men & separation

Family Law for Men experiencing Separation or Divorce

This booklet is produced by Southern, Riverland and Limestone Coast Community Justice Centres. The Centres provide free legal services and court representation at these locations.

Southern Community Justice Centre
40 Beach Road
Christies Beach SA 5165

Limestone Coast Community Justice Centre
8A Commercial Street
West Mount Gambier SA 5290

Riverland Community Justice Centre
9 Kay Avenue
Berri SA 5343

Outreach Locations

Bordertown	Cadell	Kangaroo Island	Kingston SE
Lameroo	Loxton	Marion	Meningie
Millicent	Morgan	Murray Bridge	Naracoorte
Penola	Pinnaroo	Renmark	Robe
Strathalbyn	Victor Harbour	Waikerie	

For information on all the services provided, or for any information on this publication: telephone (08) 8384 5222 or 1300 850 650 or visit www.communityjusticesa.org.au

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DEFINITIONS AND INTERPRETATIONS

In this book:

- "partner" refers to your spouse or former spouse or partner;
- "child" refers to any dependent child under 18 years including biological, step child or adopted;
- "relationship" refers to marriage and de facto relationships;
- "lives with" is the modern term for residence (previously custody);
- "spends time with" is the modern term for contact (previously access);
- "parties" means people involved in a Court action;
- "Family Court" means Family Court of Australia or Federal Circuit Court;
- "Civil Court" means the civil divisions of the Magistrates Court of South Australia, District Court of South Australia or Supreme Court of South Australia;
- "The FLA" means the Family Law Act;
- "FDR" means Family Dispute Resolution;
- "DHS" means Department of Human Services;
- "CLS" means Community Legal Services;
- "LSC" means Legal Services Commission;
- "ACD" means Advanced Care Directives;
- SACAT refers to South Australian Civil and Administrative Tribunal.

INTRODUCTION

This book has been written for men considering, or going through, separation and divorce whether in a heterosexual or same-sex relationship. This book addresses some basic legal aspects of separation and provides practical legal information with the aim of preventing some of the most common legal pitfalls which men can experience when they separate. This book is not intended as an alternative to obtaining legal advice.

In the process of addressing many important legal issues, this book acknowledges some of the emotional, practical and financial aspects relating to separation, which can be overwhelming.

About Us

Southern and Limestone Coast Community Justice Centres are community legal centres that provide a free initial consultation with a solicitor to most members of the community.

When you consult with our Service at this initial stage of assistance, we cover most areas of law.

The service provides:

- Information and referral
- Legal advice
- Ongoing assistance including court representation, where appropriate, is provided at no cost to eligible clients.


If you have concerns about how you are coping contact your GP for mental health care plan or Mens Helpline on 1300 789 978.

SEPARATION

Separation occurs when you or your partner, or the two of you together, decide that your relationship has ended. There are no legal formalities required to separate, it is very important to communicate clearly when separation has occurred for you.

> Separation can be a profoundly traumatic and emotionally painful experience in your life.

Your relationship may have been a major source of security and comfort, and you may feel that your personal identity was shaped by your relationship to your partner and your children.

At times you may feel a combination of being overwhelmed, anxious, insecure, empty, depressed or angry. These feelings are not unusual. However, if not dealt with appropriately, such feelings can have long term negative consequences, ranging from inability to cope with everyday life or work, to difficulty eating or sleeping, ill health, depression, violence, or even suicide.

> If you are having trouble managing your emotions, feel that you are losing control or just need to "bounce ideas" off someone, consider professional counselling.

Counsellors or Psychologists can help you work through these issues on a personal level. Find a Counsellor or Psychologist who specialises in the area of separation and families.

It is important to remember that many men separate, and build new lives which are positive. Despite the feelings of pain and disappointment, many men find setting new goals, continuing to engage in social or sporting activities, finding new hobbies, accepting invitations to dinner or parties, to be a vital part in assisting with the process of moving on and forming a new rewarding life.

Remember to take care of your mental health at this time. Make an appointment to speak with your GP if you have concerns about how you are coping. Alternatively, the MensLine Australia can also offer valuable support. Telephone 1300 78 99 78.

Practical Matters

If you are considering separation, there are some immediate practical issues you may need to consider. These include: who should move from the family home, where and with whom the children should live and financial matters.

You should obtain legal advice before leaving the family home as there may be implications if any future dispute arises. If you have made the decision to leave, it is advisable to take with you your credit cards, driver's licence, legal documents, financial papers, medication, keys, money, personal belongings and any personal items of significance such as photographs.

You and your partner are each entitled to a fair share of household items. The children's belongings should be sorted according to where the children will live. If you and your partner cannot agree on how to divide these items, seek legal advice.

If you and your partner have a joint home loan you should notify your bank or lender of the fact that you are no longer living in the home. If your name is not on the title of the family home, or on any other real estate in which you have an interest, you should consult a lawyer without delay about placing a caveat on the title. A caveat will prevent your partner from selling the property while both of you are working out your property settlement. Refer to page 30 of this booklet.

Resist the temptation to drop into the house whenever you feel like it, unless you and your partner have expressly agreed that it is okay for you to do this. If you attempt to get into the house uninvited it could result in your partner changing the locks or police attending if there is a disturbance. This could lead to your partner seeking an Intervention Order, which usually prevents your attendance at the house. You could also be charged with property damage even if the house is in joint names. If you are having difficulties with access to the house, seek legal advice.

If you are staying in the family home, ensure you give your partner his/her personal items and make every effort to ensure that each of you retain an appropriate amount of household goods and furniture needed to easily re-establish yourself.

Financial Aspects

Many men have difficulty finding the money to establish another home, while also paying for general living expenses, and often child support and/or spousal maintenance.

You will need to think about how to divide your property and who will pay the debts. You may need legal assistance to deal with some or all of these matters or to issue an application in either the Family Court of Australia or the Federal Circuit Court seeking appropriate relief. Ensure you have access to your personal paperwork such as bank statements, superannuation information and tax returns.

Upon separation, it is wise to cancel, if possible, any credit facilities that are in joint names to prevent incurring further debt or liability. If you owe money and cannot cancel the joint credit card account, you can arrange to "freeze" the account so that no withdrawals or purchases can be made, only payments. If you owe money to a bank or another lender you should inform them that you have separated and you want to prevent your partner from extending any joint mortgage or loan(s). There are a number of free financial counselling services that can assist with managing your finances. Refer to the back of this book.

If you have children in your care you may be entitled to child support payments from the child's other parent and you should contact the Department of Human Services Child Support. You may also be entitled to a whole or partial Centrelink benefit such as Parenting Payment or a proportion of Family Tax Benefit. You should contact Centrelink directly.

SEPARATION "UNDER ONE ROOF"

A high degree of co-operation is needed between you and your partner to enable you to live separately under the one roof and such a situation can become highly complex.

> If your relationship is ending, you and your partner may still be considered to live separately and apart even though you continue to live together in the same residence, "under one roof".

