



Answers to the 20 Most Asked Questions that You May Have About Family Law

No.	Question	Answer
1.	How long does it take to resolve a family law matter?	<p>This is a very difficult question, but in most cases, your family lawyer should be determined to resolve your matter as quickly as possible for you. If you and your ex-partner are able to come to an amicable agreement, then consent documents can usually be drafted in a reasonable time frame and the whole process can be finalised within 1 – 3 months.</p> <p>If you are in dispute about children and/or property and cannot negotiate a quick settlement, then the best way to resolve matters is through Mediation and not litigation. If both parties are cooperative and move things ahead proactively, then most property and children cases can settle within 3 – 6 months.</p> <p>It is only when parties are involved in litigation that things start to take a lot longer.</p> <p>Typically, once you have filed in Court you can expect that your dispute could</p>

		<p>take upwards of two years in a worst case scenario.</p> <p>At all times it is important that you have a lawyer who is focused on resolving your matter and providing you with proactive advice, as the longer a matter takes, usually the more expensive they become.</p> <p>In relation to divorce, the timeframes are a lot quicker and once your Divorce Application is filed, things will usually be finalised within 2 to 3 months thereafter and the process is a very simple and inexpensive one.</p>
2.	<p>When can you get divorced in Australia and how do you do it?</p>	<p>You need to have formed the intention that the marriage has broken down irretrievably and you need to have been separated for a period of 12 months before you file your Application for Divorce.</p> <p>If you have children under 18 – then there are some boxes to tick and some information to fill in concerning your children and you will need to appear in Court (usually by Microsoft teams) on the day of your Divorce Hearing.</p> <p>A Divorce Kit can be downloaded from the FCFCOA website and a step by step guide to divorce can be found in our free information and resources pages.</p> <p>The process is very straightforward and simple. There is a filing fee to be paid to the Government, or in some cases you can claim an exemption from the filing fee.</p> <p>You can file the Divorce Application yourself or jointly with your ex-partner.</p> <p>You should remember that once you obtain your Divorce Order, that you only have 12 months after that date to file in Court for property settlement and spousal maintenance relief.</p>

3.	How is property divided in a Divorce settlement?	<p>The division of property is not straightforward, but it involves the following important steps:</p> <ol style="list-style-type: none"> 1. Identify and value each parties interest in property as at the current date; 2. Assessing and evaluating contributions that each party has made to the acquisition, conservation and improvement of property from the date of commencement of cohabitation through to the current date; 3. Identifying and assessing the current relevant factors and needs, relating to things such as age, health, income, number of children under 18 and other factors; 4. Making an Order that is just and equitable in all circumstances. <p>It is important to remember that we have a discretionary based system that is based primarily on contributions made by each party, and we do not have a system that is based on excluding certain property from the exercise.</p> <p>A good family lawyer will be able to obtain relevant information and facts from you in relation to your particular case and provide you with more specific advice about your entitlements as each case is different and there are no set presumptions or rules as to how property is divided.</p>
4.	Do I need a lawyer if my ex and I reach an agreement?	<p>No, you do not have to engage lawyers if you reach an agreement, but it is probably best to seek some advice from a lawyer as to the terms of the agreement and your right and entitlement in relation to property and your duties and obligations in relation to any Parenting Plans or Orders.</p> <p>Most times, it is best to have a property settlement Order approved by the Court</p>

		<p>as this ends the financial relationship between you and your ex-partner.</p> <p>In relation to parenting matters, often the best parenting arrangement is one that is amicable and mutual between the parents and does not require any formalisation. However, if you and your ex-partner do not co-parent well, then the parenting plan or parenting order may assist in the future stability and routine for care arrangements of your children.</p>
5.	What's the eligibility criteria for Spousal Maintenance?	<p>In order to obtain Spousal Maintenance, one must first of all show that they cannot adequately support themselves and secondly, they need to show that the other party has the ability, after meeting all of their necessary and reasonable expenses, to contribute to their support.</p> <p>The Law allows Orders to be made for periodic weekly or monthly maintenance Orders or also for lump sum interim or final orders for spousal maintenance.</p> <p>Each case is different, and you should seek specific legal advice about your entitlements in your particular circumstance to spousal maintenance.</p>
6.	How does the Family Law system protect against domestic and family violence?	<p>There are many systems in place to protect you against domestic violence. On a State level there is legislation that allows you to obtain and/or the Police to obtain Protection Orders to protect you against ongoing domestic violence.</p> <p>The Family Law Legislation and cases within the family law framework treat matters of domestic and family violence seriously and they have a significant impact when it comes to deciding parenting matters and can also have an impact when it comes to property matters in certain circumstances.</p>
7.	How are de facto relationships treated compared to marriages (including same sex relationships)?	<p>De facto relationships (including same sex relationships) are treated very similar to marriages under our systems today.</p>

