

women and family law

9th edition



WOMEN'S LEGAL SERVICES NSW

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Notice and Disclaimer

From 7 June 2012 changes to the Family Law Act affect the way decisions about children are made. The changes only apply to cases filed at court on or after 7 June 2012.

The key changes are:

- 'Safety of children' is prioritised when working out what is in their best interests
- Wider definitions of family violence and abuse
- All parties must tell the court about any child welfare notifications, investigations or care arrangements
- The court no longer has to make mandatory costs orders for false allegations about family violence or abuse.

The booklet contains general information about the law and should not be relied upon as a substitute for legal advice.



WOMEN'S LEGAL SERVICES NSW



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Disclaimer

Information about the law is summarised or expressed in general statements in this publication. The information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation.

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1 General information

1.1 About this booklet

This is the ninth edition of *Women and Family Law*. It states the law as at November 2009 that applies to married and de facto couples (including same sex de facto couples) after relationship breakdown.

This booklet provides a starting point for finding out information about the law. It provides some answers to common questions and also sets out where you can go for further help.

You should not use this booklet as a substitute for seeing a solicitor and getting legal advice.

When reading this booklet, please note:

- The terms ‘partner’ or ‘ex-partner’ are used to describe a person’s husband or de facto partner, including a same sex de facto partner.
- Words and phrases are printed in bold for a number of reasons:
 - A term that is defined in Chapter 8 (definition section) is printed in bold the first time that it appears in each chapter.
 - The first time a term is abbreviated in each chapter, it is printed in bold.
 - Time limits are printed in bold.
 - Cross references to other sections of the booklet are printed in bold.

1.2 The legal framework

What laws apply?

The *Family Law Act 1975* (**Family Law Act**) is a federal law that covers:

- divorce;
- financial matters (**property** and **maintenance**) of separated couples. The *Family Law Act* covers de facto couples (including same sex couples) who separate after 1 March 2009 and married couples; and
- issues about children after the **separation** of their parents (except child welfare issues which are dealt with by the **Children’s Court**). The *Family Law Act* covers children whose parents were married or in a **de facto relationship** (including a same sex de facto relationship) and children whose parents have never lived together.

The NSW *Property (Relationships) Act 1984* (**Property Relationships Act**) covers financial matters such as property and maintenance for de facto couples (including same sex couples) separated before 1 March 2009.

The *Child Support (Registration and Collection) Act 1988* and *Child Support Assessment Act 1989* (**Child support legislation**) are federal laws that set up the Child Support Agency and the Child Support Scheme. These laws cover **child support** for children:

- whose parents separated on or after 1 October 1989;
- born after 1 October 1989; or
- who have a full sibling born after 1 October 1989.

Child maintenance is covered by the *Family Law Act* in limited circumstances as most children are covered by the child support legislation.

The NSW *Crimes (Domestic and Personal Violence) Act 2007* (**Domestic Violence Act**) is a state law. It enables **Local Courts** to make **Apprehended Domestic Violence Orders (ADVOs)** to prevent violence, abuse and harassment in **domestic relationships**. It also gives the police power to arrest anyone who breaches an ADVO and to take away firearms. The *Domestic Violence Act* includes provisions that specifically make stalking and some other forms of intimidation a crime.

Which courts deal with family law matters?

There are three courts that deal with family law matters:

- the Family Court;
- the **Federal Magistrates Court**; and
- the Local Court.

At the time of writing, the federal government plans to merge the Federal Magistrates Court and the Family Court so that the Family Court will deal with all family law matters.

The Family Court and Federal Magistrates Court are referred to throughout this book as the '**Family Law Courts**'.

For further information about how to find the Family Law Courts nearest to you see Chapter 9: 'Referrals and Resources' on page 93.

2 Getting help

2.1 Counselling and emotional support

Why do I need advice and support?

Separation or divorce can create upheaval in people's lives. It can be difficult to make decisions about money or **property** in a time of emotional turmoil. Often a woman must not only deal with her own emotional needs but also help her children adjust to their changed circumstances after separation.

It is essential that you have good legal advice to help you make the best decisions about yourself and your children. It may also be important to find emotional support. It is sensible to keep the two areas separate. Do not rely on a **lawyer** for emotional support. Do not take legal advice from a counsellor - you should only take legal advice from a lawyer.

Is there anyone I can talk to?

You may need help with the many decisions and feelings you face when your relationship is in trouble. Counsellors can help you get things clear in your mind and give you advice and information about your relationship. Most women's health centres have counsellors that offer services either for free or on a sliding scale of charges depending on your income.

Family Relationship Centres provide information and advice about parenting, relationship and separation issues. These centres also provide family dispute resolution services, which can help you and your partner reach agreement about parenting arrangements for your children without going to court.

A family relationships website and telephone service for parenting advice is also available (see Chapter 9: 'Referrals and Resources' on page 93).

The **Family Law Courts** have information on many topics including helping your children cope with the end of a relationship and handling parental visits.

Usually going to counselling is your own choice, but the Family Law Courts will require at least one visit to a family counsellor or **family dispute resolution practitioner** if:

- you want a divorce and you have been married for less than 2 years;
- an **application** is made for court orders about children; or
- the Court orders a **Family Report** about the children's welfare.

Usually what is discussed in counselling is confidential, but in family law there are some exceptions. Most counsellors must report a risk of child abuse to Community Services. The work of **family consultants**, employed by the Family Court to assist the Court in cases involving children, is not confidential because they have to make a report about your family to the judge. There may be other exceptions as well. If you have concerns about confidentiality get some legal advice.

2.2 Lawyers

Do I need to get legal advice?

No matter how well you and your partner get on, it is important to get *independent* legal advice. You can then make informed decisions and possibly work out an agreement between yourselves that is fair. Any agreements you make should be checked by your own lawyer.

If you and your partner cannot agree on important issues like the care of the children or dividing the property, it is important to get legal advice quickly before something is changed that may affect your rights or entitlements.

Legal Aid NSW, LawAccess NSW and community legal centres can give free legal advice.

Do I need a solicitor or a barrister?

In NSW, lawyers work as either **solicitors** or **barristers**. Solicitors can:

- tell you what your legal position is;
- tell you what your rights are;
- help you reach an agreement with your partner or the other parent of your children; and
- prepare documents to confirm that agreement and file them in court - ie apply to the Court for **consent orders**.

Handy Tip!

*You can apply for consent orders without a lawyer but it is better to have a lawyer prepare the actual orders to make sure that your rights are protected and that you have considered all your options. By formalising your agreement through consent orders, a court can enforce the agreement if it is breached. Consent orders are enforceable against both you and the other parent. You can file a completed Application for Consent Orders form through Family Law Courts or the **Local Court**. There is no filing fee for this form.*

Solicitors generally prepare any paper work for a court case and many solicitors will also appear in court to present a case.

Often, a solicitor will want to hire a barrister to represent you in court. Barristers specialise in court work and are usually contacted through and hired by your solicitor on your behalf. If your solicitor recommends a barrister, your solicitor must tell you how much the barrister charges and get your agreement in writing to his or her fees. You will then have the advantages of having two lawyers on your side, but you will also have extra expenses.

It may be cheaper to find a solicitor who will go to court for you without a barrister. However, if your case is complex it may be better to have the experience of a good barrister on your side. It is possible for barristers to take a case on directly without having to go through a solicitor, however it may be difficult to find one prepared to do this.

How can I find a solicitor?

To find a solicitor, ask LawAccess NSW or a community legal centre for names of solicitors experienced in family law. The NSW Law Society has a specialist accreditation program for family law solicitors. You can ask for the names of solicitors with specialist accreditation. See Chapter 9: 'Referrals and Resources' on page 93 for more details.

Many solicitors have a free first appointment so that you can meet them and decide if you feel comfortable working with them.

What can I expect from a lawyer?

Your lawyer should clearly explain your legal position to you, tell you what your choices are and what she or he thinks is the best option for you to take. But *you* are the one who should make the decisions about your case, based on advice from your lawyer.

It is important to understand what your lawyer says so you can make informed decisions. If you have difficulty understanding your lawyer's advice, ask your lawyer to explain things to you clearly and in plain English. If you still do not understand, ask them to put it in writing and you can then read it at a quieter moment or ask someone for help to understand.

Your lawyer should not agree to anything with your partner or the other **party's** legal adviser unless you have agreed to it first.

Your lawyer should also keep you informed of the progress of your case and your ongoing costs. A private lawyer will charge you for all time spent doing work for you, including talking to you on the phone and writing letters to you.

Handy tip!

Many women can feel intimidated when talking to their lawyer so it can be useful to write down all the things you want to say and all the questions you want to ask before you go to an appointment with your lawyer.

What will my legal costs be?

Before you choose a lawyer it is important to ask what their fees will be. All lawyers are required to tell their **clients** about their fees.

There are rules setting out exactly how much a lawyer, whether a barrister or solicitor, can charge for work done under the *Family Law Act 1975 (Family Law Act)*. There is a fixed hourly rate for work such as talking to you, either in person or on the phone and going to court. There is a fixed fee for preparing a divorce. There are also set charges for most other work like preparing documents, reading letters and other documents, and photocopying.

Many lawyers charge more than the fee set by the *Family Law Act*. This is permitted but they must first:

- make a written agreement with you setting out how much they charge for different kinds of work;
- let you know you can get independent legal advice about legal fees; and
- give you a Family Court brochure about legal costs, which sets out the scale of fees and your rights to challenge a legal bill.

As well as solicitor's fees, you will pay for disbursements. Disbursements are costs the solicitor pays on your behalf such as fees for your barrister, court filing fees, photocopying, or the cost of **servicing** documents on someone.

Barristers charge between \$1,500 and \$6,000 a day, depending on the experience of the barrister and the complexity of the case.

If your case comes under other laws like the NSW Property (Relationships) Act 1984, your lawyer will charge you an hourly rate on some other basis. The lawyer is still required to give you a written fee agreement that sets out exactly how you will be charged.

It is impossible to say what your legal fees may be, but here is an example. If you need a full court hearing about children or property lasting two days, it could cost you and the other party about \$25,000 each (from the beginning of the matter to the end). There are more costs if interim hearings are needed or if the value of a family business is involved. A complex case with a hearing lasting two weeks could cost over \$100,000 for each party.

Handy Tip!

Every time you talk to your lawyer you pay for their time. You can save money by taking any important documents (e.g. marriage certificate, bank account statements, receipts, superannuation details and details of any property you own) to your lawyer on the first visit. You can also prepare notes for your lawyer about yourself, your family and your property. See the 'Information Sheet' at the end of this chapter.

What if I don't like what my lawyer is doing?

If you are unhappy with your lawyer you can go to a new one, but you will have to pay the first lawyer's bill before he or she will send your papers on to you or your new lawyer.

You can make a complaint to the NSW Legal Services Commissioner about your solicitor or barrister. Complaints should be made **within 3 years**.

What if I think my lawyer has charged me too much money?

If you:

- made a costs agreement with your lawyer about costs; or
- started a court case in the Family Law Courts,

after 30 July 2008, you can challenge your lawyer's bill in the Supreme Court of NSW.

In NSW you can start by asking for an itemised bill (if your lawyer has not already given this to you). This is a bill that sets out each item of work and the amount charged for the work. If you think that the bill is too high, contact your lawyer to discuss your concerns. Your lawyer may agree to review the bill.

If you cannot reach an agreement you may want to consider costs mediation. If after mediation you are still unable to reach an agreement, you can apply to the Supreme Court of NSW for a costs assessment. This is when the Court appoints an independent costs assessor to consider the bill and your concerns with it. You have **12 months** from when your lawyer gives you the bill to apply for a costs assessment.

Contact the Office of the NSW Legal Services Commissioner or the NSW Law Society's Dispute Resolution Department for further information about costs mediation and costs assessment (see Chapter 9: 'Referrals and Resources').

If you:

- made an agreement with your lawyer about costs; or
- started a court case in the Family Law Courts,

before 30 July 2008, you can challenge your lawyer's bill through the Family Law Courts. There is a procedure to review legal bills and to deduct unreasonable charges. For more information see brochure titled '*Costs Notice Schedule 6*' on the Family Law Courts website.

Can anyone else help us to agree about important decisions?

The federal government encourages people to settle their own disputes and it has a number of ways of helping people to do this including through counselling, family dispute resolution (mediation) and arbitration.

There are many benefits of using family dispute resolution:

- it costs a lot less than court **action**;
- it may be more satisfying to be in control of the process and to come up with your own agreed resolution; and
- when there are children, parents may have to continue to relate to each other as parents long after their intimate relationship is over. A fight in court can make this adjustment to a working relationship as parents more difficult.

For a discussion about whether family dispute resolution is suitable for you, see Chapter 4, **section 4.2: Family Dispute Resolution** on page 26.

What if I have trouble understanding or speaking English?

Interpreters can be arranged for counselling, mediation, arbitration and discussions with your lawyer and court hearings. You have a right to a free interpreter in court. If a legal aid lawyer is assisting you, ensure that the lawyer knows you need an interpreter – this will also be free.

2.3 Legal aid

Can I get legal aid?

Legal aid is available in family law matters. In order to receive legal aid, you must satisfy:

- a means test to assess your income and assets;
- a merit test to assess your likelihood of getting the orders you want; and
- an ‘availability of funds’ test to see if there is enough legal aid funds to assist you with your case.

Legal aid is not free and generally you will pay a small contribution to the cost of the legal work, depending on your income. The minimum contribution is \$75.00.

Legal Aid NSW may require that you participate in a mediation called a Legal Aid Conference to try to resolve the dispute before a grant of aid is given to go to court. Legal Aid NSW should make an exception to this requirement if you have experienced domestic violence, there are concerns for the safety of a child, or a recovery

order for the return of a child is needed. A Legal Aid Conference is very beneficial because you can have your lawyer with you.

How do I apply for legal aid?

You can apply for legal aid directly to Legal Aid NSW, or get a private lawyer to apply for you. If your application is successful, Legal Aid NSW will either provide you with a solicitor, or pay the private solicitor's fees at Legal Aid NSW rates.

Legal Aid NSW may say that they cannot represent you because in the past they have represented the other parent and have a **conflict of interest**. If this is the case and you qualify for legal aid, the grant of legal aid can be made to a private solicitor who does legal aid work and they will represent you.

Legal Aid NSW can prioritise urgent matters if they fit within their Policy and Guidelines. If you think you should be getting help urgently, contact Legal Aid NSW, LawAccess or a community legal centre to ask for assistance.

If your application for legal aid is refused you can appeal to the Legal Aid Review Committee **within 28 days** of being informed of the decision.

What if I'm not eligible for legal aid?

Legal Aid NSW and some community legal centres will give you free consultations with a lawyer to give you advice and possibly assist you with the paperwork to help you represent yourself in court.

Some solicitors and barristers do work for free or for a reduced fee. This is called *pro bono* work. Contact the NSW Law Society or the NSW Bar Association for a *pro bono* referral if you cannot get a grant of legal aid. However, it is very difficult to get a *pro bono* referral for family law matters.

There are also many resources available for people who represent themselves. See Family Law Courts website: www.familylawcourts.gov.au and Legal Information Access Centre: www.liac.sl.nsw.gov.au

Information Sheet

This information sheet can help you to make the most of the time you spend with your lawyer. Fill out this information sheet and take it to your first appointment with your lawyer together with the documents listed in the checklist below.

