party to (in some circumstances) make periodic payments or lump sum payments to the other party during or after the separation process. It may be temporary or permanent.

**Duty of Disclosure:** duty to provide the other parties in your case with all information and documents which are relevant to the issues in the case.

**Subpoena:** an order which can be issued by the Court at the request of a party to a case (the issuing party) to a third party such as a bank or school to produce documents or give evidence at a hearing or Trial.



# Spousal Maintenance

The basis for Spousal Maintenance is one party's need for financial assistance and the other party's ability to pay. Spousal Maintenance is determined by a Judge or Magistrate. The Court takes into account several factors in determining the amount of Spousal Maintenance to be paid. The factors that the Court may take into account include the following:

- the age and state of health of each party;
- the income, property and financial resources of each party;
- each party's commitments to support themselves or another person they have a duty to maintain;
- whether a party has care of a child of the relationship;
- child support provided or to be provided;
- the duration of the relationship;
- the earning capacity of each party;
- the financial circumstances of any new partner that a party may be cohabitating with;
- the standard of living of the parties during cohabitation and after separation;
- the eligibility for a pension, allowance or superannuation;
- contribution to the financial position of the other;
- the terms of any financial agreements.

## Child Support

Child support is usually administered by the Commonwealth Department of Human Services. It is based on a formula. The amount payable is determined by the incomes of each party and typically the number of nights that a child spends with each party. You can obtain an estimate of the amount payable via the Department's website.

Child support can also be agreed between the parties privately and legally documented in a limited or binding child support agreement.

A limited child support agreement does not need legal advice. A Child Support Assessment must be in place and the payment set out in the agreement must be equal to or more than the Child Support Assessment. Either party can elect to terminate the agreement after 3 years, or if certain circumstances change.

A binding child support agreement requires both parties to obtain legal advice and provide a certificate to evidence that advice for it to be valid. The payment in the agreement can be more or less than the Child Support Assessment. It is difficult to terminate binding child support agreements.

In some cases, where the receiving party no longer has care of the children for at least 35% of the time, the agreement may terminate.

## Care arrangements for children

If you have children under 18, the law encourages parents to develop a plan for their care. There are several ways you can do this, and you should consider discussing which option best suits your family's needs and circumstances with one of our experienced Family Lawyers (see settlement of disputes below).

Your plan should typically provide details of the:

- time that the children will spend in the care of each parent, including holidays and special occasions;
- allocation of parental responsibility;
- time the children may spend with grandparents or significant others.

Your plan can also deal with child support and can, subject to the right formatting, be lodged with the Child Support Agency of the Department of Human Services. It will then become a Limited Child Support Agreement (see above).

# Settlement of Your Dispute

If you can come to an agreement with your ex about all of the elements of your separation, then this agreement can be documented without having to go to Court. The Court prefer parties to reach an agreement regarding their separation rather than proceed through the Court process. Your agreement can be formalised in the following ways:

**Parenting and/or Property Agreement:** a verbal or written agreement of what you and the other party have agreed to. It is not legally enforceable, and not enforceable.

**Parenting Plan:** a written, dated and signed agreement in relation to parenting. It is not enforceable but can in some circumstances replace the terms of an existing Court order. When making orders, the Court must take into consideration the most recent Parenting Plan.

There are other formed ways to document your agreement which are binding and enforceable (see next page).



## Consent Orders

**Parenting:** your Parenting Agreement or Plan can be made legally enforceable by applying to the Court for Consent Orders. You and your ex can do this yourselves with a Do-it-yourself kit from the Court (also available on the Court's website) or ask your Family Lawyer to assist you. Final parenting orders are generally unable to be amended unless there has been a significant change in circumstances. You should consider obtaining legal advice prior to filing for final orders.

**Property:** your Property Agreement can be made legally enforceable by applying for Consent Orders. You can do this yourself with a Do-it-Yourself kit from the Court (also available on the Court's website) or ask your Family Lawyer to assist you. Once a final property order is made it is generally unable to be amended or overturned unless you can prove to the Court that full disclosure of financial matters was not made. You should consider obtaining legal advice prior to filing for final orders.

Consent orders can also be made at any time during the Court process.

**Binding Financial Agreements:** these agreements are a way of making a legally enforceable agreement without applying for Court Orders. These agreements must have a statement of legal advice from an independent lawyer for each party to be legally enforceable, and the agreement must be made voluntarily without any threat or coercion. Each party must obtain legal advice if you wish to document your agreement this way.

