

# What happens when your relationship ends?

This brochure assists  
Aboriginal families work out  
what's best for the kids



## What is family law?

Most family law matters in Australia are covered by the *Family Law Act*.

It deals with things like divorce, your kids and your property.

The *Family Law Act* will cover your differences about your kids and/or property whether married or not.

You can settle your family law issue by counselling and mediation. This must happen first, unless your case is urgent or involves family violence.

If there is no agreement, the Court will decide for you.

There are three courts that can deal with family law matters:

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





## Your kids

We have just separated and disagree about arrangements for the kids. What should we do?

### Try reaching an agreement

The law says you must make a genuine effort to reach an agreement with your ex through mediation, unless:

- your case is urgent;
- it involves family violence; or
- it is not practical because of reasons like distance or serious illness.

You should get legal advice if you think this applies to you.

You need to show you have done this before you can go to court about your kids.


Mediation (also called family dispute resolution) is a very good way to resolve your differences because it:

- is faster than going to court;
- costs less; and
- may be less stressful.

It lets parents, grandparents and relatives make their own decisions about the kids.

There are many services that help with mediation including Legal Aid NSW, the Family Relationship Advice Line and the Family Relationship Centres which help separating families reach agreements. See page 15 for contact details.

Legal Aid NSW can help you reach an agreement if at least one person has a grant of legal aid. Our Family Dispute Resolution Service is available to separated parents, grandparents and other people who are important in the lives of the kids.



Aboriginal family mediators work with Aboriginal families to reach an agreement that both parties are happy with – an agreement that is best for the kids.

### **If talking doesn't work, then what?**

The Court will decide what's best for your kids and make parenting orders saying what should happen. Family Courts make decisions “in the child's or children's best interests”. The Courts look at many things like whether it's good for kids see both parents or if they need to be kept safe from any harm, neglect or family violence. Courts also listen to a kid's view and look at a kid's relationship to any brothers or sisters and grandparents.


The parenting order that the Court makes will decide things like:

- Who kids will live with;
- How much time kids will spend with a parent or other important people;
- How parenting (“parental responsibility”) will be shared; and
- How parents will talk to each other about their kids.

In family law Aboriginal children have a right to enjoy their culture with others who share it and court orders must take into account the importance of Aboriginal children maintaining their culture.

In most cases parents will have “equal shared parental responsibility”, unless there is child abuse, family violence, or it is not good for parents to share the big decisions.

This means that the parents need to talk to each other about the main issues – education, health, culture, religion and any changes that would make it much more difficult for kids to spend time with the other parent.



**I have an order for the children to spend time with me but my ex partner won't let me see them. What can I do?**

If the other parent has breached an order affecting your kids, you can either:

- try to resolve the conflict through counselling or mediation services (see back of this brochure)

OR

- you can apply to the Court saying your ex has contravened (broken) the parenting order.

**The other parent has taken the kids and refuses to return them. What should I do?**


You need to apply to the Court for a recovery order. This order allows the police (both state and federal) to find and return your kids to you.

If you do not have a parenting order that the children live with or spend time with you, you need to apply to the Court for such an order, as well as a recovery order. This can be done at the same time.

**Can I change my kids' surname?**

To formally change a child's name, you must apply to the NSW Registry of Births, Deaths and Marriages for registration of a name change. Children aged 12 years and over must consent to their change of name.

The consent of both parents is required or if this is not possible, a court order. Either parent can apply to the Court for an order seeking permission to change the name (if the other parent won't agree) or stop (restrain) a parent from using a different name for a child.



The Court will make its decision based on what is best for the kids.

A child cannot change their name on their birth certificate themselves until they are 18 years old in NSW.

### **Can my kids make their own decision about where they want to live?**

The Court has the power to make orders about where your kids live and the time they spend with each parent for kids under the age of 18. If they are under 18, the Court will consider the whole situation, not just the kids' views. Often, it depends on how mature the kids are and how much they understand about what is happening in their family.

Sometimes the Court may ask for an independent children's lawyer so they can give the Court an independent view of the evidence and act in the best interests of the kids. The independent children's lawyer may interview the kids without the parents being present, or contact schools and doctors. They may ask for a court expert to be appointed if they believe it is necessary to help the Court reach a decision about who the kids should live with and spend time with.

### **Can court orders help grandparents see their grandchildren?**

Grandparents (or anyone who has and wants to continue an ongoing relationship with the kids) can apply for an order to spend time with them. Children have a right to spend time on a regular basis with their parents and other important people in their lives unless it is not in "their best interests". Grandparents must therefore show that an order to spend time with your kids is what's best for them.

