



Complimentary Information Booklet

Disclaimer: The information in this booklet should not be taken to constitute legal advice.

FAMILY LAW

Matthews Folbigg is one of Western Sydney's leading law firms located in the heart of Parramatta. We exist to make a difference for our clients and we take pride in our work and in the role we play in helping our clients to find solutions, resolve disputes, seize opportunities and create and protect value.

FAMILY LAW

We help our clients get through one of the most traumatic times of their life with specialist advice including property settlement, separation and child custody rights. Our family law services include but are not limited to Family Court representation and advice as to:

- Separation and Divorce
- Property Settlement
- Parenting and Custody Disputes
- Spousal Maintenance
- Child Support
- Unauthorised relocation and recovery of children

INDEX

How to get a Divorce	2	Family Dispute Resolution & Mediation	6
Children & Parenting	3	Help Lines & Websites	7
Child Support	4	Testimonials	7
Property & Finances	5	Meet our Lawyers	8

Matthews Folbigg

Having years of experience dealing with family law matters, the support of a Matthews Folbigg family law lawyer can make a world of difference. You can be secure knowing that our specialist family law lawyers are there to help relieve your worries and are available to assist you with any concerns or questions regarding your family law issue. We will be with you every step of the way!



Matthews Folbigg is "Recommended" in the "Leading Family and Divorce Law Firms – Sydney" 2018, 2019 and 2020.

Carolyn Munk is "Recommended" in the Doyle's Guide "Leading Family and Divorce Lawyers – Sydney" 2018, 2019 and 2020.

Carolyn Munk is "Recommended" in the Doyle's Guide "Leading Parenting and Children Matters Lawyers – Sydney" 2018, 2019 and 2020.

How to get a Divorce?

REQUIREMENTS FOR A DIVORCE

The *Family Law Act* sets out various requirements the Court is to consider prior to granting a divorce. The requirements are:

1. Jurisdiction

At least one of you was born in Australia or is an Australian citizen or has lawfully been present in Australia (for at least the last 12 months) and intends to continue living in Australia.

2. Valid Marriage

Marriage certificate is needed. If married overseas you may need your marriage certificate translated.

3. Separated for 12 months

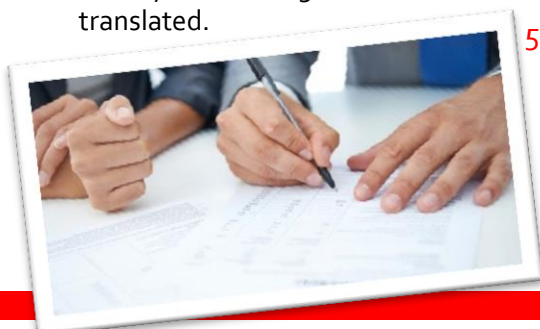
The marriage has broken down and there is no likelihood of getting back together and you have been separated for at least 12 months. A lawyer can advise you further if you have been separated under the one roof.

4. Service

If you file a joint application you do not need to serve anything. If you file as a sole applicant, you must serve your ex-partner with the papers. Certain rules apply in relation to service. If you have difficulties serving or you cannot locate your ex-partner a lawyer can assist.

5. Declaration as to Children

The Court must be satisfied that appropriate arrangements have been made for any children under the age of 18. A lawyer can assist you with satisfying this requirement.



DOCUMENTS NEEDED

There is a number of supporting documentation that you will require in order for your lawyer to process your divorce application. Some of which include:

1. Marriage certificate (with translation if not in English)
2. If neither party is born in Australia, proof of citizenship, residency or visa with passport proof evidencing you have been in Australia for the last 12 months.

Note: Other documents may be required depending on your individual circumstances.

IMPORTANT NOTE

Divorce proceedings will not deal with and finalise arrangements concerning parenting, property or financial matters. For orders to be made in relation to these areas, you must seek the particular order by filing a separate application.

If you file a **SINGLE applicant** divorce application with the Court

Serve your divorce application on your ex-partner
(service rules apply)

Acknowledgement or affidavit of service

Divorce Hearing

Divorce is final 1 month and 1 day from the orders being made

Court Process for Granting a Divorce

Note: The steps involved may vary slightly depending on individual circumstances

If you file a **JOINT** divorce application with the Court

Divorce Hearing

Divorce is final 1 month and 1 day from the orders being made

Children & Parenting

A parenting order is an order made by the Court about the parenting arrangements for your child or children. A parenting order can be applied for by parents, a child or any other person concerned with the children such as grandparents.

WHAT MAY BE DEALT WITH IN PARENTING ORDERS?