1. You

Name: _____
 Date of birth: _____
 Address: _____
 Telephone: _____

2. Other party

Name: _____
 Date of birth: _____
 Address: _____
 Telephone: _____
 Name and contact details for lawyer (if relevant): _____

3. Family history and details

Date you and your partner started living together: _____
 Date of marriage: _____
 Date of separation: _____
 Children (names, gender, date of birth): _____

| Name | Male/Female | Date of Birth | Name of other parent |
|------|-------------|---------------|----------------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Current care arrangements for the children: _____

4. **Property**

| Current assets | Details | Estimated value |
|----------------|---------|-----------------|
| House | | |
| Car | | |
| Furniture | | |
| Shares | | |
| Insurance | | |
| Superannuation | | |
| Other | | |
| | | |
| | | |
| | | |
| Current debts | Details | Estimated value |
| Credit cards | | |
| Personal loans | | |
| Mortgage | | |
| Other | | |
| | | |
| | | |
| | | |
| | | |

List the assets you brought to the relationship: _____

List your non financial contributions to the relationship, e.g. homemaker contributions: _____

5. **Checklist of documents to take to your lawyer**

- marriage certificate
- bank account statements
- credit card statements
- superannuation statements
- insurance statements for you and your partner
- mortgage documents
- title deeds of any property you own (or where they are held)
- receipts for major items you bought before the relationship
- receipts for major items you bought during the relationship

3 Divorce

3.1 Ending the marriage

How can I get a divorce?

To legally end a marriage you need to apply to the **Family Law Courts** for a divorce. Orders about **property** and children are not dealt with as part of a divorce application. You have to make separate **applications** for these orders if you need them.

To get a divorce, you need to prove to the Court that:

- you have a valid marriage (e.g. by providing your marriage certificate or equivalent documentation); and
- your marriage has broken down and there is no chance that you will get back together. This is called an **irretrievable breakdown** of your relationship; and
- you have been separated for 12 months before you applied for divorce; and
- you are an Australian citizen, a permanent resident or have been living in Australia for at least 12 months before applying for the divorce.

What does ‘separated’ mean?

You are considered to be separated from the day either you or your husband decide the marriage is over and communicate this to the other person.

You can get back together for up to three months without re-starting the 12 month separation period. However, the time you spend back together does not count as part of the **separation**. For example: If you separate for two months, get back together for one month and then separate again, the Court will consider that you have been separated for two months not three months.

You may be able to get a divorce if you and your husband have separated but still live in the same house for financial or other reasons. This is called *separation under one roof*. When you apply for a divorce you will need to prove that your marriage has ended and you and your husband live separate lives. You do this by providing an **affidavit** (legal statement under **oath**) from a friend or family member telling the Court about your separate lives.

For example, you sleep in separate rooms, do not cook his dinner or do his laundry, do not go out as a family, or eat and entertain together. Children over 18 can make this affidavit.

What if I was married for less than two years?

If you have been married for less than 2 years, you need to consider reconciliation with the help of a counsellor before you can apply for a divorce. If your husband is violent and you are afraid to see him, discuss this with the counsellor when you make an appointment. The counsellor should arrange separate appointments. If your husband will not attend counselling, you may still get your divorce by applying for permission (called special leave) from the Court. Unless you urgently need a divorce, it is easier to wait for two years from the date of marriage to apply for your divorce.

3.2 Legal process and procedures

What are the steps involved in getting a divorce?

There is help to apply for a divorce without using a **lawyer**. The Family Law Courts divorce kit provides a step-by-step guide to doing your own divorce. You will find this kit at the Family Law Courts, **Local Courts**, legal stationers and on the Family Law Courts website. See Chapter 9: 'Referrals and Resources' on page 93.

Legal Aid NSW holds divorce classes to help people fill out the divorce application form and explain the process of getting a divorce.

A summary of the steps involved in getting a divorce is set out below:

1 Complete an application for divorce form

This form can be filled out by hand. You can apply on your own or together with your husband (this is known as a joint application). The application form has to be signed and witnessed by a **solicitor** or **Justice of the Peace**.

2 File your application

File your application by taking or sending the application and any affidavits (the originals and two copies) and a photocopy of your marriage certificate to the Family Law Courts. The filing fee is \$432 in the Federal Magistrates Court and \$682 in the Family Court of Australia (see page 22 'What are the expenses related to

getting a divorce' for more details).

When you file your application you will be given a 'hearing date' for your case. The Court will keep the original documents and give you back the two copies with the Court's original seal and the hearing date stamped on them (called sealed copies). You will also get two copies of the brochure *Marriages, Families and Separation*.

One of the sealed copies of the application and the brochure is for you to keep and the other one is to be **served** on (formally given to) your husband.

3 Serve the application on your husband

- You will need to serve (formally give) the following documents on your husband:
 - a sealed copy of the application for divorce;
 - a copy of the *Marriage, Families and Separation* brochure; and
 - any other documents filed with the Court, except the copy of your marriage certificate.

You can serve the documents on your husband in two ways:

- **service by post**

If you are confident that your husband will sign and return an Acknowledgement of Service form, you can try service by post. Without a signed Acknowledgement of Service form, the Court cannot be sure that your husband received the documents.

- **service in person**

You cannot serve the documents on your husband yourself. You can get a friend or relative aged over 18 to deliver the documents, or use a professional process server.

Your husband must be served **at least 28 days** before the hearing date if he is in Australia or **42 days** before the hearing date if he is overseas.

If you have made a joint application you do not have to serve your husband with any documents.

4 File the service documents

You must prove to the Court that your husband has been served by filing:

- an Affidavit of Service (made by the person who served your husband with the divorce); and
- the Acknowledgement of Service form signed by your husband.

This proves to the Court that your husband received a copy of your application and the date he received it.

5 The court hearing

If there are no children aged under 18, then you do not have to go to court.

If you are asking for the divorce and you have children aged under 18, you need to go to court for the hearing. When you arrive, there will be a list of cases displayed in the court building and a court attendant to direct you to the right courtroom. A court officer will call your name when the Court is ready for your case. Tell the Court you are the **applicant** and that you want the Court to grant your application for divorce. If you have a solicitor, she or he will talk for you.

6 The Court makes its decision

The Court can:

- grant your divorce;
- grant your divorce but refuse to make it final until proper arrangements are made about your children;
- adjourn your case - this means the hearing is postponed to another day so you can give the Court better evidence that your husband was served or for another reason; or
- refuse or dismiss your application.

If the Court is satisfied there are grounds for divorce and proper arrangements have been made for your children, it will make a divorce order. The divorce order usually becomes final one calendar month later and is called a final divorce order. The Court can decide to shorten the time after which the divorce order becomes final. The Court will send you a sealed copy of the final divorce order, which is proof that you are divorced.

What if I cannot find my husband?

The Court will require proof that your husband has been served with (formally given) the divorce application. If it is impossible to send a copy of the divorce application to your husband, the Court can agree to **dispense with service** (i.e. the Court can say that you do not need to serve your husband). You must prove that you have tried to find him by, for example, checking with his family or friends or his last place of work. If you know where one of your husband's relatives is, the Court can order that you serve that person instead of him, or the Court may require you to put a notice in a local newspaper instead of serving him.

If you cannot find your husband, you will need to make a separate application to the Court about this problem. You can either make an application for **substituted service**, so you can serve the divorce application on someone else, or an application to dispense with service altogether.

What if my husband is overseas?

You can serve your husband by post or in person with the assistance of a process server. The Court can order some other type of service, for example, substituted service (service on someone else such as a relative).

If I was married overseas, can I still apply for a divorce in Australia?

If you were married overseas you can apply for a divorce in Australia on the same basis as Australian marriages. Evidence of the foreign marriage must be by an official extract from the foreign registry of marriages. If the official extract is not available, an affidavit explaining the reason must be filed.

What if I do not want a divorce but my husband has started proceedings?

You or your husband can choose to divorce whether the other person agrees to or not.

You cannot legally stop a divorce once the required separation has occurred. However, the law provides for fair **property settlement, maintenance and child support** so you should get advice about these matters if they have not already been sorted out.

What if my husband files for divorce and makes untruthful statements in his application?

You can file a Response, putting your version of events in a statement. If you file a Response you must then go to court for the hearing. It is best to have the record set straight, as the divorce application will remain in the court file.

What are the expenses related to getting a divorce?

When you apply for a divorce you need to pay a court filing fee (\$432 in Federal Magistrates Court and \$682 in Family Court of Australia). If you cannot afford this, you may be exempted (excused) from paying the fee if you are on a Commonwealth benefit, or you can ask the Court to waive (not insist on) the filing fee on the grounds of financial hardship. You must apply for the fee exemption or fee waiver at the same time that you apply for the divorce.

Other expenses may include getting a certified copy of your marriage certificate (if you do not have the original) and the cost of a process server, if necessary, to serve the divorce application on your husband. On average, process servers cost between \$70 and \$100. This could be more if documents have to be served in rural areas, interstate, or overseas.

If you have a child under the age of 18 you will have to go to court for the divorce hearing. A day off work may be an additional expense.

If you use a lawyer, he or she will charge a fee. This fee is in addition to other costs such as the filing fee and the cost of a process server to serve the application.

The *Family Law Court Rules* sets out a schedule of fees for a straightforward divorce where the solicitor attends court and there are children of the marriage under the age of 18 (\$788.65) or where there are no children under 18 (\$590.40). However, many lawyers charge more than the set fees. For more information see Chapter 2 'What will my legal costs be?' on page 10.

If your husband starts the divorce proceedings then you will not have to pay for the divorce and you will not have to go to court.

3.3 Marriage certificates

What if I can't find my marriage certificate?

If you do not have your marriage certificate, you can order a certified copy from the Registry of Births, Deaths & Marriages. It costs \$44 for a standard certificate and \$65 if you require the certificate urgently.

If your foreign marriage certificate is not available, you must file an affidavit with your divorce application explaining why the certificate is not available.

What if I need my marriage certificate translated?

If your marriage certificate is not in English, you will need to have your marriage certificate translated into English by a certified translator. The translated version of your marriage certificate must be filed at the Court, with an affidavit by the translator stating they are competent to make official translations.

You can have your marriage certificate translated into English at the NSW Community Relations Commission. It costs between \$70 (document translated within 14 days) and \$107 (document translated within 24 hours). The Commission may waive the fee in cases of hardship.

The cost for translation can be waived if you have a Centrelink benefit card and are an Australian citizen or a permanent resident living in Australia for more than 2 years.

3.4 Life after the divorce

When can I get married again?

One month after your divorce hearing, your divorce order becomes final. Once your divorce order becomes final, your marriage is over and you can legally remarry. The Court can shorten the one-month period.

What about my will?

It is a good idea to make a new will when something big changes in your life like marriage, divorce or the birth of a first child. When you get married, your will is automatically revoked unless that will was stated to be made in contemplation of the marriage. A divorce does not automatically revoke a will. However, if you have a will leaving

anything to your husband, when your divorce becomes final, that gift to your ex-husband will be revoked unless he can prove that it was *not* your intention to revoke his gift.

Most couples own their family home as *joint tenants* (each person owns 100% of the property) rather than *tenants in common* (each person owns a share - e.g. 50% - of the property). If you own property as *joint tenants* with your husband, that property will go directly to your husband as the surviving tenant and will not become part of your estate when you die (the reverse is also true). Marriage or divorce or a will does not have any effect on a joint tenancy. If you do not want your share of the property to go to your husband should something happen to you, it is important to pursue a property settlement as soon as possible. You may also want to get legal advice on ending the joint tenancy and then owning the property as tenants in common.

When can I get a property settlement?

You can make a property settlement any time after you separate. Once a divorce becomes final, you must apply to court within **12 months** if you need a property settlement or **spouse** maintenance. Generally, it is better to do a property settlement first or at the same time as applying for a divorce. If your husband applies for divorce, seek legal advice to get a property settlement if you have not already done so.

4 Children

4.1 When parents can agree

Do we have to go to court about the children?

The *Family Law Act 1975 (Family Law Act)* encourages separating parents to agree on parenting arrangements without going to court. If you and the other parent can agree about arrangements for your children, then you do not have to go to court at all.

We agree about arrangements for the children

- what now?

There are three options:

- You can have an *informal agreement* about the care and living arrangements of your children. There are some benefits to having informal arrangements, for example, they can be much more flexible than court orders.
- You can write a *parenting plan* about the arrangements for your children. **Family Dispute Resolution Practitioners** can help you reach agreement about your children and write up a parenting plan. If you are eligible for legal aid, you can attend a type of family dispute resolution called a Family Law Conference. For more information about family dispute resolution see **section 4.2** below.
- You can have your agreement or parenting plan made into **consent orders** by filing it with the Court. See Chapter 2, **section 2.2: Lawyers ‘Do I need a solicitor or barrister?’** on page 8 for more details about consent orders.

You can also combine the certainty of court orders with the flexibility of parenting plans to cover different aspects of the arrangements.

What is a parenting plan?

A parenting plan is a written agreement, signed and dated by you and the other parent. It sets out the future care arrangements for your children. It can cover who has **parental responsibility** for the child, who the child lives with, spends time with and communicates with, **child support** payments and other issues.

Parenting plans are not legally binding and cannot be enforced if one parent disobeys the agreement. However the Court will take into

account the agreement made in a parenting plan if your case later goes to court.

What is a Family Relationship Centre?

Family Relationship Centres (**FRCs**) are government-funded services that provide information to people about relationship issues including parenting, financial help and pre-marriage counselling.

FRCs also provide family dispute resolution (mediation) services to help separating parents work out arrangements for their children. FRCs provide assessment, preparation and three hours of family dispute resolution for free.

There are FRCs across NSW. See Chapter 9: 'Referrals and Resources' on page 93 for more details.

4.2 Family Dispute Resolution

What is Family Dispute Resolution?

Family Dispute Resolution (**FDR**) is a way of sorting out legal problems without going to court. This method of dealing with legal problems is generally known as mediation but in family law it is called FDR and the mediator is called a **FDR practitioner**.

A FDR practitioner is a trained, neutral person who helps people discuss their legal problems and reach an agreement that is acceptable to both parties. FDR practitioners do not tell you what to do or give legal advice. They try to help you to explore options you may not have thought of and to reach an agreement that reflects what is important to both people involved.

Do I have to participate in FDR?

You must participate in FDR with the other parent before you can make an **application** to the Court for **parenting orders**. However, there are important exceptions to this requirement (see below).

If FDR does not work or an exception applies, you can apply to the Court for parenting orders.

How does the Court know I have attended FDR?

You can make an application to court for parenting orders if:

- you have a certificate from the FDR practitioner that assisted you;

or

- an exception applies to you and you include this information in your application.

A certificate from a FDR practitioner will state one of the following:

- the other **party** did not attend for FDR;
- all parties attended and a genuine effort was made to resolve the dispute;
- one party did not make a genuine effort to resolve the dispute; or
- the FDR practitioner decided that FDR was not appropriate.

If a genuine effort to resolve the dispute is not made, it may affect future court decisions about legal costs.

What are the exceptions to FDR?

You will *not* need to get a certificate from a FDR practitioner if:

- you and the other parent are applying for consent orders;
- your application is in response to the other party's application;
- the Court is satisfied there are reasonable grounds to believe there has been or is a risk of abuse or family violence;
- your application is about a **contravention** of parenting orders that were made in the last 12 months, and the person who breached the court order showed serious disregard for their obligations under the order;
- your application is urgent; or
- one of the parties is unable to participate in FDR for a reason such as having a disability or living in a remote location.

If you do not attend FDR due to family violence or abuse, there is still a requirement to refer you to a family counsellor or FDR practitioner to obtain information about services and options including alternatives to a court **action**.

Should I try FDR if I have experienced family or domestic violence?

It can be difficult to decide whether or not to go to FDR if you have experienced domestic violence. FDR works best when there is equal bargaining power between the two parties. Where one party has significant power over the other, it is usually difficult to achieve a

fair resolution. A woman who feels less powerful or intimidated may make concessions or agree to decisions that are not necessarily in her best interests; that are not what she really wants, or may not be in the best interest of the children.

FDR is not normally recommended when there is domestic violence. However, a woman may still be able to achieve a fair **settlement** if she has good legal advice and can feel safe to assert her rights with FDR practitioner present. FDR can be part of a healing and empowering process but should be entered into with caution and good support.

If I have experienced domestic violence how can I try and make FDR work for me?

The following suggestions might help you to make FDR work for you if you have experienced family violence.

