

YOU

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YOU & FAMILY LAW

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Who is this book for?

This book is for people in the State of Victoria who need information about legal issues when relationships break down. This includes people who are or were married, or who are or were in de facto or same sex relationships. It is also for anyone who is involved in the care and welfare of the children of these relationships.

This book provides basic information only and is not a substitute for legal advice. If you are likely to be involved in court proceedings or legal action, you should get advice from a lawyer.

The information in this booklet is accurate as of February 2002. There is a directory at the back of the book which provides contact details for organisations that can help.

What the symbols mean



Refer to the 'Getting help' section of this book on p.55. There you will find names of agencies which may be able to give you specialised help.



It is recommended that you get legal advice relevant to your particular situation



There is another Victoria Legal Aid publication available on the topic. See the back page for details on how to contact your local Victoria Legal Aid office for a copy.



Action is recommended, but is not compulsory.



A criminal penalty applies.

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INTRODUCTION

This booklet is about what to do when a relationship breaks down, and you have to make decisions about separation, divorce, children and property.

Which laws apply to my situation?

A detailed explanation of the relationship between state and federal laws cannot be provided here. Briefly, if you and your former partner have been married or if you have any issue relating to children of the relationship (whether or not you have been married), the *Family Law Act 1975* (a Federal law) will apply.

In Victoria, if you and your former partner have been in a de facto relationship or a same-sex relationship (now called collectively “domestic relationships”) of at least two years’ duration, the *Property Law Act 1958* (a State law) may apply to property matters. In other states, different laws may apply to de facto and same sex relationships.

Do I need to see a lawyer?

It is a good idea to see a lawyer practising in the area of family law before making decisions that will have a lasting effect. A family lawyer can advise you about your specific situation, which may involve complex issues, and can alert you to issues you may not have thought about. Legal advice can be especially important if there are issues about property, money or children that need to be sorted out.



Reaching agreement

It is in everyone’s interests to reach agreement about family law matters wherever possible, and this is highlighted in the *Family Law Act* and court procedures.

The various ways of resolving disputes about family law matters are known as “primary dispute resolution”. These are discussed in the next chapter.

YOU AND FAMILY LAW

PRIMARY DISPUTE RESOLUTION

What is primary dispute resolution?

The process of participating in negotiation, counselling, mediation, arbitration or conciliation (or any combination of these) is called primary dispute resolution. The aim of primary dispute resolution is to reach an agreement which best meets the needs of all the parties involved, and is likely to be kept.

A dispute involving court action:

- can take a long time
- can be expensive
- may not be decided the way you want, and
- can increase tensions between the parties.

The advantages of reaching an agreement through primary dispute resolution are:

- you make your own decisions
- you can settle disputes in your own time
- you can move forward and make a new life
- you may improve your communication with your former partner
- it is often less expensive than going to court.

There are many agencies which help with various aspects of primary dispute resolution.



Record and register agreements you make

You should always formalise agreements you reach about children and about property matters, in a way that enables you to enforce them if you need to. See pages 13 and 30. Even if you start court action, you can still use primary dispute resolution to help you settle the dispute before or during the case.



Methods of primary dispute resolution

Negotiation: Negotiation is the process of discussing issues with a former partner in order to reach agreement or satisfactory compromise.

Counselling: Counselling provides help and guidance to parties to resolve disputed issues. It can be individual, joint, or can involve other parties. It can be voluntary, or a court may order the parties to attend.

Mediation: Mediation is a meeting with a third party (“mediator”), who helps the parties to a dispute to discuss the central issues in an orderly way, and to establish the areas of agreement. The mediator does not provide advice or make decisions.

Conciliation: Conciliation is more direct than mediation. A conciliator may offer an opinion about how matters in dispute should be resolved, but does not make a decision.

Arbitration: At arbitration, an independent third party (“arbitrator”) hears what each party has to say about an issue and makes a binding decision. The rules and procedures of arbitration are less formal than in a court.

Court-ordered primary dispute resolution

If you start court action the court will order you and the other party or parties to proceedings to try primary dispute resolution in the form of court conferences early on in the case.

If the court action involves issues relating to children, the court will also order counselling, and will usually order a “family report” (see p.15).

Confidentiality of counselling and mediation

Discussions with counsellors and mediators are generally confidential.

Exceptions are made in some circumstances, for example, where:

- the court has ordered a family report (see p.15)
- one person threatens to harm the other person or child (this will be reported to the police and/or the Department of Human Services)

- a child representative (see p.19) asks to discuss the child's case with the counsellor,
- a family and child counsellor or welfare officer provides supervision of a parenting plan, acting on a court order, or
- child abuse is suspected (mandatory reporting laws require counsellors to report suspected cases of child abuse).

What if primary dispute resolution is not appropriate?

Primary dispute resolution is not right for every situation, particularly if:

- one party refuses to participate
- there has been family violence
- there is a high level of mistrust between the parties, or
- there is a severe power imbalance.

There is a specific section on family violence (see p.38). Other issues may come up which need urgent action, and in that case primary dispute resolution will not be appropriate.

SEPARATION

Simply put, separation occurs when you and your former partner stop living together in a 'marriage-like' relationship. However, separation is seldom simple, and it is likely that you will need to deal with many emotional and legal issues at this time. Although this publication is about the law, it is recommended that you seek emotional and counselling support if and when you need it.



Do I have to do anything official?

There are no forms to fill in and you have no obligation to inform any person or organisation when you separate. Your partner does not have to agree with the separation but you do need to communicate your decision clearly to him or her.

You should get legal advice about how separation may affect your rights, for example, in relation to your will, superannuation, joint bank accounts and joint debts.



Do I have to get divorced?

No. However, neither you nor your former partner can marry anyone else unless you get a divorce (see p.8).

What about my children?

It is best if you and your former partner decide together what to do about the children, for example where the children will live, how they will be financially supported and how they will maintain contact with both parents.

In making your decisions, you should look at what is in the best interests of the children. Both of you are equally responsible for all aspects of their support, care and well being unless you have formally agreed, or a court has ordered, otherwise.

What about my belongings?

If you leave the house, you should take your personal documents (bank books, cheque books, passports, marriage certificate etc). You should also take belongings you will need for yourself and the children, if they are coming with you.

However, make sure you do not put yourself in danger by doing this.

What if I want to stay in the house?

Unless there is a court order saying otherwise, both of you are entitled to stay in the house. You can be separated and still living in the same house.



This may be very unsatisfactory for both of you, and you should get legal advice about:

- what evidence you would need to prove separation under one roof, and
- how the unsatisfactory situation might be resolved.

In some circumstances, for example where one partner has been violent toward the other partner, a court may order that only one partner have use of the home. This may be a temporary measure until a final property settlement is reached.

DIVORCE

Divorce is the official ending of a marriage. The only requirement for a divorce is the 'irretrievable breakdown' of the marriage. This is proved by the husband and wife having been separated for 12 months. The court does not consider whose fault it was that the relationship broke down.

You can reunite for up to three months without re-starting the 12 month separation period.

This means that if you are separated for four months, back together for three months, then separate again for eight months, this will be considered a total of 12 months' separation. If you are back together for four months, then only the most recent eight months would be counted as separation.

You may be able to get a divorce if you and your former partner have continued living in the same house after separation, but have lived separate lives. If this applies to you, you should get legal advice.



To apply for a divorce you or your spouse must be an Australian citizen, have been living in Australia for at least 12 months before the divorce application or regard Australia as your permanent home.

How do I apply for a divorce?

You can apply for a divorce at the Family Court or at the Federal Magistrates Court. Both of the courts operate out of the same registry (except in Western Australia). Contact the court to get an application form and follow the instructions on the form. Many people do this without using a lawyer.

If you have children, you will need to satisfy the court that you have made proper arrangements for their care before your divorce can be granted.

You can apply for a divorce together (“joint application”) or on your own (“sole application”). A sole application will take longer to process because you need to allow time for your former partner to respond if he or she wants to.

There is a fee for filing a divorce application. (At the time of publication the fees were \$526 in the Family Court, and \$250 in the Federal Magistrates Court.) If you cannot afford the fee, you can apply for a fee waiver. Forms for this are available from the courts.

If you have been married for less than two years, you can only get a divorce if you and your former partner attend a counselling session or if there are special circumstances.



Do I need to go to court?

You do not have to go to court for the divorce hearing if:

- there are no children under 18 years, and
- you ask for the application to be heard in your absence, and
- your former partner does not file a response to the application, or
- it is a joint application.

How long will it take to get the divorce?

Joint applications: It will take at least 21 days from the date of filing your application before the court will hear your case.

Sole applications: If your former partner lives in Australia, it will take at least 42 days from the date of filing your application before the court will hear your case. If your former partner does not live in Australia, it will take at least 56 days from the date of filing your application before the court will hear your case.

What will happen in court?

The divorce order is granted in two stages. At the first stage, if you have met all the administrative requirements, and the court is satisfied that proper arrangements have been made for any children of the relationship, the court will grant a decree nisi.