You must be living separate lives in specific ways and also be seen by others to be living separate lives. This is essential if intending to apply for a Divorce in the future. Refer to page 36 of this booklet for more information.

INFORMATION & LEGAL ADVICE

Some men benefit from attending courses or seminars about particular topics such as parenting or communication skills, how to build good relationships and dealing with emotions. Some of these resources are listed at the back of this book.

The Family Courts offers information sessions about how the Court system works and resources that are available through Court. If you are involved in Family Court proceedings, it is advisable you attend a session. The Court encourages people to attend, even if they are not involved in Court proceedings and want to know more about the Court.

The legal implications of separation and divorce can be confusing.

> It is wise to seek legal advice before making decisions about property, child support and children, even if you and your partner have reached an agreement or are getting along well together.

It is important to obtain legal advice about these matters before signing any legal documents to ensure your rights and responsibilities are clearly explained. A family lawyer can advise you in practical terms about short and long term consequences of any legal document you may consider signing.

OBTAINING LEGAL ASSISTANCE

Community Legal Services

Community Legal Services (CLS) are not-for-profit community based organisations that provide free or low cost legal assistance to the community and can provide initial advice in most areas.

Contacts for CLS are in the back of this booklet.

Legal Aid

Legal aid may be available in certain disputes about care of children or who children live with. In limited cases, legal aid may be available for spousal maintenance and/or certain property disputes between separated couples. You can apply for legal aid by completing a legal aid application form either online via the Legal Services Commission (LSC) website, or by filling out a hard copy form. A private lawyer who does legal aid work may do this for you. The LSC will decide if you are eligible by assessing your financial situation, the strengths of your case and whether it really needs to go to Court. If legal aid is not granted you may appeal against the decision in writing within fourteen (14) days of receiving a decision. If you do not qualify for legal aid you may obtain free legal advice from a CLS or LSC.

If you do not qualify for legal aid, you may be eligible to obtain ongoing legal assistance and court representation from a lawyer at a Community Legal Service.

Private Lawyers

In the event that you are not eligible for assistance through CLS or LSC you may consider engaging a private lawyer. It is best to consult with a lawyer who specialises in family law and to be clear on legal costs in the first consultation. It is wise to ask for an estimate of legal fees before engaging a lawyer.

Some lawyers charge in accordance with a "Scale of Fees" set by each Court. If your lawyer does not charge according to the scale rate you should enter into a Costs Agreement, which you sign if you agree with the costs to be charged. You may obtain independent legal advice from another private lawyer about any Costs Agreement.

CHILDREN'S MATTERS

> Separation is a time when your children need to know that they can rely on you. If children see that their parents are accepting and coping with separation and the changes in their lives, they are more likely to do the same.

Children will adapt better to the situation if they believe that their parents co-operate and show a caring involvement in any plans for their wellbeing and future.

With the anxiety and disruption that separation and divorce can cause children, it is crucial that you reassure them that they are not to blame for the relationship breakdown. It is extremely harmful to children, both in the short term and in the future, if parents do not take responsibility for their separation. Parents should not argue, criticise, or blame each other for the breakdown of the relationship in the presence of their children or allow others to do the same, even if each believes they are the aggrieved party.

> Research reveals that children most affected by separation in the long term are those whose parents are in high conflict. Children need to be able to love and trust both parents and have a close and positive relationship with each parent.

Parents Duties & Responsibilities

The Family Law Act ("the FLA") embraces the principle that both parents have an obligation to fulfil their duties and meet their responsibilities concerning the long-term care, welfare and development of their children. At law both parents have parental responsibility for their children and such duties include providing children with financial support, a place to live, food, clothing, education, medical care and maintaining a child's connection with their culture.

Parents must also protect their children from harm and ensure they have proper supervision, discipline, control and safety. The FLA states clearly that each of the parents of a child who is under 18 years has parental responsibility for the child. This responsibility is not affected by the parents' separation or by either or both parents re-partnering.

Parental responsibility should not be confused with "shared time" or "equal time" with the children. When you and the other parent are discussing any arrangements regarding your children, the most important question will be what is in the best interests of our children?

The FLA states that children's best interests are supported by two primary considerations:

1. The paramount consideration is that children have the right to be safe from all forms of harm.
2. If a child's safety can be maintained to an adequate standard the FLA states that a child has a right to have a meaningful and beneficial relationship with both parents.

It is beneficial for children to maintain contact with the parent who moves out, along with grandparents, other relatives, friends and where possible, also continue to attend the same school. It is important that the parent who leaves the family home continues to spend meaningful time with their children. This can be by visits, telephone, letters, videos, email or skype.

Best Interests of the Child

How does the Court decide what is in the best interests of the children?

The Court's primary considerations are the benefit of the child having a meaningful relationship with both parents and the need to protect the child from all forms of harm.

The Court can also consider:

- the views of the child (taking into account the child's maturity and level of understanding);
- the nature of the child's relationship with each parent;
- the likely effect of any changes in the child's circumstances including the likely effect of any separation from a parent;
- the practical difficulty and expense of a child spending time with a parent (eg where a parent and child live far away from each other);
- the capacity of each parent to provide for the child's needs, including their intellectual and emotional needs;
- the maturity, gender, lifestyle and background of the child;
- the child's cultural heritage;
- each parent's attitude to the child and to the responsibilities of parenthood;
- any family violence involving the child or a member of the child's family;
- any Final or contested Family Violence Order that applies to the child or to a member of the child's family;
- whether it is preferable to make an Order which would be the least likely to lead to further proceedings;
- any other facts or circumstances which the Court considers relevant.

It is up to the Court to decide what importance it places on each of the factors listed above when deciding what kind of Parenting Orders to make.

Equal or Substantial Parenting Time

When making a Parenting Order, the Court must decide if it is in the child's best interests and reasonably practical for the child to spend equal time with each parent. If the Court decides not to make an Order for equal time, the Court must then consider if it is in the child's best interests and reasonably practicable for the child to spend substantial and significant time with each parent.

'Substantial and significant' time can mean that the time the child spends with a parent will include days on both weekends and holidays, as well as other weekdays which form part of the child's daily routine, for example school days.

Court Pre-Action Procedures

Pre-action procedures are steps that you will need to take in most cases before a family law matter proceeds to Court. This is particularly the case in the Family Courts.

To ensure that each prospective party in parenting proceedings makes a genuine attempt to resolve the dispute at the earliest opportunity, and before Court proceedings are issued. In most cases the Family Courts require you and your partner to undertake certain pre-action procedures. If you are thinking of going to Court about your children's care arrangement, or if your partner has applied to Court and you are the Respondent, you must, subject to some exceptions set out below, first demonstrate that you have participated in Family Dispute Resolution such as counselling or mediation.

If you believe that the pre-action procedures do not apply to you, you should seek legal advice.