- Tell the FDR practitioner about your experience of domestic violence and discuss what he or she can do to provide a safe process.
- If you will feel intimidated or afraid to be in the same room as your ex-partner ask about a telephone FDR or a shuttle FDR so that you will be in separate rooms.
- Make arrangements for separate times to arrive and leave the waiting rooms.
- If you are eligible for legal aid, it may be possible to organise a 'Family Law Conference' which is a type of FDR where you can have a **lawyer** present. This provides an important safeguard if there is a history of domestic violence.
- Get legal advice about your options before and after attending FDR.

What is shuttle FDR?

Shuttle FDR is where the parties are in different rooms. The FDR practitioner moves between rooms to listen and pass information about the issues and possible solutions between the parties. Shuttle FDR is one way of attempting to provide a safe environment where there is a history of domestic violence. FDR can also be done by telephone in appropriate circumstances.

What happens in FDR?

FDR will usually go for three hours, but it may finish earlier or go for longer. FDR could also run over a number of sessions. It is important to have breaks and for the session not to go too long, otherwise it's too exhausting.

Different FDR practitioners may use different processes but usually an FDR session will include the stages described below.

1 Opening statement by the FDR practitioner

The practitioner explains their role (a neutral person there to assist communication and negotiation) and outlines the expected process.

2 An opening statement by each party

Each party is asked to give a short statement outlining how they see the situation and how they have been affected. No interruptions are allowed. Parties talk to the FDR practitioner and not to each other. It does not matter who goes first.

3 The FDR practitioner summarises both opening statements

Listen carefully and let the FDR practitioner know if they have got anything wrong.

4 Setting the agenda (list of issues or topics to discuss)

The FDR practitioner identifies issues and works with you to set an agenda for the session. It might include joint and individual issues; issues that you both agree about; and needs and options.

5 Exploration

The FDR practitioner works with both parties to explore the issues on the agenda one at a time. There is usually lots of talking and sometimes allegations are made about past behaviour. FDR cannot decide the truth of an allegation. An FDR practitioner cannot give you advice or make a decision about whether what one party says is true or not.

6 Private sessions

The FDR practitioner may stop the session one or more times to talk privately with each party. Private sessions are confidential. The practitioner explores options with each party; discusses

underlying issues or hidden agendas; and asks you to think about whether options are practical. He or she may also explore how you see your best and worst alternatives to a negotiated agreement.

7 Negotiation

Some FDR practitioners enter into a negotiation stage towards the end. The practitioner might be more involved in problem solving, assessing options, identifying common interests and focusing on the best interests of the children.

8 Agreement

Agreement in FDR is by consensus, that is, both parties agree on the outcome. Sometimes you may reach agreement about some but not all issues. The FDR practitioner may want to put your agreement in writing. It's a good idea to get legal advice before signing a parenting plan.

9 Termination

Termination of FDR occurs where there is no agreement; a party walks out or does not show up; or safety issues cause the FDR practitioner to decide to terminate. If this happens you will be given a certificate that states that FDR was unsuccessful. This certificate allows either party to file an application in court.

Handy tip!

The following suggestions may help you prepare for FDR.

- *Get legal advice before going to FDR. Find out what are your best and worst alternatives to a negotiated agreement. You might hear this called a 'BATNA' and 'WATNA'. They will be what the likely range of orders a court would make. Knowing the best and worst alternatives will help you in the negotiations.*
- *Prepare a short opening statement to make at the beginning of the FDR meeting. Give your view of the situation and how you and/or the children have been affected.*
- *Prepare for the rest of the FDR meeting by writing notes to take with you and help you remember what to talk about. Write notes about:*
 - *your main concerns – the issues that you need to have resolved. Focus on what is in the best interests of your children and explain why;*
 - *what you want and why it is best for your children; and*
 - *what you might agree to in the short term and what would need to happen or change for you to move beyond this short term arrangement.*
- *If your ex-partner gives their opening statement first, do not respond to what is said – stick to the opening statement you prepared. The FDR practitioner's job is to identify the issues and give you a chance to respond to them later.*
- *Be prepared to let the FDR practitioner know if you need a break or if you feel the session needs to end. It's important the FDR practitioner knows any difficulties you are having with the session. Otherwise, there is a risk that he or she may decide that a genuine effort wasn't made to resolve the dispute and this may affect future court decisions about legal costs.*
- *Stick to the agreed ground rules during the session.*
- *Try not to interrupt when others are speaking. Write down your concerns and raise them when it's your turn.*
- *Don't feel pressured to sign a parenting agreement at the FDR session – get legal advice first.*

4.3 Decisions of the Family Law Courts about children

What if we cannot agree about what happens to the children?

If you cannot agree about arrangements for the children, it is important to get legal advice quickly to decide whether or not you need court orders.

When parents cannot agree on the arrangements for their children, then either parent may apply to the Court for a decision about what is best for the children. If the Court makes orders about children they are called parenting orders.

Parenting orders deal with who has parental responsibility; where the child lives; who the child spends time with; how parents should communicate with each other about the children; the communication a child is to have with another person (including by phone or email) and any other aspect of the child's care, welfare and development.

What is parental responsibility?

Both parents automatically have parental responsibility for a child until that child turns 18. Parental responsibility means 'all the duties, powers, responsibilities and authority that, by law, parents have in relation to children'. If you separate from the other parent your parental responsibility does not automatically change. Both parents can make important decisions about the child's life, often without consulting the other parent.

Courts can make orders about parental responsibility and arrangements for the child. Usually they will make orders for **equal shared parental responsibility**, which means that parents are obliged to consult each other and agree on major long-term decisions about the child. These issues include:

- the child's education (both current and future);
- the child's religious and cultural upbringing;
- the child's health;
- the child's name; and
- changes to the child's living arrangements that make it significantly more difficult for the child to spend time with a parent. (This does not include a parent's decision to form a

relationship with a new partner, but does include moving to another area.)

When the Court makes a parenting order there is a presumption that it is in the best interests of the child to make an order for equal shared parental responsibility. This does not mean the amount of time the child spends with each parent is the same. The presumption for equal shared parental responsibility does not apply in cases of child abuse or family violence.

The Court can also make orders for sole parental responsibility, but is usually very reluctant to make this order. The *Family Law Act* does not apply if orders for parental responsibility have been made by the **Children's Court** (in a child protection case).

How are the best interests of the child decided?

The 'best interests of the child' is the most important consideration when the Court makes orders about children. The best interests of the child are made up of primary and additional considerations.

The primary considerations are the:

- benefit to the child of having a meaningful relationship with both parents; and
- need to protect the child from harm.

The additional considerations are the:

- views of the child;
- nature of the relationship of the child with parents and others, including grandparents;
- willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the child and the other parent;
- effect of change to **status quo**;
- practical difficulties and expense of spending time with and communicating with a parent and the impact on the child of maintaining personal relationships and direct contact regularly with both parents;
- capacity of the parent and others to provide for the needs of the child;
- maturity, sex, lifestyle and background of the child and parents;

- right to enjoy Aboriginal or Torres Strait Islander culture;
- parent's attitude to child and to parenting;
- any family violence involving the child or a member of the child's family;
- a final or **contested family violence order**;
- an order that is least likely to lead to further proceedings; and
- any other fact or circumstance the Court thinks relevant.

In deciding the best interests of the child, the Court must also take into account the extent to which each parent has fulfilled or failed to fulfil their responsibilities as a parent, particularly since **separation**. This includes each parent taking opportunities to spend time or communicate with a child and also the extent to which one parent has facilitated the other parent spending time with or communicating with a child. It also includes the parents' obligation to support the child financially.

Is it likely that the Court will order equal living arrangements?

If the Court orders equal shared parental responsibility for the child, the Court must then consider making an order for the child to live with each parent on an *equal basis* or allow the other parent to have **substantial and significant time** arrangements with their child. Substantial and significant time should include weekend, weekdays and holidays and allow for parents to be involved in daily routines and special occasions. The Court can only order these care arrangements if it is in the best interests of the child and reasonably practical. Factors the Court considers include:

- how far apart the parents live from each other;
- the parents' current and future capacity to have an arrangement where the child can spend **equal time**, or substantial and significant time, with each of the parents;
- the parents' current and future capacity to communicate with each other and resolve any difficulties that might arise in making an arrangement work;
- the impact that an arrangement would have on the child; and
- other matters the Court considers relevant.

What is the point of orders for children to spend time and communicate with someone?

The main aim of making parenting orders about children spending time or communicating with the other parent is to foster an ongoing relationship between a child and both parents. It helps children if you encourage them to spend time with their other parent, so they do not feel torn between the two of you.

Does the Court always make orders for children to spend time and communicate with the other parent?

Parents do not have an automatic right to spend time with or to communicate with a child. The child on the other hand, has a right to know and be cared for by both parents. Unless you can show that there is an unacceptable risk of abuse or neglect to the child, the courts usually make orders for a child to spend time and communicate with the parent the child does not live with. If you have serious concerns about your children's safety during parental visits you should contact your local office of NSW Community Services immediately and also get some legal advice.

Beware, the Court may look unfavourably on a parent who has not facilitated the child's relationship with the other parent. Such behaviour may jeopardise the chances of that parent getting an order that the child live with them.

4.4 Who can apply for court orders?

Who can apply for a parenting order?

An application for a parenting order may be made by anyone who has a genuine interest in the child - it does not have to be made by a parent but could, for example, be made by a grandparent.

I co-parent a child with my same-sex de facto partner - what are my rights if we separate?

If you were in a **de facto relationship** with the birth mother when the child was born through donor insemination, then you are the child's legal parent. As a parent you have parental responsibility for the child. If you cannot agree with the other parent about arrangements for the child then you can apply to the Court for the child to live with you, spend time or communicate with you.

If the child was born as a result of sexual intercourse, then you are not the child's parent (even if you were in a de facto relationship at the time) but you can apply to the Court as someone concerned with the child's care, welfare or development. Inner City Legal Centre has a publication about rights of lesbian mothers, gay fathers and sperm donors (see Chapter 9: 'Referrals and Resources' on page 93 for details).

Do I have any rights to see my grandchildren if I'm a grandmother?

If you are a grandparent, you can apply to the Court to see your grandchild. The *Family Law Act* says that children have a right to spend time with their relatives and other significant people if it is in their best interests. The relationship of a child with others, including grandparents, is specifically included in the list of considerations about the best interests of the child. If you want an order to spend time or communicate with your grandchild, then you must first attempt FDR and if that does not work you can apply to the Court for orders. You will need to tell the Court why it is in the best interests of your grandchild to make the orders you want. It is possible to apply for court orders even if the child's parents are still together. Legal Aid NSW has a brochure about legal options for grandparents (see Chapter 9: 'Referrals and Resources' on page 93 for details).

4.5 Going to court

Do I need a lawyer?

It is possible for you to go through the entire court proceedings without having a lawyer at all and many people have no other choice. You will need to be prepared to 'represent' yourself in court by finding out about the Court rules and the law, writing affidavits yourself and making arguments to the Court about why it should make the orders you are asking for. This can be particularly hard if you are up against a lawyer on the other side.

If you are on a low income, you should see if you are eligible for legal aid. You can also get free legal advice from some community legal centres and many family lawyers will give you a free first appointment.

The **Family Law Courts** have tried to simplify procedures so it is easier for you to apply for orders without the assistance of a lawyer.

Check the court rules and case management directions. These are available from the court registries or on the Family Law Courts website: www.familylawcourts.gov.au

Many of the court forms can now be completed by hand and do not need to be typewritten. The Family Law Courts do not require formal legal language so you can simply write on your application what you would like the Court to do for you. For example, 'I want the child to live with me'.

How long will it take to get a parenting order?

Generally, you can assume it will take a lot longer than you want. Some cases could take up to two years because of limited court resources or because of interim applications in your case. Urgent matters can be decided very quickly if necessary. Your **Local Court** may decide matters much more quickly, depending on how busy it is.

What is a less adversarial trial?

The less adversarial trial (**LAT**) process means that the same judge is involved early in the case and takes an active role. Parties talk directly to the judge, rather than through their lawyers, and everything said in court is treated as evidence in the case. At the beginning of a case, you will be asked to complete a LAT questionnaire. You should complete this very carefully since it will become part of the evidence in the case.

Can a lawyer be appointed for the children?

The Court may decide to appoint an **independent children's lawyer** to represent your child's interests. An independent children's lawyer should be appointed in any case where there is so much hostility that the best interests of the child may not be presented to the Court by either parent; or where there are serious allegations of abuse or neglect of the child or where there is some other complicating feature like differences of religion or culture between the parents, or mental health issues.

If you believe that an independent children's lawyer should be appointed you can ask the Court to make this order.

In most cases the independent children's lawyer is paid by Legal Aid NSW but parents may have to contribute to or cover the costs of the independent children's lawyer. This depends on the financial

situation of the parents.

What if the children are in danger of violence?

If you or your children are at risk of family or domestic violence or sexual assault, you should call the police on 000.

You should get legal advice as quickly as possible if your children are in danger. You can apply to the Court for an urgent order for your children to live with you. In a genuine emergency a court can make orders without the usual requirement that notice be given to the other parent. An order made without the other parent being present is called an **ex parte order**.

The Court can also make a temporary order to last for a longer period. These are **interim orders**. Generally, they are made to last until all the evidence can be heard at a final hearing. If there is any risk to the child's safety then an interim order should be made to protect the child from this risk.

In any case where there has been family violence or child abuse by one of the parties or if there is a risk of violence or abuse, a Notice of Child Abuse or Family Violence (Form 4) must be filed in the Court.

If you fear for the safety of your children, you can contact the police or apply yourself to a Local Court for an **apprehended domestic violence order (ADVO)**. The Family Law Courts can also give you a protection order for you and the children, where there is a clear threat to you or your children's safety or welfare.

4.6 Contravention of parenting orders

What happens if the children do not spend time with the other parent as required by a parenting order?

Family law orders must be taken seriously. If there is an order for the child to spend time with the other parent or any other person, and you do not allow this to happen, you risk being taken to court for contravention (breach) of the court order.

Depending on the circumstances, the Court may refer you to a parenting program, order make-up time with the other parent, or in serious or persistent cases issue a fine or even gaol you. If the parenting orders are no longer workable, the Court may consider changing the orders.

If you are taken to court for breaching a parenting order, you may avoid being punished if you show that you had a *reasonable excuse*. A reasonable excuse may be that you needed to protect someone's health or safety, or you believed that you had not contravened the order at the time.

The Court can order costs against an unsuccessful **applicant** if they lodged the contravention application to harass the other parent.

If there are parenting orders in place and you are concerned that the children are in danger when spending time with the other parent, you need to immediately apply to the Court to change the parenting orders. See 'What if the children are in danger' on page 38 for more details.

The Court might order you to attend a post separation parenting program. The aim of these programs is to help families who are having difficulty making court orders about children work, particularly where there have been breaches of the orders.

What can I do if other parent does not want to see the children?

Even if there are parenting orders for the children to spend time with the other parent, the courts have not been willing to force a parent to see their child. The courts have yet to consider this to be in the child's best interest. A practical option may be to ask for help from a family counsellor or parenting program to assist the other parent to acknowledge parental responsibility.

4.7 Taking children without consent of a parent

What if the other parent takes the children?

You should first try to contact the other parent and see if you can get an agreement about returning the child. If you do not have a parenting order and the children are taken and/or not returned, you can apply immediately for a *parenting order* for the child to live with you and a **recovery order** for the child to be returned. If you already have a parenting order, you still need to go back to court and apply for a recovery order. A recovery order is like a warrant for the return of the child and empowers the state, territory and federal police to find and return your child to you.

You will need to prove that the Court should deal with your case urgently. If your case is not urgent you will have to try FDR before

you can file an application to the Court (unless one of the other exceptions to attending FDR applies to you).

Normally you need to serve (formally notify) the other parent when you make a court application, but if you cannot find the other parent or if the situation is very urgent, you may be able to get the Court to hear your application *ex parte* (without the other parent present in court).