This is a provisional order which ends the marriage. It will order the issue of a decree absolute (a divorce) to take effect one month and one day after the date the decree nisi is granted, unless within that time the court is presented with a valid reason (cause) why it should not grant the divorce. You can not re-marry until the decree becomes absolute.

In exceptional cases the court can order a shorter waiting period between the decree nisi and the decree absolute. If you need a shorter waiting period get legal advice before you make your divorce application.

A copy of the decree absolute will be sent to you by post in due course. You should arrange to keep the document in a safe place.

Planning your re-marriage

It is not wise to set your wedding date too close to the anticipated date of the decree absolute. If, for some reason, there is a hold-up with the grant of your divorce, you will not be able to go ahead with your wedding until the problem is resolved and the divorce is granted.

CHILDREN

PARENTING ISSUES

Most issues relating to parenting are dealt with under the *Family Law Act*, whether or not the parents of the child are married. The information in this chapter is also relevant for same sex couples with children.

In 1996 the Act was amended to emphasise the rights of the child and the duties and responsibilities of parents towards their children. Separation, divorce or re-marriage do not change these duties and responsibilities. The child's best interests are the main concern of the court.

Proof of parentage

Disputes about parentage, most commonly disputes about paternity, can arise in a number of circumstances, for example, in relation to payment of child support. The law relies to some extent on presumptions of parentage, which can be demonstrated in the following ways:

- production of a birth certificate or adoption certificate naming the father as the parent.
- the father provides a statutory declaration acknowledging paternity.
- the child was born while you were married or living together.
- the child was born within 44 weeks of a period of reconciliation or of your ultimate separation.
- the court has made certain findings or orders based on the father being the parent of the child, and those orders or findings have not been overturned.

Presumptions about parentage sometimes can be rebutted (proved wrong) with other evidence.

Parentage also can be established very accurately by DNA testing, which involves taking samples of bodily fluid (usually a mouth swab) from each party and from the child. The samples are then compared for common characteristics. Testing must be performed by organisations accredited under the *Family Law Act*.



The parties can volunteer to undergo DNA testing, or the court can order tests. If the court orders a test, and a party refuses to undertake the test, the court may make an order that the person is the parent.

It is important to consider all aspects of the psychological effect that a dispute about parentage can have on a child.

Custody and access orders made before 1996

If you already have court orders or agreements about children that were made before June 1996, the changes to the Act will not affect you, unless you make new agreements or get new court orders. Contact the Family Court, Victoria Legal Aid or a community legal centre for more information.

How do I make arrangements for my children?

The *Family Law Act* encourages parents and other people interested in the welfare of children, to try and agree on arrangements for children. To reach agreement, you can use primary dispute resolution, including counselling and mediation (see p.3).

If you can reach an agreement about the children that you are happy with, you do not have to do anything else, but it is a good idea to formalise the agreement as a parenting plan or as consent orders registered with the court. If you cannot agree, you can ask the court to make parenting orders.



Parenting plans

A parenting plan is a written agreement between the parents of a child (and other people, if relevant), which deals with any or all of the following:

- who the child is to live with (including shared arrangements)
- the contact each parent or other person will have with the child
- schooling
- health and medical treatment
- religious observance
- financial support of the child (subject to the *Child Support Assessment Act*) and
- any other aspect of parental responsibility.

A parenting plan deals only with matters relating to the child and does not deal with property issues.

The plan must be registered with the court if it is to be enforceable. Once registered, the parenting plan has the force of a court order.

Getting help with making and registering your parenting plan

It is a good idea to get legal advice before commencing negotiations on a parenting plan, to ensure that you cover the relevant issues.



The Family Court publishes information on how to draw up a plan, and has prepared a kit to assist parties prepare their plan. Ask at the Family Court for a copy of the parenting plan kit.

Before you can register your plan, you will need to show either that it was drawn up in consultation with a family and child counsellor, or that each party has received independent legal advice about its meaning and effect.

You do not usually have to attend court to register your plan if the other parties provide their written consent to its contents. If you submit a correctly completed written application with your plan, a registrar of the court will decide whether or not to approve the plan. You may be asked to provide more information about it. If the other parties have not provided their consent to the plan, it is likely to be referred to a court hearing.

Consent orders

Consent orders are orders made by the court reflecting an agreement the parties have reached.

Consent orders can be prepared at any time you reach agreement. Often what might start out as an application for a parenting order by one party is resolved by the parties reaching agreement and filing consent orders.

Unlike parenting plans, consent orders for parties who are or have been married can also cover property and some lump sum maintenance issues. Periodic child support payments should be dealt with in a child support agreement (see p.20). If you have been married and your agreement deals with other issues besides parenting issues, consent orders may be the appropriate choice. If you have not been married, your consent orders can only deal with parenting issues.

Parenting orders

If you are unable to reach agreement about parenting, or if negotiations are inappropriate, you can apply to the court for a parenting order. A parenting order is a court order setting out who has particular responsibilities for the child. It can cover contact, residence and any other specific issues relevant to the care of the child. The court will only make parenting orders that are in the child's best interests.

The court can make a parenting order:

- after hearing evidence and legal submissions, or
- without hearing evidence, if the parties agree on arrangements for the child.

How does the court decide what to do?

When the court decides what parenting orders to make, its main concern is the best interests of the child. The kinds of things the court will look at include:

- where the child is living at the moment and how any change would affect him or her
- the likely effect of separating the child from a parent, other sibling(s) or other significant people
- what the child wants to do (depending on the child's level of maturity and understanding)
- the need to protect the child from ill treatment or violence
- whether there is an injunction or intervention order
- how well either parent can look after the child
- the child's background and culture, including where relevant, the need to maintain a connection with the lifestyle and traditions of Aboriginal or Torres Strait Islander culture
- the contents of a family report.

Family reports

The court may ask a counsellor to prepare a family report. This report gives the court an independent view of the dispute and family relationships. It may include:

- the background to the dispute
- the current relationship between the parents
- the current relationship between the parents and the child
- the child's wishes and
- how the child sees their relationship with significant adults in their life.

In preparing the report, the counsellor may speak with the child, the parents and other significant people.

Any of the parties to the court proceedings can ask for an order for a family report to be written. Sometimes, the court will order that the child has separate representation through a child representative (see p.19).

The court cannot force a person who is not a parent (biological, adoptive or step parent) to take on responsibility for a child. (See 'Proof of parentage', p.11)

What are the types of parenting orders?

Parenting orders can include residence orders, contact orders and specific issues orders. You may have one or more of these orders depending on your situation and the needs of the child.

Residence order: A residence order covers who the child will live with. If a person other than the child's biological parent applies for a residence order, the court may ask for a report to be prepared by the court counselling service even if all parties consent to this arrangement. This is so the court can decide if the residence order is in the best interests of the child. All parties will have to go to counselling to discuss the issues.

Contact order: Contact is an important right that the child has. It is the right of the child to have contact and to continue a relationship with significant people in their lives who are not living with them. The contact order says who the child can see and when he or she can see them. A contact order will only be made if the court believes contact would be in the best interests of the child.

For example, if a parent has emotionally or physically abused the other parent or the child, contact may only be allowed on certain conditions, such as:

- the parent attending an anger management course, or
- the contact being supervised at a contact centre.

Specific issues order: A specific issues order covers the areas of parental responsibility not covered by residence and contact orders. Specific issues orders are about issues which affect the day to day or long term care, welfare and development of the child. Specific issues orders can include:

- where the child will go to school
- the child's religious upbringing
- discipline issues
- the child's medical treatment.

A specific issues order can have more or less detail, depending on the needs of the child. If no specific issues orders are made, then both parents continue to have parental responsibility for the long term care, welfare and development of the child.

Who can make a parenting plan or apply to the court for a parenting order?

The parents of the child must be parties to the agreement or order. However, the law recognises that the child has the right to regular contact with anyone who has a significant role in his or her care, welfare and development.

For that reason, other people besides the parents can apply for an order or be made a party to an agreement, including a parent's new partner, a same sex partner, grandparents, brothers, aunts, friends and godparents.

When negotiating a parenting plan, or applying for a parenting order, it is important to make sure the agreement is workable, and is in the child's best interests. For example, it would not be appropriate to agree to your child staying over every weekend if you had to travel interstate on weekends or were on call for work during this time. The court will not register a plan unless it is in the best interests of the child.

When can I apply for a parenting order?

You can apply to the court for a parenting order at any time. Applications are usually made when:

- parents cannot agree on arrangements for the child, for example, where the child will live
- the situation of the parent or the child has changed and this affects the parenting plan or existing parenting orders, for example, one parent is moving interstate and needs to change contact arrangements.

You do not have to have legal representation, but you should get legal advice before making an application to the court.



Can I change the parenting plan or parenting order?

A parenting plan can be changed by agreement, but to be able to enforce the revised plan, you need to register it with the court. A change to a parenting plan which is not agreed, or a change to a parenting order, can only be made by the court, and only after considering the issues listed on p.15.

Breaking a parenting order

The court views very seriously any failure to meet an obligation under a parenting order unless there is a reasonable explanation. If the court finds that a parent has broken a parenting order without a reasonable explanation they may be ordered to attend a parenting program, conducted by an approved counselling service.

