

Separating from your partner

This infosheet provides practical information if you are considering leaving your partner. It also lists major services which may be able to help you make decisions if your relationship breaks down.

This infosheet was produced in collaboration with Women's Legal Service – a community legal centre offering free information, advice and referrals to women. All legal advice is individual and confidential. This infosheet is based on **Separation - a legal resource for women**. Contact Women's Legal Service for a copy.

1800 677 278 (07) 3392 0670

Can I leave home?

The decision to separate from your partner involves making significant changes to you and your children's lives. Separating brings emotional upheaval and it is recognised as one of the most stressful events in life.

However, if you are unhappy in your relationship, you have the right to separate at any time you decide.

It is often helpful to talk to a counsellor, close friend or family member about the changes that separation causes. If you do not have to leave urgently, speak to a solicitor about your rights.

Officially, you do not have to inform anyone of the separation but it is useful to record the date of separation for Centrelink benefits and for legal reasons such as divorce.

If you leave the family home you do not lose the right to your share of the home or other property.

What if you need to live in the house and your partner refuses to leave?

There are some limited options available if your partner refuses to leave the home. If your partner has been violent towards you, you may be able to get an order under the *Domestic and Family Violence Protection Act 1989* which requires them to leave the home. This can happen when you apply for a protection order from the Magistrates Court. These orders are not made lightly and you should seek legal advice to determine the best option for you.

If you are married with children and having difficulties with money and accommodation, and/or have experienced violence, and/or abuse, then you may be able to get a *Sole Use and Occupation Order* from the Family Court or Federal Magistrates Court. This order allows you to stay in the family home and orders your partner to leave. This is also possible if you are in a de facto relationship and own your own home. These orders can be difficult to obtain so talk to a solicitor before making an application.

Can we be separated and still live in the same house?

You can live in the same house and be considered 'separated' – or 'separated under the one roof'. It is important that you seek legal advice as there are special rules that apply in these circumstances, including those applied by Centrelink.

Women's Infolink

Women's Infolink provides an information and referral service about health, safety, financial security and equity issues for Queensland women. It offers information about Office for Women programs, seminars, events, grants, fact sheets and publications.

Monday to Friday 8am to 6pm

Women's Infolink 1800 177 577

www.women.qld.gov.au

Telephone Translator Service 13 14 50

TTY (07) 3877 8226

Infosheet series

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I have to leave but where can I go?

If you leave, there are a range of accommodation options available to you:

- **Staying with friends or relatives**
- **Private rental.** If you live in a private rental property and are experiencing domestic violence there are special provisions in the *Residential Tenancies Act 1994* which may assist you. Contact your local Housing Resource Worker, Tenants' Union or the Residential Tenancies Authority for more information.
- **Public rental** from the Department of Housing. If you have experienced domestic violence and are currently applying for public housing, you may be given a higher priority on the waiting list. If you live in public housing then you may be able to transfer to another house or change the house into your name. If you can provide evidence (such as a current protection order or evidence your partner has been convicted of assault against you), you may be eligible for a priority transfer to accommodation in an appropriate area.
- **Housing schemes**, like the Community Rent Scheme, operate through community housing organisations and can provide housing assistance to people in immediate and severe need who are on the waiting list for public housing.
- A **refuge** is a safe and secure place for you and your children at a secret location. Bring your personal belongings as the refuge will only supply accommodation, some transport and food. Call **dvconnect** on 1800 811 811 to find a refuge.

What can I take when I leave?

Identification, documents and money

It is a good idea to carry some money and at least three forms of identification with you (for applying for Centrelink payments or a new bank account) in case you decide to leave in a hurry. If possible, take the following original documents with you:

- passport/s
- birth and marriage certificates
- bank books, credit cards including joint accounts
- driver's licence

- car registration
- health care cards
- citizenship papers
- title deeds, business and personal finances papers
- tax file number
- your will.

Property

If you are taking children with you, it is reasonable to take the belongings and property you need to meet the day-to-day needs of yourself and your children. This could include the fridge, washing machine, television, crockery or linen.

It is important to get legal advice about the things you are entitled to keep when you separate. If you take more than you are entitled to, you may be ordered to return some property.

If it is unlikely that your partner will give you money or access to possessions, you can take available funds from joint bank accounts to support yourself and your children. It is advisable to leave money in the joint account to meet outstanding bills or mortgage payments if it has been set aside for this purpose.

It is advisable to take any personal items of importance to you as it may be difficult to get them back later (e.g. photos, special toys, gifts).

You can take the family car if it is registered in joint names or in your name. If the car is registered in your partner's name, get legal advice about your rights to the car before you take it. If you are unable to do so before taking the car, see a solicitor as soon as possible.

If you suspect your partner will sell the property before you divide it then you can prevent this by getting an urgent order from the court restraining them from selling the property. You should get legal advice as soon as possible, especially if the property is in your partner's name only.

Can I return to the house to collect my belongings?

You have a right to your personal possessions. If the house is owned jointly or is in your name, you can go back to the house. If the house is in your partner's name you should seek legal advice before going back to the house and collecting your belongings.

Office for Women - making things better for Queensland women

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You should consider whether there is a risk of violence or harassment from your partner. You can ask the police to accompany you but they will be there only for your protection. They will not help carry property and will not step in if you and your partner dispute ownership of belongings, unless they suspect you have taken something that is not yours. It is helpful to have some proof of ownership for what you wish to take.

If you are seeking a domestic violence order, you can request collection of your belongings from the premises as a part of that order.

How will I survive financially?

You may be eligible for a pension or benefit when you separate. Contact Centrelink to find out if you are eligible for assistance. If you are considering leaving you can also speak to a Centrelink social worker to discuss your options.