What if I do not know where my child has been taken?

You can get a *location order* or a *commonwealth information order* to get information from individuals or government departments like the Commissioner for Taxation, Centrelink or the Department of Housing about where the other parent is and where the children may be.

Can I stop the children being taken overseas?

Your children could be taken overseas without your knowledge if they have current passports and your partner can access these passports. If you are afraid your partner will take the children out of Australia, get legal advice straight away.

Handy tip!

There are some steps you can take to prevent your children from being taken overseas.

- *If the children already have passports, keep them in a safe place.*
- *If the other parent already has the children's passports, ask the Court to order the other parent to give the Court their passport and the children's passports and get a restraining order so that the children cannot be taken out of the country without the Court's permission.*
- *If the children do not have passports, ask the Australian Passport Office to stop passports being issued for your children. You can also request that your children are placed on a child alert list so that if an application for a passport is lodged, the Passports Office is more likely to notify you about this application. You can place children on this list for 12 months.*
- *If it is possible that your children could get foreign passports or be added to the other parent's foreign passport, you must contact the embassy or consulate about that country's policy to protect children from being abducted overseas.*
- *If you have a court order or an application for a court order, you can notify the Australian Federal Police to place your child on the Airport Watch List to stop the child being taken out of Australia. Any child on the list will be stopped before boarding a plane or ship. Your court order or application needs to specifically ask for this type of order.*

What if the children are taken out of Australia?

If the children are taken out of Australia without your consent or kept overseas longer than you allowed, get legal advice straight away.

Australia has signed an agreement (the Hague Convention on the Civil Aspects of International Child Abduction) with more than 70 other countries to prevent child abduction. If the country the child has been taken to has signed this agreement you can ask that country to assist in returning your children to Australia. To do this, you will

need to contact the Commonwealth Attorney-General's Department and NSW Community Services.

To have your children returned to Australia, you must show that your child is aged 16 or under; the child usually lives in Australia and that you have a legal right under Australian law to decide where they live.

If the country is not part of the Hague Convention it is more difficult to get the children back. You can either try to enforce an Australian parenting order in the other country or you can try to get a parenting order in the country where the children are located.

If you are concerned that your child may be taken illegally out of Australia, contact the Australian Branch of International Social Service that provides telephone referral and social work support. If there is a risk that your child may be taken out of the country before the next working day, the Family Law Courts have an out-of-hours service for emergencies (1800 622 395). See Chapter 9: 'Referrals and Resources' on page 93 for details.

If the children live with me can I move?

If moving house will make it more difficult for the other parent to spend time with a child, making the existing arrangements unworkable, they will need to agree to you moving house. If they won't agree you will need to apply for parenting orders allowing you to move. These cases are called relocation cases. You will have to show the Court why it is in the best interests of the child to allow the relocation and how the other parent will be able to maintain a meaningful relationship with the child.

You should get legal advice before you move. If you move with the child without the consent of the other parent or a court order, the Court can make orders for the child to live with the other parent or force you to return if the child is to live with you.

4.8 Appeals

What can I do if I am not happy with the court decision in my case?

If you think a **registrar** or a judicial registrar has made a wrong decision you can ask for a 'review' by a judge. You need to lodge an Application for Review. You need to check with the court staff about the time limits.

If you think that the federal magistrate or judge made the wrong decision based on the law, you can appeal the decision. An appeal is not a rehearing of the whole case. The appeal is only to look at whether the federal magistrate or judge made an **error of law**. A Notice of Appeal must be filed **within 28 days** of the order being made and you will have to pay the filing fee or apply for a waiver or exemption of the fee.

You must apply for a **stay of execution** from the Court that made the orders you do not like. The stay will stop those orders from having effect while you wait for the appeal.

If you have applied for your parenting order in the Local Court and you do not agree with the decision of the magistrate you can appeal to the Family Law Courts. The matter will be heard by a judge of the Family Law Courts and the case is reheard from the start. You need to lodge a Notice of Appeal **within 28 days** of the orders being made by the Local Court and pay the filing fee.

4.9 Other common questions

How can I change my child's name?

A child's name cannot be changed without the consent of both parents, or a court order.

You first need to try FDR and attempt to reach agreement with the other parent. For further information about FDR, including exemptions from the requirement to attend FDR, see **section 4.2** on page 26 for details.

If you cannot reach agreement through FDR, or if you cannot find the other parent, you can apply to the Court to change the child's name. You will need to persuade the Court that the name change is in the best interests of the child.

Alternatively, you can apply to the District Court to change the child's name. The District Court will not consider other parenting issues and there are no FDR requirements.

What happens to the children if I die?

If there is an order that your children live with you, the other parent does not automatically have the right to have the children live with them if you die.

You can decide who you would like your children to live with and name them as a 'testamentary guardian' in your will. This may help that person to get a parenting order that the children live with them. Naming a guardian in your will does not guarantee that the Court will order what you want. The Court will still decide the case based on the best interests of the child. However, your wishes are important and will be considered by the Court.

5 Protection against violence & harassment

5.1 Domestic violence

What is domestic violence?

Domestic violence occurs when one person tries to dominate and control another person in a family-like or **domestic relationship** (see Chapter 8 for definition of domestic relationship). Domestic violence involves an abuse of power and can take the form of physical violence, sexual abuse, emotional or psychological abuse, verbal abuse, **stalking** and intimidation, social and geographic isolation, financial abuse, cruelty to pets, or damage to **property** or threats to be violent in these ways. In the majority of cases, domestic violence is perpetrated by men against women. However, women can be perpetrators of violence in both heterosexual and homosexual relationships.

What is the difference between domestic violence and family violence?

The terms ‘domestic violence’ and ‘family violence’ are often interchanged.

The term ‘domestic violence’ is sometimes used when describing a relationship between two adults who have or had an intimate relationship. The term ‘family violence’ is sometimes used when describing violence in Indigenous communities because it can be seen as a broader term encompassing kinship relationships.

In NSW, the terms ‘domestic violence’ and violence in a ‘domestic relationship’ are used in NSW *Crimes (Domestic and Personal Violence) Act 2007* (**Domestic Violence Act**). This legislation deals with personal protection orders called Apprehended Violence Orders (AVOs). However, the federal *Family Law Act 1975* (**Family Law Act**) refers to ‘family violence’. See Chapter 8 for the definition of ‘domestic relationship’ and ‘family violence’.

The laws about domestic violence restraining orders are different in each state or territory.

Is domestic violence a crime?

Domestic violence is a crime and should be reported to the police. They can charge the violent person with assault and/or apply for an **Apprehended Domestic Violence Order (ADVO)** on your behalf. Many police stations also have Domestic Violence Liaison Officers (**DVLOs**) who should be helpful and understanding of your situation. If police come to your home as a result of violence, they can get a temporary ADVO quickly by email to protect you until you can go to court. This type of ADVO is called a Provisional Order. Police should also take any firearms away from the violent person. If the violent person is on bail for assault or some other crime, you can ask that the person report to a police station far away from where you and the children live. It is important to report the violence you suffer to the police.

Where do I go if I need to leave my house?

If you need to leave your home in order to be safe from violence, there are organisations that can support you. Women's refuges provide a safe place to stay and some time to work out future plans. Counselling services can help you emotionally and give you a chance to talk over your options. They can also give you referrals for financial help. The government Domestic Violence Hotline can also provide information and referrals to services in your area. (See Chapter 9: 'Referrals and Resources' on page 93 for details).

5.2 Apprehended Domestic Violence Orders

What is an ADVO and how can it protect me?

An ADVO is a court order that places restrictions on the person who is violent or abusive towards you. An ADVO can be tailored to your own circumstances to provide the best protection for you. However, an ADVO cannot order a person to do something, for example attend counselling or an anger management course.

What is the difference between a domestic violence and personal violence order?

You apply for an Apprehended *Domestic* Violence Order (ADVO) if you are involved or were previously involved in a domestic relationship with that person.

You apply for an **Apprehended Personal Violence Order (APVO)** if you are not related to or have never been in a personal relationship with the person, for example, you are neighbours or co-workers.

The information in this booklet is about ADVOs.

Is it a criminal offence if an ADVO is made against me or someone else?

The purpose of having an ADVO is to protect you from the future behaviour of the violent person. Applying for an ADVO against the violent person does not give them a criminal record.

If the violent person is named as a defendant in an ADVO, it is not a criminal offence and they will not have a criminal record simply because of the ADVO. If the violent person breaches (disobeys) the ADVO issued against them it can lead to a criminal offence. If a breach occurs, the police may charge the violent person. If that person is found guilty of the charge, a criminal conviction can be recorded.

How do I get an ADVO?

You can report the violence to the police who can then make an **application** on your behalf, or you can make a private application for an ADVO at your **Local Court**.

If you apply yourself, the **Registrar** at the **Local Court** can prepare the application for you. You must explain to the registrar the reasons why you want an ADVO. You should also tell the registrar that you are afraid of the violence and/or harassment from the violent person and tell him or her what has happened that makes you afraid. The registrar will then issue an application, which will order the violent person to come to court.

If you need protection straight away, you can ask the registrar to help you get immediate protection, which is called an **interim ADVO**. This will last until the case next comes to court. For an interim ADVO to be enforceable, it must first be **served on** (formally given to) the violent person by the police.

Will a lawyer help me at court?

If the police made the application on your behalf, the police prosecutor will represent you in court. You will still need to go to

court to tell the magistrate why you need protection. If you made the application privately with the help of the registrar, you can represent yourself or have a **lawyer** represent you. To find a lawyer, contact the Women's Domestic Violence Court Advocacy Scheme at the Local Court you will be attending or Legal Aid NSW. Legal aid is available to people who meet the legal aid means test and availability of funds test.

What support can I get at court?

Many Local Courts have Women's Domestic Violence Court Advocacy Schemes (**WDVCAS**) where you can get help from a court support worker. If the police are not applying for an ADVO on your behalf, you may be able to obtain free representation from a lawyer in court to get your ADVO. At a number of courthouses, there are 'safe rooms'. These are women only rooms where you can speak to a court support worker and/or lawyer. Call your Local Court to find out whether it has a WDVCAS and a free lawyer. If not, you should tell the court staff about your safety fears so the Court can make arrangements to protect you from threats of violence and intimidation (See Chapter 9: 'Referrals and Resources' on page 93 for more details).

What happens at court?

On the day the violent person comes to court, there are a few possible outcomes. The violent person may come to court and agree to the orders in your application and an ADVO can be made with the consent of both of you. The violent person can consent to an ADVO without admitting what is in the application is true.

If the violent person does not attend court but there is proof that he or she has received the application to come to court, the magistrate can order an ADVO in his or her absence. This is called an **ex parte** ADVO. The magistrate can also make an interim (temporary) ADVO if the violent person has not been served with the application.

If the violent person did not know they were required to attend on the court date, the matter will be adjourned (put off) to a later date so the violent person can be informed. The ADVO is not enforceable until the order is formally served on (given to) the violent person.

If the violent person does come to court but disagrees with the application, then another date will be arranged so that a hearing can

occur. An interim ADVO can be made up until this court hearing. The violent person can agree to this interim order without admitting to any of the violent behaviour. If the violent person challenges the request for an interim order, you may need to tell the magistrate why you need the order. The magistrate will then decide if it is necessary to make an interim order up until the next court date.

At the hearing, the magistrate will listen to the evidence about you and the violent person. You will need to tell the magistrate in court why you are afraid of the violent person. You will be asked about the particular acts of violence and/or threats of violence that have happened that make you afraid this person will be violent to you in the future. The magistrate will consider the evidence and decide on ‘the balance of probabilities’ whether or not you fear the defendant and if these fears are reasonable. If the magistrate agrees with your fears, an ADVO will be ordered.

What orders can be made?

Every ADVO will say the violent person must not:

- assault, molest, threaten, harass;
- intimidate; or
- stalk,

you or anyone in a domestic relationship with you.

These orders are called mandatory orders.

In addition to these mandatory orders the magistrate will make orders depending on your circumstances. For example, these could be that the violent person must not:

- go to your home or workplace; and/or
- approach you (by telephone, sms, email telephone or in person); and/or
- live at your place; and /or
- carry any firearms.

When an ADVO is made the magistrate can also make an order for you or the violent person to collect personal property. This is called an *ancillary property order*. It can say that the police or another person must also go with the person collecting the property.

The orders in an ADVO stay in place for the period set by the Court.

ADVOs are usually made for one or two years but could be for more or less time.

If I want an ADVO does it mean my partner has to leave the house?

An ADVO does not mean that the violent person has to leave your home. You can decide to stay together and have an ADVO that orders your partner not to assault, molest, threaten, harass, intimidate or stalk you, and other orders to suit your circumstances.

What happens after the ADVO is made?

You will be given a copy of the order or interim order by the court staff or a copy will be mailed to you, and the police will keep a copy of it on their central computer. You should keep a copy of the order with you at all times. This will make it easier to tell the police about the ADVO if the order is breached.

The ADVO is not enforceable unless the violent person was in court when the order was made or the police served the order on them. If the violent person disobeys the order, the police can arrest and charge the person with breaching the order. If you think the violent person has breached the order, you should report it to the police.

Handy Hint!

If the violent person breaches the ADVO there are a number of things that you can do:

- *Keep a record of all breaches of the ADVO, no matter how small they may seem to you. This may help to establish a pattern of abusive behaviour over a period of time. Every time the violent person breaches the ADVO write details about:*
 - *the date and time of the incident;*
 - *what happened – what did the violent person do or say, how did you respond;*
 - *any witnesses who saw or heard what happened; and*
 - *what you did afterwards.*
- *Ask any witnesses to keep a record of the incident and write down what they saw or heard.*
- *Collect evidence of the breach:*
 - *a message from the violent person may be a breach of the ADVO. Save any emails, text messages, voicemail messages or messages on your answering machine. You can then show or play these messages to the police.*
 - *if you are physically injured, go to the doctor or hospital for medical care.*
 - *take photographs of any injuries (e.g. bruises scratches).*
- *Report the breach to the police. You can telephone the police or go in person to the police station to make a statement. Use the notes you made in your diary to help you make a statement to the police. You should report all breaches of the ADVO to police no matter how small or insignificant they seem to you. By consistently making the reports, you can establish a pattern of abusive behaviour over a period of time.*
- *Keep a record of any reports you make to police. Write down:*
 - *the date(s) you made the report to the police;*
 - *how you made the report (by telephone or in person);*
 - *the name of the police station where you made the report;*
 - *the name of the police officer you spoke to; and*
 - *the police event number. This is a special number that records the incident on the police computer system.*

What if I am still afraid when the ADVO period is up?

If you still fear violence when the order is nearly finished, you can apply for an extension of the ADVO. You must apply for an extension of the order before it expires. You should get legal advice about an extension 6-8 weeks before the ADVO expires.

If things change during the period of the ADVO, you can apply to the Court to have the order altered.

If the order has expired and you still have fears you can apply for a new ADVO.

Can my children and new partner be protected too?

The mandatory orders in an ADVO protect you and any person with whom you have a domestic relationship (such as children and a new partner).

You can also ask that your new partner be named separately as a protected person on your ADVO so that they are protected by any other orders on the ADVO.

If the Court issues an ADVO for your protection, the orders should include any child with whom you have a 'domestic relationship' (unless the Court thinks there are good reasons for not doing this).

Only the police can make a separate application to obtain an ADVO for children aged under 16. Children over 16 years old can make their own application for an ADVO.

5.3 ADVOs and family law

What if my ADVO was made *before* my Family Law parenting orders?

If you have an ADVO, any later **parenting orders** that are inconsistent with your ADVO will override those sections of your ADVO. If this happens the Court must state in the parenting order that it is inconsistent with your ADVO, give a detailed explanation in the order about how the children's time with the other parent is to take place, explain the order to all people affected by the order, and serve a copy of the order on other parties and on the police and Local Court.

It may be helpful if you take a copy of your family law orders to your local police if you also have an ADVO in place and the parenting orders are inconsistent with the ADVO.