## Court proceedings

If you cannot settle your dispute, you may need to commence Court proceedings. After an initiating application is filed, the first hearing is known as a directions hearing. The Magistrate will usually only make orders by consent and orders which progress the matter forward. For example, they may order the filing of responding documents or make some orders for the provision of information. In some cases, substantive orders (i.e. about interim spousal maintenance or parenting arrangements) will be made at the first hearing, so it is important to be prepared and to seek legal advice.

## Trial

If parties cannot make a final agreement on all of the issues then a Trial will be necessary. Going to Trial is expensive and extremely emotional. Trials can last anywhere from one day to several weeks depending on the complexity of the matter and how many parties and witnesses are involved. You should consider all settlement options before electing to go to trial.

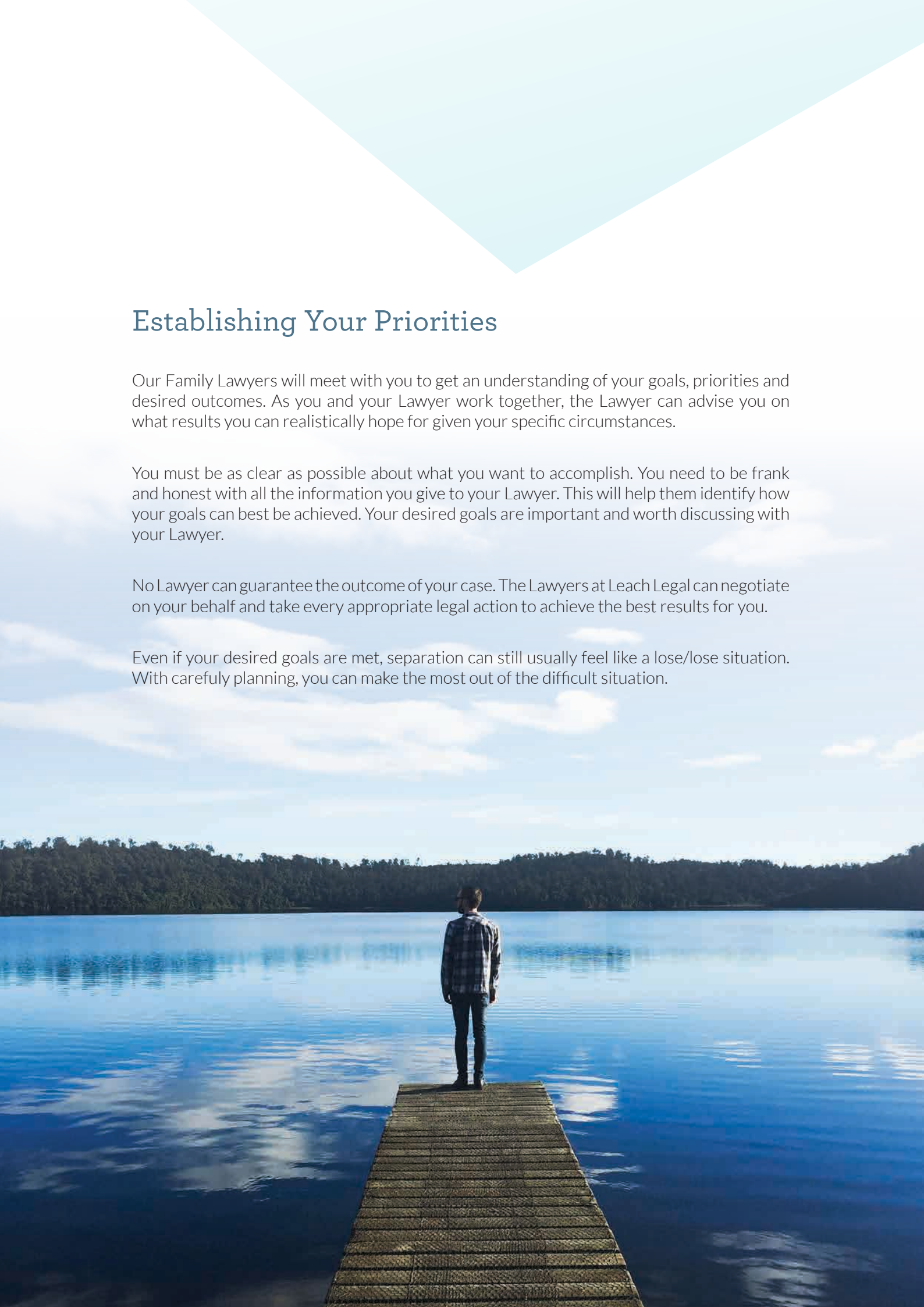
## Establishing Your Priorities

Our Family Lawyers will meet with you to get an understanding of your goals, priorities and desired outcomes. As you and your Lawyer work together, the Lawyer can advise you on what results you can realistically hope for given your specific circumstances.

