

LeachLegal

Divorce & Family Lawyers

Marriage, Families & Separation



Better Outcomes

*This document was produced by The Family Court of Western Australia

This brochure provides information for couples considering separation or divorce. It also includes information for people affected, or likely to be affected, by separation or divorce.

This brochure includes information about:

- the social and legal effects of separation;
- the services provided to families by the Family Court of Western Australia and by government, community and other agencies; and
- the steps involved in court proceedings.

Separation

Separation is an upsetting experience for almost everyone involved. It is understandable that you may be stressed at this time. It is important for you and your children that you have support to help you through this difficult time.

When you separate, you and your former partner need to make important decisions about the future care of your children and how

to divide your property, money and belongings. Working through these issues is often difficult and emotionally challenging. Separation is also a stressful time for your children. They may experience a range of emotions that are difficult for them to deal with and talk about with you. They may also behave in ways that are unusual for them.

- There are services in the community that can help:
- you and your partner work through any problems in your relationship;
- you and your children adjust to separation or divorce;
- you and your former partner reach an agreement; and
- you and your family adjust to and comply with Court orders.

To find a service near you, visit **familyrelationships.gov.au** or call the Family Relationships Advice Line on **1800 050 321**.

Where to Get Legal Advice

If you are considering separation or have separated, you should get legal advice. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also explain and help you reach an agreement with your former partner without going to Court. You can get legal advice from a:

- legal aid office;
- community legal centre; or
- private law firm.

**Court staff can help you with questions about Court forms and the Court process, but cannot give you legal advice.*

Concerned About Personal Safety?

If you have any concerns about your safety while attending Court, please call 08 9224 8222 before your Court appointment or hearing. Options for your safety at Court will be discussed and arrangements put in place. By law, people must inform a court if there is an existing or pending family violence order involving themselves or their children.

Non-Court Based Family Services

People considering separation or divorce, and those affected by it, are encouraged to use services in the community to resolve issues.

Community-based services that can help you and your family include:

FAMILY COUNSELLING

A process in which a family counsellor helps people deal with personal and interpersonal issues relating to families, relationships, marriage, separation and divorce.

FAMILY DISPUTE RESOLUTION

A process in which a family dispute resolution practitioner, independent of all the parties, helps people resolve some or all of their disputes with each other during and after separation and divorce.

ARBITRATION

A process in which parties to a dispute present arguments and evidence to an arbitrator, who makes a determination to resolve the dispute. You can get a list of arbitrators from the Family Law Section of the Law Council of Australia (details on back page).

If there is a history of family violence, it may not be appropriate to attend the services listed above. Speak to staff at the agency about your options and support services that are available.

Reaching an Agreement

Reaching an agreement with your former partner offers many advantages, such as:

- you make your own decisions;
- you greatly reduce the financial and emotional costs of legal proceedings;
- your continuing relationship as parents, if you have children, is likely to work better;
- you are able to move forward and make a new life for yourself;
- you may improve communication with your former partner and be better able to resolve disputes in the future.

CONSENT ORDERS

A consent order is a written agreement that is approved by the Court. A consent order can cover parenting arrangements for children as well as financial arrangements such as property and spousal maintenance. Consent orders have the same legal force as if they had been made by a Judicial Officer after the Court hearing.

You and your former partner can apply for consent orders to be made without going to Court.

For more information or to get a "Consent Orders Kit":

- go to familycourt.wa.gov.au;
- call 08 9224 8222; or
- visit the Family Court of WA registry.

PARENTING PLANS

A parenting plan is a written agreement that sets out parenting arrangements for children. Because it is worked out and agreed jointly, you and your former partner do not need to go to Court.

Unless a Court orders otherwise, you and your former partner can agree to change a parenting order (made on or after 1 July 2006) by entering into a parenting plan. A parenting plan is not legally enforceable. It is different from a parenting order, which is made by a Court.

Confidentially in Non-Court Based Family Services

Generally, communications with a family counsellor or family dispute resolution practitioner are confidential and may not be used in Court.

There are exceptions, for instance:

- where there is a legal requirement to report a suspicion or risk of child abuse and violence or threats of violence. The Court may order that a family counsellor or family dispute resolution practitioner give evidence of an admission or disclosure of abuse made during a session.
- meetings, discussions or other exchanges with Arbitrators are not confidential, and may be used in Court.