The Court may find that pre-action procedures do not apply in some cases where:

- there is urgency such as a genuine risk to the child, relocation or overseas travel;
- there are allegations of family violence;
- you would be unduly prejudiced or adversely affected if your partner knew you were intending to issue proceedings;
- there has already been an application about the same or similar issues in the last 12 months.

Parenting Agreements and Court Orders

The FLA encourages parents to reach their own agreement about the care and living arrangements of children. Many parents reach an informal agreement without needing a lawyer. Some parents reach their own agreement and then have the agreement formally lodged in Court. These documents are called "Consent Minutes of Order" and have the effect of:

- setting out the Agreement reached in writing;
- setting out each parents' obligations under the Agreement; and
- making the Agreement legal and enforceable if a parent breaches a term of the Order.

Family Dispute Resolution

It is compulsory for parents to have attended Family Dispute Resolution (FDR), in the form of mediation or joint counselling, through a Family Relationships Centre or similar services before being permitted to file an Application with the Court concerning their children's care arrangements.

Each party will be assessed for their suitability to participate in FDR. Not all cases are appropriate for FDR, for example in cases where there is urgency, where there are allegations of family violence, or child abuse, or where a party refuses to participate.

In cases which are deemed suitable for FDR, about three (3) hours of mediation or counselling will usually be provided free of charge, after which:

- the parties may choose to continue with FDR to try to resolve their issues (some cost may be incurred); or
- the parties are given a Certificate by the FDR Practitioner confirming the participation of the parties and their inability to resolve some or all of their issues. Only after the Certificate has been obtained can a party go to Court.

Court Orders

Where parents cannot agree, they can make an Application for the Court to make Orders either urgently, in the interim, or at a trial. The Court has wide powers and can make many different Orders regarding care of children. These Orders include:

- with whom the child will live;
- when and how the child will spend time with each parent or other persons significant to the child;
- urgent Orders;
- supervised time with a parent;
- arrangements regarding the child's medical care or schooling.

The Court can also make Orders for injunctions and restraining Orders preventing certain things from happening such as:

- one or both parents from consuming alcohol or drugs before or during time spent caring for the child;
- the child coming into contact with a particular person;
- taking a child outside the metropolitan area, or the country;
- a parent applying for a passport for a child.

Shared parental responsibility can be changed by a Family Court Order for one parent to have the sole parental responsibility for a child, for example, in order to protect a child from physical or psychological violence, neglect or abuse.

Complying with Court orders

Parents and others (such as grandparents) who are subject to parenting orders must do all things required by the Orders. Orders of the Court are legally binding upon the parties and there are consequences that may apply in the event that a Court Order is breached (contravened). Parties are required to take all reasonable steps to ensure the Order is followed, including positively encouraging children to do so.

Parenting Orders will remain in place until a subsequent Parenting Order or Parenting Plan varies the original Order in some way.

Changing Family Court Orders

Once the Court has made Final Orders, the only way to change these is by agreement between the parties or by applying to the Court. Where there is no agreement with regards to changes the Court may not readily vary an Order unless there are compelling reasons. Parents should not ask the Court to vary a final Order whether made by consent or by the Court without good reasons and what must amount to significant and substantial changes in his or her circumstances.

There is still an expectation that parents will engage with FDR prior to considering applying to the Court to vary existing Final Orders. All Parenting Orders regarding a child end when the child reaches 18 years, marries or begins living in a de facto relationship.

Location and Recovery Orders

Sometimes situations arise where one parent makes a decision to withhold a child from the other parent and changes address or moves away to prevent the other parent from finding or spending time with the child. Sometimes there may be safety reasons for this behaviour however, it remains that neither parent is at liberty to make such decisions and prevent a child from having a relationship with the other parent. A child's care arrangements are to be decided by both parents, keeping in mind what will be in the best interests of the child.

If you are in a situation where the other parent has taken a child and you do not know where the child is, it may not be possible for FDR to occur. You will need to consider applying to the Court to ask for either (or both) a Location Order and a Recovery Order.

A Recovery Order is an order that you would seek if you have been the primary carer for the child since separation and the other parent has removed the child from your care without your knowledge and/or consent.

A Location Order requires the Court to request from Centrelink or any other Government Department to release information about a child's address either to the Court or your legal representative. You will not be at liberty to know that address, however, the information will be used to serve the other parent with your Application for Parenting Orders.

We recommend that you seek legal advice before applying to the Court for either a Recovery or Location Order.

Common Pitfalls in Care Arrangements

Beware of the following:

- **"It's my right to shared care"**. Incorrect. Family Law focuses on the best interests of children and parent's responsibilities to ensure children are protected from harm. While children often need the ongoing care and support of both parents, this does not always equate to an equal amount of time spent by the child at both parent's homes. It is more about the quality of the time children spend with their parents, not the quantity.
- **"She's the mother so she'll actually get full custody".** There is no presumption that it is in a child's best interests to reside with the mother or other parent. Rather, it is important to focus on the needs of the children and the care arrangements that are in the children's best interests. Remember, separation effects children too and they can react in different ways.
- Do not rely on what your family or friends say or the care arrangements they may have for their children. Every family is different, so the arrangements that work for your family may be different to other families.
- **"My children told me they want to live with me".** It is important not to place the burden of parenting issues and care arrangements on children. Children often have the difficult task of trying to make both of their parents happy, however this does not mean they should be involved in discussing the care arrangements with you or your partner.
- There is no automatic age that children can begin making their own decisions as to which parent they will live with and how much time they will spend with the other parent. Care arrangements and disputes concerning children remain a parenting issue until children turn 18 years of age. You should seek independent legal advice.
- Try to minimise any arguments or conflict away from the children. Conflict can have a significant impact on not only children, but parents as well. It can be important to consider an appropriate method of communication between yourself and your partner so that you can discuss the children and care arrangements without arguing.
- **"I need a Court Order to protect myself".** It is important to obtain independent legal advice before finalising any care arrangement or Parenting Plan into a legally binding Consent Order. In particular, it is important to consider whether you have young children, whether separation occurred recently and whether you and your partner intend for the care arrangements to continue until the children turn 18 years of age.

DOMESTIC AND FAMILY VIOLENCE

Many parents express concerns about what they perceive to be safety concerns for their children when it comes to negotiating care arrangements. If you are about to engage in FDR it will be important to be upfront about those concerns in order to allow the mediator the opportunity to assess the appropriateness of FDR. FDR services are experienced at managing a variety of conflicts and concerns however they may not conduct the mediation if they assess that there are risks to the children or either party that cannot be safeguarded against.

When you believe you may have concerns related to family violence, it is important to consider whether your concerns are actual safety concerns or simply a difference in parenting values. Ask yourself whether the concerns you have are of such concern that you believe appropriate authorities, such as the police, medical practitioners or the Department for Child Protection, should be alerted.

Family and domestic violence includes physical violence or threats of physical violence, emotional, psychological and verbal abuse, property damage, sexual abuse, rape, placing financial or social restrictions on family members, and generally, behaviour which places the family member(s) in fear.