		<p>The Court's powers in relation to parenting issues, are the same and property settlement provisions are also very similar.</p> <p>The major difference to be aware of is that after a de facto relationship ends, you only have two years to initiate proceedings for property settlement and/or maintenance from the other party.</p> <p>Issues, such as whether a de facto relationship exists or not, and when the relationship started and finished are often important and can sometimes be very difficult to answer and depends upon specific circumstances in your case.</p> <p>You should seek legal advice from a family law specialist if you are unsure.</p>
8.	<p>What are the time limits for applying for Divorce and property settlement</p>	<p>You cannot apply for a Divorce until you form the intention that your marriage has broken down irretrievably and you have been separated for a period of 12 months.</p> <p>However, there is no time limit after separation to initiate the Divorce process. Remember, that when you obtain your Divorce, you only then have a further 12 months to institute proceedings for property settlement and spousal maintenance.</p> <p>In relation to de facto relationships, you only have two years after the relationship ends to institute proceedings for property settlement and maintenance. Also, it is important to remember your de facto relationship must be at least 2 years in length or there must be a child born of the relationship or you have made a significant contribution, before you can file proceedings for property and maintenance relief.</p>
9.	<p>Can I take my children on a holiday?</p>	<p>If you are separated, it is always best to communicate with the other parent</p>

		<p>about trips and holidays away within Australia and also be aware that if you do have specific parenting orders or a parenting plan in place, then you need to abide by those terms and any requirements in relation to taking the children away on holidays.</p> <p>Remember, you cannot take children overseas (out of the country) without the consent of the other parent and you will need the other parent's consent or Order of the Court to obtain a Passport for a child.</p>
10.	What is a Family Report?	<p>A Family Report is prepared by an independent social worker or psychologist who interviews the parties and the children (depending upon their ages) with a view to making a report as to the family dynamics to assist a Judicial Officer in coming to a decision as to what arrangements would be in the best interests of your children.</p> <p>A Family Report is typically undertaken when parents are in conflict and cannot agree on parenting arrangements and this can be done prior to Court proceedings, or it can be ordered as part of the Court proceedings.</p>
11.	What happens if I do not comply with the Parenting Orders?	<p>There are powers within our current legislation to have parties dealt with who breach Parenting Orders and these powers range from making Costs Orders, and in the worst cases, imprisonment, although that it extremely rare.</p> <p>Non-compliance with a Parenting Order without reasonable excuse is said to be a breach of those Orders and penalties and punishments are available under the current legislation.</p> <p>You should always seek legal advice from your family law lawyer in relation to such issues.</p>
12.	What are Child Support payments?	Typically, these are payments that are assessed by the Child Support Agency on

		<p>lodgement of an Application for child support through Centrelink after separation.</p> <p>In most cases, the amount of child support will be collected from the other party's wage and paid to you on a monthly basis.</p> <p>There is a formula within the Child Support Legislation that calculates the amount that should be paid based on the children's ages, the incomes of both you and your ex-partner and the number of nights the children spend with each parent.</p> <p>Separated parties can also come to their own agreement amicably in relation to child support payments and formalise this through the execution of a Limited or a Binding Child Support Agreement.</p>
13.	Is Child Support tax deductible?	<p>No – Your child support payments are not tax deductible and are not countered as part of taxable income for the payee. In some limited cases there may be some tax effective measures that you can put in place that assist with child support payments, through the creation of a Child Maintenance Trust – but they are less effective today than they previously were, and you should seek legal advice in relation to your particular circumstances as to whether such vehicle is available to you.</p>
14.	What is a Consent Order?	<p>A Consent Order is when you and your partner come to an agreement and wish to formalise the agreement by having it lodged and approved by the Family Court. Typically, those Consent Orders can be for parenting matters and also for property and maintenance matters.</p> <p>The Consent Order is lodged in Court with an Application seeking to approve the Orders and a Registrar of the Court will usually peruse and consider the terms of the Consent Order and if they are satisfied the document is in the best</p>

