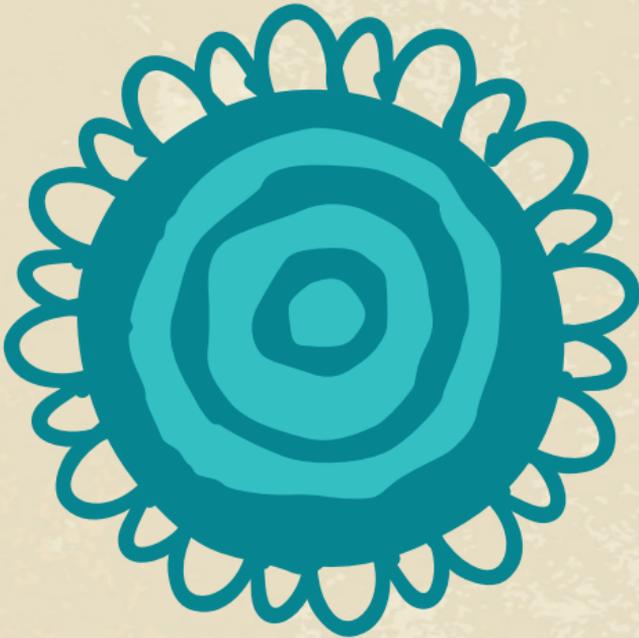


What happens when we split up?

Helping Aboriginal and Torres Strait Islander families work out what's best for kids.



What is family law?

Family law deals with marriage, divorce and relationships splitting up including what happens to property and what happens to the children.

In Australia most family law issues are covered by the *Family Law Act*. The law doesn't care whether you are married or in a de facto (living together) relationship.

You should always first try to settle your family law issue out of court unless your case is urgent or involves family violence.

If you and your ex can't sort out your disagreements the court will decide for you.

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

- Federal Circuit and Family Court of Australia (FCFCOA), and
- Local Court.



Family law and your kids

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

Try reaching an agreement

The law says you must try to sort out differences with your ex through mediation unless:

- your case is urgent,
- it involves family violence,
- you live far away from each other, or one of you is seriously ill.

Before you go to court you must try and sort out the problem by yarning with the family or using a trained mediator to help solve disagreements. This is called mediation or family dispute resolution.

Mediation is a very good way to work out your differences because:

- it is fast,
- doesn't cost too much and
- is often less stressful than going to court.

Mediation 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 Family Relationship Centres, which help separating families reach agreements.

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

Legal Aid NSW can help with mediation if at least one of you has been granted legal aid. Our family dispute resolution service is available to help separated parents, grandparents and other people who are important in the lives of the kids.

If we can't sort it out ourselves, then what?

The court will decide what's best for your kids and make a "parenting order" saying what should happen. The courts try to make decisions "in the child's or children's best interests". They look at things like whether it's good for kids to 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 will decide things like:

- who kids will live with,
- how much time kids will spend with a parent or other important people,
- how parenting will be shared, and
- how parents will talk to each other about their kids.

In most cases parents will have "equal shared parental responsibility" unless there is child abuse, family violence or other reasons why this can't happen.

Aboriginal and Torres Strait Islander children have a right to enjoy their culture with others from their mob and court orders must recognise the importance of Aboriginal and Torres Strait Islander children maintaining their culture.

Equal shared parental responsibility means that parents must talk to each other about big issues like education, health, culture, religion and any other changes that make it much more difficult for kids to spend time with both parents.

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

If the other parent has broken a court parenting order affecting your kids, you can either:

- try to resolve the conflict through counselling or mediation services, or
- apply to the court saying your ex has broken the order.

My ex has taken the kids and refuses to return them. What can I do?

You may need to apply to the court for what's called a "recovery order", even if the court has already made parenting orders about where your child lives. 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 kids live with or spend time with you, you need to apply to the court for this order, as well as a recovery order. This can be done at the same time.

Can I change my child's surname?

If you want to formally change a child's name, you must apply to the NSW Registry of Births, Deaths and Marriages and you will need the agreement of the other parent or a court order. Kids aged 12 years and over must agree to their change of name.

Either parent can apply to the court for an order to change the name (if the other parent won't agree) or to stop a parent from using a different name for a child.

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

Can kids decide where they want to live?

If the kids are under 18, the court will consider the whole situation, not just the kids' views.

