

What happens when your relationship ends?

Answers to questions about your
family, your children and your
property.



Family law is the area of law that deals with family-specific matters like divorce, your children and your property.

Most family law issues in Australia are covered by the *Family Law Act*. If you are married or in a de facto relationship, the *Family Law Act* will cover any disagreements you might have about your children and/or property.

Even if you are not married or in a de facto relationship, the *Family Law Act* still covers any disagreements you have about any children of your relationship, for example where they will live.

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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. Most people will need to complete and eFile an Application for Divorce online through the Commonwealth Courts Portal at www.comcourts.gov.au. For more information see our publication [*Divorce Factsheet 1: Applying for a divorce*](#). If you are unable to access the online system, contact the Federal Circuit and Family Court of Australia (FCFCOA) or a lawyer.

It is possible to obtain a divorce even if you and your spouse lived in the same home during a part or all of the 12-month separation period. You will need to provide extra information and documentation to the court. You should obtain legal advice. For more information, see our publication [*Divorce Factsheet 3: Separation under the same roof*](#).

You **can not** apply to the court for a divorce (decree of dissolution of marriage) unless you have been separated for at least 12 months before the application is filed. However you **can** start negotiations about property (and children) as soon as the marriage has broken down.

Many matters are resolved before the divorce application is filed.

You can obtain a Divorce Kit at www.fcfcoa.gov.au. A divorce will only legally end your marriage. It will not resolve issues in relation to the children or how your property will be divided.

If you get divorced before you and your ex-partner have settled your property, you must start property and/or spouse maintenance proceedings within 12 months of getting divorced.

Legal Aid NSW can give you free help with your divorce.

- Call the Early Intervention Unit (EIU) on **1800 551 589**. The EIU provides free family law services in courts and community organisations throughout NSW.
- Call LawAccess NSW on **1300 888 529**. LawAccess NSW provides free telephone legal information, advice and referrals to other services, including to your nearest Legal Aid NSW office, community legal centres, private lawyers and other organisations that can help.

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

Both you and your spouse or ex-partner 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 the court orders it. See page 23 for more information about family law property orders.

If you have to move out, it will not affect your entitlement to a share of 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 **More information** on page 32.

Sometimes one party can obtain a sole occupancy order requiring the other party to leave the home. The court can make what is called an exclusive occupancy order of the house for either spouse. That means you can live in the house, without your spouse living there until the property has been divided. When the court makes this kind of order, it will look at the needs



of the parties and the children. Sole occupancy orders will usually only be made in exceptional situations where there is domestic violence or threats are being made by one spouse against the other, especially if the children are affected, or the house has been adjusted because somebody has a disability.

Children

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

Try dispute resolution.

Before you go to court about your children, you must:

- make a genuine effort to resolve the dispute through counselling or mediation and
- make reasonable efforts to communicate with your ex-partner.



There are many services that help with counselling and family dispute resolution including Legal Aid NSW, the Family Relationship Advice Line and Family Relationship Centres. See **More Information** on page 32.

Do I have to attend family dispute resolution before I go to court about my children?

Family dispute resolution (also known as mediation) is required before you can start court proceedings about children, unless your case is urgent or involves some exceptional factors such as family violence. The court usually requires a certificate from a family dispute resolution practitioner before a case about children can go ahead. For more information, see our publication, [*Family dispute resolution at Legal Aid NSW*](#).

Do we have to go to court to discuss our parenting arrangements?

You don't have to get formal court orders made about arrangements for your children - you can come to an informal agreement. Many separated parents have informal agreements in place about the parenting of their children.

Agreement is usually reached through negotiation between the parents with or without the help of mediation or counselling services. Neither parent can make the other stick to an informal agreement.

It will often be important to get some legal advice because the agreements you make about where children live and where they spend their time can also affect property matters and child support.

Parenting plans

Parents are able to enter into agreements about the arrangements for their children, known as parenting plans. A lawyer, family counsellor, family dispute resolution practitioner or family consultant ('an adviser') can help you and your ex make a parenting plan.