A parenting order may set out, amongst other things, the following:

- Where the child is to live
- How much time a child is to spend with a non-resident parent or another person such as grandparents
- When and how a child is to communicate with their parents and other significant people
- How parental responsibility is to be allocated between the parents including for major long-term issues
- Process for resolving disputes

WHAT DOES THE COURT TAKE INTO CONSIDERATION?

When determining what order to make for a child, the paramount consideration is the best interests of the child. In determining what is in the best interests of the child, the primary considerations are firstly, the benefit to the child of having a meaningful relationship with both of the child's parents and secondly, the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence. Some of the other considerations include the views of the child, the relationship that the child has with each of the parents and the extent to which each of the parents have taken the opportunity to spend time and communicate with the child.



PRE-ACTION PROCEDURES

Before filing an application for parenting orders, you must:

1. Read the *Marriage, Families and Separation* brochure; and
2. Attend Family Dispute Resolution.

Frequently Asked Questions

How can I prevent the other parent taking our child overseas?

There are various steps that can be taken depending on your individual situation. However, a 'Watch List' Court order can be sought as a pre-action step. This will place the child on the AFP watch list which will prevent the child from leaving any international airport or seaport in Australia.

What are the 'major long term issues' parents need to consult each other about?

Some of the more standard issues include but are not limited to: education, religion and culture, health and medical procedures, relocation and significant changes to living arrangements, change of name, overseas travel and any long-term issues about the care, welfare and development of the child.

My child doesn't want to live with the other parent. Are the views considered?

The Court considers factors such as the child's age, maturity and level of understanding as well as potential parental manipulation when deciding whether it should give weight to the child's views. The Court considers the views of the Child but is not bound by them and must take into account additional considerations.

What is an Independent Children's Lawyer (ICL)?

An ICL is a Court-appointed legally aided lawyer whose job is to independently represent the child's interests in the proceedings. There is a criteria to be met for the Court to order an ICL to join the proceedings.

Child Support

Child support is a payment made by one parent to assist the other with the cost of looking after the parties' children who are under the age of 18 years old, unless other factors cease the payments earlier.

Parents have the choice of applying to Services Australia for an administrative assessment or they can make a private agreement between themselves with the assistance of a family law Lawyer.

Option 1 – Child Support Administrative Assessment

Child support is assessed by Services Australia using a formula set out in the Child Support (Assessment) Act 1989.

The Basic Child Support Formula looks at:

- The number of children
- The children's ages
- How much money the parent needs to support themselves
- Both parent's incomes
- The percentage of care each parent provides for the children
- Other dependent children from other relationships

**Note factors considered are not limited to those listed above, every case may be different.*

Option 2 – Private Child Support Agreements

In order to provide certainty and stability, parents may agree to make a legally enforceable agreement about the amount or frequency of child support that is to be paid as well as how these payments are calculated. Parents may also reach an agreement relating to additional expenses for a child including school fees, clothing or payments for extra-curricular activities. A Binding Child Support Agreement is a written agreement signed by both parents that allows parents to agree on these issues.

There are two types of private agreements that can be made.

Type 1 - Binding Child Support Agreements

This type of agreement provides a high level of certainty and finality. They are however difficult to adapt to future changes. There are technical requirements set out in the legislation that must be met for an agreement to be binding. Child Support Lawyers are able to guide you through these requirements.

Type 2 - Limited Child Support Agreements

This type of agreement offers more flexibility and can be ended after 3 years in some circumstances. The agreed amount payable must be equal to or more than the Services Australia assessment amount.



Property & Finances

If you and your partner cannot agree on how to manage your property and finances at the end of a relationship, you may be able to apply for a property order.

A property order is an order made by the court and can determine how your property, income, financial resources and debts should be divided between you.

WHAT MAY BE CONSIDERED IN PROPERTY ORDERS?

- Properties and investments in Australia and overseas
- Cars, boats and other vehicles
- Bank accounts
- Loans and credit card debts
- Superannuation
- Businesses
- Inheritance
- Shares
- Any other assets and liabilities



HOW DOES THE COURT DEAL WITH PROPERTY?

In Australia, there is no presumption that property to the relationship will be divided equally. Instead, the Court will assess what is 'Just and Equitable' considering the particular circumstances of the case.

The Court will consider any financial and non-financial contributions to the acquisition, preservation or improvement of property, as well as any contributions made in the capacity of homemaker. The future needs of the parties are also relevant. For example, the Court may find that a party should have a higher percentage of the property due to decreased ability to work.