Where there is an inconsistency the ADVO will be invalid to the extent of the inconsistency. For example:

- The ADVO states the father is to stay away from the mother's home.
- The parenting order states the father is to collect their child from the mother's home on Friday at 4pm.
- The father will not be in breach of the ADVO on Fridays at 4pm but he *will* be in breach if he goes to the home at any other time.

What if my ADVO is made after my Family Law Parenting Orders?

If you need to apply for an ADVO and parenting orders are already in place, the Local Court has the power to vary the parenting orders to suit the conditions in your ADVO. The Local Court can only use this power if it has new material or fresh evidence that the Court that made the parenting order did not have when it made the order.

Unfortunately, Local Courts are reluctant to use this power to vary parenting orders. You should ask the police prosecutor or your lawyer to try to change the orders if violence occurred at child changeover or involved the children. For example, if you hand the children over at your home or the violent person's home, you might ask to change the orders so you can hand the children over at a public place.

If the Court makes a final ADVO it can vary, revive, discharge or suspend a parenting order. If the Court makes an interim ADVO it can vary, revive or suspend the parenting order but only for a maximum of **21 days**.

In family law proceedings a final ADVO or a contested interim ADVO is taken into account when the Court is deciding about the best interests of the child.

Can I get protection under the *Family Law Act* or *Property Relationships Act*?

If you apply for parenting orders (whether you are married or in a **de facto relationship**) and your partner is violent, you can ask for an **injunction** under the *Family Law Act* to protect yourself and/or your children. An injunction is an order made by the Court to stop or restrain your partner from being violent towards you.

If you have no children and you were in a de facto relationship (including a same sex de facto relationship) that broke down before March 2009, you can get similar orders under the NSW *Property (Relationships) Act 1984* to those available under the *Family Law Act* to protect yourself from violence or harassment.

However, applying for an ADVO from the Local Court offers better protection. Breach of an ADVO is a crime and the police can make an immediate arrest.

6 Financial support for children

There are generally two types of financial support that you can receive for children after you separate from your partner (you can also receive financial support from the other parent even if you have never lived together):

- family assistance benefits from the federal government, and
- child support from the other parent.

6.1 Family assistance

What types of family assistance benefits can I get if I separate from my partner?

You may be able to receive financial assistance from the federal government to help you with the costs of caring for your children. This financial assistance is generally referred to as ‘family assistance’ and may include **Family Tax Benefit A**, **Family Tax Benefit B** and rental assistance. You may also be able to get other benefits such as a health care card and money to move into rental accommodation (e.g. payment of the bond).

The type of family assistance and rates vary for every parent and are based on the law and rules about social security. The type of benefits and rates paid depend on your circumstances including your income, the income of any new partner you live with, the number of children who live with you, the time the children spend with the other parent and other factors.

From 1 July 2009, the government takes into account the income and financial circumstances of a same-sex partner, in the same way as partners of the opposite sex, in assessing family assistance.

There may be other types of financial assistance from the government that you may be eligible for, depending on your circumstances.

To ask about and apply for family assistance benefits and other benefits from the government:

- call the Family Assistance Office on 13 61 50 (you can start the application process over the phone); or
- visit your local Family Assistance Office at Medicare offices.

If you were already receiving family assistance from the government before you separated, you should tell the Family Assistance Office or Centrelink about your changed circumstances, as the type of benefits you receive or the amounts paid will probably change.

If I am receiving family assistance benefits, do I have to try to get child support from the other parent?

Generally, yes.

Family assistance and child support are closely linked. You must apply for child support from the other parent through the Child Support Agency (CSA) in order to get more than the base rate of **Family Tax Benefit A**. How to apply for child support is explained below in **section 6.3**.

If you have a child from a previous same-sex relationship, from 1 July 2009 you must take reasonable action to obtain child support from your former same-sex partner to get more than the base rate of Family Tax Benefit A.

You have **13 weeks** from when you first separate from your partner to apply for child support. If you do not apply for child support within that time, you can only receive the base rate for Family Tax Benefit A.

There are exemptions from this rule which include where:

- you fear that the other parent may be violent to you;
- you do not know where the other parent is; or
- you cannot establish who is the other parent of the children.

Speak to the social worker at a Family Assistance or Centrelink office if you have a good reason for not wanting to get child support from the other parent.

You can also register a child support agreement at the CSA any time if you and your partner wish to do so (see **section 6.7**). However, these agreements can take some time to negotiate and it is unlikely you will be able to register an agreement within 13 weeks from your separation. It is usually quicker and easier to apply for child support through the CSA when you first apply for family assistance.

If you only receive the base rate of Family Tax Benefit A or you do not receive any family assistance payments, you can make a

private arrangement about financial support of the children without applying to the CSA. However, you should get legal advice before entering into a private agreement. See **section 6.7** for more details about private arrangements.

6.2 Child support

What does the law say about child support?

Child support laws provide for the assessment, collection and enforcement of child support payments. The child support laws are administered by the CSA. Generally, they apply to children in Australia:

- whose parents separated on or after 1 October 1989;
- born after 1 October 1989; or
- who have a full sibling born after 1 October 1989.

In some limited circumstances financial support can be provided in the form of child maintenance (see **section 6.10**).

Do both parents have to pay child support?

All parents must contribute to the financial support of their children whether they were married, lived in a de facto relationship (including same-sex couples) or never lived together.

I was in a same-sex relationship when I had my children. Can I get child support from my ex-partner?

The Federal Government has removed discrimination against same-sex couples in family, child support and social security law (as well as other laws).

From 1 July 2009 you are able to apply for child support from your former same-sex partner if you and that partner are recognised as ‘parents’ under the *Family Law Act*. If you separated from your same-sex partner before 1 July 2009, you can still apply for child support now. Payments cannot be paid for the period before 1 July 2009 and may only start from the date of your application for child support.

If you were in a de facto relationship with your same sex partner and the child was born through donor insemination, both you and your partner are the child’s legal parents under the *Family Law Act*. See Chapter 4, **section 4.4** on page 35 for more information about same-

sex parents under the *Family Law Act*.

You should get legal advice about whether you are a ‘parent’ under the *Family Law Act* and how the child support laws apply to you.

Do I have to arrange child support through the Child Support Agency?

Generally, parents can choose whether or not to arrange child support payments through the CSA. However, making a private arrangement to receive less child support than your children are entitled to may adversely affect the amount of Family Tax Benefits you can receive. See **section 6.1** for more information about family assistance benefits.

6.3 Applying for child support

Who can apply for an assessment of child support?

Generally, a parent of the child can apply to the CSA for an assessment of child support.

A person who is not a parent of the child may also apply for an assessment of child support if they:

- are an ‘eligible carer’ of the child; and
- are not living with either parent on a genuine domestic basis; and
- do not have care jointly with a parent of the child.

An ‘eligible carer’ is a person who has at least ‘shared care’ of the child i.e. they have care of the child for 5 – 9 nights per fortnight.

How do I apply for a child support assessment?

You can:

- telephone the CSA on 131 272 and ask to apply for child support over the phone;
- visit the CSA website at www.csa.gov.au. Complete and lodge an ‘Application for Child Support Assessment’ form electronically; or
- complete an ‘Application for Child Support Assessment’ form in writing and lodge it by mail, facsimile or personally at any CSA, Centrelink or Family Assistance Office.

What happens to my child support assessment application?

Before the CSA accepts an application for child support assessment, it must be satisfied that the people claiming to be the parents of the child are in fact the parents.

There are certain circumstances when the CSA assumes a person is a parent of a child.

Once the assessment is made, the CSA notifies both parents of the assessment. The CSA also lets both parents know about their right to apply for a:

- review of the decision; or
- a declaration that a person should not be assessed because they are not the parent of the child.

What can I do if I need proof that I am the parent?

If you think that you are not the parent of a child, or if you do not have proof you are the parent of the child, you can apply to the Family Law Courts for a declaration of parentage.

The CSA will tell you in writing if your application for assessment has been refused, or that you have to pay child support (because the CSA has decided you are the parent).

There are different time limits to file applications in the Family Law Courts about parentage in child support matters. When you receive the written notice from the CSA you must file your application for a declaration *within*:

- **56 days** of receiving the notice, if you are applying to the Federal Magistrates Court, and
- **60 days** of receiving the notice, if you are applying to the Family Court or Local Court.

DNA testing may be ordered by the Court to determine if a person is a parent. If the Court has to decide if you or the other person is a parent, where you are both women, the Court will need other evidence about your relationship, how the child was conceived and what you and the other person intended when the child was conceived.

6.4 Child support payments

How are child support payments calculated?

The CSA works out the amount of the child support by using a formula based on:

- the costs of caring for children (based on Australian research);
- the income of both parents;
- who cares for the child(ren);
- whether the parents have any other dependent children living with them; and
- whether the parents have any other children for whom they must pay child support (i.e. any other children in child support cases).

There is a basic formula that can be varied to cover different family circumstances.

What if my circumstances do not 'fit' the formula?

If you think that the child support assessment is unfair because it does not take into account the special circumstances of your case, you can apply to the CSA to change the assessment. You must satisfy the CSA that 1 of 10 reasons to change the assessment applies to your case. These reasons are listed on the form you need to use to apply to change the assessment.

You should also provide the CSA with any supporting documents that are relevant to your application to change of assessment. The CSA will send a copy of your application and supporting documents to the other party. The other party must fill in a response and provide any supporting documents to the CSA. The CSA must give you a copy of the response and supporting documents.

A senior case officer (SCO) will make a decision about whether to accept your application for a change of assessment. The SCO will usually have a conference with you and the other party - either together, separately or by telephone. Sometimes the SCO will make a decision based on written submissions. Arrangements can also be made to use interpreters. You cannot have a representative appear on your behalf at the conference.

If you are worried about your safety, or if you feel you cannot participate in a conference with the other parent because of domestic

violence, tell the CSA when you file your application to change the assessment and when you are contacted by the SCO about your application. Talk to the CSA and SCO about removing all identifying information from your supporting documents, before they are sent to the other party.

The process of applying for a change of assessment takes about three months.

What should I do if I am unhappy with the decision of the SCO?

If you are unhappy with the decision of the SCO, you can object to the CSA in writing or by email **within 28 days** of receiving the decision. The SCO will conduct a review of the case and notify you in writing of the decision about your objection.

If you still disagree with the SCO's decision, you can apply to the Social Security Appeals Tribunal (SSAT) within **28 days** of receiving the SCO's decision.

If the CSA decides the issues are too complex you will need to apply to the Family Law Courts to change the assessment. The CSA will tell you if this applies to your case.

What if the other parent's or my circumstances change?

You can ask the CSA to vary your child support assessment if:

- your income falls by 15% or more below the income the original assessment was based on; or
- subject to certain requirements, you earn extra money (e.g. working overtime or second job) to re-establish yourself after separation. You can apply for the extra income to be excluded from the child support assessment for a maximum of 3 years.

Is there a minimum amount of child support payable?

For parents on low incomes who receive income support from Centrelink or Veteran's affairs, the minimum child support payment is \$6.82 per week. This amount is indexed annually. This minimum amount can be paid for up to 3 children (currently up to a total of \$20.46 per week in child support payments).

A fixed child support assessment of \$22.58 per child per week (indexed annually) applies to parents reporting a low taxable income

who are not receiving any income support. Where there are more than three children, this amount is capped (currently \$67.74 per week).

6.5 Disagreeing with CSA decisions

What if I disagree with the child support assessment decision?

The CSA must tell you in writing about most decisions it makes about your case. If you think the CSA did not make the right decision you can ask the CSA to formally review the decision. This is called an **objection**. You might want to object because you think the CSA did not consider all the facts, used wrong information, or did not apply the law correctly.

You must object to a CSA decision within **28 days** of the CSA notice being delivered to your address (**90 days if you live overseas**).

You must tell the CSA in writing or by email that you object to the decision. You should give the CSA any documents that support your objection.

You can object to a CSA after this time, but you need to tell the CSA why you are late. If the CSA does not accept your late objection, you can file an appeal about this decision at the Social Security Appeals Tribunal (**SSAT**). You must do this **within 28 days** of receiving the decision of the CSA that it has refused to accept your late objection.

The CSA will give the other parent a copy of your written objection and supporting documents if they relevant. Talk to the CSA about removing all identifying information from your documents before they are sent to the other parent. Tell the CSA if there has been domestic violence or you are afraid of the other parent.

The other parent can respond and provide supporting documents. The CSA will consider the evidence and may talk to you and the other parent about the objection. The CSA has to make a decision about the objection **within 60 days (120 days if a parent lives overseas)** of receiving it.

The CSA must tell you in writing about the decision about your objection and any changes made to the child support assessment. If you do not agree with this decision you can apply to the SSAT to review the CSA decision. You must do this **within 28 days** from the date the decision was delivered to your address.

Handy Hint

- Don't ignore letters from the CSA.
- Tell the CSA in writing if you disagree with decisions it makes about your case.
- Check time limits.

6.6 Ending child support payments

Child support payments end if the child:

- dies;
- becomes a member of a couple (married or de facto relationship);
- is adopted; or
- no longer lives in Australia (except if they are in a reciprocating jurisdiction) or is no longer an Australian citizen.

Child support payments also end when a child turns 18. In limited circumstances, child support can be sought from parents for a young person aged over 18.

6.7 Child support agreements

What type of child support agreements can I make?

There are two types of agreements:

- limited child support agreements; and
- binding child support agreements.

Both types of agreements must be signed by both parents and registered with the CSA to be binding.

Child support agreements can cover a range of financial matters concerning the costs of the children. For example, they might provide for how much money is to be paid on a periodic basis (e.g. weekly), non-periodic payments (e.g. school fees, children's music and sporting activities) and binding agreements might include a lump sum payment of child support.

It is important to get legal advice if you are thinking about entering into a child support agreement. If you are considering a lump sum payment instead of weekly amounts, you must make sure you get

advice about whether this will affect your entitlement to family assistance or other Centrelink benefits.

What is a limited agreement?

A limited agreement is a formal written agreement signed by both parents. You do not need legal advice before signing a limited agreement. However, you should get legal advice to make sure you understand what you are agreeing to and if it is right for you.

There must be a child support formula assessment by the CSA already in place before the CSA can accept a limited child support agreement. The amount you agree to accept or pay in the agreement must be equal to or more than the child support amount assessed by the CSA.

Limited agreements are used when parents want some flexibility about child support and are not meant for long-term arrangements.

What is a binding agreement?

A binding agreement is also a written agreement signed by both parents. However, it is different from a limited agreement because:

- you do not need to have a child support assessment formula in place;
- the agreed child support amount can be less than child support amount assessed under the formula;
- you need independent legal advice before entering into or ending the binding agreement and you need a statement from your lawyers that legal advice has been given; and
- the binding agreement can only be ended by a new binding agreement registered with the CSA or a court order in very limited circumstances.

6.8 Collection of child support payments

How is child support collected?

If:

- the CSA issues a child support assessment; or
- you make a child support agreement and the CSA accepts the agreement; or
- a court order is registered with the CSA (**see section 6.10**),

you can choose to collect payments privately or you can request that the CSA collect child support payments.

Collecting child support payments privately may be an option for you if:

- the other parent has made child support payments regularly in the past; and
- you are satisfied the other parent will make future payments on time and in full.

If private collection arrangements break down, you can ask the CSA to collect payments. The CSA can only collect payments up to three months in arrears (in special circumstances this can be extended to nine months).

You can ask the CSA to collect child support payments for you if you do not want to receive payments directly from your ex-partner. The CSA can deposit the child support payments directly into your nominated bank account or you can ask to receive the payment by cheque.

6.9 Enforcing child support payments

What can the CSA do to collect missed child support payments?

The CSA generally tries to negotiate for the collection of missed child support payments. However, if unsuccessful, the CSA may try to enforce payment in various ways such as:

- garnishing wages (take unpaid child support payments directly from a person's pay);
- enforcing tax return lodgements;
- intercepting tax refunds; or
- issuing overseas travel bans to stop parents who have failed to pay child support from leaving the country until they pay outstanding child support.