A parenting plan must be in writing, signed and dated.

It can be changed by another signed written agreement. Parenting plans create no legal obligations on either parent. However, the court can consider what has been agreed in a parenting plan if you need to go to court later about parenting issues.

What do consent orders do and what are they about?

A consent order is filed at, and approved by the court and is binding because the court can be asked to enforce it. It records agreements reached about parenting after negotiating with the other parent, usually with the help of a lawyer or dispute resolution service.

Which courts decide parenting matters?

Family law matters in NSW are dealt with in the Federal Circuit and Family Court of Australia (FCFCOA) and the Local Court. In many cases you may file your matter at the Local Court and it will be transferred to the FCFCOA. More complex matters are likely to be decided in the FCFCOA.

What is a parenting order and what does the court consider when it makes a parenting order?

The courts decide what parenting orders to make for a child on the basis of the best interests of that child. The law says that in determining the best interests of a child, the court's primary considerations must be:

- the benefit to the child of having a meaningful relationship with both of the parents and
- the need to protect the child from physical or psychological harm, and from being subjected to, or exposed to, abuse, neglect or family violence.

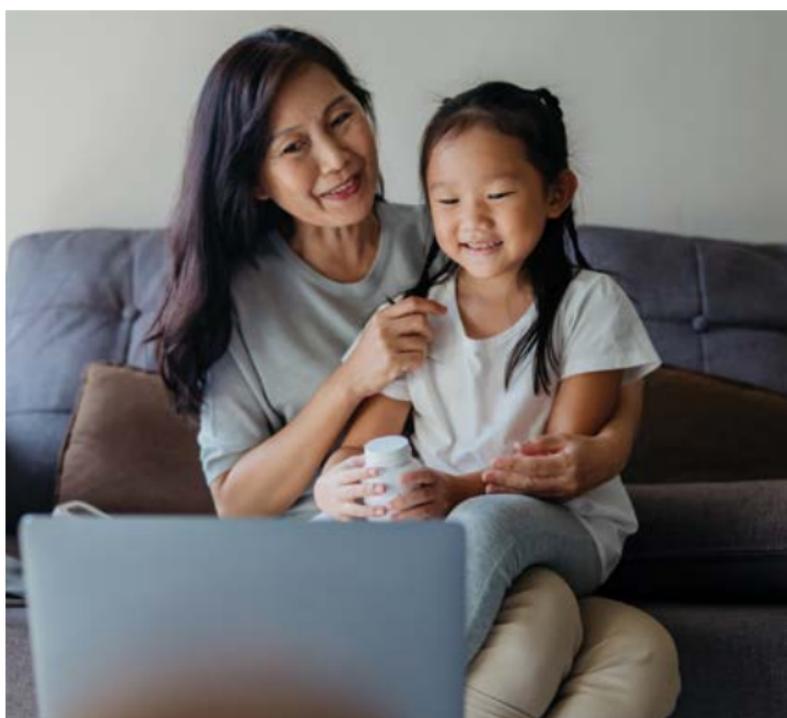
Additional considerations include:

- any views expressed by the child, taking into account the child's maturity
- the child's relationship with each parent and with any other person who is important to them (e.g. grandparents, siblings)

- the effect on the child of any change in arrangements for the child, including separating siblings from each other
- the capacity of each parent to provide for the needs of the child and
- the willingness and ability of a child's parents to encourage a close and continuing relationship with the other parent.

The parenting order that the court makes will cover issues like:

- who a child will live with
- what time a child will spend with a parent or other persons important to the child
- how parental responsibility will be shared
- how parents will communicate about a child and



- how any disputes about what is set out in the orders will be resolved.

Parental responsibility means the duties parents have to their children and the important decisions parents make about their children. Each parent has equal shared parental responsibility for a child unless the court makes an order changing this.

The court presumes that parents will have equal shared parental responsibility, unless there has been abuse of a child, family violence, or it is not in the child's best interests.