The aim of the program is to assist participants to focus on the needs of their children and to deal with conflict constructively.

The court may also make changes to the existing order, for example, to compensate the other partner for any loss in contact time and to vary other arrangements. If the parent breaks the order more than once, or if the court believes the parent shows serious disregard for the parenting order, the court may apply more severe penalties.

At the time of publication, the penalties for each breach include community work, entry into a bond, the payment of a fine of up to \$6600, or a jail term of up to 12 months.



What is a child representative?

The child representative is a lawyer who helps the court decide on what arrangements are in the child's best interests. This could include contact and residence arrangements for your child.

The child representative forms an independent opinion on what is best for the child by:

- getting information about the child from people like teachers, doctors or counsellors
- considering all other evidence presented to the court
- talking to the child (if appropriate).

While the child's wishes are important, the opinions of the child representative may be different from those of the child.

The child representative does not have to act on any wishes expressed by the child. Any party to proceedings can request the court to appoint a child representative.



What happens if I start a new relationship?

If you start a new relationship, all orders or registered agreements about the child continue to apply as before. However, your former partner might ask the court to change these arrangements if there are new circumstances. A step parent or non-biological parent may apply for a specific issues order to allow them to take over responsibility for the short term or long term care of the child. In those circumstances the biological parents will be parties to the proceedings and can oppose any such orders being made.

Can a child's surname be changed?

Children's surnames can be changed formally only if the other parent agrees, or by a court order. If your child is over 12 years old, he or she must also agree to the name change.

CHILD SUPPORT AND MAINTENANCE

Child support and child maintenance are regular payments made by one parent to the other to help with the costs of looking after a child. There are two sets of laws that apply, depending on when you separated and when the child was born.

Child maintenance – stage 1 (child maintenance order)

The court can only make a child maintenance order if you separated before October 1, 1989 and no child of the relationship was born after that date. If there is no agreement about child maintenance, or if you are not happy with the arrangement, you can apply to the court for a child maintenance order.

The court will consider the needs of the child and financial situation of both parents before deciding how much child maintenance the parent, that the child is not living with, should pay. The court is also likely to consider various forms of statistical information setting out the costs of raising children.

Child support – stage 2 (child support)

This applies to you if you separated after 1 October 1989 or have a child of the relationship born after that date.

If you agree about child support, the agreement can be registered at the Child Support Agency. If the child lives with you and you receive a pension or benefit, Centrelink is required to approve the agreement.

If there is no agreement about how much child support should be paid, you can apply to the Child Support Agency to make an assessment. The assessment is based on the income of the payer and the number of children. When working out the assessment, the Child Support Agency must also take into account whether the paying parent has remarried, has other children for which he or she pays child support or has other biological children from a new marriage or relationship.

Who must pay child support?

Parents of a child (including step parents in some instances) have an obligation to pay child support. If your former partner denies being the parent of your child, you may need to provide evidence of parentage (see p. 11), or an explanation of why your former partner should be held liable to pay child support.

If the Child Support Agency has made an assessment of child support payable, or if it collects the child support payments, it must be notified about any changes in circumstances. Such changes could include where the child is living, if a child has turned 18 or if a child gets married or gets a job. Either parent can ask the Child Support Agency to review the amount of child support at any time, especially if their financial circumstances have changed.

If either parent is unhappy with the result of the review, an appeal can be made to the court.

Child maintenance for children over 18

If your child turns 18 before the end of their school year, you can make an application to the Child Support Agency to ensure that the payments are made until the end of the school year notwithstanding that the child has turned 18.

The Family Court can make an order for child maintenance in relation to a child who is over 18 if it is satisfied that the provision of maintenance is necessary for the child to complete his or her education or because of a mental or physical disability of the child. The court can make this order even if the child is 17 so that it takes effect when the child turns 18.

Child support problems

If you have problems relating to child support, for example making payments to, or obtaining payments from, a former partner, or disputing child support payments, you should get help.



TAKING THE CHILD

Generally speaking, unless you have your former partner's consent to take the child from the family home, it is a good idea to obtain legal advice before you do so. Any decision you make about moving the child must be based on the child's best interests, not yours.

For guidance on this issue, look at the factors a court would be required to consider in approving a parenting order (see p.15). If you remove the child without good reason, you may be ordered to return him or her home. You should not do anything that may amount to disobeying an existing court order.

Family violence

If there is actual or threatened violence against you or the child, you may need to seek police help and also to make an urgent application for an intervention order or injunction (see p.38).



Can I take my child interstate or overseas without my former partner's consent?

You should try to obtain your former partner's agreement if you want to move with your child to a place which might affect the child's ability to maintain contact with your former partner. If you want to take the child interstate or overseas and your former partner opposes the travel, you may need to get a court order to allow this.

This applies to holiday travel and permanent residence. If it can be established that the move is not in the best interests of the child the court may make orders preventing the move.

An application for court approval for re-location or holiday travel may take up to three months to be heard by the court, particularly around peak holiday times.

If any residence, contact or care orders have already been made, it is an offence, punishable by three years' jail, to move the child outside Australia without the written agreement of all parties to the order, or a further order of the court.



Locating abducted children

If your child is taken without your consent, you can apply for orders requiring the location of the child to be disclosed and / or for the child to be returned to you. The court's powers are wide – both individuals and government departments can be required to disclose what they know about the whereabouts of the child.

If the court decides it is in the child's best interests, it can order that the child be returned to you. It is important to act quickly in such a situation.

International child abduction

Australia has entered an agreement with other countries aimed at preventing the wrongful removal or retention (abduction) of the child from his or her country of habitual residence.

The agreement is called the Convention on the Civil Aspects of International Child Abduction, but is sometimes referred to as the Hague Convention. It does not define the country of habitual residence, but it is the country in which the child usually would live.

Under the agreement, the courts in the country to which a child has been abducted must order the return of the child to his or her country of habitual residence unless there are compelling reasons not to do so. The agreement does not apply to children over the age of 16 years. Not all countries have entered the agreement. Countries that have entered the agreement are called participating countries. The Commonwealth Attorney-General's office maintains a list of participating countries.

What is wrongful removal and who has rights of custody?

Removal or retention of a child is wrongful if it is in breach of the rights of custody a person (or institution) has in relation to a child, where that person has been exercising those rights, or would have been exercising them had the child not been removed or retained.

Removal or retention is not wrongful where a person with rights of custody consents to it occurring.

Rights of custody broadly means parental or other responsibility for a child, whether or not it amounts to the main responsibility. In Australia, both parents have parental responsibility, even when the child lives exclusively with one parent. Other parties may also have a recognised responsibility for a child that amounts to a right of custody.

Can I apply to have my child returned to Australia?

If your child (aged 16 years or younger) is taken to, or kept in, another participating country without your consent, and if you are prevented from exercising your rights as a parent, you can apply to the central authority for help in returning the child to Australia.

If the central authority is satisfied your claim is justified, it will try to have your child returned. A court in the participating country will consider whether the child should be returned.

How do I apply?

Your initial application goes to the Department of Human Services (Victoria). If it is satisfied that the child has been unlawfully removed to or retained overseas, it must refer the matter to the Commonwealth Attorney General's Department, which is the central authority in Australia.

If that office is satisfied, it is obliged to forward your application to the corresponding authority in the country to which the child has been taken.

Must the court order the return of my child?

The general rule is that when a child has been wrongfully removed from, or retained in, a participating country, he or she must be returned. If you are the applicant for the child's return, you must show that:

- the child is aged 16 years or younger
- you have rights of custody over the child
- you were exercising those rights (or you would have been exercising them if the child had not been removed)
- the child was habitually resident in Australia, and
- you did not consent to the child being taken or kept overseas.

The defendant to the claim may defeat it by successfully arguing that:

- more than a year has passed since you made the application for the return of the child, and he or she is now settled in the new environment
- you either did not have rights of custody or did not exercise those rights
- to return the child to the place of residence would expose the child to grave risk of physical or psychological harm or would place the child in an intolerable situation
- the child objects to being returned, and has reached an age and level of maturity which causes the court to consider his or her wishes, and
- there would be a denial of the child's fundamental human rights.

How much does all this cost?

The reasonable and proper legal costs of the overseas application must be met by the central authority in the country in which the costs were incurred, although some countries have reserved the right to only cover the costs which would be covered by that country's legal assistance scheme. You should discuss with the central authority the overseas costs for which you may be liable.



You must pay any legal costs you incur in Australia, although you may be eligible for legal assistance. (Check your eligibility before you incur the costs.) You may also apply for assistance in meeting travel and related costs if the travel is considered by the central authority to be required for the purpose of proceedings. Travel assistance is means tested.

Does the same apply if a child is abducted from another country and brought to Australia?

If the other country is a participating country, the procedures are essentially the same, except that the central authority of that country will start proceedings, which are heard in Australia.

Australian authorities would meet the reasonable costs of the applicant's application. The applicant would be responsible for the costs in the home country, but may be eligible for assistance there.

What can I do to prevent my child being taken overseas without my consent?

The steps you can take will depend on the circumstances and the time available.