If these methods fail, the CSA may start legal proceedings to try and recover the 'debt' of child support payments.

What happens to child support payments if either parent is declared bankrupt?

Child support payments are not affected by bankruptcy. This means the child support debt can still be claimed against the non-paying parent, even if she or he declares themselves bankrupt.

6.10 Child maintenance

The *Family Law Act* provides for the Family Law Courts to issue child maintenance orders in limited circumstances:

- urgent child maintenance when there is a need for immediate assistance prior to the CSA making an assessment or providing payments;
- a departure is sought from an assessment given by the CSA;
- the child is over 18 and requires support to attend tertiary education; or
- the child is over 18 and has a disability and requires continued support.

6.11 Spousal maintenance

Can I get spousal maintenance for myself from my partner?

You are not automatically entitled to spousal maintenance from your partner.

You may be able to get some maintenance from your partner to cover your own living expenses, if you are unable to work.

The *Family Law Act* covers issues of spousal maintenance for:

- married couples;
- de facto (including same sex) couples separated since 1 March 2009; and
- de facto couples separated before 1 March 2009 who 'opt in' to be covered by the *Family Law Act*.

De facto couples must satisfy a number of conditions before their matter can be heard under the *Family Law Act*. See Chapter 7, **section 7.1** on page 69 for a detailed discussion of these requirements.

In order to receive maintenance from your partner under the *Family Law Act*, you must show that:

- you need the financial support; and
- your partner has the ability to pay for that support.

Maintenance may be ordered because:

- you have been in the relationship for a long time and have lost your work skills;
- you are caring for a child of the relationship;
- you cannot work because you have a disability or because of your age; or
- you have some other very good reason that stops you from supporting yourself.

The Court will usually make a maintenance order for a limited period of time. Sometimes the Court will order a lump sum be provided to you or transfer an interest in the property to you. Unless you will never be able to work, it is best to go to court with a plan about getting back into the paid workforce. For instance, apply for a course to retrain and apply to the Court for spouse maintenance for the period of time it would take to complete the course.

First, the Court looks at how much you need to support yourself. You should prepare a detailed budget taking into account all of your expenses. Then the Court looks at your partner's income and ability to pay for your support. The Court will ignore any support you may receive from Centrelink when deciding if you need maintenance. If you do get a pension or benefit, Centrelink may reduce your pension by some amount if you receive maintenance.

You can ask the CSA to collect your maintenance for you once an order is made.

You can apply for maintenance at any time after you separate, even if you are separated under the same roof. You must apply for maintenance **within 12 months** of your final divorce for married couples or **within 2 years** from the date of separation for de facto couples. If you want to apply later, you will need to seek leave (permission) of the Court, which is only given in exceptional circumstances.

What are the steps involved in getting maintenance?

If you and your partner can agree, you can ask the Court to make your agreement legally binding by making ‘**consent orders**’. There is a Consent Orders Kit available from the Family Law Courts. You can enforce consent orders by going back to the Court if necessary. It is important to seek independent legal advice before making consent orders.

If you cannot agree, you can make an application yourself in the Local Court or the Family Law Courts.

What if I am still living with my partner but they will not give me any money to live on?

You may be able to get maintenance for your own living expenses even though you are still married or in the relationship and living with your partner. You apply in the same way as if you were separated.

Can I get maintenance if I am pregnant?

If you are pregnant, you can claim maintenance from the other parent of your child while you are pregnant or **within 12 months** of the child’s birth.

You can get child-bearing expenses whether or not you are or were married, in a de facto relationship (including a same sex relationship) or never in a relationship with the child’s other parent. Generally, you can ask for maintenance for 2 months before and 3 months after the birth, plus certain other expenses including reasonable medical expenses related to your pregnancy. You apply through the Family Law Courts or through the Local Court. The Court will consider the financial situation of each parent and any special circumstances.

You can get free legal advice concerning child-bearing expenses from the Child Support Service of Legal Aid NSW, LawAccess or some community legal centres.

7 Property

7.1 Where do I start?

What will happen to our property?

When your marriage or **de facto relationship** ends, all the **property** that you and your partner own needs to be divided in a way that is fair to both parties.

Property includes a house, land, superannuation, a business or company, trusts, cars, bank accounts, insurance policies as well as furniture and household items. Personal things like clothing are unlikely to be included.

Property can be in joint names (you and your partner own the property) or in sole name (only one person owns the property). It does not matter if all the property is only in one person's name as the title to property can be changed from one **spouse** or partner to the other to make sure that both parties are treated fairly.

Which law applies to me if I am married?

The federal *Family Law Act 1975 (Family Law Act)* applies to you if:

- you are validly married under either Australian law or the law of another country; and
- either you or your husband is:
 - an Australian citizen;
 - residing (permanently living) in Australia; or
 - in Australia at the time a court **application** is made for a property **settlement**.

Which law applies to me if I have been in a de facto relationship?

This will depend on various factors and mainly the date your relationship ended. The federal *Family Law Act* or the NSW *Property (Relationships) Act 1984 (Property Relationships Act)* might apply to you.

When does the *Family Law Act* apply to de facto couples?

There is a three step process to work out if the *Family Law Act* applies to you.

Step 1

- You were in a de facto relationship which ended on or after 1 March 2009; or
- You and your partner;
 - were in a de facto relationship which ended before 1 March 2009; and
 - make a written choice for the *Family Law Act* to apply, called 'opting in'.

Step 2

You meet one of the following conditions:

- your relationship lasted for at least 2 years; or
- there is a child of your relationship; or
- one of you made a substantial contribution to the relationship and there would be a serious injustice if an order or declaration was not made; or
- your relationship is or was registered under a prescribed law of a State or Territory (such as VIC, TAS and ACT).

Step 3

You must also meet one of the following requirements:

- you and your partner were residing (permanently living) in a *participating jurisdiction* (currently NSW, QLD, VIC, TAS, ACT or NT) when your relationship broke down; or
- you and/or your partner reside in a participating jurisdiction on the day the court application is made; and either
 - both of you lived in a participating jurisdiction for at least one third of your relationship; or
 - the **applicant** for the orders made a substantial contribution to the property or finances of the relationship or the welfare of the family in a participating jurisdiction.

When does the *Property Relationships Act* apply to de facto couples?

The *Property Relationships Act* applies to you if:

- you were in a de facto relationship that ended before 1 March 2009; and
- you and your partner do not agree to opt in and use the *Family Law Act*; and
- you meet one of the following conditions:
 - your relationship lasted for at least 2 years; or
 - there is a child of your de facto relationship; or
 - you:
 - made a substantial contribution to the property or finances of the relationship or the welfare of the family; or
 - have the care and control of a child of your ex-partner, and it would be unfair for the Court not to make an order in the circumstances.

You must also meet the following requirements:

- either you or your partner reside in NSW on the day you apply to the Court; and
- that:
 - both of you lived in NSW for at least one third of your relationship; or
 - the applicant for the orders made a substantial contribution to the property or finances of the relationship or the welfare of the family in NSW.

What if I was in a same sex relationship?

Under both the *Family Law Act* and the *Property Relationships Act* the definition of de facto relationship includes same sex couples.

The federal *Marriage Act 1961* specifically states that marriages between same sex couples are not recognised as valid marriages in Australia. This means that even if you were legally married in another country you will be treated as a de facto couple under Australian law as long as you meet the conditions for de facto relationships set out above.

7.2 How will our property be dealt with under the *Family Law Act*?

How long after we break up do I have to sort out property issues?

If you want a court to help you sort out property issues, time limits apply. If you were *married* you must apply to court **within 12 months** of your divorce order becoming final. If you were in a *de facto relationship* you must apply to court **within 2 years** from the date you **separated**.

The same time limits apply to applications for spousal **maintenance** by married and de facto couples. See **section 6.11: ‘Spousal Maintenance’** on page 66.

If your time limit has expired you have to make a special application to the Court for permission to apply out of time and this is only given in exceptional circumstances.

Can I go straight to court?

In most cases, the *Family Law Act* requires you to try to reach an agreement by using dispute resolution such as mediation before you can apply to the Court for property orders.

In some cases you may not have to try to resolve your property dispute before going to court, such as when:

- you have experienced family violence;
- your partner refuses to negotiate;
- there has been fraud;
- there is a reason to make an urgent application, for example, if there is a risk that your partner may sell property without telling you; or
- you are almost out of time to make your application.

How will our property be divided under the *Family Law Act*?

There is no formula about how to divide your property. The Court will look at the facts of your case and use the following four steps to decide a fair way to divide your property. You and your partner should use the same steps if you want to divide your property without asking the Court to decide for you.

1 Identify what property you have and how much it is worth

Identify and value the property that formed part of your relationship. The property is identified at the time of separation and valued at the time of the court hearing. Property includes such things as property owned by you or your partner at the start of the relationship; property purchased by either or both of you during and after the relationship; superannuation; gifts and inheritances received by either of you; goodwill in a business; compensation payments; lottery winnings; redundancy payouts; and loans.

If you do not know what property your partner owns you can ask the Court to issue a type of order called a **subpoena**. A subpoena requires banks, employers or other organisations to send the information to the Court for you or your **lawyer** to look at. See **section 7.4** for information about how to find out about your partner's superannuation.

2 Work out what contributions you both made to the relationship

Look at the contributions you and your partner made to the relationship. Contributions made after your relationship ends and up to the time you finalise your property division may also be relevant.

Financial contributions include any money provided by yourself or your parents or other family members, wages or a deposit paid on a house. They also include initial contributions (any property you had at the start of the relationship).

Non-financial contributions include any unpaid work you or others have done repairing, improving or maintaining property, or work done in a business owned by your partner.

Contributions you make as a *homemaker or parent* are also valuable. Generally, in a relationship where there was a traditional division of labour, that is, male partner as paid worker and female partner as mother and homemaker, the past contributions will be considered to be equal. In some cases the contributions may not be seen as equal, such as where the relationship was short or the contributions of one **party** were particularly large.

In *exceptional circumstances* domestic violence, or behaviour such as gambling or drug and alcohol addiction may be taken into account in property cases. The violence or other behaviour must have significantly impacted on a person's ability to make contributions to the relationship. It may be fair to increase the victim's contributions and reduce the violent person's contributions.

3 Work out your future needs

Future needs are worked out by looking at the following types of things for you and your partner:

- age and health, including any disabilities;
- income;
- ability to earn an income and entitlements to any financial resources;
- responsibility to support children or others, including how many nights children live with each parent; and
- whether or not the relationship has affected your ability to get a job.

For example, if the Court decided that your contributions were equal in the past and that you have two young children who live with you most of the time and your partner makes more money than you do or can, then the Court may order a 60% or more distribution of the property to you and 40% or less distribution to your partner.

4 Think about whether it is a fair division of the property in the circumstances

Work out if the way you have divided the property between you and your partner is fair. The Court assesses this by looking at the overall position after the first three steps have been considered. The Court should only make an order if 'it is satisfied that, in all the circumstances, it is just and equitable to make the order'.

Handy tip

To start most property cases under the Family Law Act, you need to file the original (the Court keeps this) and two copies (one for you and one for your partner) of each of the following documents:

- an Initiating Application form (handwritten or typed), which must state the orders that you want the Court to make (you can change the orders you are asking for later on if you get new information about your property);
- a Financial Statement (handwritten or typed); and
- an **Affidavit** in support (must be typed).

If you are or were married, give the Court a copy of your marriage / divorce certificate.

If you want the Court to make interim or urgent orders you must file an affidavit saying why it is an urgent matter and ask for leave (permission) to have your case heard more quickly.

There will be a filing fee unless you are eligible for an exemption or a waiver of court fees. The current fee is \$155 for both applicants and respondents.

You can also apply for orders about your children at the same time. See Chapter 4: 'Children' p25

It is a good idea to go to the **Family Law Courts** website or call the Court first to check the current court rules and to get copies of the right forms.

What happens after I have filed my Initiating Application form?

You must arrange for a copy of all documents filed at the Court to be served on (formally given to) your partner by ordinary post or served by hand by anyone over 18 (except you).

Your partner should then file and serve you with a Response to Initiating Application, Financial Statement and Affidavit (if required) within **14 days** of your documents being served on him or her.

Your partner can oppose all or part of your application and ask for different orders to be made.

What will happen at court?

There are a range of events which may happen at court including:

- directions hearings - where orders about court process can be made such as what timetable will apply to your case and what documents to file; and
- conferences - where a registrar will meet with you and your partner and your lawyers to try to settle your dispute.

If you cannot reach an agreement with your partner your matter will eventually be listed for a trial (this is also called a final hearing). In most cases both you and your partner will need to give oral evidence at the trial. This means you may be asked to answer questions after taking an **oath** to tell the truth.

What if we reach an agreement about property before going to court?

If you reach an agreement about how to divide your property before commencing a court case, that agreement can only be enforced by the Court if:

- the agreement is made into consent orders by the Court. The Court will consider the information provided to check that the property is divided fairly between both of you. If the Court thinks that the agreement is fair they will make the agreement into orders. For more about **consent orders** see Chapter 2, **section 2.2 Lawyers ‘Do I need a solicitor or barrister’** page 8; or
- it is a binding financial agreement (see page 77).

What if we reach an agreement after our court case has started?

If you reach an agreement after your court case has started you can ask the Court to make consent orders, sometimes called ‘Terms of Settlement’. Once the Court approves the orders they will be just as binding and enforceable as orders made by a judge or magistrate.

For more about **consent orders** see Chapter 2, **section 2.2 Lawyers ‘Do I need a solicitor or barrister’** page 8.

Can I appeal a court order?

If you think the Court has made a wrong decision you can file an appeal within **28 days** of the judgment and ask for the decision to be

set aside. This is not a rehearing of your case, but an appeal based on an **error of law**.

If your time limit has expired you have to make a special application to the Court for permission to appeal out of time and this is only granted in exceptional circumstances.

You should get legal advice about the appeal process as it is very complex and can be very expensive.

Can we make agreements about our property?

Yes, you and your partner can agree about what to do with your property or you can make a **binding financial agreement (BFA)** before, during or after your relationship.

A BFA can deal with how your property and financial resources are to be divided on the breakdown of your relationship and the payment of spousal maintenance in some situations.

The Court is not required to approve a BFA but can enforce the agreement if the necessary requirements are followed, which include:

- you and your partner must obtain independent legal advice before entering into a BFA and produce a certificate stating that you received this advice; and
- at least one of you must sign a separation declaration.

You will need a solicitor to prepare your BFA as they are complex and must satisfy many legal requirements. BFAs are likely to be expensive to enter into and they can only be set aside by the Court in limited circumstances.

If you are in a de facto relationship and have a BFA you will need to make a new BFA if you later marry your partner.

7.3 How will our property be dealt with under the *Property Relationships Act*?

What are the time limits for applying to the Court under the *Property Relationship Act*?

If you were in a de facto relationship and separated before 1 March 2009, the *Property Relationships Act* may apply to you (see **section 7.1**). You must apply to the Local, District or Supreme Court for orders about property division and spousal maintenance **within 2**

years of the date of your separation. To apply later you have to make a special application to the Court for permission to apply out of time and this is only granted in exceptional circumstances.

Which court do I go to?

You can apply to the:

- Local Court if the total value of you and your partner's property is less than \$60,000;
- District Court if the total value of you and your partner's property is less than \$750,000; or
- Supreme Court if the total value of you and your partner's property more than \$750,000.

If you and your partner consent the Local Court or District Court may deal with your matter even if the value of your property is more than the Court's limit.

How will our property be divided under the *Property Relationships Act*?

The first step is to identify and value the property. The next step is to assess the financial, non-financial and homemaker / parent contributions made by you and your partner (see **section 7.2**, p72). Unlike under the *Family Law Act*, your future needs will not be considered under the *Property Relationships Act*.