OTHER THINGS TO CONSIDER

Depending on the circumstances, it may be necessary to obtain further documentation beyond the standard financial disclosure. This may include:

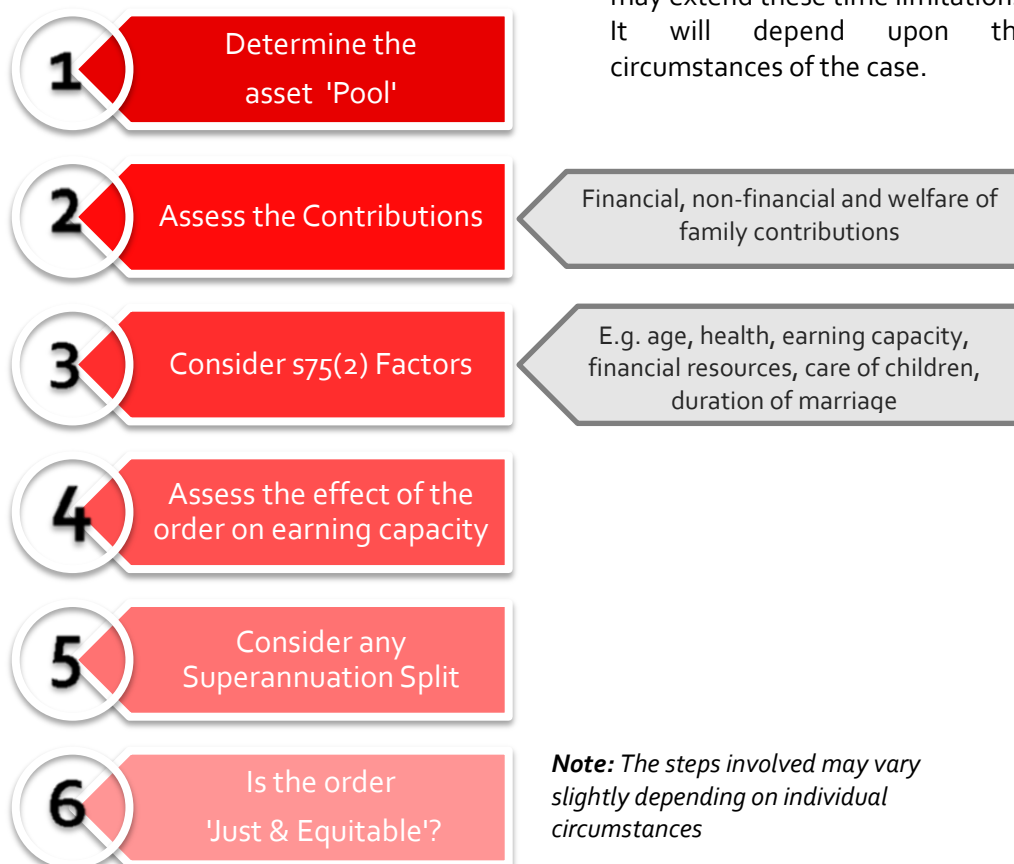
- Valuation of properties
- Valuation of businesses
- Balance of the spouse superannuation

TIME LIMITS

Applications for a property order must be brought within:

- 12 months after divorce for married couples; or
- 2 years after the breakdown of a de facto relationship.

In some circumstances the Court may extend these time limitations. It will depend upon the circumstances of the case.



Note: The steps involved may vary slightly depending on individual circumstances

Family Dispute Resolution & Mediation

WHAT IS FAMILY DISPUTE RESOLUTION?

Family Dispute Resolution (FDR) is a way of assisting families to resolve their family conflict and make decisions about their family law dispute. This includes issues surrounding both children and property. Family Dispute Resolution is facilitated by a FDR practitioner that is impartial to the outcome of the dispute. The role of the FDR practitioner is to facilitate communication between the parties and keep the mediation conversation focused on the children.

Confidentiality

Generally, anything said during FDR is confidential and cannot be used as evidence in later Court proceedings.

Compulsory

It is generally compulsory for families to attempt FDR before applying to the Family Court for parenting orders. Families are required to make a genuine effort to resolve their disputes during FDR. Some exceptions exist.

Section 6OI Certificate

A section 6OI certificate is required to apply to the Court for a parenting order. The certificate must be issued by an accredited Family Dispute Resolution practitioner. A section 6OI certificate can be issued where the other party did not attend or the FDR practitioner is concerned about family violence or child abuse.

POSSIBLE OUTCOMES OF FDR

Parenting Plan

Once an agreement has been reached, the terms can be recorded as a parenting plan. The plan must be in writing, dated and signed by both parties. While they are not legally binding, they can be used in Court.