If no passport has been issued, you can refuse to sign the passport application. The signatures of both parents are needed for a child's passport application. You can also complete a Travel Stop document (available from your post office) and send it to the Passport Office. This asks the Passport Office not to issue a passport.

If a passport has been issued, you can apply to the court for an order to stop your former partner taking your child overseas and to have the child's passport handed in to the court. You might also apply for a residence order, a specific issues order and a location or recovery order.

In a very urgent case you can apply for an injunction restraining the person responsible from taking the child overseas. At the same time notify police to place the child on departure watch lists, and try to locate the child.

Get legal advice to do any of these things.



PROPERTY ISSUES

PARTIES WHO ARE OR HAVE BEEN MARRIED

Who can apply for a property settlement under the *Family Law Act*?

Only parties who are or were married can apply for a property settlement under the *Family Law Act*. Different law applies to property settlements for de facto or same sex partners (domestic partners; see p.34).

The general intention of the Act is to encourage parties to reach binding arrangements which, as far as possible, do not need change. Once an agreement becomes legally binding, you can ask a court to enforce it if it is not followed.

What is a fair property settlement?

An equal distribution of assets between the two of you may be a good starting point, but it will not always be fair. There are many factors that can affect the balance of a property split, particularly if there are children's needs to consider. While compromise is sometimes necessary, this does not mean you should agree to less than your fair share of the property.

Changing your financial arrangements later may be difficult (see p.33), so it is important to get legal advice before you start negotiating an agreement, and again on the proposed arrangement before you sign it. Make sure you get legal advice from a lawyer who has not advised your former partner.



What property is included in a settlement?

A property settlement may involve:

- real estate, including the family home,
- cash,

- investments,
- insurance policies,
- shares,
- any other assets (or debts).

Property includes assets owned individually, jointly, or by a family trust or family company. If you leave the house, you do not lose your entitlement to a share of the house or other property. Although superannuation or life insurance entitlements are not strictly property, they are financial resources that are included in a property settlement.

New laws being introduced (but not in force at the time of publication) will provide parties with new options to earmark part of a superannuation fund for the benefit of their former partner as part of a property settlement.

The fund manager will be required to manage that part of the fund for that former partner. The effect of the re-allocation of funds will depend on the type of fund involved. You should check the status of these new laws before completing your financial arrangements.



Property settlement by agreement

Most couples are able to reach a fair agreement about property matters without going to court.

If you need help reaching agreement, there are counselling and mediation services that may be able to help. Counsellors and mediators do not give legal advice, but can help you to reach your own agreement that is fair to both sides.



What kind of agreement?

Your options are to:

- have an informal agreement, written or unwritten. An informal agreement is not enforceable by a court. Generally speaking, informal arrangements are not recommended, since they may be disputed later
- prepare consent orders, which are orders made by the court which reflect the terms of an agreement you have reached.

Consent orders are enforceable as any order of the court. (The Family Court has prepared a kit for you to apply for consent orders. Ask at the court for a copy of the kit)



- enter a financial agreement. For this to be enforceable, you need to meet strict requirements designed to ensure that each of you really understands all the consequences of the agreement (see p.33).

Court proceedings

If you cannot agree with your former partner, or you do not feel confident negotiating with him or her about property (even with professional assistance), you can apply to the court for property orders, which set out how property is to be divided. You should get advice from a lawyer to do this.



Part of the court process involves a conference to try to resolve differences. Reaching an agreement at conference will reduce your legal costs.

When can I apply for a property settlement under the Family Law Act?

If you are married you can apply for a property settlement at any time before you are divorced. However, once you are divorced, you must file an application for property orders within 12 months of receiving the decree absolute. In some circumstances the court may allow this time to be extended.

Case conference

If you apply to the court for a property settlement, you will have to go to a case conference before any hearing. In the case conference you, your former partner and any lawyers involved, discuss the settlement with a court registrar. The aim is to settle the property dispute by agreement, instead of the court making the decision.

How does the court make property orders?

Property orders are a balance between the contributions made during the relationship and the future needs of both people. The court will only make an order which it considers is just and equitable.

To do this, the court will ask what financial and non-financial contributions you and your former partner made during the relationship.

The court will consider, for example:

- the length of the relationship
- what you owned when you started the relationship
- direct and indirect financial contributions made by each party, such as earnings from salary or wages
- any work done to improve a home or business
- savings, gifts or inheritances
- work done in the home and caring for children
- future requirements, such as who will have daily care of the children
- whether a person is employed or can find a job
- whether there is any illness or disability which affects the person's ability to work
- whether a person has a new family to support.

The court does not normally consider who is at fault in the breakdown of the relationship.

What about spousal maintenance?

Generally, a party to a marriage will only be required to pay spousal maintenance if their former partner is unable to support himself or herself. Either partner can apply to the court for a maintenance order within 12 months of divorce.

Strict rules apply to making maintenance applications outside the 12 month period. Get legal advice before making an application.



It is a good idea to agree on spousal maintenance when you are negotiating a property settlement so that all issues are resolved together. Many people include a lump sum for spousal maintenance as part of the property settlement.



If you cannot agree on spousal maintenance, you may need to apply to the court. Generally, your entitlements to regular payments of spousal maintenance stop if you remarry.



Binding financial agreements

New laws allowing parties to enter binding financial agreements dealing with their assets before or during, during, or at the end of a marriage came into effect on December 27, 2000. Financial agreements made before marriage are often referred to as pre-nuptial agreements.

Financial agreements can cover the maintenance of either or both parties, and the way in which some or all of the assets and financial resources of either or both parties are to be dealt with in the event of a breakdown of marriage. They can also cover related or incidental matters.

There are strict requirements to meet before a financial agreement can be considered binding. It must:

- be signed by both parties;
- contain a statement to the effect that each of the parties has had independent legal advice covering specifically:
 - * how the agreement will affect the rights of that party
 - * whether or not the agreement is to that party's advantage
 - * whether it is prudent (wise) to make the agreement, and
 - * whether the agreement is fair and reasonable in the foreseeable circumstances.

The documentation must contain a certificate from each of the lawyers who provided the advice, confirming that the advice was given. It is also necessary to show that each party received a signed original of the agreement and that it has not been terminated or set aside by the court.

Changing, ending or setting aside consent orders and financial agreements

Once consent orders have been made, or a financial agreement has been entered into, it is difficult to change or end them without the other party's agreement.



One of the court's aims in approving consent orders is to ensure that they are final, thus avoiding the need for further proceedings. To set aside consent orders (except by agreement) it is necessary to prove (for example) that there has been a fraud; that the orders are proving impractical to carry out (not merely inconvenient); or that exceptional circumstances relating to the care, welfare and development of a child of the relationship have arisen.

Similar considerations apply to changing or ending financial agreements, although where the issue is a change in the circumstances relating to the care and welfare of a child, it is necessary to demonstrate only a “material” change in those circumstances.

Safe-guarding assets and property

It is important to keep tabs on all assets relevant to a property settlement until financial arrangements are completed. This can be difficult, particularly if assets are not in joint names.



In relation to real estate, it may be possible to lodge a caveat over the land. This will warn a third party dealing with the land that you have an interest in it which needs to be taken into account. This procedure will not always be possible – you need to satisfy the Registrar of Titles that you have an interest in the land which should be protected.

If you believe your former partner will dispose of, or has disposed of, assets which should form part of the joint asset “pool”, you should take action immediately. It may be possible, for example, to obtain an injunction from the court to prevent an asset being sold. If it has been sold already, it may be possible to obtain orders freezing the proceeds of the sale. Bank accounts and other cash resources may also be frozen.

The court may provide short-term protection (called interim relief) until it has heard fully from both sides and can make a more lasting decision.

DOMESTIC RELATIONSHIPS (DE FACTO & SAME SEX)

Many Victorian laws affecting family relationships have been changed recently. Earlier laws gave some protection to the property rights of parties in a de facto relationship. A de facto relationship is a relationship between a man and a woman who live together or have lived together in a ‘marriage-like’ relationship, but are not legally married.

In the family law area, a new category of relationship has been recognised, called a domestic relationship, effective from November 8, 2001.

The term de facto relationship continues to exist, but is likely to become less relevant over time. The new terms domestic partners and domestic partnerships apply to heterosexual and same sex relationships.

A domestic relationship is a relationship between two people (irrespective of gender) who are not married but who live or have lived together as a couple on a genuine domestic basis.

Not all laws that apply to married couples apply to domestic partners; for example, domestic partners cannot receive spousal maintenance under Victorian law.

Use of the Family and Federal Magistrates Courts

The Family Court and the Federal Magistrates Court can decide certain matters about children within a domestic partnership. Neither can decide property disputes for domestic partners.

What about property settlement?

Property disputes between domestic partners (both de facto and same sex partners) can be heard in the Supreme Court, County Court or Magistrates' Court. The choice of court depends mainly on the value of the property in question.

There are specific provisions relating to property division for domestic partners in Part 9 of the *Property Law Act*. Property can include anything but superannuation and retirement benefits. For Part 9 of the *Property Law Act* to apply, former partners must have lived in a domestic relationship for at least two years, unless there are exceptional circumstances (such as children being born as a result of the relationship).