Property matters for de facto couples under the *Property Relationships Act* can be more complex and technical than under the *Family Law Act*. It is important to get legal advice.

Can we make arrangements about our property without having to go to court?

Yes, you and your partner can agree about what to do with your property without doing anything formal or you can make one of the following financial agreements:

- A **domestic relationship agreement** is a written agreement made at the start of or during your relationship and sets out how your property is to be dealt with if your relationship breaks down.
- A **termination agreement** is usually made as your relationship is ending or after it has broken down and sets out what property you have and how it is to be divided. If you decide to enter into

a termination agreement, you should do this within two years of separating so you still have the option of going to court if you cannot reach an agreement or your ex-partner refuses to sign the termination agreement.

Also if you enter into a termination agreement because you and your partner expect to separate but then decide to remain together, the termination agreement will automatically change to a domestic relationship agreement after three months.

These agreements do not need to be approved by the Court, but to be binding they must be in writing and both parties must obtain independent legal advice and get a certificate stating that they got this advice.

A termination agreement and a domestic relationship agreement are almost the same, except that the Court has more power to set aside a domestic relationship agreement.

7.4 Superannuation

How is superannuation dealt with under the *Family Law Act*?

The *Family Law Act* allows superannuation to be split at the end of your relationship. Usually superannuation can be taken from your partner and put into a superannuation fund in your name. Sometimes the superannuation will be put in your name into the same fund as your partner because of the legal requirements of the fund.

How do I find out about my partner's superannuation?

You are allowed to ask the **trustee** of your partner's superannuation fund to tell you the value of their superannuation.

The Family Law Courts website has a Superannuation Information Kit which contains the forms that you must send to the trustee of the fund, which are:

- Form 6 Declaration; and
- Superannuation Information Request Form (accompanied by the appropriate Superannuation Information Form).

The fund may charge a fee for this information which you pay when you send these forms.

Handy Hint!

Keep a record of the name of you and your partner's superannuation funds and you and your partner's membership numbers.

How do I divide this superannuation?

If the *Family Law Act* applies to you and you ask for some of your partner's superannuation, the following options are available:

- reach an agreement with your partner to split the superannuation and enter into a Superannuation Agreement, which is a Financial Agreement that includes superannuation. You must provide a certificate stating that you have received independent legal advice regarding this split. You do not have to register this agreement in court, so you must keep a copy of the agreement. The *Family Law Act* does not require that the trustee be given notice of the terms of a superannuation agreement, but it is wise to do so to ensure the terms can be carried out by the trustee; or
- register an agreement with the Court so it becomes consent orders (see pages 8 - 9 for more details about consent orders). You must notify the superannuation fund trustee who must approve the orders. This must be done at least **28 days** before filing the Application for Consent Orders; or
- apply to the Court to make an order regarding your partner's superannuation. You must tell the superannuation fund trustee about the orders you are asking the Court to make about superannuation. You must provide the trustee with an opportunity to attend the court hearing and object to the orders.

If you and your partner split your superannuation, you will not receive any cash payments from the superannuation fund until retirement. However, in some cases of severe financial hardship it may be possible to apply to the trustee to have the superannuation released to you before retirement age.

Sometimes you can ask the Court to order the trustee of the superannuation to *flag* when a superannuation payment is due. This can be done to make sure that the benefit is not paid out to your partner before the property division is resolved. Flagging a

superannuation interest can be useful when your partner is close to retirement age.

You should get legal advice about how to deal with superannuation in your property settlement. It is a complex area of law.

How is superannuation dealt with under the *Property Relationships Act*?

You cannot split superannuation under the *Property Relationships Act*, but it can be taken into account as a financial resource and in some cases as property. The law about superannuation for de facto couples under the *Property Relationships Act* is uncertain and you should get legal advice.

Trustees of superannuation funds have wide powers and may direct that some of your partner's superannuation be allocated to you on your relationship breakdown. It is also helpful if your partner has already nominated you as beneficiary of the superannuation fund.

7.5 What else should I think about?

Can I get an urgent court order to protect our property?

Yes, if you are worried that your partner may sell or give away property or get a new loan without telling you, the Court can make an urgent order (**injunction**) to stop this happening until a final decision is made about your property. This includes property which is owned in the sole name of your partner.

Can I get an order for my partner to give me money to pay for a lawyer?

In some cases you can ask the Court to make an order for your partner to pay you some money for your legal fees or other expenses. However, before the Court will do this they must be satisfied that you will get at least that amount of money at the end of your property dispute and that your partner has enough money left for themselves.

Any money you get in advance may be taken off the amount you get at the end of your property dispute. This will depend on things like how much money your partner has spent on their legal fees and other expenses during the court case.

The Court does not make these orders very often – usually only where your partner has a very high income compared to you, or

valuable property in his or her name that can be used as security for borrowing money from a bank.

Can I live in the house after separation?

You or your partner are entitled to live in the family home unless there is a court order that says either you or your partner must leave. It does not matter whose name is on the title to the home. In limited circumstances, you can get a family law order giving you the right to stay in the house until the property settlement is finalised. The Court looks at the needs of both parties and the needs of the children. This is called a sole occupation order or an exclusion order.

If you have experienced domestic violence you can also apply for an exclusion order as part of an application for an apprehended domestic violence order (ADVO).

What if my partner is bankrupt?

If your partner is bankrupt at the time of your property settlement, you are still entitled to make a claim on the property remaining after the bankruptcy. Your financial and non-financial contributions will be recognised equally with the rights of any other creditors making a claim to the property. If your partner is bankrupt or looks like they might go bankrupt, you should get urgent legal advice.

What about stamp duty and capital gains tax?

Stamp duty and/or capital gains tax often need to be paid when property is sold or transferred. However in most cases you will not have to pay stamp duty or capital gains tax if you transfer the title of your property from one spouse or partner to the other under a court order. This includes consent orders and orders made by a judge or magistrate.

You should get legal and accounting advice about any capital gains tax you might have to pay on property you keep after the property is divided and then later sell.

What happens to our debts?

The only debts that you must pay (or make arrangements to be paid by someone else) are debts that are in your name, joint debts or debts guaranteed by you. Just because you are married or in a relationship does not mean that you take on all your partner's debts.

Under the *Family Law Act* the Court can order that the responsibility

for a debt be altered. The debt can be transferred into your name or your partner's name or altered so that both of you pay part of the debt. To do this, the Court can order third parties (e.g. banks) connected to the debt to alter it accordingly.

This means that any third parties involved with your debt must be told about the court application so they can tell the Court what they think about the proposed change.

Under the *Property Relationships Act* the power of the Court is more limited. The Court cannot make orders that bind anyone else except you and your partner. This is particularly important if you have joint debts. The orders may say that your partner must pay certain joint debts, but if your partner does not pay or goes bankrupt, you may be left with the debt. At the time the property settlement is finalised, make sure that joint debts are paid out or refinanced in the name of the person who is supposed to pay them.

Will a property agreement affect my Centrelink payments?

If you are getting a pension or benefit from Centrelink, or if you are likely to apply in the future, any agreement you make to take a larger share of the property instead of maintenance for you or the children may affect your payments. Get advice from Centrelink or a **solicitor** to find out how you may be affected before you sign any agreement or apply for court orders.

Can I get legal aid?

It is difficult to get legal aid in property matters, particularly if you have an interest in a house. However, in some situations legal aid may be available. For example, if you are trying to keep the family home for the children and will not receive any other money in the property settlement or when the only property of any value is superannuation. Sometimes you will get legal aid but may have to pay back some or all of the legal costs from your property settlement, after the case is finished. Contact Legal Aid NSW to find out if you might be eligible. See Chapter 9: 'Referrals and Resources' on page 93.

If you feel that you have exceptional circumstances and have been refused legal aid for your property matter then you should lodge an **appeal within 28 days** of receiving that refusal. Contact your local Community Legal Centre for help with your appeal or read the

Legal Aid NSW policy on their website. See Chapter 9: 'Referrals and Resources' on page 93.

Handy tips

Make lists of as much of the following information that you can. You will need this information if you are negotiating a property settlement with your partner or if you are going to see a lawyer. You can use the 'Information Sheet' in Chapter 2 to record this information:

- **dates** - when your relationship began and/or when you married; when it ended; the dates of birth of yourself, your partner and of any children;
- **valuations of assets** - current valuations for your home, cars, furniture, shares, life insurance and superannuation policies and any other assets. Estimates are good enough at this stage. If you must go to a full hearing you will need to get proper valuations. Real estate agents will often give you a 'market assessment' or appraisal which is an estimate of the value of your home for free;
- **liabilities** - outstanding mortgages, personal loans, credit card statements and any other outstanding debts;
- **family business** - any family business liabilities and current trading statements;
- **financial contributions** - any money or other assets brought into the relationship at the beginning and during the relationship, and any money or other assets, such as cash savings, investments, gift from parents, compensation payments or any other source;
- **non-financial contributions** - if you have mainly been a homemaker it is essential that you document your contribution to the relationship in terms of home decoration, renovation or maintenance, attendance at school functions, supervising homework, entertaining business clients, etc;
- **you and your partner's salaries**; and
- **superannuation entitlements** - current statements for both yourself and your partner's super funds

If you are planning on leaving your home, it will make things easier later on if you take the original or photocopies of all documents relating to your property, such as title deeds, bank statements, superannuation fund statements and receipts.

8 Legal language – what does it all mean?

These terms are highlighted in bold the first time they appear in each chapter of this booklet.

Action

A dispute that is taken to court. Also called ‘proceedings’, a ‘case’, a ‘matter’ or a ‘suit’.

Adjournment

Putting off a court case until a later date.

Affidavit

A written statement of facts and circumstances, sworn or affirmed to be the truth and signed before a solicitor or Justice of the Peace. Affidavits are used as evidence in court cases.

Affirmation

A promise to tell the truth when giving evidence in court either in person or by signing an affidavit.

Applicant

A person who starts a court case.

Application

The document filed by the applicant to start a court case.

Apprehended domestic violence order (ADVO)

A violence protection order against a person with whom you have domestic relationship (e.g. a spouse or family member).

Apprehended personal violence order (APVO)

A violence protection order against a person with whom you do not have a domestic relationship with (e.g. a neighbour).

Barrister

A lawyer who specialises in court work.

Binding financial agreement

An enforceable agreement dealing with the division of property, and/or payment of maintenance. It can be entered into before, during or after marriage.



Registrar

An administrator at a Local Court who gives legal information (not advice) and help with court forms.

Children's Court

A state court that deals with matters related to the care and protection of children and young people, and also criminal cases concerning children and young people.

Child support

Payments that are worked out by the Child Support Agency and made by a parent for the benefit of a child.

Client

A person who employs a lawyer.

Conflict of interest

A clash between the different duties that a lawyer has to clients, the Courts, other lawyers or the public. The clash usually happens when a lawyer has a duty toward two or more groups with incompatible goals. For example, a lawyer has a duty to keep client information confidential and to put the interests of the client before others. A lawyer cannot fulfil these duties by representing two people on opposing sides of a case or in some cases acting against a past client.

Contravention

When a party does not follow (breaches) the parenting orders issued by the Court.

Consent order

A court order based on agreed terms between parties to a dispute. It is just as enforceable as any other court order. It can be about property or children or both.

Contested or defended action

A dispute in court where the respondent will not agree with all or part of an application.

Contested family violence order

An Apprehended Violence Order (AVO) made by the Court after hearing a dispute where the violent person did not agree to accept the terms of the AVO application.

Cross application

The document where the respondent asks the Court for different orders to those made in the application. Sometimes known as a 'response'.

Decree

An order made by a court.

De facto relationship

A relationship between two adults who live together as a couple and who are not married or related by family.

De facto partner

A partner in a de facto relationship (formerly de facto spouse).

Deponent

A person who swears or affirms an affidavit.

Dispense with service

A court order which means that you do not have to give your application or other court documents to the other party.

Dissolution of marriage

Divorce, the legal end of marriage.

Domestic relationship

You have a domestic relationship with another person under NSW law, if you have any of the following types of relationships: Marriage, de facto relationship, intimate personal relationship (eg boyfriend, fiancé), paid or unpaid carer, relative, part of your extended family or kin according to Indigenous kinship system. You are also considered to have a domestic relationship with another person if you are both living in the same household or residential facility.

Domestic relationship agreement

Under NSW state law, includes agreements between de facto spouses about what will happen with their property and/or maintenance if they separate. Couples who separated after 1 March 2009 can now access the federal family law system.



Equal shared parental responsibility

This is how the responsibility for the major decisions in a child's life is shared between the parents once a family court order is made. Parents must talk to each other and agree about major long term issues including: the child's education, religion and culture, health, name and changes to living arrangements. Equal shared parental responsibility does *not* mean that parents spend equal time with the child or children.

Equal time

Each parent spends time with a child on an equal basis.

Error of law

A mistake in the way the judge interpreted or applied the law.

Ex parte order

A court order made without the other party to the application being present.

Family Consultant

A family consultant is either a psychologist or social worker who specialises in family issues arising from separation and divorce and who is employed by the Court to help it make decisions about a child's living arrangements.

Family Dispute Resolution Practitioner

An independent person who helps separating couples to resolve some or all of their family law issues through mediation. They must complete an accreditation course and be registered with the Federal Attorney General's Department.

Family Law Courts

The Family Court or the Federal Magistrates Court.

Family Tax Benefit Part A

The primary payment from the federal government to help with the cost of raising children. It is usually paid to a parent or guardian for a child aged less than 21 years or a dependent full time student aged between 21 and 24 years.

Family Tax Benefit Part B

An extra payment to help families with the cost of raising children where there is only one main income earner (including sole parent families) with a dependent full time student up to the age of 18 years.

Family violence

Actual or threatened behaviour directed at a person, the person's property or family members that causes the person or their family reasonably to fear for, or reasonably to be apprehensive about, their personal wellbeing or safety (as defined in the *Family Law Act*).

Federal Magistrates Court

A court that is part of the federal court system designed to deal quickly and cheaply with less complex family law matters and divorce applications. Cases are heard by Federal Magistrates.

Independent children's lawyer

A solicitor appointed by the Court to represent the interests of a child or children in a family law case.

Injunction

A court order that forbids a person from doing something or commands him or her to do something. Also known as a restraining order.

Interim order

A temporary order made until the Court can hear all the evidence.

Intervener

A person who asks the Court to make orders to protect their interests, who is not the applicant or respondent.

Irretrievable breakdown of marriage

No reasonable likelihood of getting back together. Under family law this is proved by 12 months separation.

Judgment

A decision by a judge resolving a dispute after a hearing, together with their reasons for the decision.

Justice of the Peace

A person who has formal authority to witness legal documents.

Lawyer

A general word for solicitors and barristers.

Litigation

A court dispute.

Local Court

A state court where a magistrate hears cases and makes decisions.

Magistrate's Court

Same as a Local Court.

Maintenance

Money paid by one former partner for the support of the other former partner and/or their children.

Mention

A brief hearing when the Court gives a case some attention but not a full hearing.

Oath

A promise to tell the truth sworn on a religious book that is important to the person making the promise.

Party or parties

People involved in a court case or a dispute - usually, an applicant and a respondent.

Parenting order

Any order about children made under the *Family Law Act*.

Parental responsibility

All the duties, powers and responsibilities and authority that parents have for their children. Parents have joint parental responsibility for their children until a court orders otherwise.

Property

Any assets of value including a house, investment properties, cars, boats, trailers, cash in bank accounts, superannuation, household contents, shares, or interest in a business. Even if the property is in one spouse or partner's name, it can still be divided in a family law property settlement.

Recovery order

An order of the Court that directs a person or people (such as the police) to find, recover and deliver a child to a parent of the child; a person who has parental responsibility for the child, or a person with parenting orders that state the child must live with, spend time with or communicate with them.

Registrar

A lawyer who works for the Court and may make decisions about procedural issues.

Respondent

The other party in any application you make to the Court.