This means that the parents need to consult each other about major long term issues affecting their child, such as education, religion, health, the child's name and changes to living arrangements that make it much more difficult for the child to spend time with the other parent.

When an order is made for equal shared parental responsibility, the court will also consider whether it would be in the child's best interests or practical for the child to spend either equal time with each of the parents, or substantial and significant time with each parent.

The court will take into account how far apart the parents live, the effect on the child of any proposed arrangements, and whether the parents can co-operate with each other.

Can court orders help grandparents see their grandchildren?

Grandparents (or anyone who has and wants to continue an ongoing relationship with children who are important to them) can apply for an order to spend time with their grandchildren. Children have a right to spend time on a regular basis with their parents and other significant people in their lives unless it is not in their best interests.

Grandparents must show that an order to spend time with the children is in the best interests of the children. Grandparents may need to attend family dispute resolution before they can apply to the court.

Can children make their own decision about where they want to live?

The court has the power to make orders about where children live and the time they spend with each parent where children are under the age of 18. There is no age under 18 when the court will listen only to the child's views. The court must consider each child's views, but the importance placed on those views will depend on each child's maturity and level of understanding. Older children's views may be considered particularly significant by the court.

Who makes decisions about COVID-19 vaccinations for children?

The law says that generally children under 16 are not able to consent to a vaccination. Each parent has parental responsibility and can make decisions about COVID-19 vaccinations unless there are court orders about who has parental responsibility.

The court expects that parents will discuss the vaccination and, if possible, reach decisions together. If an agreement cannot be reached, you should seek legal advice about your options including whether court is an appropriate option for your family.

What is an Independent Children's Lawyer?

Sometimes the court may request that an independent children's lawyer be appointed to form an independent view of the evidence and act in the best interests of the child. This lawyer may interview the child without their parents present, contact schools and health professionals of the child or parents, and make sure certain documents and reports are provided to the court. They may ask for a court expert to be appointed if they believe it is necessary to assist the court to reach a decision about who the children should live with and spend time with.

Can I change my child's 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 is required. Either parent can apply to the court for an order seeking permission to change a child's name (if the other parent won't agree) or to stop (restrain) a parent from using a different name for their child.

The court will make its decision based on what is in the best interests of the child. For example, the court may look at the embarrassment a child may suffer because they have a different name from the parent they live with, or the possibility of the child being confused by the name change. However the court rarely authorises a name change where both parents have a relationship with the child.

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

How do I get a passport for my children?

Unless exceptional circumstances exist, both parents' consent is required to obtain a passport for your children. If one parent refuses to consent, then you will need to obtain orders from the court for a passport

to be issued, and to permit the children to travel without the consent of the other parent.

If you take the children out of Australia without permission and there are court proceedings or orders, you could be committing a criminal offence.

Regardless of whether any court orders are in place, Australia has an agreement with many countries (the Hague Convention) which requires these countries to send the children back.

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 is in breach of an order affecting your children, you can either:

- try to resolve the conflict through counselling or mediation services or
- you can apply to the court alleging the other party has contravened (broken) the parenting order.

The court takes breaches of its orders very seriously. Depending on the circumstances, the non-complying parent can be referred to a parenting program, fined, made to provide compensatory (or 'catch up' time) with your child, or even face gaol. When a breach occurs, the non-complying parent may show a reasonable excuse. For example, a very sick child (supported by proper medical evidence) may be considered a legitimate reason for a parent breaching an order.

If the orders breached are no longer workable, the court may order that both parents attend a parenting program, or adjourn the case to consider varying the orders.

Moving

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

The *Family Law Act* states 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 range of factors need to be considered.

Where there are court orders about the child

You will need to look at the court order to see whether the move will breach the order. For example, if the order says your children are to spend time 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.

Where 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 children 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 children. Above all, the court will look at what is in the best interests of the child.

The other parent has taken the children and is refusing to return them. What should I do?

If you have an order that the children live with you or spend time with you and the children have been taken or not returned, 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 children to you.



If you do not have an 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.