If you are a grandparent, aunty, uncle, cousin or other relative, see our brochure *Caring for kids in Aboriginal families*.



## Moving

**The kids have been living with me since separation and I want to move out of the local area. Can I just go with the kids or do I need the other parent's permission?**

The law says that children have a right to know and to be cared for by both parents. However when a parent needs to move away and that move may affect the children's ability to spend time with and communicate with the other parent on a regular basis, a number of things need to be considered.

### **When there are court orders about the child:**

You will need to look at the order to see whether the move will breach the order. For example, if the order says your kids are to spend each weekend with the other parent and you plan to move from Sydney to the Gold Coast, you would probably be in breach if you moved. You would then need to have the orders varied either with the other parent's consent or by the Court before you move.



### **When there are no court orders about the child:**

You will not be breaching any orders by moving. However, if there is an informal agreement or parenting plan for your kids to spend time with the other parent, then the other parent can ask the Court for an order which stops you from leaving the area with the kids.

Above all, the Court will look at what is in “the best interests of the child”.

## **Separation and divorce**

### **How do I get a divorce?**

When you first separate, there is nothing that you need to do and no document you need to sign to confirm that you are separated.


Divorces are a formal end to a marriage. After you have been separated for at least 12 months you can file for divorce. A divorce will only legally end your marriage. It will not resolve issues in relation to your kids or how your property will be divided.

Although you can NOT apply to the Court for a divorce until you have been separated for at least 12 months, you CAN start negotiations about property (and kids) as soon as the marriage has broken down. Many matters are resolved before the divorce application is filed.

Legal Aid NSW presents free divorce classes in a number of Sydney and regional centres. Contact LawAccess NSW on 1300 888 529 for details or visit our website: [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

You can obtain a divorce kit by contacting the Federal Magistrates Court (contact details on page 15).





## **I want to end my relationship but my ex won't move out of the house that we own. What can I do?**

Both you and your ex are entitled to live in your home after separation regardless of whose name is on the rental agreement or the title of the property. You cannot be forced to leave just because the property is not in your name, unless a Court orders it.

If you have to move out, it will not affect your right to a share in the property. Any rights you have built up during the relationship will remain even if you leave. If you fear violence you should seek advice immediately (see pages 14–15 for details).

## **How do we settle our property?**

You can start negotiating about property as soon as the marriage or relationship breaks down. The same laws apply about property whether or not you were married or in a de facto relationship.

If you get divorced you must start property or spouse maintenance proceedings within 12 months of your divorce becoming final. If you have been in a de facto relationship, you must start property or maintenance proceedings within two years of your separation.

Property includes all things owned by either one of you (in joint or sole names) including money, cars, furniture, property owned before marriage, gifts, inheritance, redundancy payouts.

Superannuation is split depending on a number of things, including the type of superannuation scheme to which that person belongs. You should get advice from a lawyer if superannuation is an issue.

## How does the Court divide our property?

It will consider many things including property owned before the marriage, how long you were married, what contributions the other partner made and future needs (e.g. whether one partner will be supporting a child, the age and health of each partner and their ability to obtain employment and earn income).

Contributions to the welfare of the family such as caring for kids would be considered to be just as important as the contribution of the primary wage earner.

It is very important to get legal advice.





## Child support


### What is this?

Parents need to work out how they will continue to pay for their kids' food, housing, clothes, school costs and other activities and expenses after separation. The money, or in-kind payments, paid by one parent to the other (or to someone else if the kids do not live with a parent) is called child support or child maintenance. Sometimes these payments are made by one parent to the other, even if the kids are living part of the time with the paying parent.

The Child Support Agency (CSA), which is the Commonwealth government agency that looks after child support payments, works out how much child support should be paid. This is called a child support assessment.

Once a child support assessment is made by the CSA, parents are free to arrange private payment of this sum. The person entitled to receive the child support payments can also ask the CSA to collect these payments on their behalf.

Parents can also make agreements known as Child Support Agreements, which set out in writing the amount, frequency and method of payment of child support payments. Child Support Agreements should not be entered lightly. You should get independent legal advice before entering a child support agreement.



**The CSA will not give me a child support assessment because I don't have proof that my ex-boyfriend is the father of my child. What can I do?**

CSA will only issue a child support assessment to a person if they can prove that the paying parent is a biological or adoptive parent of the child. Acceptable proof includes the name of the parent on the child's birth certificate, showing the parents were married to each other at the time of the child's birth, or statutory declaration completed by the parent acknowledging parentage of the child. If you cannot provide acceptable proof, you can take steps to change this, but you may need the help of a lawyer from Legal Aid NSW, a community legal centre or a private lawyer. In some cases Legal Aid NSW may be able to pay a private lawyer. To resolve this issue, you may need to take court action and to have DNA testing done by an approved DNA testing lab.