If you apply to Centrelink and have dependent children, you will need to apply for child support from the children's father. If you are concerned about pursuing child support because of domestic violence, you can seek an exemption. Speak to a social worker at Centrelink about this or any other concerns you have.

If you are not eligible for a benefit or a pension you can still pursue child support by applying to the Child Support Agency.

If you are married and need immediate financial assistance, you may be able to claim spousal maintenance on an urgent or temporary basis. Spousal maintenance is different from child support: it is money to support *you*. If your partner does not agree to pay, you will have to apply to the court. Spousal maintenance proceedings should be started within 12 months of your divorce being finalised. You should get legal advice about this process.

Emergency relief is available if you are in urgent need of food, clothing, furniture or money.

Divorce

Divorce is the official legal recognition of the end of a marriage. You do not have to wait for a divorce before dividing property or making arrangements for the children. Once your divorce is final there is a time limit of 12 months to apply to court for property settlement or spousal maintenance. If you are outside the time limit you should seek advice from a solicitor immediately.

You must be separated from your partner for 12 months before you can apply for a divorce.

You or your spouse must be an Australian citizen or resident and regard Australia as your permanent home.

If you have been married for two years or less, the court will require you to attend counselling to be satisfied that the marriage has ended.

The court only needs to know if you have been separated for 12 months, not who is to blame or that there is no chance of you getting back together. You do not need to register your separation; just note the date on your divorce application. You can prepare your own divorce application or pay a solicitor to do it for you. Divorce kits are available from Family Law Courts Registries (www.familylawcourts.gov.au). There is a fee for filing a divorce, but this can be waived if you receive a means tested benefit or are experiencing financial hardship.

What about the children?

When parents separate, decisions need to be made about who the children live with and how and when they will spend time with the other parent. If you are leaving, it is advisable to take the children with you.

You should seek legal advice about your children as soon as possible, especially if you are unable to take the children with you.

The *Family Law Act 1975*, in relation to parenting disputes, is the same for married or de facto couples. The law requires arrangements to be made in the best interests of children.

The law balances the benefit to children of having a meaningful relationship with both parents, with the need to protect children from physical or psychological harm.

Parents are required to attempt to reach an agreement about their children before applying to court. Family dispute resolution services (like Family Relationship Centres and dispute resolution services at Legal Aid Queensland) are available to help you reach agreement. However, there are exceptions to the requirement to attempt to reach an agreement, including urgency and where there is family violence or child abuse.

It is important to note that the *Family Law Act 1975* does not introduce a blanket rule of '50/50' shared care after separation. That is, there is no presumption that children must be cared for by each parent for 50% of the time. However, the court is increasingly required to consider whether a shared care arrangement, or arrangements, where a child spends substantial and significant time with each parent, is in the best interests of the child and is reasonably practicable. Where there has been family violence or child abuse such arrangements may not be in the best interests of the child and legal advice should always be obtained in these cases.

Do I need legal advice?

It is important to get legal information and advice when separating. It can assist you in making decisions and inform you of your legal position, rights and obligations.

If you and your partner cannot agree then it is best to seek legal advice as soon as possible, particularly if threats are being made to you or your children.

Even if you and your partner can talk together and agree on arrangements, it is useful to know beforehand what you

are legally entitled to and where you legally stand. If you have a written agreement, a solicitor can check it for you. You will need advice if you want to make the agreement legally enforceable.

A solicitor can also advise you about other legal matters such as your will and powers of attorney.

Where do I get legal advice?

Try to find a solicitor who is either experienced in, or specialises in, family law. Some solicitors have undertaken special training and are called **accredited family law specialists**. Make sure you ask upfront about costs and payment methods. Legal costs will depend on the amount and type of work your solicitor has to do and whether or not you receive legal aid.

Community legal centres, such as Women's Legal Service, provide free legal information and advice. Staff at community legal centres can refer you to a solicitor experienced in family law if you need a solicitor to act for you.

Legal Aid Queensland may pay a solicitor to assist you if you are eligible. The Queensland Law Society provides listings of lawyers who specialise in family law (www.qls.com.au).

For further information, see: Office for Women Infosheet Property Settlement - Dividing property after separation.

Contacts

Women's Infolink

For referral to a service nearest to you.
1800 177 577

Office for Women 'Find a Service'

Online service locator of more than 2000 government and community services for women. www.women.qld.gov.au/findaservice

Brisbane Women's Legal Service

(07) 3392 0670 or 1800 677 278

Legal Aid Queensland

1300 651 188
www.legalaid.qld.gov.au

Centrelink

Payments can be arranged for you and for your children. 13 10 21 (appointments and opening hours)
TTY 1800 810 586
www.centrelink.gov.au

Other services

There is a range of services that can help you through the separating process. Contact **Women's Infolink** 1800 177 577 or www.women.qld.gov.au/findaservice for services near you.

Community legal services

Are located across the state to provide a range of general and specialist legal services including family law matters

Relationship counselling services

Counselling agencies offering counselling and mediation services are available across the state.

Mediation services

Specialist family law services and other general mediation services can provide this assistance.

Accommodation services

Emergency, short-term and public housing contacts.

Homeless Persons Information Queensland

1800 474 753

Department of Housing

1300 880 882

Domestic violence services

dvconnect - Domestic and Family Violence Access and Support Service

Free, confidential telephone counselling, information and Queensland-wide refuge referral. 1800 811 811 (24 hours a day)

1800 numbers are free unless from a mobile phone and 13 and 1300 numbers are at local cost unless from a mobile phone.