You must be as clear as possible about what you want to accomplish. You need to be frank and honest with all the information you give to your Lawyer. This will help them identify how your goals can best be achieved. Your desired goals are important and worth discussing with your Lawyer.

No Lawyer can guarantee the outcome of your case. The Lawyers at Leach Legal can negotiate on your behalf and take every appropriate legal action to achieve the best results for you.

Even if your desired goals are met, separation can still usually feel like a lose/lose situation. With carefully planning, you can make the most out of the difficult situation.

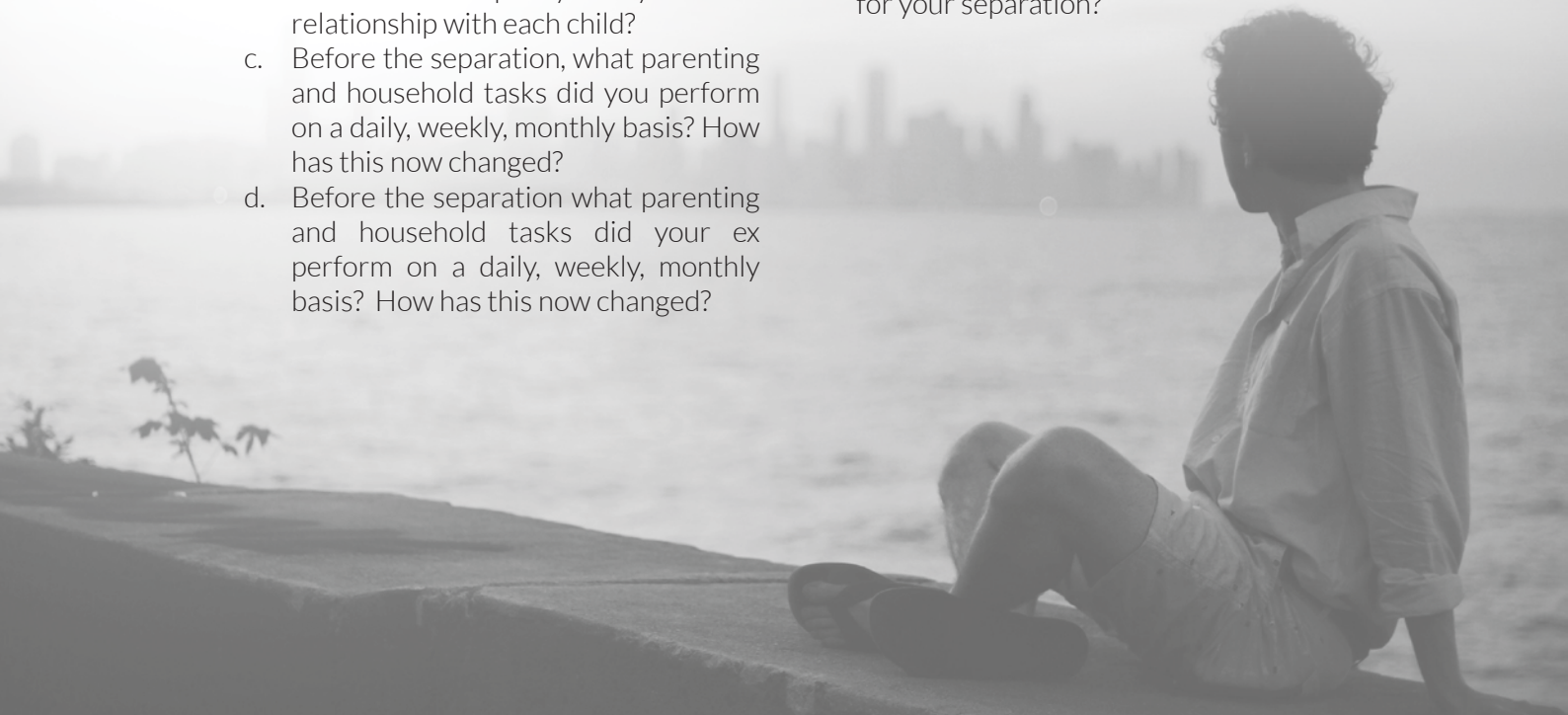




# Questions to Ask Yourself

Objectively assess your current relationship with your ex and your children, your immediate needs, financial situation and priorities. Write your answers to these questions and bring them to your initial consultation with your Lawyer.