The court can only make an order if it is satisfied that one of the parties lived in Victoria on the date the application was made. It is necessary to show either that the parties lived in Victoria for at least one third of the period of the relationship or that the applicant made substantial financial or non-financial contributions to the welfare of parties within the relationship.

Transition provisions

The timing of the ending of the relationship is important. Part 9 will apply to any domestic relationship ending after November 8, 2001.

In addition, some de facto partners will be able to seek a court remedy if their relationship ended in the period before November 8, 2001.



When does a domestic relationship exist?

In deciding whether there has been a domestic relationship, the court must look at all the circumstances, including, but not limited to:

- the duration of the relationship
- the nature and extent of common residence
- whether or not a sexual relationship exists
- the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties
- the ownership, use and acquisition of property
- the degree of mutual commitment to a shared life
- the care and support of children
- the reputation and public aspects of the relationship.

An application under Part 9 of the *Property Law Act* must be made within two years of separation. The court may allow more time in some circumstances. If you want to make an application outside the two-year period you will need the approval of the court.

What orders can the court make?

The court must, if practical, make orders which will break all financial ties between the parties and avoid future disputes. With that in mind, the court can order:

- a transfer of property between parties or to one or other of them
- a sale of property and distribution of proceeds
- the production of, and signing of, necessary documents to change ownership of assets
- payment of money by one party to the other in a lump sum or by instalments, and security for such payments to ensure they are made
- the appointment or removal of trustees to protect the assets, and
- generally anything required to do justice.

What if my former partner gives everything away, or hides our assets?

The court has very wide powers to deal with any actual or planned sale or gift of assets made with the intention of defeating an order of the court. The action taken will depend on what is practical in the circumstances, but can include an injunction restraining further dealing with the assets, or payment of the value of the assets as the court directs. Third parties who conspire in plans to defeat a claim may be ordered to pay the costs of the aggrieved party.

You should get legal advice as soon as you become aware of, or suspect the existence of, any plans to hide, sell or dispose of assets.



What if I can't prove a domestic relationship exists?

You may have other legal rights to money or property, for example under trusts law.



FAMILY VIOLENCE

Family violence can be both physical and non physical. The abuse may be emotional, psychological or sexual, and can affect women, men and children. Family violence can happen in both heterosexual and same sex relationships.

Family violence is a crime if it involves a physical or sexual assault or the threat of assault. If your partner is violent to you or to your children or threatens to be violent, you can inform the police and ask the police to record your complaint. The police may decide to take further action.



What can I do?

Anyone can apply to the court for an order to protect himself or herself from a violent partner. You may also apply for an order to protect your child or an order to protect both of you. You will need to show the court how you and your child have been subjected to domestic violence.

You can apply at a Victorian Magistrates' Court for an intervention order. An intervention order can order your partner not to approach you or your children or not to harass you. These orders may include other restrictions that the court thinks you need for your protection. These orders are usually the easiest and fastest to get.



You can apply to the Family Court for an injunction to help keep a threatening or violent former partner (to whom you are or have been married) away from you or the children and to stop harassment.

If you are not married but need an injunction to protect your children, you can also apply. Injunctions are usually slower and more expensive than applying for an intervention order in the Magistrates' Court.

If your former partner breaks a court order about domestic violence, criminal penalties apply.



Urgent protection

If you need urgent protection, you can apply to the court for a temporary (interim) order. The court will only make an order if it is justified in the circumstances.

The court may order that the police arrest the violent person.

The police can help

The police can apply for an intervention order on your behalf. Do not be afraid to call the police and ask for protection for you or your children. Once you have an intervention order, keep a copy handy in case you need to enforce it.

Other help and support

The Domestic Violence and Incest Resource Centre can provide confidential support, information and referrals for people who have experienced family violence.



For help with legal action against a violent person, call your nearest community legal centre or Legal Aid office.

If you are forced to leave home and have nowhere to go, you may be able to find accommodation at a refuge or other emergency service.



THE COURTS

The *Family Law Act* gives power to the Family Court of Australia, the Federal Magistrates Court and local Magistrates' Courts in each state and territory. The choice of court depends on the nature of the issues involved and you also should weigh up the differences in the costs of proceedings. Filing fees, where they apply, are higher in the Family Court than elsewhere.

If you will be representing yourself at court at any stage, see p.49.



Family Court of Australia

The *Family Law Act* gives the Family Court power to deal with divorce, property, maintenance and issues such as what contact and involvement each parent will have with the children, and with whom the children will live.

The Act emphasises the obligations of parents and the rights of children. This means that the law in Australia is concerned not with the rights of parents to have contact with their children, but with the rights of children to have contact with both of their parents.

The Family Court focuses on:

- achieving results that are in the best interest of children
- encouraging people to come to their own agreements.

Aboriginal and Torres Strait Islander culture: The Family Court specifically recognises the importance of Aboriginal and Torres Strait Islander culture. This means the court hears evidence from people who have a good understanding of the culture and the effect family law orders would have on the family. This evidence may be given by elders or specialist workers in the Aboriginal and Torres Strait Islander community.

How your case is likely to run

Case conference: When an application is lodged with the court, the court usually schedules a case conference. In most cases, this will involve you, your former partner, your lawyers if either of you has retained them, and court staff. In some cases, a conference may not be possible, for example, if your former partner is in prison or overseas, or if there is a serious threat of violence. If there has been a case conference in the last six months, or if the court cannot schedule a date within its own guidelines, then no conference will be scheduled.

The case conference is usually preceded by a compulsory information session to help you understand the court processes and the issues you are facing. They include general information on:

- family law matters
- court procedures
- options for resolving disputes
- services available to separating families.

You can attend an information session even if you haven't started court proceedings. The sessions are free, informal and off the record. Contact the court for details.

The case conference itself usually starts straight after the information session. The convenor will be either a deputy registrar of the court (for financial and property matters) or a court counsellor (if there are children's issues). If there are both types of issues, then a deputy registrar and a counsellor may attend. The convenor will find out from each of you what the issues in dispute are, and try to help you resolve those issues.

The convenor will not give either of you legal advice. If you are not represented by a lawyer, it would be a good idea to get legal advice before you go.



At the end of the case conference, the convenor will summarise the outcome of discussions for the court record, and each of you will be given a copy.

Following the case conference, on the same day, there will be a directions hearing. If you have reached agreement during the day, you will be able to obtain binding orders reflecting your agreement straight away. If you have not reached agreement, a deputy registrar of the court will set down a date for a trial notice listing. An interim hearing before a registrar may be ordered if the matter is urgent.

Trial notice listing: At the hearing for the trial notice listing a list of tasks (orders) will be issued. These will be tasks either or both of you will need to carry out to prepare for your case, and the due date for completing each task will be shown. You should follow these orders accurately and on time.

The last task on the list is to file a compliance certificate, stating that your case is ready to proceed. If you or your former partner do not comply with the tasks on your list, or if you do not file a compliance certificate your case may be placed in the Not Ready List. From here, your case may be dismissed by the court, or costs may be ordered against the defaulting party (or their lawyer if appropriate).

If the case is in the Not Ready List, the parties will need to take action to reinstate the case in the active list.

Pre-trial conference: Assuming the tasks in the trial notice have been completed, the next event is likely to be a pre-trial conference to confirm that you and your former partner are ready to go to trial and to set the trial date. If the case is not ready, it may be adjourned to a directions hearing or placed in the Not Ready List. If either party is in default, costs may be awarded against that party.

Trial: The final event will be the trial, unless you have agreed to settle beforehand. At the trial, you will need to be fully prepared to conduct your case. If you are calling witnesses you should consider whether a subpoena is advisable to ensure that they come to court and/or bring the documents you have requested.

The subpoena must be served (formally delivered) to the witness, at least seven days before the date they are required to attend. You must therefore apply to the court for the subpoena in enough time to ensure that you can serve it on time.

You should allow for the possibility that the witness may not be able to be served immediately. If your witness is cooperative you may be able to arrange a time and place for him or her to be served.

The time between your case conference and your trial will depend on the type, complexity and urgency of the matter. It could be between six and 18 months.

Refer to the Family Court web site for detailed information on case management and other topics.



Federal Magistrates Court of Australia

The Federal Magistrates Court of Australia is known as the Federal Magistrates Court when it sits as a court, and the Federal Magistrates Service at all other times. In this publication the term Federal Magistrates Court is used to minimise confusion. It can deal with most of the same family law issues as the Family Court.

It cannot deal with adoption, property disputes over \$700,000.00 (unless the parties agree) or matters to do with the validity of, or nullity of, a marriage.

The Federal Magistrates Court does not accept parenting plans and will only accept consent orders if they are filed as part of court proceedings.

The procedures and rules of the Federal Magistrates Court are designed to be more streamlined and flexible and to make proceedings less expensive. As with the Family Court, there is strong emphasis on other forms of dispute resolution, but a dispute not resolved by other means can be heard in the Federal Magistrates Court.

How your case is likely to run

Generally, the matters heard in the Federal Magistrates Court will be less complex, and they are expected to be finally decided within six months. There are fewer steps between the first and last hearing.