> Family violence experienced, witnessed or heard by children is very damaging to their essential development and can have lasting effects into adulthood.

Even though the general perception in the community is that women are often the victims of family violence, it is becoming more common for men to speak up if they are the victim.

Intervention Orders

If you are a victim of family violence, you can seek assistance from the Police. It is best to contact a police station which has a Family Violence Unit. In some cases you can obtain a Intervention Order ('IO') from a Magistrates Court against your partner which can limit contact.

You can also make your own application in the event the police decline to offer or are unable to offer assistance. You will need to establish that you hold a reasonable fear for your safety or that of your children.

If you recognise that you have been violent, and you want to make positive changes, assistance is available. Please see resources at the end of the book.

> Men who find the courage to address their behaviour can make huge changes in their lives and their children's lives.

If your partner has alleged that you have perpetrated family violence and you do not agree, it could be time to reflect honestly and ask yourself, "is there a basis of truth to some of the allegations"? If there is no truth to the allegations, you have a right to defend an IO application at the Magistrates Court. However, you should seek legal advice first.

If your partner obtains an IO against you, it will contain Orders limiting or preventing contact with her/him. If the children are in the care of your former partner, then it may be difficult for you to make arrangements with the other parent about the children. You can ask that the IO permits you to have contact with your former partner to make these arrangements. In some circumstances this will not be possible and you will need to obtain a Court Order from the Family Courts permitting you to spend time with the children.

Once an IO is in place, it acts as a civil remedy against a person to protect another. This means that it is not considered to be a criminal act and a criminal conviction is not recorded against your name if you are named as the defendant of an IO. However, if you breach any terms of the IO, the police can arrest you for a criminal offence which carries a risk of imprisonment. It is important that you obtain legal advice from a lawyer if you are served with an application for an IO or there is an IO in place.

The Family Courts take family violence seriously. They will take IO's or allegations of family violence into account when addressing issues about the care of children.

CHILD PROTECTION

Child protection is the commitment by the State to protect children and young people who are in need of care and protection from abuse or neglect by their carers.

Following a report of abuse, neglect, child maltreatment or harm to a child the Department for Child Protection (formerly Families SA) ("the Department") may decide if action needs to be taken in the Youth Court.

The Youth Court has wide powers to ensure children are protected from abuse, harm or neglect and can make the following orders once an application has been made by the Department including:

- Removing children from the care of either or both parents. If this occurs, the Department must make an application to the Youth Court within 24 hours or return the child/ren to their home;
- Requesting Investigation and Assessment Orders for a period of 42 days. This authorises the Department to obtain parenting capacity assessments and various other orders including documents from medical services, SAPOL and the Education Department;
- Following an Investigation and Assessment Order, the Department can then apply for an Application for Care and Protection if they believe the children are at a risk of abuse, harm or neglect. These orders can place the children under the guardianship of the Minister for Child Protection for a period of 12 months or until the child/ren turn 18 years of age.
- The Court can also make orders for access to the children by the parents or guardians.

Sometimes when the Department decides to take action in the Youth Court, it can prompt parents or relatives to consider actions in the Family Court. The Family Court will not make any orders until the Youth Court matter has resolved.

If the Department or the Youth Court are involved in your parenting dispute, you should seek legal advice as soon as possible and, where possible, work with the relevant authorities to ensure the care and safety of the children.

PROPERTY SETTLEMENT

Property settlement involves the division of all the assets (including Superannuation) and liabilities (debts) you and/or your partner have accumulated during the period of your marriage or relationship.

The Family Law Act 1975 (Cth) (the FLA) governs property settlements between separating married couples and de facto couples (heterosexual or same sex couples) who live in and have property in South Australia and who separated on or after 1 July 2010. De facto couples who separated before 1 July 2010 should seek legal advice.

The law requires that a Court Order for property settlement is just and equitable to both parties.

For the FLA to apply you must first establish that you are either married or have been in a de facto relationship.

A person is considered to be in a **de facto relationship** if:

- The persons are not legally married to each other; and
- The persons are not related by family; and
- Having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

In addition to establishing that a de facto relationship exists, you must also satisfy the Court that:

- The relationship is one that has existed for at least a total of two (2) years; or
- There is a child of the relationship; or
- A party has made substantial contributions and a failure to make the order or declaration would result in serious injustice to the applicant; or
- The relationship has been registered in the relevant State if applicable.

The Family Courts deal with property settlements for people who have been married and couples in a de facto relationship that separated on or after 1 July 2010.

With limited exception, the Magistrates Court of South Australia, District Court of South Australia or the Supreme Court of South Australia will deal with property settlements for people who have been in a de facto relationship and separated before 1 July 2010.

Property Settlement Process

In order to commence taking steps to financially end the relationship following separation, it is helpful to consider the following four step process which the Court applies when determining an appropriate division of the assets, liabilities and superannuation entitlements of you and your former partner.

1. **Establish the property pool**
   (assets, liabilities and superannuation)
2. **Assess the contributions of each party to the pool**
   (financial, parenting, homemaker, non-financial)
3. **Identify the current and futures needs of each party**
   (e.g. age, health, income, dependents and other factors)
4. **Determine a just and equitable division of property**
   (a fair distribution of property based on the first 3 steps)

To ensure the property settlement is just and equitable, all the assets, liabilities and financial resources of you and your partner need to be considered. Both parties have a duty to provide full and frank disclosure of their financial position including all sources of earning, interest, income, property, superannuation fund and other sources.

What is 'property'?

One of the first steps in the property settlement process is to identify and value the property pool. But what can be considered as 'property' for the purposes of a property settlement?

The term 'property' is very comprehensive and includes a wide range of interests that may be held in the names of either party, whether solely or jointly, or under their control.

Assets may include everything owned by you, by your partner, or in joint names, anywhere in the world. Likewise, liabilities may include all debts owed in your name, your partner's name, or jointly.

For example, property will include common interests such as:

- Real estate (including family home, investment properties, land)
- Motor vehicles (including boats, trailers, caravans, motorbikes)
- Furniture and household contents (including tools, jewellery, personal effects, antiques)
- Money held in bank accounts
- Interest in a business or partnership (even if there are other partners in the business)
- Shares, stocks and bonds
- Superannuation
- Mortgages, personal loans & credit cards

Depending on the circumstances, including how and when they were accrued, less common interests may also be considered as property, for example:

- Gifts and inheritances
- Long service leave lump sums
- Overseas real estate or and assets
- Life insurance

It is important to note that property may also include assets or liabilities held by either party prior to the relationship, or acquired following separation. Assets that have been sold or disposed of may also be considered. When valuing assets and liabilities in the property pool the Court will consider the value at the time of the property settlement.

Superannuation is treated like an asset of the relationship. The Trustee of a superannuation fund can be bound by certain Orders made by the Family Courts. There are many ways that your superannuation interest can be dealt with in a property settlement, including splitting the interest between you and your partner, or "flagging" the interest until an event occurs, such as retirement. The value of the superannuation interest can be taken into account in the property settlement and "traded off" for other assets. Whatever happens with superannuation must be just and equitable in your property settlement. Superannuation law is very complex. You should seek legal advice about how to deal with superannuation in your property settlement.