1. What are your primary concerns, goals and priorities?
2. What do you consider to be your ex's primary concerns, goals and priorities?
3. What is the status of the relationship with your ex? Is it openly hostile or amicable?
4. Is it possible for you to have a constructive conversation with your ex about separation issues?
5. Where would you like it to be in the future, for the benefit of your children?
6. Is your ex represented by a Lawyer? If so, who?
7. Is your ex pregnant?
8. Please provide the names and dates of birth of your children:
  - a. What is the quality of your relationship with each child?
  - b. What is the quality of your ex's relationship with each child?
  - c. Before the separation, what parenting and household tasks did you perform on a daily, weekly, monthly basis? How has this now changed?
  - d. Before the separation what parenting and household tasks did your ex perform on a daily, weekly, monthly basis? How has this now changed?
9. What is your goal for being a parent?
10. What is your occupation and annual gross income?
11. What is your ex's occupation and monthly income?
12. If your ex is not working, is there any reason why they cannot work outside of the household?
13. What are your assets?
14. What are your debts and obligations?
15. Are your basic needs being met for the time being?
16. Who currently lives in the family home?
17. What issues do you agree with your ex?
18. What issues do you and your ex disagree on?
19. What do you see as the major problem in reaching an agreement with your ex?
20. What do you see as the best outcome for your separation?



# Documents That You Will Need

You will need to compile a complete list of all your family's assets and liabilities for property settlement and financial matters. Take time and be thorough. Remember your superannuation accounts, shares, bank accounts, property, financial accounts for any businesses you may own, expensive jewellery, cars and valuable collections. Have a think about their realistic, current values. Bring the list with you to your meeting with your Lawyer. This will assist your Lawyer in providing you with advice.

You should try and have a document evidencing the value that you attribute to each item on your list of assets and liabilities. Other useful documents to gather are:

- Title deeds and valuations for homes, cars, boats, etc.
- Business and business' assets and liabilities
- Partnership agreements
- Lease agreements
- Trust account documents
- Trust deeds
- Recent tax returns and notices of corresponding assessments
- Market appraisals for real estate
- Financial statements for any business, company or trust which you hold an interest or receive a benefit
- Share certificates or portfolio summary
- Recent bank statements
- Details of any insurance policies
- Inheritances, gifts or personal injury awards that you have or are likely to receive
- List of chattels, furniture and other household goods
- Your will

## Do I Need a Lawyer?

An experienced Family Lawyer can make a huge difference in the outcomes you are able to achieve. It can be intimidating and confusing to navigate the legal process on your own. It can also be difficult to stay objective during this time. Having an objective professional by your side is a huge benefit. Your Lawyer has the experience to know what can and cannot be accomplished during the separation process and how to do it. For some people it is not may not be necessary to engage a Lawyer. These separations are not complicated and have little risk. If there are children or valuable financial assets involved, then it would be sensible to engage an experienced Family Lawyer. Making the right decisions at each stage of the process is essential. Your Lawyer will be able to advise you on your options regarding any important decisions. The cost of mishandling your own case may far exceed the cost of hiring a Lawyer. Our Lawyers collectively have years of experience in all aspects of Family Law and can guide you through the process.

## Assembling Your Team

Throughout the separation process, it is important to assemble a support team of people that will be there for you and that have your best interests at heart. Close friends, family members, a counsellor or psychologist and your Family Lawyer will make huge difference for you, your children and your future. For most people, this is not the time to do it on your own, but rather, a time to keep your friends and family close. Stay in touch with them regularly. You will feel better after talking with other people who have been through the process, who have lived through it and even improved their lives as a result. Separation can be a time of renewal and remake.

# How to Choose Your Lawyer

**Trustworthy** – Your Family Lawyer should be someone that you are comfortable with and formal/spacious working with and someone you can trust. You will be sharing a lot of time and personal information with them.

**Experience** – Your Lawyer should be an experienced Family Lawyer who is familiar with handling separation cases in Western Australia.

**Good Listening Skills** – You want a Lawyer who will listen to you and understand what your goals and priorities are. You also want a Lawyer who will be honest with you and explain why some of your goals may be difficult, unrealistic and expensive to attain.

**Get results** – You want a Lawyer that will get you the best possible outcome. The Lawyer cannot guarantee they will always

get what you want but they need a good track record of successfully representing clients in Family Law cases.

**Willing to Negotiate a Settlement** – Most separations in Australia are settled by agreement – that is, they do not go to trial. Your Lawyer should be good at negotiating settlements. This will save you money, time and emotional stress. If you are unable to reach an agreement, your Lawyer must be ready to go to Trial. You will want to select a Family Lawyer that has experience in Trials and a Lawyer that is knowledgeable and comfortable in the Courtroom.

**Conveniently Located** – You do not want to pay for lots of time spent by your Lawyer travelling to Court. An office conveniently located close to the Court will generally save you money.



Our experienced Lawyers at Leach Legal are available to assist you in protecting your rights during your separation or divorce.

**Find out more by contacting us for a free 15 minute consultation.**