		<p>interest and welfare of the children and/or are just and equitable to both parties in property matters, then they will stamp and approve those Orders and you will receive a sealed copy of the Consent Order.</p> <p>In relation to property matters, there are often Stamp Duty and Capital Gains Tax concessions by finalising your property settlement via a Consent Order and you should seek legal advice from your family lawyer about the particular advantages that may apply to you by entering into a Consent Order.</p>
15.	<p>Are the same sex relationship laws the same in Australia for property and children matters?</p>	<p>Yes – same sex couples are afforded the same rights in relation to marriage laws and de facto laws in relation to property, parenting and financial matters.</p>
16.	<p>What is Mediation in family law?</p>	<p>In parenting matters, it is compulsory to attempt to settle outstanding issues prior to any Court proceedings being instituted.</p> <p>Mediation is usually conducted by a Family Dispute Resolution practitioner who is trained in Mediation and able to assist the parties to come to a resolution on parenting matters.</p> <p>Similarly, in property matters parties are required to partake in Mediation in an attempt to resolve their matter. Property Mediations usually take place in the early stages after proceedings have commenced, or prior to the commencement of proceedings. These types of property Mediations, which also can include parenting issues are usually conducted with both parties represented by lawyers and an independent qualified mediator engaged to assist the parties to reach a resolution.</p> <p>In most of these Mediations, they can take place with the parties being in separate rooms and the mediator</p>

		moving in between the rooms and assisting them with negotiations.
17.	Does my inheritance get counted in property settlement?	<p>The first step in a property settlement is to identify and value each party's interest in property. If one has received an inheritance during the relationship, then that will usually form part of the property that party has and it needs to be identified and valued. This does not mean that the other party will automatically receive one half of the inheritance and it depends upon what contributions each party has made throughout the relationship.</p> <p>Contributions from you by way of an inheritance that you have received, can sometimes be a significant contribution which is given greater weight by the Court when dividing up property.</p>
18.	My partner has a rich relative and they are elderly, is this relevant to my property settlement?	<p>In the majority of cases, the answer is "no". What one may expect to receive from the death of parents or relative is irrelevant to a property settlement proceeding, because people can change their Will at any time and until property actually comes into existence, it cannot be dealt with by the Court.</p>
19.	My partner has property in Trusts and companies and it is complex – How is this taken into account in a property settlement?	<p>Even if there are complex structures in place, it is always a matter of identifying what each party's interest in property is. In relation to companies, it is the shareholding that is held by a party that is relevant as being the piece of property and its value will depend upon the overall value of the company.</p> <p>In relation to Trusts – a typical Family Discretionary Trust will have assets that have been built up during the marriage and either the husband or the wife will be in control of that Trust. In these types of circumstances, the assets of the Trust are valued and notionally treated as assets of the parties.</p> <p>However, depending upon the nature and the type of Trust, the answer to this</p>

		question is not always straight forward and you should seek legal advice from a family law specialist in relation to these types of issues.
20.	I have a minority interest in my parents' company – Can my parents' company be dragged into the Family Court and affect my property settlement	<p>If you have an interest in your parents or a third-party company that has some value, then it is only the value of your proprietary interest in that company that will be relevant to your family law dispute. However, often in order to value your share in a third-party company, the company as a whole will need to be valued and documents will need to be produced.</p> <p>Your parents' company can seek legal advice about what documents to provide and can provide the documents amicably or if Subpoenas are issues, they may need to produce relevant documents to the Court.</p> <p>Generally, it is not necessary to join a family company (where the spouse is a minority shareholder) to the Family Court proceedings but there can be circumstances where that applies, and you should always seek legal advice from a family law specialist about the particular circumstances of your case.</p>

Disclaimer

Thank you for downloading our free guide to preparing a Divorce Application.

We appreciate and understand that there are many cases where parties cannot afford legal representation and this guide takes you through the journey of filling out your Divorce Application in a Step-by-Step manner, with examples and precedents to help you complete the task.

The information that is contained in this guide, does not constitute legal advice and if you have any questions, you should engage lawyers to act for you and assist where necessary.

The guide is current as at *February 2024* and we do update the guides regularly, but no assurance is given that the forms are up to date at all times and you should always check the FCFCOA website and download the latest copy of available forms at the following address: <https://www.fccoa.gov.au/>

We do not provide any assistance in relation to filling out the forms and the guide is a self-help tool that we make freely available to members of the public to assist them with the divorce process.

We hope you find the document and the guide helpful.