Financial Resources

The Court will also consider any financial resources that may be available to either party as part of the property settlement process. A financial resource can include a financial interest or benefit, such as income or a lump sum of money, that a party may be entitled to, or expect to receive in the future.

For example:

- Anticipated inheritances
- Anticipated pension entitlements
- Superannuation held overseas
- Assets held in trust controlled by a third party
- Unpaid long service leave and annual leave entitlements

Financial resources that may be available to either party will not be included in the property pool, but will be considered as relevant factors when determining a fair property settlement.

This can be a complex area of the law and you should obtain legal advice and assistance before beginning the property settlement process.

Assets, Liabilities & Financial Resources

Factors relevant to the division of property

In addition to the above, there are many other facts the Court considers relevant. These include:

- the period of time you and your partner have been together;
- assets, liabilities and financial resources you and/or your partner had when you married or started living together;
- age and health;
- income of you and your partner;
- who cared for the home and/or the children;
- who has been, or will be, caring for the children after separation;
- the future financial needs and earning capacity of you and your partner;
- Whether in fact it is necessary or just and equitable to make orders in relation to the property.

Court Pre-Action Procedures

The pre-action procedures in property settlement procedures are similar to parenting care disputes procedures as explained in this book. The Court usually requires you and your partner to undertake certain pre-action procedures before Court proceedings are issued in relation to property settlement.

If you are thinking of going to Court about property settlement and/or spousal maintenance, or if your partner has applied to Court and you are the Respondent, you must, subject to some exceptions set out below, first demonstrate that:

- you have participated in FDR such as counselling, mediation, negotiation, conciliation or arbitration;
- where FDR has been unsuccessful, you (or your lawyer) have written to your partner and any other potential party to the dispute setting out your claim and exploring options for settlement; and
- you have complied with the duty of disclosure as set out in the Family Court Rules. This means making available to your partner certain financial information with a view to resolving the case more quickly and easily.

The above are what the Court refers to as pre-action procedures. If you do not comply with the pre-action procedures, the Court can make Orders that you pay your partner's legal costs.

The Court may find that pre-action procedures do not apply in some cases where:

- there is urgency such as a genuine risk to the child, relocation or overseas travel;
- there are allegations of family violence;
- there are allegations of fraud;
- there is an intractable dispute (for example where your partner refuses to negotiate);
- you would be unduly prejudiced or adversely affected if your partner knew you were intending to issue proceedings;
- a time limitation is close to expiring;
- there has already been an application about the same or similar issues in the last twelve (12) months.

There are exemptions to the requirement to undertake the pre-action procedures. Pre-action procedures do not apply to proceedings which only involve child support, or bankruptcy, or divorce.

If you believe that the pre-action procedures do not apply to you, you should seek legal advice.

Mediation/Negotiations for Property Disputes

Certain mediation services are available to people who are separating and want to negotiate property settlement. Property mediation has a number of advantages with the obvious one being that it is the most cost-effective way to settle any dispute. Whilst mediation may have some cost, this is generally lower compared to the cost of making an application to the Court for determination.

Mediation works most effectively when each party first obtains independent legal advice from their lawyer, separately, and then attends mediation with their partner to reach an agreement. Mediation allows parties to reach their own agreement and, if successful, can obtain advice about whether or not the agreement should be made legally binding. It is important to understand that when a written or verbal agreement is reached in mediation this will not be legally binding. It is advisable that you take this agreement to a lawyer to discuss whether the agreement should be prepared into a legal document.

Finalising Property Settlements

It is very important that you legally finalise your property settlement. Even if you do not own real estate you should still obtain legal advice as to the appropriateness of obtaining a legally binding document. This is to prevent your partner making a claim in the future, for example if you inherit money, receive compensation, win a lottery or increase your superannuation before retirement.

> The only way you can legally prevent your former partner from making further property claims against you is when there is a sealed Order made by the Court, by way of Consent Minutes of Order, or a Binding Financial Agreement. These important documents should be prepared by a lawyer.

Creditors

The FLA allows the Courts to hear from your creditors, or your partner's creditors, in cases where your property settlement may affect your creditor's rights to recover monies you or your partner owe. The creditors can become a party to the proceedings and have their claims assessed at the same time as you and your partner.

Bankruptcy

If you and/or your partner are unable to pay your debts and are contemplating bankruptcy, you should seek financial advice immediately. Refer to the resources at the end of this book.

If you and/or your partner are bankrupt or contemplating bankruptcy you should be aware that under the FLA the Trustee in bankruptcy can become involved in your property settlement as a party to the proceedings. This is because the property settlement could have an impact on the rights and interests of not only yourself and your partner, but also those of your creditors. The Court can consider the interests (often competing) of yourself, your partner and the creditors and deal with the property settlement and the bankruptcy at the same time.

Caveats

If your partner is the sole registered owner of real estate, you may have what is commonly referred to as an equitable interest in the property. It is advisable that you lodge a caveat over the property. You should do this even if your partner is not threatening to sell the property. Once lodged with the Land Titles Office, the caveat is registered on the Certificate of Title and serves as a warning to potential buyers that there is a dispute over the property. Once the property settlement has been finalised, you must remove the caveat. You should always get legal advice before lodging or removing a caveat.

Agreement

If you and your partner can agree about the division of property then your agreement can be prepared by a lawyer.

An agreement can be formalised one of two ways

- a Binding Financial Agreement or
- Consent Orders (the Orders), which are filed in Court. If the Court is satisfied that the Orders are just and equitable, the Court will make the Orders.

These documents are legally binding and finalise the property settlement with an aim to sever all financial ties where possible and do not require parties to go to Court.

Court Proceedings

If you and your partner cannot reach an agreement either by negotiations or mediation on a property settlement, either of you can make an application to the Court to decide your case. The vast majority of cases which are filed in the Court settle without the need for a trial.

Urgent Court Applications and Injunctions

In some situations it may be necessary for you to go to Court to try to prevent your partner from doing something, for example to stop him or her from selling or disposing of assets or taking on further debts. In this way the assets are preserved and can be protected, if required, during the Court proceedings.

Similarly, you can apply to the Court to obtain an Order for him or her to do something such as sign a Sales Agency Agreement with a real estate agent.

Time Limit for Property Settlement

If you have not finalised your property settlement within the following time limits you will be required to seek permission from the Court to file your application for property settlement out of time. An extension of time to file an application may not be granted as it is ultimately at the Court's discretion.

If you are married you will have 12 months from the date your divorce was granted to either legally formalised your property settlement by agreement or apply for the Court to make a determination.

If you were in a de facto relationship and you separated on or after 1 July 2010 you will have two (2) years from the date that you separated.

If you are out of time, seek legal advice as soon as possible.