Pre-court mediation: If the application is a dispute relating to children, the court will order the parties to attend a pre-court mediation. If you are the applicant, you will be responsible for sending the notice of mediation to the respondent.

First court hearing: At the first hearing each party (or his or her lawyer) will outline the case to the court. The court will make orders (directions) then about how the case will proceed. It may also make other temporary (interim) orders to deal with matters until the final hearing. If appropriate, the court will refer parties with property disputes to a conciliation conference, and parties with disputes about children to a primary resolution service. The court can also make final orders. If the matter is not resolved at the first hearing, a final hearing date will be set.

Final court hearing: At the final court hearing your case must be ready to run. As with the Family Court, if you are running your own case, you will need to have your documents properly prepared and filed. You will also need to plan for the subpoenaing of witnesses if applicable (see p.42).

Magistrates' Court of Victoria

The Magistrates' Court of Victoria is the most accessible, with many locations. It can deal with a similar range of matters related to children, property and intervention orders as the Federal Magistrates Court, except its powers are further confined by legislation and by developed court procedures. Most matters are dealt with by way of consent between the parties, with disputed matters being referred to the Family Court.

In many instances, and particularly cases in rural areas, the Magistrates' Court may be the most convenient venue in which to commence proceedings, such as location or recovery orders.

Get legal advice about other matters you can start in the Magistrates' Court.



The court cannot make an order about matrimonial property where the value of that property exceeds \$20,000, unless both parties agree to allow the court to hear the case.

The Magistrates' Court of Victoria also has power under state laws to act in domestic violence situations.

How your case is likely to run

Family violence cases can be heard *ex parte* (with or without the other party present) immediately or within seven days. In the family law area, urgent matters can be heard immediately, but otherwise the timeframe mention to prehearing is two weeks and from prehearing to hearing is eight weeks.

CONSULTING A LAWYER

What can a lawyer do for me?

A lawyer can help you to:

- understand the legal process, so that you make informed decisions
- formalise any agreement you make
- understand your options if negotiations break down, and to
- give you ongoing advice about the law as it affects you.

If going to court or urgent action is required, a lawyer can:

- prepare and file documents with the court
- negotiate with your former partner, or his or her lawyer, and
- represent you in court, if necessary.

In some circumstances, you will need to show that a lawyer has explained your rights and responsibilities to you before you can register some documents at court.

What should I take with me?

Take a list of questions that you would like to ask the lawyer. At the appointment, you can write down the answers. Take all documents related to the issue including:

- any court documents or orders
- your marriage certificate
- any financial documents
- important letters and
- any other papers you think are important.

A list of key dates will also be useful, such as the date of your marriage, the date of separation, birth dates of children and dates of any major domestic incidents if applicable. Preparing for a meeting with your lawyer may reduce your legal costs in the future.

Interpreter

If you need an interpreter ask your lawyer to arrange for one to be in meetings you have with him or her.

What questions should I ask the lawyer?

Ask the lawyer to:

- explain anything you do not understand
- explain any affidavits that have been prepared for you (An affidavit is your evidence in writing and must be truthful. Make sure you understand the affidavit before you sign it, and do not sign an affidavit if the contents are not accurate.)
- tell you about all communication he or she has with your former partner or his or her lawyer.

What will it cost?

Lawyers must tell their clients what the likely legal costs are at the start and at stages during the case. The family law costs scale sets the amount a lawyer can charge. If the lawyer wants to charge you more, you must agree in writing to pay a higher fee. Always make sure you ask the lawyer:

- if the first appointment is free or discounted, when you make the appointment
- what you will have to pay and when you would have to pay.

The lawyer may offer you a 'cost agreement'. This is a letter from your lawyer setting out the expected cost of your case. The cost agreement will include disbursements. These are expenses your lawyer has to pay for you, such as court filing fees, barristers' fees, title office fees or stamp duty. Always ask the lawyer:

- to explain any cost agreement offered to you
- to give you a pamphlet which explains the rules about legal costs and about applying for legal aid. (You can also ask if the lawyer will help you apply for legal aid.)

You should take the cost agreement away to read carefully. You may want to get legal advice before signing the agreement.



What if I am not happy with my lawyer?

If you are not happy with your lawyer, talk to them about the problem. This may resolve the issue.

You can change your lawyer at any time, but this may involve extra costs. You may also complain about your lawyer to the Victorian Lawyers Registered Professional Association (RPA) or the Legal Ombudsman.

What if I think the bill is too high?

If you think a bill for court costs in proceedings is too high, you can ask the court to check ('tax') the bill. You should do this within 28 days of receiving the account. Contact the relevant court for more information. If the bill does not relate to court proceedings you can ask the Victoria Lawyers RPA to investigate.

Important things to remember

Make sure that your lawyer has not advised your former partner at any time. If the lawyer has advised your former partner, get a different lawyer. Remember that your lawyer can only act on the basis of your instructions. You can accept or reject your lawyer's advice. If you feel unhappy with your lawyer's advice you can see another lawyer.

What if I can't afford a lawyer?

Victoria Legal Aid and community legal centres provide some free legal advice. As well, some private lawyers offer a first appointment free or at a low cost. The Victorian Lawyer's RPA can refer you to such a lawyer. In some circumstances you may be entitled to legal assistance (see next chapter).



Self-representation

If you are not eligible for legal assistance and you cannot afford to retain a lawyer to work for you, you may need to consider representing yourself. This can seem very daunting.

It is important to realise that your case, or story, must be presented to the court in writing, in the form of applications and affidavits. These must be prepared properly and this will require some skill and knowledge.

The court is limited in the assistance it can provide you along the way.

In addition to preparing your own case, you will need to anticipate what the opposing case will be.

This means being familiar with the contents of documents submitted by either side, and knowing how to challenge material you believe is incorrect. You also need to be familiar with the rules relating to examination and cross examination of witnesses.

The Family Court is developing a self-represented litigants program in recognition of the fact that many people come to court without a lawyer. It is also trying to simplify its processes.

Self-Represented Litigants Workshops

If you intend to represent yourself at any stage of the court proceedings, and especially the final court hearing, it is strongly recommended that you book a place in the Self-Represented Litigants Workshops run by Victoria Legal Aid as early as possible in your case. These workshops are free. Contact the Community Legal Education Section on 9269 0223 for more details and bookings.

LEGAL AID

If you have a legal problem, you can get free advice from Victoria Legal Aid or a community legal centre. If you need a lawyer but cannot afford to pay, you may be eligible for financial assistance (“legal aid”).



Will I get legal aid?

Getting legal aid will depend on your financial position and why you want legal assistance. A lot will depend on whether you are likely to get the result you want. Generally you must have tried to sort out the problem yourself before you get legal aid.

Usually legal aid is not given for divorce, especially if there is no dispute or the application is simple and you can do it yourself. Legal aid may be granted when there are residence and contact issues with children, and your case is assessed as having "merit" – that is, that there is a reasonable chance you will win.

How can I get legal aid?

You can apply for legal aid by filling in an application form. Application forms are available from any Victoria Legal Aid office, community legal centres and some solicitors' offices. Applications come with a guide containing important information for applicants. You do not have to get a lawyer to fill out the form but it will help. Lawyers are not allowed to charge you if they help you fill out an application form.

What if I need legal aid urgently?

Your lawyer can fax an application to Victoria Legal Aid and ask for an urgent grant of assistance. Urgent cases include family law cases involving violence or child abduction. Faxed applications are usually processed on the same day they are received.

What if my application for legal aid is not successful?

If you are not happy with Victoria Legal Aid's decision about your application for legal assistance, you can ask for the decision to be reconsidered. This request can be made by calling Victoria Legal Aid within 14 days of the decision.

If you are not happy with the outcome of the reconsideration, you can write to Victoria Legal Aid asking for the decision to be reviewed by an independent reviewer. Requests should be made within 21 days of receiving the reconsidered decision.

What does legal aid cost?

Legal aid is not free. If you are granted legal assistance you may be asked to pay some or all of your legal costs before legal aid starts or at the end of your court case. The amount depends on your financial position.

If you own a house but have no cash, you may have to pay legal aid when you sell your house or when your financial position changes, even if this is many years later.

How much legal aid will I get?

There are limits (called 'cost ceilings' or 'caps') on the total amount payable in any one grant of assistance. At the time of publication, the Family Law cost ceiling is \$10,000 per person for adult parties and \$15,000 for the child representative if one is appointed.

In exceptional circumstances the managing director may exercise his discretion to approve further funding above the ceiling. A limit of funding will be set which is appropriate to the case.

What if I am not happy with my lawyer?

If you are not happy with your legal aid lawyer, talk to them about the problem. This may resolve the issue. If you are still unhappy, you can change your legal aid lawyer once. You will have to pay any costs caused by this change and it may delay your case.

You may also complain about your lawyer to Victoria Legal Aid, the Victorian Lawyers RPA or the Legal Ombudsman.