For more information about parenting plans and how they work, contact the Family Relationships Advice Line
on **1800 050 321**.

Going to Court

If you cannot reach an agreement, you may consider applying to the Court for orders. Going to Court is often a stressful time for many people. It can also be expensive and time consuming. However, sometimes it may be the only way to deal with a dispute.

Even when a Court application is filed, it is possible to reach an agreement, at any stage, without the need for a Court hearing. In fact, a Judicial Officer is needed to make a final decision in only a very small percentage of cases started in Court.

BEFORE YOU APPLY FOR PARENTING ORDERS

Parties intending to apply for parenting orders must attend family dispute resolution and make a genuine effort to resolve the issue in dispute before filing an application with the Court. The requirement does not apply in cases that involve urgency, family violence or child abuse.

In cases where parties are required to attend dispute resolution, the Court cannot hear an application for a parenting order unless a certificate from a registered Family Dispute Resolution Practitioner or a valid exemption form is filed with the application.

BEFORE YOU APPLY FOR FINANCIAL ORDERS

In the Family Court of WA, parties intending to apply for financial orders must follow pre-action procedures, which include attending dispute resolution, before filing an application.

Pre-action procedures do not apply in some cases such as those that involve family violence, fraud or urgency.

For more information about applying for financial orders in the Family Court of WA, see the brochure series: "Financial Cases in the Family Court".

PRE-ACTION PROCEDURES

The aim of the pre-action procedures is to explore areas of resolution and where a dispute cannot be resolved, to narrow the issues which require a Court decision. Pre-action procedures are not required for applications for divorce or child support cases. In addition, they do not apply or are not appropriate in cases: involving urgency; involving allegations of child abuse in children's matters; involving allegations of family violence; in financial matters involving allegations of fraud or where a time limitation is close to expiring; and where there is a genuinely intractable dispute; for example, where one person refuses to negotiate.

FAMILY CONSULTANTS

Family Consultants are psychologists and/or social workers who specialise in child and family issues after separation and divorce. Family Consultants can help you and the Courts in many ways. They can:

- help you and the other party resolve your dispute;
- assist and advise the Court and give evidence about your case;
- write and provide a report to the Court about your family; and
- advise the Court about the services provided to families by government, community and other agencies.

Their work with you is not confidential and may be used in Court at a later date.

Children Court

Generally, the Court is not an appropriate place for children. You should make other arrangements for their care when you come to Court.

Sometimes children will need to attend Court to speak to a Family Consultant or Judicial Officer. If this is your situation, you should check with Court staff if any childcare arrangements need to be made for the day. There is a free child minding service on level three of the Family Court of WA. Please arrive in plenty of time to settle your child. The service is closed between 1:00pm and 2:00pm. Your child can only remain in care for three hours per session.

Steps Involved in Court Proceedings

1. Pre-action procedures.
2. Court application filed.
3. First Court appointment, conference or hearing.
4. Court based dispute resolution.
5. Preparation for final trial or hearing, (this stage may involve more than one Court appointment).
6. Final trial or hearing.

Agreement may be reached at any stage, with consent orders made and the case finalised. Different steps may apply in some cases.

Compliance with Court Orders

When an order is made each person bound by the order must follow it. There are services in the community that can help you and your family adjust to and comply with Court orders (see contact details on page one).

If the order is not complied with, you may file a Court application. The Court can make an order to enforce an existing order. The Court may also make an order that discharges, varies or suspends the order or renews some or all of an earlier order, or adjourn the case to allow a person to apply for a further order that alters the existing order.

If the Court finds a person has breached (contravened) a parenting order, it may impose a range of penalties.

For more information about this, read brochure 5 "Parenting Orders, Obligations Consequences and Who Can Help".

Need an Interpreter?

If you need an interpreter to assist you at Court, please tell Court staff at least two weeks before your Court appointment or hearing. They will arrange a professional and independent interpreter to assist you free of charge.

You can get more information about particular Court appointments and hearings from **familycourt.wa.gov.au**, by calling **08 9224 8222** or at the Family Court of WA registry.