Common Pitfalls in Property Settlements

Many couples divide their assets and debts without obtaining legal advice. This can cause unforeseen problems and may prove financially disastrous. To avoid such problems, seek expert legal advice from a lawyer who specialises in family law .

Beware of the following:

- **"It's 50/50, right?"** Wrong. Do not automatically assume that a fair division of property is an equal split of everything. Each case has its own facts that are taken into account.
- **"I will give you the car if you pay for the loan."** Do not transfer assets or debts without first getting legal advice. If you transfer an asset that is in joint names (eg family car or home) to your partner, on the understanding that your partner will pay the joint loan or mortgage, you are still legally responsible to pay the loan or mortgage if your partner stops payments. The finance company is not bound by any informal agreement reached between you and your partner.
- Do not try to obtain legal advice from your partner's lawyer. You should always receive independent legal advice.
- Do not rely on what your friends or family say. Their good intentions could lead you astray. You should seek advice from a qualified family lawyer.
- **"I'll go to Court because it's my right to have my day in Court."** If your matter proceeds to Court it will be far more expensive, take longer to finalise and be more emotionally draining. You will also have no control over the outcome. Most property settlement matters are not finalised by the Court but rather settled through negotiations by lawyers, in mediation or by direct negotiation between the parties.
- **"We agree to sort out the property ourselves, so I don't need lawyers."** Beware of this situation as, if you reach an agreement with your partner about the division of property, the settlement is not legally binding and will not protect you against future claims by your partner. Should this happen, the Court must take into account the assets you had at the time of separation, and in addition, the value of any assets owned by you and your partner at the time your partner makes their Application.
- Never agree to transfer any property or assets instead of paying child support without legal advice.
- **"My ex has no right to my financial documents."** Duty to disclose requires all parties to a family law dispute to provide to each other all relevant information regarding their financial circumstances.
- **"We agreed not to touch the super."** Superannuation is an asset of the relationship and needs to be considered in line with all other assets.

Pre-Nuptial Agreements

Before entering into another de facto relationship or marriage you may want to protect yourself from property settlement claims by your new partner. If you are entering into a relationship, you may consider having a Binding Financial Agreement (often referred to as a Pre-Nuptial Agreement).

You should obtain legal advice about these agreements as they are complicated to draft and could be subject to challenge by your partner in the event of separation. This is especially the case if circumstances at the time of separation are very different from the circumstances at the time of making the agreement.

SPOUSAL MAINTENANCE

After separation some partners find it difficult to support themselves financially and may seek spousal maintenance payments. The concept is similar to child support payments, except spousal maintenance payments are for financial support of a partner. Spousal maintenance payments are governed by the FLA. Some partners choose not to pursue spousal maintenance and instead factor the need for financial support into their property settlement agreements.

Entitlement to Spousal Maintenance

Examples of when a partner may seek spousal maintenance include:

- After a long "traditional" marriage/relationship where the husband was the "breadwinner" and the wife took care of the children and the home, the wife's age and lack of workforce skills means she cannot adequately support herself.
- A partner who has been the main care-giver to children under 18 years of age and may not be able to work due to continuing the role of care-giver.
- A partner with a physical or mental incapacity who may not be able to support themselves after the breakdown of the marriage.

If a party seeks spousal maintenance they must demonstrate that they cannot support themselves adequately. You will only be liable to pay maintenance to the extent you are reasonably able, taking into account your own necessary expenses to support yourself.

The Court can take into account numerous factors when deciding if a party is entitled to maintenance payments. If the Court decides the party is entitled, the Court will carefully consider the financial needs of the party seeking maintenance and the financial ability of the other party to pay maintenance. Although the Court looks carefully at the income (and expenses) of both parties, the assets, debts and financial resources of each could be considered in assessing how much maintenance is to be paid.

Spousal Maintenance Agreements

As with property settlements, where parties agree on the arrangements for maintenance, the agreement can be formalised into Consent Orders. This would then be filed and sealed in the Court. Alternatively, an Agreement can be in the form of a Binding Financial Agreement.

Spousal Maintenance Orders

Where parties cannot agree on maintenance payments, the party seeking the payments can apply to the Court for Orders. Often maintenance Orders will be sought at the same time as property settlement Orders.

Types of Spousal Maintenance Payments

- Periodic: a regular amount usually paid weekly, fortnightly or monthly.
- Lump Sum: this can be in the form of a lump sum of money or a transfer of assets.

Maintenance is a complex area of law. Before seeking maintenance payments or agreeing to pay maintenance, especially in the form of any lump sum or transfer of assets, you should seek legal advice.

Time limits for Spousal Maintenance

In most instances, the same time limits are enforced for spousal maintenance applications as are applied to property settlement applications. That is, in most cases you will have 12 months from the date a divorce becomes final or two years from the date of separation from defacto relationship to make an application for spousal maintenance.

DIVORCE

You or your partner, or both of you jointly, can apply for a divorce in the Federal Circuit Court of Australia after you have been separated for at least 12 months. There is no legal requirement to file for a divorce. If you do not want to divorce but your partner does, he or she can make the application on their own. If you disagree with the facts set out in the application, you can respond.

It is important to be able to establish that you have been separated at least twelve (12) months to enable you to fulfil one of the requirements for divorce, even if you have been separated under the one roof.

However, if you decide that you want a divorce then you must be able to establish that:

- you are legally married and able to provide a copy to the Court; and
- you have been separated for at least 12 months; and
- there has been an irretrievable breakdown of your marriage; and
- there is no likelihood of living together again as spouses.

Please note that there may be special requirements for circumstances when one or more of the following apply whereby it is recommended you obtain legal assistance:

- separation under the one roof for all or part of the 12 month separation requirement;

- if you have been married for less than two years as at the date of the application;
- if the marriage occurred or your partner resides overseas;
- location of your partner is unknown.

You can contact the Family Court or visit their website www.familycourt.gov.au to obtain further information. Divorce applications can be made online at the Courts website. You should consult a lawyer if you need assistance.

If a sole application has been made the applicant must ensure service requirements have been complied with in accordance with strict time frames. You should consult a lawyer if you need assistance.

If there are no circumstances preventing the divorce being granted, the Court will usually grant the divorce at the first hearing of the divorce application. Then the parties to a divorce must wait one (1) month from this time before the divorce becomes final.

A divorce formally ends the marriage in a legal sense. It does not resolve any issues relating to children, child support, spousal maintenance or property. You do not need to wait until you are divorced either to reach an agreement with your partner or to make an application to the Court for Orders about living and financial arrangements for children, your partner or division of property.

If you are required to have to file an application for property settlement or have Orders made in relation to property settlement you must do so within 12 months from the date of your divorce. If you do not do this you will need to seek permission from the Court to file out of time. There are no time restraints in relation to finalising property settlement if you are not divorced, however, it is recommended that you resolve property dispute prior to applying for divorce.

WILLS & ESTATE PLANNING

After separation, you should re-consider any directive or power you have given an ex-partner, or consider any future directive or power you intend to give to a new partner (or adult child) over your health care and/or financial affairs.