Separation

The situation when a married or de facto couple lead separate lives and usually live apart. There is no need to formally register when you first separate.

Serve documents / Service of documents

A process where you (or your representative) formally give the documents in your case to the other party. There is a court rule that all documents in a court case must be formally given to the other party before the Court will hear the case.

Settlement

An agreement between parties to a dispute about how to resolve it without a court decision.

Solicitor

A lawyer who may give clients legal advice, help with legal problems and who may appear in court.

Spouse

A general word for wife or husband.

Stalking

A form of harassment when someone follows you around or waits outside your home or workplace.

Status quo

A Latin phrase that means ‘the way things are’. A phrase that refers to current situation or circumstances.

Stay of execution

A court order that temporarily stops a court judgement from being carried out.

Subpoena

A court order to make a witness come to court to give evidence and/or to bring documents to court.

Substantial and significant time

An amount of time that enables parents to be involved in daily routines and special occasions and includes weekends, weekdays and holiday times.



Substituted service

A court order so that you can give your court documents to a relative or friend of the respondent, or put a notice in the paper instead of giving them to the other party if you do not have an address or do not know where he or she is.

Termination agreement

Under NSW state law, an agreement between former de facto partners about how to divide their property after they separate.

Witness

Any person who tells a court what she or he knows about a case.

9 Referrals and Resources

9.1 Referrals

If you are deaf or have a hearing or speech impairment, you can ring any telephone number through the National Relay System.

| | |
|-------|---|
| Phone | 133 677 <i>(local and chargeable calls)</i> |
|-------|---|

| | |
|-------|--|
| Phone | 1800 555 677 <i>(free calls)</i> |
|-------|--|

Centrelink

| | |
|--------------------------|--|
| Family Assistance Office | 13 61 50 <i>(8am – 8pm, Monday – Friday)</i> |
|--------------------------|--|

| | |
|------------------------|--|
| Indigenous Call Centre | 13 63 80 <i>(8 am – 5 pm, Monday – Friday)</i> |
|------------------------|--|

| | |
|-------------------------------------|--|
| Centrelink Multilingual Call Centre | 13 12 02 <i>(8 am – 5 pm, Monday – Friday)</i> |
|-------------------------------------|--|

| | |
|-----|------------------------------|
| TTY | FreeCALL 1800 000 567 |
|-----|------------------------------|

For details of the Centrelink office closest to you, see the Centrelink website. www.centrelink.gov.au

Children's Contact Services

| | |
|--------|---|
| Albury | Upper Murray Family Care Inc 02 6051 3533 |
|--------|---|

| | |
|-------------------|---|
| Blacktown Service | Blacktown Children's Contact 02 9671 3900 |
|-------------------|---|

| | |
|--------------|---|
| Campbelltown | Centacare Campbelltown Contact Service 02 4640 8527 |
|--------------|---|

| | |
|---------------|--|
| Coffs Harbour | Interrelate Family Centre 02 6651 1010 |
|---------------|--|

| | |
|-------|--|
| Dubbo | Interrelate Family Centre 02 6882 4699 |
|-------|--|

| | |
|---------|--|
| Lismore | Interrelate Family Centre 02 6621 4970 |
|---------|--|

| | |
|--------|--|
| Orange | Interrelate Family Centre 02 6360 0895 |
|--------|--|



| | |
|------------------|--|
| Penrith | Relationships Australia CCS 02 4728 4802 |
| Port Macquarie | Interrelate Family Centre 02 6584 9293 |
| Newcastle | Relationships Australia CCS 02 4940 1500 |
| Nowra | Centacare Nowra Contact Service 02 4421 8248 |
| Sutherland | Interrelate Family Centre 02 9545 3566 |
| Sydney | Sydney Children's Contact Service 02 9390 5366 |
| Sydney (Western) | Central West Contact Service 02 9893 7949 |
| Tamworth | Tamworth Family Support Service 02 6766 4596 |
| Wagga Wagga | The Children's Contact Service 02 6921 8844 |
| Wollongong | Centacare Wollongong Contact Service 02 4254 9339 |
| Wyong | The Wyong/Gosford Children's Contact Service 02 4351 3155 |

Child Support Agency

| | |
|---------------------------|--|
| General Inquiries | 131 272 <i>(8:30 – 4:45 Monday – Friday)</i> |
| TTY | 1800 631 187 |
| Complaints | 132 919 |
| CSA Information Service | 131 107 <i>(24 hours 7 days a week (automated information service about child support accounts for existing customers)</i> |
| Change of Assessment Team | 131 141 |

To find the CSA office nearest to you, go to CSA website.
www.csa.gov.au

Community Legal Centres NSW

CLCs NSW is the peak body for community legal centres in NSW. To find the Community Legal Centre nearest to you, go to the CLCs NSW website.

| | |
|--------|--|
| Phone | 02 9212 7333 |
| Email: | nswclc@clc.net.au www.nswclc.org.au |

NSW Community Services (formerly DoCS)

| | |
|------------------------|--|
| DoCS Helpline | 132 111 <i>(24 hours, 7 days a week (to report suspected abuse or neglect)</i> |
| TTY | 1800 212 936 |
| Complaints | 1800 000164 |
| Domestic Violence Line | 1800 65 64 63 or 1800 671 442 (TTY) <i>(Referral to accommodation, Counselling and support services)</i> |

To find a Community Services office nearest to you, visit the Community Services website. **www.community.nsw.gov.au**

Family Relationships Advice Line

The Family Relationship Advice Line is a national telephone service that provides information on family relationship issues and advice on parenting arrangements and referrals to local services.

Phone: **1800 050 321**
*(8am – 8pm Mon – Fri
 and 10 – 4 pm Saturday)*

Family Relationships Online

The Family Relationship Online website provides families with information about relationship issues and services to assist them with their relationship issues, including family dispute resolution services. The website also includes the contact details of Family Relationships Centres across Australia. **www.familyrelationships.gov.au**

Family Law Courts

National Enquiry Centre: **1300 352 000**
(8:30 – 5:30 Monday – Friday)

TTY: **1300 720 980**

Email: **enquiries@familylawcourts.gov.au**

After hours emergency line: **1800 622 395**
*(To contact a Judicial Officer to
 consider the making of an
 emergency order)*

To find a Family Law Registry nearest to you, go to the Family Law Courts website. **www.familylawcourts.gov.au**

Family Violence Prevention Legal Services (NSW)

Bourke Family Violence
 Prevention Legal Service **02 6872 2440**

Broken Hill Family Violence
 Prevention Legal Service **08 8087 6766**

Forbes (*Binaal Billa Family
 Violence Legal Service*) **02 6851 5111**

Kempsey (*Many Rivers Violence
 Prevention Unit*) **6562 5856 or 6562 5867**

Moree (*Thiyama-li Family
 Violence Service Inc*) **02 6751 1400**

Walgett (*Walanbaa Yinnar Wahroo
 Walgett Family Violence Prevention Unit*) **02 6828 2143**

Homeless Persons Information Centre

Information and referral service, including refuge accommodation information.

Phone: 02 9265 9087 or 02 9265 9081
Rural Toll Free: 1800 234 566
www.cityofsydney.nsw.gov.au

Inner City Legal Centre

Includes Statewide Lesbian and Gay Legal Advice Service and Same Sex Court Assistance Service

Phone: 02 9332 1966
Email: Inner_City@clc.net.au
www.iclc.org.au

International Social Service – Australian Branch

Telephone information and social work support for international child abduction and tracking cases.

Phone: 02 9267 0300
TTY: 1300 657 843

LawAccess NSW

Free legal information, advice and referrals.

Phone: 1300 888 529
www.lawaccess.nsw.gov.au

Law Society of NSW

Phone: 02 9926 0333
(9am to 5pm, Monday to Friday)
Email: lawsociety@lawsociety.com.au
www.lawsociety.com.au

Legal Aid NSW

Phone: 02 9219 5000
TTY: 02 9219 5126
www.legalaid.nsw.gov.au

Child support service

Phone: 02 9633 9916 or 1800 451 784
(9 am to 5 pm Monday to Friday)

Legal Information Access Centre (LIAC)

Legal research assistance and access to legal information resources
(including legislation and case law).

Specialist librarians can assist with legal research.

Phone: **9273 1558**

Email: **liac@sl.nsw.gov.au**

State Library of NSW

Macquarie Street, Sydney, 2000

(Corner of Hunter and Macquarie Streets)

Opening hours 10am - 5pm Monday to Friday and Sunday. Closed Saturdays.

Local Courts NSW

To find the Local Court nearest you, go to the Local Courts website.

www.lawlink.nsw.gov.au/lawlink/local_courts

NSW Office of the Legal Services Commissioner

Phone: **02 9377 1800**

Freecall: **1800 242 958**

TTY: **9377 1855**

Email: **olsc@agd.nsw.gov.au**

www.lawlink.nsw.gov.au/olsc

Parenting Orders Program

Counselling, information, educational courses and support to parents who have difficulty, or experience conflict, in reaching agreement about their parenting arrangements. The Parenting Orders Program is managed by Relationships Australia.

Phone **02 4221 2001**

Email: **illawarrapop@ransw.org.au**

www.relationships.com

Wirringa Baiya Aboriginal Women's Legal Centre

Legal service for Indigenous women.

Phone: **02 9569 3847**

Freecall: **1800 686 587**

www.wirringabaiya.org.au

Women's Domestic Violence Court Advocacy Schemes.

| <i>Name of scheme</i> | <i>Phone</i> | <i>Courts</i> |
|-------------------------|--|---|
| Blue Mountains WDV CAS | 02 4782 4155 | Katoomba, Lithgow, Bathurst, Mudgee |
| Burwood WDV CAS | 02 9744 1866 | Burwood |
| Central Coast WDV CAS | 02 4304 6941 | Gosford, Woy Woy, Wyong |
| Far South Coast WDV CAS | 02 6492 5002 | Bega, Narooma, Eden, Batemans Bay, Moruya |
| Far West WDV CAS | 08 8087 2053 | Broken Hill, Wilcannia, Wentworth |
| Hunter WDV CAS | 02 4940 8766 | Newcastle, Toronto, Belmont, Raymond Terrace |
| Hunter Valley WDV CAS | 02 4934 5332 | Maitland, Singleton, Cessnock, Musswellbrook |
| Illawarra WDV CAS | 02 4228 1499 | Wollongong, Port Kembla, Albion Park, Kiama |
| Macarthur WDV CAS | 02 4640 7333 | Campbelltown, Camden, Picton |
| Macquarie WDV CAS | 02 8833 0922 | Parramatta, Ryde |
| Mid-North Coast WDV CAS | 02 6555 2042 02 6584 0053 | Forster, Gloucester & Taree Port Macquarie, Wauchope |
| New England WDV CAS | 02 6771 4221 | Armidale, Walcha, Tamworth, Gunnedah, Glen Innes |
| North Coast WDV CAS | 02 6650 0302 | Coffs Harbour, Kempsey, Bellingen, Grafton, Macksville |
| North West WDV CAS | 02 6752 7135 | Moree, Boggabilla, Inverell, Mungindi |
| North West Syd WDV CAS | 02 4587 8877 | Blacktown, Windsor |
| Northern Rivers WDV CAS | 02 6621 1045 | Tweed Heads, Murwillumbah, Mullumbimby, Byron Bay, Ballina, Lismore, Casino, Kyogle |

| | | |
|-------------------------|---------------------|--|
| Northern Sydney WDV CAS | 02 8425 8707 | Hornsby, Manly, North Sydney |
| Riverina WDV CAS | 02 6964 6432 | Griffith, Leeton, Hillston, Hay, Lake Cargellico |
| South Coast WDV CAS | 02 4423 8507 | Nowra, Moss Vale |
| South Eastern WDV CAS | 02 6299 4799 | Quenbeyan, Cooma, Goulburn |
| South West Syd WDV CAS | 02 9601 6988 | Liverpool, Fairfield, Bankstown |
| Southern WDV CAS | 02 6021 3059 | Albury, Holbrook, Finley, Deniliquin |
| Southern Sydney WDV CAS | 02 9589 1200 | Sutherland, Kogarah |
| Sydney WDV CAS | 02 9287 7813 | Downing Centre, Newtown, Waverley, Balmain |
| Wagga Wagga WDV CAS | 02 6921 6227 | Wagga Wagga, Narrandera, Young, Tumut, Cootamundra |
| Western WDV CAS | 02 6884 7388 | Dubbo, Nygan, Wellington, Bourke, Brewarrina, Cobar, Narromine, Warren, Gilgandra |
| Western Sydney WDV CAS | 02 4731 5098 | Penrith, Mt Druitt |

Women's Health NSW

Women's Health NSW is the peak body for Women's Health Centres in NSW. To find a Women's Health Centre nearest to you, go to the Women's Health NSW website.

Email:

info@whnsw.asn.au

www.whnsw.asn.au

Women's Legal Services NSW

Administration: **02 9749 7700**
www.womenslegalnsw.asn.au

Interpreter Service - TIS **131 450**

National Relay Service

TTY/Voice: 133 677

24 hr relay call numbers

Speak & Listen (SSR): 1300 555 727

For deaf, hearing or speech impaired women

WLS provides face to face legal advice by appointment at a number of locations across Sydney. Phone to book an appointment at outreach service nearest to you.

Blacktown **02 9831 2070**

Campbelltown **02 4627 2955**

Fairfield **02 9726 4044**

Liverpool **02 9601 3555**

Penrith **02 4721 8749**

Wyong **02 4351 1152**

Indigenous Women's Program

Legal Contact Line **1800 639 784**

Domestic Violence Advocacy Service

Advice Line **02 8745 699** or **1800 810 784**

(outside Sydney)

Women's Refuge Resource Centre

Peak body for women's refuges in NSW.

Phone: **02 9698 9777**

Email: **admin@bigpond.net.au**

www.wrrc.org.au

9.2 Useful resources

| <i>Organisation</i> | <i>Resource</i> | <i>Website</i> |
|-------------------------------|--|--|
| Australian Federal Police | <i>Family Law Kit:</i> Information about recovery of children and the airport watch list. | www.afp.gov.au/national/family_law/familylaw_kit.html |
| Attorney General's Department | Information about international child abduction. | www.ag.gov.au/nsf/Page/International_child_abduction |
| Family Law Courts | Pamphlets, fact sheets and kits about court's services, court processes, costs and a range of family law issues. | www.familycourt.gov.au www.familylawcourts.gov.au www.fmc.gov.au |
| Inner City Legal Centre | <i>Talking Turkey:</i> A Legal Guide for Lesbian Mothers, Gay Fathers and Sperm Donors in New South Wales. <i>Fined Out:</i> A resource about the fine enforcement process. | www.iclc.org.au |
| Thomson Reuters | The Law Handbook 11th edition Sydney 2009 | |
| Legal Aid NSW | Pamphlets and fact sheets on family law, child support and domestic violence as well as other criminal and civil law issues. | www.legalaid.nsw.gov.au |



| | | |
|--|--|---|
| <p>Legal Information Access Centre (NSW State Library)</p> | <p><i>Hot Topics:</i> Publications about legal issues in plain language. Issue 66 is about domestic violence and AVOs. Find Legal Answers Service lists useful legal resources, by topic, available on the web and in print from public libraries across NSW or in the State Library of NSW.</p> | <p>www.liac.sl.nsw.gov.au</p> |
| <p>Welfare Rights Centre</p> | <p>Fact sheets about social security benefits and dealing with Centrelink (e.g. ‘Declaring your same sex relationship to Centrelink’, and ‘Prosecution of social security offences’).</p> | <p>www.welfarerights.org.au</p> |
| <p>Wirringa Baiya</p> | <p>Infosheets on a number of topics including victims compensation, sexual assault, domestic violence and AVOs.</p> | <p>www.wirringabaiya.org.au</p> |
| <p>Women’s Legal Services NSW</p> | <p>Women and Family Law Booklet, brochures about domestic violence</p> | <p>www.womenslegal.asn.au</p> |

Notes