Consent Orders

After you have agreed on a parenting plan, you may apply to the Court to have your agreement made into a legally binding Court order called a Consent order.

BENEFITS

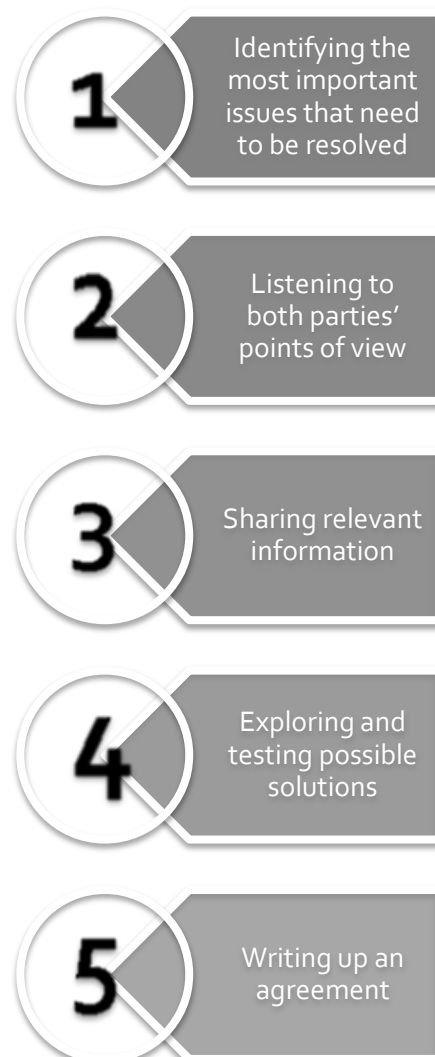
- More expedient and less expensive than the Court process
- Enhanced communication between the parties can benefit an ongoing parenting relationship
- Guide to resolve future disputes
- Parties have more control over the decisions that affect them
- Reduced stress



BEFORE FDR

Before commencing the FDR/mediation session, the practitioner will complete a client assessment to identify safety concerns.

POSSIBLE PROCESS



Note – The steps involved may vary slightly depending on individual circumstances

Help Lines and Websites

FOR WOMEN

Women's Legal Services NSW is a free community legal centre for women across NSW, providing specialised legal advice for issues relation to domestic violence, assault, family law, child protection and discrimination.

Women's Domestic Violence Court Advocacy Services assist women in obtaining legal protection against their perpetrators. They also help with other needs, including accessing support services for counseling, financial assistance and housing.

FOR MEN

Dads in Distress is an organisation that looks to providing support for me, and helping them improve their family safety and wellbeing, particularly during or after the separation process.

MensLine is a professional telephone and online support service for Australian men. It looks to ensure men are taking care of their emotional wellbeing during difficult times, particularly in cases of divorce or separation.

FOR FAMILIES

Relationships Australia assists families in creating harmonious and positive relationships. They specialise in crisis support, as well as family dispute resolution.

FOR CHILDREN

Kids Helpline is a free 24-hour counseling service for young people aged between 5-25 years old. The Hotline is designed to allow children to speak confidentially with a counselor regarding any issues they may be facing. The counselors can offer advice to improve their situation, and facilitate better relationships with family members.

Relationships Australia is an organisation which provides services to enhance family relationships as well as provide support for individuals, couples and families who need help with parenting and separation.

Family Relationship Centres operate across Australia. For those unable to reach the centres, the Family Relationship Advice Line is open. The Centres also offer a Children's Contact Service which provides separated parents a safe and positive contact arrangement to pick up and drop off their kids. This enables ongoing contact between both parents, which is a positive aspect of a child's well-being.

HERE'S WHAT SOME OF OUR FAMILY LAW CLIENTS HAVE SAID

Jonathan

"Thank you again for all your help and assistance in finalising this matter. I greatly appreciate your guidance and help in bringing a very difficult matter for me to a conclusion. Thank you also to your members of staff in ensuring all went smoothly and without a hitch. Thanks again and wish you all well in the future."



Ivory

"...you helped me with your professional knowledge and caring heart during the most difficult time of my life. I will always remember, whenever I encountered any problems, you were always there for me and gave me valued advices. Your effort was the key which lead to the excellent result of my case."



Meet our Family Lawyers



Carolyn Munk
Principal
Accredited Specialist



Kieran Ridley
Associate



Andrew Banna
Principal
Accredited Specialist



Chloe Elkerton
Solicitor



Cathy-Anne Grew
Special Counsel
Accredited Specialist



Cassandra Bayliss
Solicitor



Tina Lohitharajah
Senior Associate / Mediator
Accredited Specialist

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