Advance Care Directive

An Advance Care Directive (ACD) is a document that sets out a clear legal arrangement for your future health care, end of life, preferred living arrangements and other personal matters.

In South Australia, this directive is governed by the Advanced Care Directive Act 2013 (SA).

This arrangement is completely subject to your wishes, preferences and instructions, a way in which you can clearly express what decisions you would like to be made in relation to your future care whilst you are still legally competent and able to make such decisions.

The ACD allows you to also appoint one or more Substitute Decision-Makers to make these decisions on your behalf if you are unable to in the future, for example, if you suffer a sudden accident or serious mental health episode, dementia, stroke, or end up in a coma.

To write an ACD you must be at least 18 years of age, know what an ACD is, what it is used for and when it will be used.

The ACD replaces what was an Enduring Power of Guardianship, Medical Power of Attorney and Anticipatory Direction with one single ACD form. If you already have any of these documents in place prior to 1 July 2014, they will continue to be legally effective unless you complete a new ACD form to replace them.

An ACD must be made using a specific Form. Both the Form and the do-it-yourself ("DIY") Kit (which contains the form) are available for download or electronic completion from www.advancecaredirectives.sa.gov.au.

Hardcopies of the Form can also be purchased from Service SA.

Once completed and witnessed, the original ACD should be retained by you and certified copies provided to your health care practitioner and substitute decision makers (if so appointed by you).

Please note the ACD is not a Will, nor can it be used to make financial or legal decisions.

Powers of Attorney

A power of attorney is a document that gives a person (the donee) the power to act on behalf of the person who gives them that power (the donor). In South Australia, this power is regulated by the Powers of Attorney and Agency Act 1984 (SA).

This power given by a donor to a donee is the power to deal with the donor's financial affairs ONLY.

Any person over the age of 18 years who has 'legal capacity' can make a power of attorney. To have 'legal capacity' means that you are able to understand the nature of the document and its effect and are able to communicate this.

No one can make a power of attorney for someone else, only the donor can make one and give their power to someone else (the (donee).

There are two different forms of powers of attorney, a general power of attorney (PoA) and an Enduring Power of Attorney (EPoA).

General Power of Attorney

This gives the donee the power to deal with the donor's financial affairs, for example the power to buy and sell things or operate a donor's bank account if the donor is away overseas. This power is automatically cancelled when the donor loses their legal capacity.

EPoA

This extends the power given to the donee by the donor – it operates even when the donor becomes legally incapacitated and loses their legal capacity. In such circumstances, and an existing PoA becomes invalid and, if duly executed, the EPoA is still effective.

Sometimes it is difficult to assess whether or not someone is legally incapacitated. Legally incapacitated means that someone is unable to understand the nature of the document and its effect, or is unable to communicate in any way. If there is a question about a person's competence it is best to obtain a written medical opinion, and it is best to get that from the person's own doctor.

However, you are not able to make an EPoA if you are already incapacitated. If issues arise as to making financial decisions for someone in this position, anyone with proper care for the person can apply to the South Australian Civil and Administrative Tribunal (SACAT) who have the capacity to appoint an administrator to manage that person's financial affairs.

Giving a power of attorney, General or Enduring, does not mean you lose control over your finances. You can still deal with whatever matters you wish to deal with, the donee can only carry out financial decisions that they are allowed to carry out. The extent of what they are allowed to carry out is stated in the power of attorney document and their powers are limited to those outlined conditions.

Please note however, that giving someone an EPoA can carry risks. You should always seek legal advice before executing a power of attorney.

A power of attorney ends when the donor dies. At this point, any Will left by the donor becomes effective.

You can purchase the forms from Service SA or get a private lawyer to prepare a power of attorney, which is advisable given the complex nature of the forms.

Alternatively, Legal Services Commission and the Office of the Public Advocate have made a DIY Enduring Power of Attorney Kit which contains the forms, a 'how to' guide to filling them out as well as answers to common questions regarding EPoAs.

Wills

After separation, you should give thought to Will and Estate planning in the event of your death.

If you marry, have children, separate, divorce or re-marry you should seek legal advice about making a new Will. A Will is not affected by separation, however, it is automatically revoked by divorce. You should make a new will if your testamentary wishes have changed.

If you want to include a provision as to whom you want to be the Guardian(s) of your children upon your death, you should obtain legal advice from a lawyer specialising in Wills and Estates. You should note however, that this clause will not prevent the Family Court making Orders about the children if the mother or another party interested in the welfare of the children makes an application.

The Public Trustee, a private Trustee Company or a lawyer can prepare your Will. DIY Will Kits are also available from Service SA for a fee. Always obtain legal advice regarding these Kits as many people make basic mistakes which can affect the validity of the Will.

If you have Superannuation benefits you should obtain legal advice and contact the Superannuation fund(s).

CHILD SUPPORT

Both parents have a legal duty to financially maintain their children until at least the age of 18 years. The legal duty can extend beyond the age of eighteen 18 years if maintenance is necessary to enable the child to complete their education (this can include high school, TAFE, University, private College, apprenticeships) or if they have a disability and are unable to support themselves financially.

Calculating the Child Support Assessment

The administrative formula applied by the DHS Child Support, for cases, calculates the initial amount of child support payable based on several factors, including the most recent and available taxable income of both parents, number of children, ages of the children, level of care of the children and any other relevant dependent children. There are a number of ways this amount or liability can be changed.

Estimates

If either parents' income is at least fifteen percent (15%) less than the income used by the DHS to calculate the rate of child support, the parent can contact the DHS to lodge an Estimate of Income (EST) provided they have been lodging regular tax returns. They may be required to provide supporting documents or information to verify the change of income.

If the DHS accepts the EST, a new assessment will be calculated which applies from the date that the EST was accepted. Estimates cannot be backdated so it is important to inform the DHS immediately if there is a change of circumstances. It is also important to update the DHS if your income estimate increases or decreases.

Additional Income Earned Post Separation

In some circumstances a parent may apply to have additional income earned after separation (limited to 3 years after separation) excluded from the adjusted taxable income. This can include income earned from sources such as overtime work, a second job, or a promotion. The DHS must be satisfied that it is not income that would have been earned in the ordinary course of events. Should you be successful in a reduction, the carer parent may apply to have this amount increased by having the income included in the assessment.

Change of Assessment Applications

Many parents have special circumstances or changed circumstances they want taken into consideration to make the child support assessment fairer. The Change of Assessment process gives parents the opportunity to have those circumstances taken into consideration in cases where there is a financial consequence.

There are specific grounds upon which parents can apply for a Change of Assessment. These include, but are not limited to, income, earning capacity, financial resources, assets and property of either parent, special needs of the children, cost of educating the children in the manner expected by both parents, high cost of self support due to necessary and unavoidable expenses. In addition to these examples, there are other reasons where an assessment may be changed.