Sometimes in an emergency the court may give these orders *ex parte*, that is without the other parent being at court. If you are worried that the children might be taken out of Australia you should put the children's names on the Family Law Watchlist (previously called the Airport Watchlist). You will need to apply to the court to place the children on the Watchlist and send a copy of the application and any court orders made to the Federal Police.

If you find yourself in this situation you should phone the Federal Police and find out what they require.

Property

How do we settle our property?

The same laws about property apply whether or not you were married or in a de facto relationship (whether with a partner of the opposite sex or the same sex). You can start negotiations about property as soon as the marriage or relationship has broken down.

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 commence property or maintenance proceedings within two years of your separation.

De facto relationships

A de facto relationship is defined in the *Family Law Act*. The law requires that you and your former partner, who may be of the same or opposite sex, had a relationship as a couple living together on a genuine domestic basis.

If you are in a de facto relationship you can make an application for a property settlement under the *Family Law Act* if any one or more of the following conditions apply:

- your de facto relationship lasted for at least two years
- you have a child with your de facto partner or



- you have made a substantial contribution to the property or finances of your partner.

If there is a dispute about whether you were in a de facto relationship, the court will look at things such as the length of the relationship, your living arrangements, arrangements of finances and property ownership, whether there was a sexual relationship, whether or not you had or cared for children and the way you presented your relationship in public.

We are now separated. How do we divide our assets?

Property includes all things owned by either one or both partners (in joint or sole names) including:

- cash and investments
- real estate as well as personal property (e.g. cars, furniture)
- property owned before the relationship
- gifts, inheritances, lottery wins received by one partner or spouse and
- redundancy payouts.

What about superannuation?

Superannuation will be relevant to any property settlement. It can be treated as property and can be split between married or de facto couples after they separate. How superannuation entitlements will be split depends on a variety of matters, including the type of superannuation

scheme to which that person belongs. You should consult a lawyer if superannuation is an issue in your matter.

How does the court divide our property?

There is no formula or rule that determines how the property will be divided. The court is not required to split the property 50/50. It will consider many things, including:

- **Property owned before the marriage or relationship.** The extent to which this is considered the property of an individual partner will depend on the length of the marriage or relationship and what contributions the other partner made (if any) towards the accumulation and upkeep of property.
- **Contributions made by both partners during the marriage or relationship.** This includes direct contributions (e.g. wage earnings, maintaining assets and property), indirect contributions (e.g. gifts, assistance from family members), and non-financial contributions (e.g. do-it-yourself home renovations and contributions made to the welfare of the family as a caregiver or homemaker).
- **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).
- Generally, **contributions to the welfare of the family** would be considered to be just as important as the contribution of the primary wage earner.

It is a good idea to get a lawyer for your property settlement even if only for legal advice and help making consent orders. Otherwise, even if you have settled up in accordance with an informal agreement, there is nothing to stop the other party taking you to court to get more. If you have court orders, you will be exempt from paying stamp duty on many property transfers.

Child support

What are child support and child maintenance?

Any parent knows that it costs a lot to look after children. Of course, this does not change when parents separate. Parents need to work out how they will continue to pay for their children's 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 children do not live with a parent) is called child support or child maintenance. Sometimes one parent makes these payments to the other even if the children are living part of the time with the paying parent.

Child support may apply to all parents. It doesn't matter if you have been married, in a de facto relationship, never lived together, never had a relationship, or what gender you or your partner are.

Services Australia: Child Support (Child Support), the Commonwealth government agency that looks after child support payments, uses a mathematical formula to work out how much child support should be paid.

The end result is a child support assessment. The child support assessment takes into account factors such as the number of children involved, the age of the children, the parents' income and the level of care each parent provides for the children.



Once a child support assessment is made by Child Support, parents are free to arrange private payment of this sum. The person entitled to receive the child support payments can also ask Child Support to collect these payments on their behalf. It is a good idea to have Child Support collect if a parent/carer believes the other parent will not pay.