Sometimes the court may ask for an independent lawyer to represent the kids' interests. This independent children's lawyer may interview the kids without the parents being there, or contact schools and doctors. They may ask for a court expert to give advice if they think that will help the court decide who the kids should live with and spend time with.

Can family law help grandparents see their grandchildren?

Grandparents (or anyone who has and wants to continue their relationship with the kids) can apply for an order to spend time with them. Kids have a right to spend regular time with their parents and other important people, such as grandparents, unless there is a reason why this wouldn't be in "their best interests". Grandparents may have to show that spending time with their grandkids is in the kid's best interests.

For more information about grandparents and other family members, see our brochure *Caring for kids in Aboriginal and Torres Strait Islander families*.

Our family dispute resolution service is available to help separated parents, grandparents and other people who are important to the lives of the kids.

Moving

The kids have been living with me since separation and I want to move out of the local area. Do I need my ex's permission?

The law says that kids have a right to know and to be cared for by both parents. So when a parent needs to move away and this means that the other parent can't see the kids regularly, a number of things need to be considered:

- If there are court orders about the kids you will need to look at the order to see whether it allows you to move. If the order says your kids must spend each weekend with the other parent and you plan to move from Sydney to the Gold Coast, you may be in breach if you moved. You then need to have the orders changed, with the other parent's agreement or by the court, before you can move.
- If there are no court orders over the kids you will not be breaching any orders by moving. However the other parent can ask the court for an order to stop you from leaving the area with the kids, or an order for the kids to return to the area even if you've already left with them.

The court will always look at what is in "the best interests of the child".

Separation and divorce

How do I get a divorce?

When you first split up, you don't need to do anything to register the separation and there are no documents to sign.

If you are legally married and want to formally end the marriage you must apply for a divorce. You must be separated for at least 12 months before you can apply for a divorce. A divorce will only legally end your marriage but it won't sort out issues about 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 talking about property (and kids) as soon as the marriage has broken down. Many matters can be worked out before you file the divorce application.

LawAccess NSW

You can find out more about applying for a divorce from LawAccess NSW. See page 14 for contact details.

I want to end my relationship but my ex won't move out of our house. 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. Neither of you can be forced to leave just because the property is in the other person's name, unless a court orders it.

If you do move out, your share in the property won't be affected. Any rights you have built up during the relationship will remain even if you leave the property. If there is family violence you should seek advice immediately (see contact details on page 14).

How do we divide up our property?

You can start talking about property as soon as you split up. The same laws about property apply whether or not you were married or in a de facto relationship.

Property includes all things owned, by either one of you or both of you, including money, cars, furniture, property owned before marriage, gifts, inheritance, and redundancy payouts.

You must start property or spouse maintenance proceedings within 12 months of your divorce becoming final. If you were in a defacto relationship, you must start property and maintenance proceedings within two years of separation. Spouse maintenance is when a person gives regular money to their ex.

Superannuation is split depending on a number of things, including the type of superannuation scheme you or your ex have. You should get advice from a lawyer if you or your ex have superannuation.

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. These include whether one parent will be supporting a child, the age and health of each parent and whether they are able to get a job and earn a wage.

Looking after the kids and other contributions to the family will be considered just as important as any money brought in by the main wage earner.

It is very important to get legal advice.

Child support

What is child support?

Both parents need to work out how their kids' food, housing, clothes, school costs and other activities and expenses will be paid for after separation. The money 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-time with the parent who is paying child support.

Services Australia looks after child support payments. You can ask them to work out how much child support should be paid. This is called a "child support assessment".

Once a child support assessment is made by Services Australia, parents can arrange to make and receive these payments on their own. Or the person who should receive the child support payments can ask Centrelink to collect the money for them.

Parents can also make Child Support Agreements, which set out in writing how much, how often and how the child support payments are made. Child Support Agreements are very serious and you should get independent legal advice before signing one.

Services Australia 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?

To get a child support assessment from Services Australia you must prove that your ex is the biological parent or has legally adopted the child. The proof that they need includes the name of your ex on the child's birth certificate, showing that you were married to each other at the time of the child's birth, or a statutory declaration from your ex stating that he is the father.

If you don't have a child support assessment Centrelink might pay you less family tax benefit. So it's a good idea to talk to a lawyer about getting proof of parentage. You may need to go to court and possibly get DNA testing done by an approved DNA testing lab. If you are afraid about applying for child support, a lawyer can give you advice getting an 'exemption' so Centrelink will put your family tax benefit back at the higher rate.