Applications to Change the Assessment can be very complex. It is important that before lodging a Change of Assessment application you obtain advice from one of the child support legal services listed at the back of this booklet.

Paying Child Support

Child support can be paid in different ways; directly to the DHS Child Support, to the receiving parent or to a third party (in some circumstances).

Payments via DHS CS

If you pay child support directly to the DHS Child Support you are required to make your payments by a certain date each month. Late payment penalties apply if payments are not paid on time.

The DHS Child Support can also arrange for child support to be taken directly from the paying parent's wages. This can happen without the paying parent's consent if they have a poor payment record.

Payments Direct to the Receiving Parent

If you pay child support direct to the other parent, it is best to pay child support money into the other parent's bank account to ensure evidence of payment. If you pay in cash, it is important to keep accurate records such as signed receipts of all payments as evidence. Issues can arise if you pay mortgage payments, private school fees or other bills or debts instead of child support. There may be a dispute as to whether you did pay this money or whether it was intended as child support. It is important to obtain legal advice before making any such arrangements. It is important you keep clear records and receipts of all such payments to avoid a dispute as to whether a payment was made for child support.

Non-Agency Payments

The child support legislation allows for some non-cash payments or payments to third parties and these can be credited against the child support liability if both parents agree that these payments are intended as child support. This is called a "Non-Agency Payment" (NAP).

The DHS Child Support can credit some specific payments known as "prescribed payments" toward thirty percent (30%) of the child support liability without the other parent's agreement. You will need to speak to the DHS Child Support about any indirect payments you intend to make. To avoid dispute, it is important to keep accurate records and evidence of any such payments made.

Enforcing Child Support

In cases where a paying parent regularly misses payments or owes child support and the DHS Child Support are unable to communicate with the paying parent, the DHS Child Support can take enforcement action to recover the amount owing. This may include taking monies from the paying parent's bank account, from a lump sum source (eg a Return to Work payout, or other compensation payment or tax refund) or in certain circumstances initiating Court action.

While some paying parents find it hard or frustrating to talk to DHS Child Support, it is important to keep the lines of communication open. Whether you are the paying parent or receiving parent, it is better to try to deal with the arrears before they increase, either by contacting DHS Child Support or seeking legal advice from a child support specialist Service. Refer to the back of this booklet.

Child Support Agreements

Often when a Child Support Agreement is signed, one or both of the parties are not fully aware of the implications of the document and problems subsequently arise. If you or the other parent are considering signing a Child Support Agreement, it is important that you first obtain independent legal advice about the document and that you understand the implications of what you are agreeing.

These procedures are important as usually a signed Child Support Agreement is legally binding. If, after the Agreement has been signed, you or the other parent want to change this and cannot agree, you may need to apply to a Court seeking that the Agreement be changed.

Lump Sum Child Support

If you want to transfer your interest in the family home or in any other property to the other parent as payment of child support or if you want to pay child support in a lump sum, YOU MUST obtain specialist legal assistance from a Lawyer who specialises in family law and has a sound knowledge of lump sum child support matters.

These Agreements can be very complex and require specialist legal advice.

Before you agree to make any substantial lump sum payment of child support instead of periodic payments, you need to consider a number of important practical matters, such as:

- whether you will be able to afford to re-establish yourself financially in the short and long term without this money;
- any change in future circumstances such as losing your job or whether the child is likely to live with you in the future;
- the effect a lump sum payment may have on you and/or the other parent's ongoing entitlement to Centrelink payments.

Child support is a complex area of law. It is important to obtain as much information as possible about the system and your rights as soon as possible.

Many child support problems are easier to resolve if dealt with at an early stage. It is difficult to recover child support if you have paid too much or to catch up on arrears if you have let these accumulate.

PARENTAGE (DNA) TESTING

Do not sign a child's Birth Certificate or a Statutory Declaration stating that you are the father if you have valid doubts. If you sign either of these documents, you will be assessed to pay child support and there will be other legal implications as you will be considered to be the father of the child.

If you are paying child support or if you have received an assessment to pay child support from DHS Child Support, and you do not believe that the child is your biological child, you may ask the mother to consent to Parentage Testing. Parentage Testing involves you, the mother of the child and the child undergoing a strictly regulated medical procedure which determines whether you are the father of the child. The current tests are more than ninety nine percent (99%) accurate.

If you and the mother cannot reach an agreement about the tests, or who will pay for testing, either of you can apply to the Court for an Order for Parentage Testing.

MEN'S RESOURCES

Legal Resources

Southern Community Justice Centre	8384 5222	1300 850 650
Uniting Communities Law Centre	8342 1800	1300 886 220
Northern Community Legal Service	8281 6911	1300 558 555
WestSide Community Lawyers	8340 9009	
Limestone Coast Community Justice Centre	8723 1396	1300 850 650
Legal Services Commission Advice Line	1300 366 424	
Law Society Legal Referral Service	8229 0288	
Aboriginal Legal Rights Movement Inc	8113 3777	
Justice Net SA	8313 5005	

Child Support Legal Services

Southern Community Justice Centre	8384 5222	1300 850 650
Northern Community Legal Service	8281 6911	1300 558 555
Legal Services Commission, Child Support Unit	8111 5576	

Financial Resources

Uniting SA	8440 2200
Bankruptcy Advice Centre	1800 738 353
Uniting Communities	1800 615 677
Anglicare SA	8305 9200

General Resources

Beyond Blue, National Depression	1300 224 636
Centacare Family Mediation Service	8215 6700
Department of Human Services Child Support	131 272
Family Law Courts	1300 352 000
Family Relationship Advice Line	1800 050 321
Mens Line Australia www.menslineaus.org.au	1300 789 978
Parenting SA	1800 088 158
Parenting Helpline	1300 364 100
Relationships Australia Family Mediation Service	1300 364 277
Family Relationships Centre Adelaide	8419 2000
Family Relationships Centre Noarlunga	8202 5200

SOUTHERN, RIVERLAND AND LIMESTONE COAST COMMUNITY JUSTICE CENTRES

Southern Community Justice Centre
40 Beach Road
Christies Beach SA 5165

Limestone Coast Community Justice Centre
8A Commercial Street,
West Mount Gambier SA 5290

Riverland Community Justice Centre
9 Kay Avenue,
Berri SA 5343

Outreach Locations

Bordertown
Cadell
Kangaroo Island
Kingston SE
Lameroo
Loxton
Marion
Meningie
Millicent
Morgan
Murray Bridge
Naracoorte
Penola
Pinnaroo
Renmark
Robe
Strathalbyn
Victor Harbor
Waikerie

Contact

Christies Beach
(08) 8384 5222
F: (08) 8384 5212
E: southern@communityjustice.org.au

Mount Gambier
(08) 8723 1396
F: (08) 8723 1450
E: limestone@communityjustice.org.au

Berri
(08) 8582 4998
F: (08) 8582 5383
E: riverland@communityjustice.org.au

For general information please phone: 1300 850 650

Visit

www.communityjusticesa.org.au