More information

You can get more information about Victoria Legal Aid services and applying for legal aid by:

- contacting the Multilingual Telephone Information Service on 9269 0120 or 1800 677 402 (This service is provided in English and 11 community languages)
- contacting one of Victoria Legal Aid's regional offices listed on the back cover of this booklet or
- visiting the Victoria Legal Aid web site at the following address – <http://www.legalaid.vic.gov.au>

IF YOU NEED AN INTERPRETER

In court

The court can arrange interpreters to help people who do not understand or speak English. Interpreters can help with getting legal advice, counselling, mediation and appearing in court to give evidence.

If you need an interpreter you should contact the court at least one week before the hearing.

Lawyers

Before you see a lawyer, tell them if you need an interpreter. There will be a cost for this service. Interpreters are free for court proceedings and Victoria Legal Aid provides interpreters free of charge for advice at their offices and when you are receiving legal aid.

Other help

Migrant Resource Centres can help people from non-English speaking backgrounds with family law issues.



FURTHER READING

- The Law Handbook – summarises different areas of law. Contact the Fitzroy Legal Service to purchase this handbook or look for it in your local library.
- The Family Court Book – published by the Family Court of Australia 1999 – explains court procedures. Contact the Family Court to purchase this book.
- Family Court Practice Manual – 4th Edition – Peter Szabo – published by Leo Cussen Institute may be consulted but not borrowed from the Victoria Legal Aid library (see below) or view online at: www.netspace.net.au/~szabo/

Order copies of these Victoria Legal Aid publications by calling 9269 0223:

- Child Representative information sheet
- Intervention Order booklets for applicants and respondents
- Child Support Legal Service pamphlet
- Paternity Testing pamphlet
- Child Bearing Expenses pamphlet
- Child Support Legal Service booklet – A guide for carer parents

Victoria Legal Aid's library staff are able to help you research family law issues. The library is open 9.00am to 5.00pm Monday to Friday and is at 350 Queen Street, Melbourne.

Victoria Legal Aid has a kit for people who are representing themselves in the Family Court. If you would like more information about ordering the kit, call 9269 0223.

Web sites to look at

Victoria Legal Aid: <http://www.legalaid.vic.gov.au>

Family Law on Line: <http://www.familylaw.gov.au>

Child Support Agency: <http://www.csa.gov.au>

Family Court: <http://www.familycourt.gov.au>

Federal Magistrates Court: <http://www.fms.gov.au>

Attorney General's Department: child abduction information
<http://www.ag.gov.au/childabduction/index.html>

GETTING HELP

Child Support Agency

<http://www.csa.gov.au>

Tel: 131 272 (all centres)

Bendigo: Cnr Lyttleton Terrace & St. Andrews Avenue 3350

Box Hill: 990 Whitehorse Road (PO Box 9815) 3128

Dandenong: 14 Mason Street (PO Box 9815) 3175

Frankston: Cnr Young and Davey Streets 3199

Geelong: 92-100 Brougham Street (PO Box 9815) 3220

Moonee Ponds: 6 Gladstone Street (PO Box 9815) 3039

Morwell: Cnr Elgin and Chapel Streets 3840

Courts

FAMILY COURT OF AUSTRALIA

<http://www.familycourt.gov.au>

Melbourne Commonwealth Law Courts, 305 William St 3000

Hours: 9.00am-4.00pm

Tel: Registry: 8600 3777

Mediation 8600 3888

Albury 463 Kiewa St. 2640

Hours: 9am-12.30pm / 1.30-4.30pm

Tel: (02) 6021 8944

Geelong 200 Malop St. Geelong, 3220

Tel: 8600 3777 (Melb.)

Dandenong 53-55 Robinson St Dandenong, Vic 3175

Hours: 9.30am-4.00pm

Tel: Registry: 9767 6200

Mediation 9767 6280

FEDERAL MAGISTRATES COURT

<http://www.fms.gov.au>

Melbourne

Commonwealth Law Courts, 305 William St. 3000

Tel: Assistance: 1300 367 110

Switchboard: 8600 4450

MAGISTRATES' COURTS OF VICTORIA<http://www.magistratescourt.vic.gov.au>

Melbourne 233 William St. Melbourne 3000

Tel: 9628-7777

Metropolitan

Broadmeadows: Cnr Dimboola Road & Pearcedale Parade 3047

Tel: 9309 1555

Dandenong: 35 Pultney Street 3175**Tel: 9767 1300**

Frankston: Fletcher Road (PO Box 316) 3199

Tel: 9784 5777

Heidelberg: Jika Street (PO Box 105) 3084**Tel: 9458 2422**

Lilydale: Castella Street (PO Box 254) 3140

Tel: 9735 1693

Melton: Western Highway (PO Box 11) 3337**Tel: 9743 3178**

Moonee Ponds: Kellaway Avenue (PO Box 176) 3039

Tel: 9370 7111

Preston: Cnr Roseberry Avenue & Kelvin Grove 3072**Tel: 9470 2768**

Sunshine: 10 Foundry Road (PO Box 435) 3020

Tel: 9300 6200

Werribee: Salisbury Street (PO Box 196) 3030**Tel: 9741 4288****Country Victoria**

Ararat: Cnr Barkly & Ignor Streets (PO Box 86) 3377

Tel: 53521081

Bacchus Marsh: Main Street (PO Box 227) 3340**Tel: 5367 2953**

Bairnsdale: Nicholson Street (PO Box 367) 3875

Tel: 5153 1000

Ballarat: Camp Street (PO Box 604) 3350**Tel: 5336 6200**

Benalla: Bridge Street (PO Box 258) 3672

Tel: 5762 1433

Bendigo: 71 Pall Mall (PO Box 930) 3550**Tel: 5443 1122**

Castlemaine: Lyttleton Street (PO Box 92) 3450

Tel: 5472 1081

Cobram: Cnr Punt Road & High Street 3641**Tel: 5872 2639**

Colac: Queen Street (PO Box 200) 3250

Tel: 5231 5455

Corryong: Jardines Street (PO Box 50 Wodonga, 3690)**Tel: 6024 2276**

Dromana: Codrington Street (PO Box 105) 3936

Tel: 5987 2606

Echuca: Heygarth Street (PO Box 76) 3625**Tel: 5482 1006**

Geelong: Railway Terrace (PO Box 428) 3220

Tel: 5225 3333

Hamilton: Martin Street (PO Box 422) 3300	Tel: 5572 2288
Hopetoun: 75 Lascelles Street 3396 (PO Box 111, Horsham 3400)	
Horsham: 20 Roberts Ave (PO Box 111) 3400	Tel: 5362 4444
Kerang: Victoria Street (PO Box 77) 3579	Tel: 5452 1050
Korumburra: Bridge Street (PO Box 211) 3950	Tel: 5655 1766
Kyneton: Hutton Street (PO Box 20) 3444	Tel: 5422 1832
Lakes Entrance: Shire Offices, Palmer Road 3909 (PO Box 367, Bairnsdale 3875)	Tel: 5155 3100 Non-court Days 5153 1000
Mansfield: Cnr High & Highett Streets (PO Box 105) 3722	Tel: 5775 2672
Maryborough: Claredon Street (PO Box 45) 3466	Tel: 5461 1046
Mildura: Deakin Avenue (PO Box 968) 3500	Tel: 5023 0519
Moe: Lloyd Street (PO Box 87) 3825	Tel: 5127 4990
Myrtleford: Myrtle Street (PO Box 633) 3737	Tel: 5752 1868
Nhill: 110 MacPherson Street (PO Box 8)	Tel: 5391 1207
Omeo: Main Street 3898 (PO Box 367 Bairnsdale 3875)	Tel: 5154 1328
Orbost: Wolsley Street (PO Box 367 Bairnsdale 3875) 3888	Tel: 5154 1328
Ouyen: Oke Street 3490 (PO Box 5014 Mildura 3500)	Tel: 5092 1463
Portland: 67 Cliff Street (PO Box 374) 3305	Tel: 5523 1321
Robinvale: George Street (PO Box 968, Mildura 3500) 3549	Tel: 5026 4567
Sale: Foster Street (Princes Highway) (PO Box 351) 3850	Tel: 5144 2888
Seymour: Tallarook Street (PO Box 235) 3660	Tel: 5792 1045
Shepparton: High Street (PO Box 607) 3630	Tel: 5821 4633
St Arnaud: Napier Street 3478 (PO Box 45 Maryborough 3465)	Tel: 5495 1093
Stawell: Patrick Street (PO Box 179) 3380	Tel 5358 1087
Swan Hill: Curlewis Street (PO Box 512) 3585	Tel: 5032 1352
Wangaratta: Faithful Street (PO Box 504) 3677	Tel: 5721 5066
Warrnambool: Cnr Timor & Gilles Streets (PO Box 244) 3280	Tel: 5562 2444
Wodonga: Elgin Street (Hume Highway) (PO Box 50) 3960	Tel: 6024 2276
Wonthaggi: Watt Street (PO Box 104) 3995	Tel: 5672 1071

Community legal centres

Albury Wodonga Community Legal Service

29 Stanley Street, Wodonga 3690

Tel: (02) 6056 8210

Brimbank Community Legal Centre

822 Ballarat Road, Deer Park 3023

Tel: 9363 1811

Broadmeadows Community Legal Service

180 Widford Sreet, Broadmeadows 3047

Tel: 9302 3911

Casey Cardinia Community Legal Service Inc

42 Claredale Road, Dandenong 3175

Tel: 9793 1993

Central Highlands Community Legal Centre

Ludbrook House, 115 Lydiard Street North, Ballarat 3350

Tel: 5331 5999

Coburg/Brunswick Community Legal Centre & Financial Counselling Centre

78 Bell Street, Coburg

Tel: 9350 4555

Darebin Community Legal Centre

80 High Street, Northcote 3070

Tel: 9489 6321

Eastern Community Legal Centre Inc.

