



Divorce is only one part of finalising separation from your partner

Date: Monday August 16, 2021

To finalise separation from your partner, there are a number of issues that should be considered and addressed over and above obtaining a Divorce Order (if you were married) or simply moving on with your life if you were in a de facto relationship. In this blog, we look at the various tasks you may need to attend to after separation, aside from applying for divorce.

There is a common misconception or misunderstanding that once a Divorce Order is obtained, your separation has been resolved. This is far from the case.

Five primary tasks to attend to when separating from your partner

There are five main issues, each separate from the other, although each issue is intertwined and connected to the other.

Some of these issues may not be relevant to every relationship; for example, there will be no need to consider parenting arrangements or child support if there are no children of the relationship. All the issues listed below, save for divorce, are the same for de facto relationships.

Parenting – care arrangements for children;

Child support;

Property settlement;

Spousal maintenance;

Divorce;

Estate planning.

Parenting arrangements

If there are children or a child of your relationship, you and your partner will need to agree on [parenting arrangements](#); where the children will live, the time the children will spend with the other parent during school term, holidays, special occasions, what school the children will attend.

Agreements reached by parents can be formalised in a [parenting plan or with Consent Orders](#) made by the Family Court and can cover a myriad of issues and situations.

If you and your partner cannot agree the arrangements for your children, you may need to consider seeking Orders from the Court. Unless certain criteria apply, such as a risk of [family violence](#), you and your partner will need to [attend mediation before an application is filed with the Court for parenting matters](#).

When considering what arrangements to make for your children, the underlying and paramount principle of the family law system for parenting matters is the “best interests of children”. This concept is explored and explained in our article [“Parenting Orders for spending time with the children”](#).

Child support

Child support is an amount of money paid by one or both parents to the other for the financial support of children of their relationship. Child support is generally paid until the child turns 18.

You can elect to apply to the Department of Human Services (Child Support) for an administrative assessment of the amount of child support.

The [Department website provides a child support calculator](#) which provides an estimate for child support that would be payable pursuant to an assessment.

Alternatively, parents can contract out of the administrative assessment by entering into a child support agreement about how they will pay child support. This can include periodic child support (i.e. weekly child support) and non-periodic child support (i.e. school fees). For more detailed information about these options, visit our article [“The difference between a Binding Child Support Agreement and a Limited Child Support Agreement”](#).

Property settlement

Property settlement is the division of the assets, liabilities and superannuation interests of the parties to the relationship.

The family law courts adopt the following process in determining how parties' assets will be divided:

Identifying if it is just and equitable (i.e. fair) to make an order adjusting the parties' property. This step involves identifying the legal and equitable interests of the parties (i.e. the net asset pool, which could include real estate, shares, trusts, companies, motor vehicles and other assets).

If it is just and equitable to make an order, the respective contributions of each of the parties is assessed as to the asset pool. Contributions can include financial (for example, one party contributed more to the relationship financially due to having a higher salary), homemaker and parenting (for example, one parent stayed at home for a period of time to care for children). Financial contributions are not given greater weight than parenting contributions.

The third step involves considering each party's future needs, having regard to a range of factors, including a party's age, health, care of children and income-earning capacity.

Finally, there will be an assessment of the overall percentage outcome to ensure the division of property is just and equitable.

The Family Court has extensive and wide-ranging powers when determining financial matters between married spouses and de facto partners.

Importantly, once separated, parties [do not have to wait for any time period](#) to pass before negotiating the terms of their property settlement.

For more detailed information about finalising property settlement, visit our blog ["How does the Family Court determine property settlement matters?"](#)

Spousal maintenance

[Spousal or de facto maintenance](#) is an amount of money paid by one party to a relationship for the financial support of the other party.

Importantly, there is no automatic right to maintenance upon separation. If maintenance is sought, an application must be made to the Family Court. The court will consider:

whether the applicant (the person receiving payments) can adequately support themselves; and

whether the respondent (the person making payments) has the capacity to support the applicant.

In determining whether the applicant can adequately support themselves, the court will consider a range of factors, including:

if the party has the care of children of the relationship; and

if the party is unable to obtain appropriate employment due to age or physical or mental incapacity.

Applying for divorce

For parties to a marriage, you are able to apply for a divorce one year and one day after separation.

There is only one legal ground that must be met when applying for a Divorce Order; that your marriage has broken down irretrievably. There is no requirement to provide a reason or reasons why your marriage has broken down.

To apply for a divorce, an Application for Divorce must be completed and filed with the court. The application can be sole or joint with the consent of your former partner.

If a Divorce Order is made, it will take effect one month and one day after the Order was made. At that point, your marriage is dissolved.

Importantly, you will only have one year from the date the Divorce Order comes into effect to commence property settlement or spousal maintenance proceedings in the family law courts or finalise those matters in a legally binding way. There are [limited circumstances under which you may be granted leave of the court to proceed out of time](#).

For more detailed information about divorce, visit our blog "How do I get a divorce in Australia?"

Estate planning

The [end of a marriage or a relationship is likely to affect any Will or other estate planning document](#), such as a binding death nomination.

Generally, a Divorce Order to marriage will automatically invalidate a Will.

It is important your various estate planning documents are reviewed and changed (if appropriate) to reflect the change in your circumstances following separation.

Get help from a family lawyer

If you are separating from your partner or you are considering separation, it is important you seek advice early from an experienced family lawyer.

Meillon & Bright's team of experienced family lawyers are specialists across all areas of family law.

Meillon & Bright also [works with a number of experienced professionals](#), including commercial lawyers, accountants and financial advisors, to consider all aspects of your family law matter to suit specific personal and financial circumstances for a variety of situations.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.