**I've lost my job and can't afford to pay child support. What can I do?**

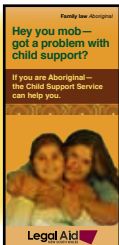
Contact the CSA and find out what your options are. These will vary depending on your circumstances, but chances are that you will be able to pay less child support. The CSA can be contacted on 131 272 and their website can be found at [www.csa.gov.au](http://www.csa.gov.au) .

## The kids live with my ex who is in a new relationship. Do I still have to pay child support?

The parent who doesn't live full time with the kids from the relationship has an obligation to financially support their children until they are at least 18 years old. A new partner does not have a legal obligation to support another person's child.

## How long does child support last?

Child support lasts until your kids are 18. Sometimes you can go to the Family Courts for payments after they are 18 for educational expense or if there is an ongoing disability. You will need to get legal advice.



**You can get free legal advice from Legal Aid NSW about child support.**

*See our brochure [Hey you mob – got a problem with child support?](#)*



## Who to contact: legal help

### Legal Aid NSW

Family law advice is free from all our offices. Contact your nearest Legal Aid office or visit [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

### Legal Aid NSW Child Support Service

This is a specialist legal service with lawyers experienced in child support and over 18 maintenance cases. An extensive outreach service is provided across NSW.

Phone **9633 9916** to make an appointment in Sydney or **1800 451 784** to make an appointment in regional NSW.

**LawAccess NSW** ..... **1300 888 529**  
[www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au)

A telephone service which provides legal information, referral and in some cases legal advice.

**Community Legal Centres NSW** ..... **9212 7333**  
[www.nswclc.org.au](http://www.nswclc.org.au)

**Law Society of NSW Community Referral Service** ..... **9926 0300**

or call LawAccess on **1300 888 529** for information and referral to private lawyers.

**Women's Legal Centre** ..... **9749 5533**  
(country areas toll free) ..... **1800 801 501**

**Indigenous Women's Program**  
toll free ..... **1800 639 784**

**Wirringa Baiya Aboriginal Women's Legal Service** ..... **9569 3847**  
..... **1800 686 587**  
[www.wirringabaiya.org.au](http://www.wirringabaiya.org.au)

## Help with domestic violence

**Domestic Violence Advocacy Service** . 8745 6999

**Toll free** ..... 1800 810 784

**DoCS Domestic Violence Line** ..... 1800 656 463

24 hours 7 days.

## Courts

**Family Courts of Australia** ..... 1300 352 000

[www.familylawcourts.gov.au](http://www.familylawcourts.gov.au)

The Family Law Courts share their registry and telephone information services.

## Mediation and counselling

**Legal Aid Family Dispute Resolution Service**

..... 9219 5000/ 9219 5118/ 9219 5119

Legal Aid's mediation service for clients who have been granted legal aid.

**Family Relationship Centres and Family**

**Relationship advice line** ..... 1800 050 321

[www.familyrelationships.gov.au](http://www.familyrelationships.gov.au)

**CatholicCare** ..... 9390 5366

[www.catholiccare.org](http://www.catholiccare.org)

**Community Justice Centres** ..... 1800 990 777

[www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au)

**Relationships Australia**

**Mediation Service** ..... 1300 364 277

[www.relationships.com.au](http://www.relationships.com.au)

**Unifam** ..... 8830 0777/8830 0700

[www.unifamcounselling.org](http://www.unifamcounselling.org)

**Interrelate Family Centres** ..... 1300 736 966

[www.interrelate.org.au](http://www.interrelate.org.au)

## Other contact points

**Centrelink Free call** ..... 1800 050 004


**Child Support Agency Free call** ..... 131 272

**Federal Police** ..... 6223 3000

**DoCS Helpline** ..... 132 111

**NSW Registry of Births, Deaths and Marriages**

(local call) ..... 1300 655 236



This brochure 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 about your particular situation.

At the time of printing, the information shown is correct but may be subject to change.

For more information, contact LawAccess NSW on 1300 888 529.

For more copies of this brochure, order online at [www.legalaid.nsw.gov.au/pubsonline](http://www.legalaid.nsw.gov.au/pubsonline) or contact the Publications Unit, Legal Aid NSW on 9219 5028 or email: [publications@legalaid.nsw.gov.au](mailto:publications@legalaid.nsw.gov.au)



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Photos: Dani Pontes

Original artwork by Tanya Martin, Ngemba People, Bourke

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