Child support assessments can be varied to reflect certain changes in circumstances such as a change in income, the birth of a new child or changed care arrangements. Parents/carers with a child support assessment need to tell Child Support of changes in circumstances such as a new address, income or changed care arrangements as soon as these events occur as Child Support cannot back-date assessments to reflect these changed circumstances.

An application can also be made to Child Support to ask for the child support assessment to be changed due to special circumstances. This could take into account:

- the high costs of spending time with your child (for example if the parents live a long way apart)
- caring for your child (for example if they need braces on their teeth or have a disability with high out-of-pocket expenses)

- educating your child (for example if the parents have agreed they attend a non-government school) or
- the assessment does not properly reflect one or both parent's capacity to pay child support in some other way.

In certain circumstances it is possible to back-date these changes. You should obtain legal advice about this process before you begin.

Parents/carers must read letters from Child Support carefully (or ask for them to be explained) to find out about their obligations to inform Child Support when something changes.

It is possible to object to various decisions made by Child Support and these objections can usually also be reviewed by the Administrative Appeals Tribunal (AAT). Time limits apply and these are usually stated in Child Support's decision letter. You may find it helpful to get legal advice about lodging an objection or applying to the AAT.

What are child support agreements? Should I obtain legal advice?

Parents can 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 into lightly and you should obtain independent legal advice before signing

one. Child support agreements can be 'limited' or 'binding'. Only binding child support agreements require a lawyer to provide a special certificate of independent legal advice, but you should always obtain legal advice before signing any sort of child support agreement.

If the parent/carer receiving the child support payments is receiving more than the minimum amount of family tax benefit, Centrelink has rules that must also be taken into account when making a child support agreement.

Child Support will not give me a child support assessment because I do not have proof that my ex-boyfriend is the father of my child. What can I do?

Child Support will only issue a child support assessment if you can prove that the paying parent is a biological or adoptive parent of the child, or a former same-sex partner (in certain circumstances). Acceptable proof includes having that person named as a parent on the child's birth certificate, showing that the parents were married to each other at the time of the child's birth, or a statutory declaration made by a person acknowledging they are a parent of the child. If you do not have acceptable proof, you may need to take further steps to prove parentage. This may include court action and, in some cases, DNA parentage testing done by an approved laboratory.

For more information, see our publication [*Child support factsheet 1: Taking action to get child support.*](#)

The Child Support Service at Legal Aid NSW can give you advice about getting proof of parentage for a child support application. Call **(02) 9633 9916** (Sydney and metropolitan areas) or **1800 451 784**.

I have lost my job and cannot afford to pay child support. What are my options?

Contact Child Support 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. Contact Child Support on **131 272** or see www.servicesaustralia.gov.au/separated-parents. It is important to act quickly, because Child Support often cannot back-date assessments to reflect changed circumstances. You may find it helpful to get legal advice about your situation.

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

Both parents have an obligation to financially support their children until they are at least 18 years of age, even after separation. That legal obligation does not change when one or both parents repartner. A parent's new partner does not have a legal obligation to support another person's child.

I have a child support assessment. My child turns 18 this year and is still at school. Can I do anything?

If a child turns 18 while still in secondary school, the carer parent can ask Child Support to continue the child support assessment until the child completes the current school year. This application must be made before the child turns 18, and only runs until the end of that school year. Once the child support assessment ends, either a private agreement must be reached or the carer/parent or young person can make an application to the court for an order under the *Family Law Act*.



My child has a disability and has turned 18 and the child support assessment has ended. Can I still get financial support from my child's other parent?

It is possible to make an application under the *Family Law Act* for maintenance for a young person over 18 if they have a disability or maintenance is necessary to help them complete their education. It is very important to get legal advice about your situation from someone experienced in making these applications to the court, because success depends on the circumstances of your case and how well you prepare. It is also important to remember that once a young person turns 18, they have an obligation to do everything they can to support themselves, even if they have a disability. This will depend on the capacity of the young person involved. Legal aid may be available for these types of cases.