20c Blackburn Road, Blackburn 3130

Tel: 9877 5777

Domestic Violence & Incest Resource Centre

292 Wellington Street, Collingwood 3066

Tel: 9486 9866

Essendon Community Legal Centre

13a Wingate Avenue, Ascot Vale 3032

Tel: 9376 7929

Fitzroy Legal Service

124 Johnston Street, Fitzroy 3065

Tel: 9419 3744

Flemington & Kensington Community Legal Centre

40 Bellair Street, Kensington 3031

Tel: 9376 4355

Footscray Community Legal Centre

220 Nicholson Street, Footscray 3011

Tel: 9689 8444

Geelong Community Legal Service

257 Moorabool Street, Geelong 3220

Tel: 5221 4744

Gippsland Community Legal Service

53-55 Buckley Street, Morwell 3840

Tel: 5133 9998

Monash Oakleigh Legal Service

60 Beddoe Avenue, Clayton North 3168

Tel: 9905 4336

Murray Mallee Community Legal Service

122 Ninth Street, Mildura 3502

Tel: 5023 5966

North Melbourne Legal Service

1st Floor, 504 Victoria Street, North Melbourne 3051

Tel: 9328 1885

Peninsula Community Legal Centre

Suite 2-4, 431 Nepean Highway, Frankston 3199

Tel: 9783 3600
1800 064 784**Peninsula Community Legal Centre (Bentleigh Branch)**

82 Brady Road, Bentleigh East 3165

Tel: 9570 8455

Southport Community Legal Service

341 Coventry Street, South Melbourne 3205

Tel: 9690 9144

Springvale Monash Legal Service

5 Osborne Avenue, Springvale 3171

Tel: 9562 3144

St Kilda Legal Service Coop Ltd

161 Chapel Street, St Kilda 3182

Tel: 9534 0777

The Legal Centre

135 Kepler Street, Warrnambool 3280

Tel: 1300 361 680

Women's only service: 1800 672 473

Victorian Aboriginal Legal Service

6 Alexandra Parade, Fitzroy 3065

Tel: 9419 3888

Villamanta Legal Service (for disability related legal issues)

6 Villamanta Street, Geelong West 3218

country callers: 1800 014 111

TTY: 1800 104 333

Tel: 5229 2925

Werribee Legal Service, Old Shire Building (rear)

Corner Duncans Road & Watton Street, Werribee 3030

Tel: 9741 0198

West Heidelberg Legal Service

Corner Catalina Street & Alamein Road, West Heidelberg 3081

Tel: 9458 3777

Western Suburbs Legal Service

30 Hall Street, Newport 3015

Tel: 9391 2244

Women's Legal Service (VIC)

3rd Floor, 43 Hardware Lane, Melbourne 3000

Tel: 9642 0877

1800 133 302

TTY 9642 0334

Financial counselling services

Financial and Consumer Rights Council

13/227 Collins Street Melbourne 3000

Tel: 9663 2000
1800 134 139

Contact centres

Deer Park Brimbank Community Centre

822 Ballarat Road, 3023

Tel: 9363 1811

Frankston Gordon Homes Children Contact Service

36 Beach Street, 3199

Tel: 0419 146 528

Mentone Gordon Homes Children Contact Service

1 Remo Street 3194

Tel: 9584 6777

Mildura

Mallee Family Care 122 Ninth Street, 3502

Tel: 5023 5966

Morwell: Boyd House Children's Contact Centre

PO Box 959 3840

Tel: 5133 6855

Narre Warren Windemere Child and Family Services

48 Webb Street, 3805

Tel: 9705 2144

Counselling and mediation services

Centacare Catholic Family Services www.centacare.com.au

Melbourne

Tel: 9287 5555

Dandenong

Tel: 9793 2200

Ballarat

Tel: 5337 8999

Bendigo

Tel: 5443 9577

Geelong

Tel: 5221 7055

Gippsland

Tel: 5622 1888

Family Court Mediation Services (if proceedings issued)

Melbourne

Tel: 8600 3888

Dandenong

Tel: 9767 6280

Life Works www.lifeworks.com.au

Bayswater, Brighton, Broadmeadows, Camberwell, Frankston

Geelong, Lilydale, Moonee Ponds, Preston, Sunbury

Tel: 9654 7360

Wangaratta

Tel: 5721 5700

Werribee

Tel: 9974 3200

Albury

Tel: (02) 6041 3247

Family mediation centres

<http://www.mediation.com.au>

Carlton	Tel: 9650 0048
Moorabbin (Head Office)	Tel: 9555 9300
Narre Warren	Tel: 9705 6277
Ringwood	Tel: 9876 0677

Relationships Australia <http://www.relationships.com.au>

Ballarat	Tel: 5331 1558
Croydon	Tel: 9725 9964
Greensborough	Tel: 9432 3033
Kew	Tel: 9261 8700
Narre Warren	Tel: 9704 7788
Shepparton	Tel: 5821 1846
Sunshine	Tel: 9364 9033
Traralgon	Tel: 5174 1100
Windsor	Tel: 9855 0416

Emergency accommodation

Women's Domestic Violence Crisis Service

Tel: 9329 8433
freecall: 1800 015 188

There may be other emergency accommodation services in your area. Ask at your local regional housing council, community health centre, local council or community information centre.

Family violence

Domestic Violence and Incest Resource Centre

Tel: 9486 9866
TTY 9417 1255

Salvation Army Crisis Centre

Tel: 9525 4100
(country callers) 1800 627 727

Women's Domestic Violence Crisis Service

Tel: 1800 015 188

You can reverse charges for this phone call by first telephoning the operator on 0176 from a public phone, or 011 from a private one. This is a 24-hour service for women who need to leave home.

Immigrant Women's Domestic Violence Service

Tel: 9898 3145

Men's Referral Service (12pm – 9 pm)

Tel: 1800 065 973

Interpreter services

Someone who does not understand or speak English fluently may need an interpreter when speaking to a lawyer or counsellor.

Telephone Interpreter Service

Tel: 131 450

(This is a government service which may provide an interpreter for you.)

Victorian Interpreting and Translating Service

Tel: 9280 1955

(For legal action, courts, tribunals or police. Bookings need to be made by state or local government agencies.)

Health Interpreter Service

Tel: 9370 1222

Centrelink Multilingual Service

Tel: 131 202

Victoria Legal Aid will provide an interpreter free of charge when you are speaking to one of their lawyers (see back cover for addresses).

Lawyers

Law Institute of Victoria Legal Referral Service

Tel: 9607 9550

(The service may be able to help you find a lawyer who specialises in family law or one who speaks your language.)

Victoria Legal Aid (see back cover for addresses)

Migrant resource centres

Altona North: 78-82 Second Avenue 3025

Tel: 9391 3355

Dandenong: Level 1, 314 Thomas Street 3175

Tel: 9706 8933

East Bentleigh: 92 Bignell Road (North Wing) 3165

Tel: 9576 4038

Footscray: Level 2, 289 Barkly Street 3011

Tel: 9689 2888

Geelong West: 153 Pakington Street 3218

Tel: 5221 6044

Glenroy: 175 Glenroy Road 3046

Tel: 9306 5611

Hoppers Crossing: 80 Lonsdale Circuit 3029

Tel: 9748 3066

Morwell: 100-102 Buckley Street 3840

Tel: 5133 7072

Oakleigh: 17 Chester Street 3166

Tel: 9563 4130

Preston: 251 High Street 3072

Tel: 9484 7944

St Albans: 27 Alfrieda Street 3021

Tel: 9367 6044

Windsor: 40 Grattan Street 3181

Tel: 9510 5877

VICTORIA LEGAL AID OFFICES

Melbourne

350 Queen Street ☎ 9269 0234

Bairnsdale

101A Main Street ☎ 5153 1975

Bendigo

424 Hargreaves Street ☎ 5441 1155

Broadmeadows

1100 Pascoe Vale Road ☎ 9302 2388

Dandenong

9-11 Pultney Street ☎ 9791 5522

Frankston

Cnr O'Grady Ave &
Dandenong Road ☎ 9784 5222

Geelong

1st Floor, Busport
48 Brougham Street ☎ 5229 2211

Morwell

Cnr Chapel &
George Streets ☎ 5134 8055

Preston

42 Mary Street ☎ 9478 8844

Ringwood

23 Ringwood Street ☎ 9879 5500

Shepparton

36-42 High Street ☎ 5823 6200

Sunshine

1/474 Ballarat Road ☎ 9311 8611

Website

www.legalaid.vic.gov.au