Legal Aid NSW has special child support lawyers that help with these sorts of problems. You can make an appointment to talk to us by calling 02 9633 9916 or 1800 451 784.

See our brochure *Hey you mob – need help with child support?*

You can also get help from a community legal centre or a private lawyer. In some cases Legal Aid NSW may be able to pay a private lawyer to help you.

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

Contact Services Australia to find out what you can do. It will depend on your circumstances but chances are that if you lose your job you will be able to pay less child support. Contact Services Australia on 131 272. It's important to let them know early about changes to your income.

Do I still have to pay child support if my ex is in a new relationship?

If you don't live with the kids full time you must financially support them until they are at least 18 years old. Your ex's new partner does not have a legal obligation to support your child.

How long does child support last?

Child support lasts until your kids are 18. If your kids will still be in high school when they turn 18, you can ask for it to be extended until the end of that school year. Sometimes child support keeps going after the child is 18 for educational expenses or if there is an ongoing disability, but only with a court order. 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 – need help with child support?*



More information

Legal Aid NSW has the following family law brochures for Aboriginal and Torres Strait Islander people:



Family law problems?

Settle your family law problem now – act early. The Family Law Early Intervention Unit helps Aboriginal and Torres Strait Islander people resolve family problems before they get serious.



Hey you mob – need help with child support?

The Legal Aid NSW Child Support Service gives independent legal advice to parents, grandparents, aunties and uncles about child support, Centrelink and Services Australia decisions.



Caring for kids in Aboriginal and Torres Strait Islander families

This brochure is for Aboriginal and Torres Strait Islander grandparents, aunties, uncles and other relatives involved in looking after young children.

Who to contact

Legal help

LawAccess NSW

LawAccess NSW is a free information service run by Legal Aid NSW. They have a culturally appropriate legal information and referral service for Aboriginal and Torres Strait Islander people with a legal problem in NSW. Click on the Chat with us button at www.legalaid.nsw.gov.au or call **1300 888 529** between 9am and 5pm, Monday to Friday (excluding public holidays).

Family Law Service for Aboriginal Communities (FamAC)

FamAC is an Aboriginal led service at Legal Aid NSW made up of lawyers, Aboriginal Field Officers and mental health caseworkers, who are dedicated to assisting Aboriginal and Torres Strait Islander families and children in family law and care and protection matters. Call **(02) 9407 2941**.

Law Society of NSW Solicitor Referral Service

Call **(02) 9926 0300** for referral to private lawyers.

Women's Legal Service NSW

Call **(02) 8745 6988**
Regional areas call **1800 801 501**

First Nations Women's Legal Service Contact Line

Call **1800 639 784**

Wirringa Baiya Aboriginal Women's Legal Centre

Call **(02) 9569 3847** or **1800 686 587**

Help with domestic violence

Legal Aid NSW Domestic Violence Unit

Call **1800 979 529**

Women's Domestic Violence Court Advocacy Services (WDVCASs) assist women and children experiencing domestic violence get legal protection from the court. Call **1300 WDVCAS (1300 938 227)**

Courts

Federal Circuit and Family Court of Australia
1300 352 000 www.fcftoa.gov.au

Mediation and counselling

Legal Aid Family Dispute Resolution Service
(02) 9219 5118 • (02) 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

CatholicCare Family Dispute Resolution Service
13 18 19

Community Justice Centres

1800 990 777

Relationships Australia Mediation Service

1300 364 277

Interrelate Family Centres

1300 473 528

Other contact points

Centrelink

136 150

Services Australia (Child Support)

131 272

Australian Federal Police

(02) 5126 0000

Child Protection Helpline

132 111

NSW Registry of Births, Deaths and Marriages

13 77 88

This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on **1300 888 529**.



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Order brochures online at:
www.legalaid.nsw.gov.au/ways-to-get-help/publications-and-resources

For more information, visit:
www.legalaid.nsw.gov.au

Do you need help to contact us?



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am–5pm) and ask for LawAccess NSW.

Do you find it hard to hear or speak?



If you are deaf, or have a hearing or speech impairment, contact us through the [National Relay Service \(NRS\)](#). Ask for LawAccess NSW on **1300 888 529**.