More information

Legal help

LawAccess NSW

Provides free telephone legal information, advice and referrals to other services, including to your nearest Legal Aid NSW office, community legal centres, private lawyers and other organisations that can help. Call **1300 888 529**

www.lawaccess.nsw.gov.au.

Legal Aid NSW

Family law advice is available at our offices around NSW. To find your nearest Legal Aid NSW office call **1300 888 529** or visit

www.legalaid.nsw.gov.au/contact-us.

Legal Aid NSW Child Support Service

Free, independent confidential advice about child support issues.

Call **02 9633 9916** (Sydney and metropolitan areas) **1800 451 784** (outside Sydney).

Early Intervention Unit (EIU)

The EIU is a state wide specialist service of Legal Aid NSW. They can help you resolve your family law issues early without the need to go to court. Call **1800 551 589** .

Community Legal Centres NSW

Community legal centres are independent non-government organisations that provide free legal help. To find your closest centre call LawAccess NSW on **1300 888 529** or visit www.clcnsw.org.au.

The Law Society of NSW Solicitor Referral Service

Call **9926 0300** or email ereferral@lawsociety.com.au.

Wirringa Baiya Aboriginal Women's Legal Service

A state-wide community legal centre for Aboriginal women, children and youth.

Call **9569 3847** or **1800 686 587**.

Women's Legal Service NSW

A community legal centre providing women across NSW with a range of free legal services. Call **8745 6988** or **1800 801 501** (country areas toll free).

First Nations Women's Contact Line

Free confidential legal information, advice and referrals for Aboriginal and Torres Strait Islander women in NSW.

Call **8745 6977** or **1800 639 784**

(Monday, Tuesday, Thursday 10.00 am – 12.30pm.)

Domestic and family violence

Domestic Violence Unit

A dedicated statewide service of Legal Aid NSW bringing together specialist domestic violence lawyers, social workers and financial counsellors. Call **1800 979 529**.

Family Advocacy and Support Services, (FASS)

Help for families affected by family violence and who have a family law issue. They also have dedicated social support workers for women and for men.

Call **1800 979 529**.

Social support for women: **1800 11 FASS**

Social support for men: **1300 00 FASS**

Women's Domestic Violence Court Advocacy Services (WDVCAS)

Information, court advocacy and referral for women in domestic violence situations and assistance with getting an ADVO.

1800 WDVCAS or **1800 938 227**.

Family Violence Law Help

www.familyviolencelaw.gov.au is a website with easy-to-understand legal information about AVOs, family law and child protection.

Mensline

Phone support and referral for male victims and perpetrators of domestic violence. 24 hours, 7 days. Call

1300 789 978 or visit

www.mensline.org.au.

Courts

The Federal Circuit and Family Court of Australia (FCFCOA)

You can get further information about court processes, forms, publications and Do-It-Yourself kits on the FCFCOA website at www.fcfcga.gov.au or by phonomg the National Enquiry Centre (NEC) on **1300 352 000**.

Mediation and counselling

Legal Aid NSW Family Dispute Resolution Service

Legal Aid's mediation service. Call **9219 5118** or **9219 5119** or visit www.legalaid.nsw.gov.au/fdr.

Family Relationships Advice Line

1800 050 321

Catholic Care Careline

131 819

Community Justice Centres

1800 990 777

Relationships Australia

Family Dispute Resolution (Mediation)
1300 364 277

Interrelate

1300 473 528

Other contact points

Services Australia: Child Support

131 272

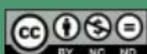
NSW Registry of Births, Deaths and Marriages

137 788 (Service NSW)

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**.

This brochure is also available in: Arabic, Dari/Farsi, Korean, Simplified Chinese, Spanish, Vietnamese.



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Order brochures online at:

www.legalaid.nsw.gov.au/publications

For more information about Legal Aid NSW services:



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 find it hard to hear or speak, call us through the National Relay Service (NRS) on **133 677** and ask for LawAccess NSW or visit: www.relayservice.gov.au

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