



**TOP END WOMEN'S  
LEGAL SERVICE INC.**

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# Separation

If you are considering separating or are in the process of separation from your de facto partner or spouse, this factsheet provides information about separation.

## Who can separate?

Anyone in a relationship can choose to separate or go their separate ways. This includes any couple, including de facto couples, same sex couples, married couples and any other relationship. Separation happens when one person in the relationship decides to separate, acts on that decision and tells the other person.

**The other person doesn't have to agree to the separation.**

## What is the difference between separation and divorce?

While separation is the process of ending a relationship, divorce is the legal process of ending a marriage; it is only through a divorce application that you can legally end a marriage.

## What if the relationship has ended but we still live in the same house?

If you have separated but still live in the same house, this is called "separation under one roof". This can be important if you need to make a divorce application, where you would need to show that you are separated through actions such as:

- No longer sleeping in the same room
- Having divided or separate assets and accounts
- No longer doing household duties for each other
- Informing family and friends of separation and not socialising as a couple

## Separation is a difficult time

Separation can be an emotionally difficult, stressful and upsetting time, so it is important to ensure that you are supported in terms of your health and wellbeing. This can also include support for children, who may be exposed to parental conflict during separation.

People can also go through the different stages in grief in terms of separation. It is a good idea to talk with friends and family, as well as seek out professional assistance, such as a counsellor or psychologist

## Separation and visas

Separation will not necessarily affect your visa or residency. If this applies to you, you should seek migration law advice from a qualified lawyer or migration agent.

## Domestic and family violence and separation

If there is or has been domestic and family violence (DFV) during your relationship – including emotional, psychological, sexual, financial, and physical violence – it is important to consider in family law matters.

DFV can affect any property settlements you may make following separation, as well as parenting arrangements, if there are children of the relationship. If you or your children are at risk of being hurt, you should get help quickly by calling police on 000.

If there is DFV in the relationship, separation may be more difficult and it will be important for you to think about safety planning. This may include:

- Thinking about when the safest time is to leave;
- Having in mind a place you, your children and any pets can exit to quickly, such as a friend or family member's house, or a women's shelter; and
- Having copies of important identification, legal and financial documents, ready in a safe place, as well as valuables and cash.

It is important to know that you are not responsible for any abuse or violence being used against you.

If you have or are experiencing domestic and family violence, you should seek legal advice.





## Separating – things to consider

Separating can involve lots of different areas of your relationship and your life together with your former partner. Areas that may be relevant to people who are separating include:

### Parenting arrangements

If you and your former partner have any children under the age of 18, including non-biological children, you will likely need to make arrangements for their care, welfare and development following your separation. These arrangements are known as parenting arrangements.

You can make parenting arrangements in lots of different ways – there is no “right way”.

Some examples of parenting arrangements are verbal agreements, written agreements (called parenting plans), reaching agreement through mediation, or making an application to the family law courts for orders. You can make parenting arrangements as a parent, and also as a person involved in the parenting of a child, including an aunt, grandparent, or guardian.

For more information, please see the TEWLS factsheet “Parenting Arrangements”.

### Property arrangements

When you separate, you and your partner will likely need to discuss if and how you will divide your finances and property, including assets and debts.

For more information, please see the TEWLS factsheet “Property Arrangements”.

### Divorce

If you and your former partner are married, you may want to apply for a divorce to end your marriage. You can make a divorce application to the family law courts after you have been separated from your ex-spouse for at least 12 months.

For more information, please see the TEWLS factsheet “Divorce”.

### Updating your will

It is important to update your will to reflect your change in circumstances. If you do not have a will and you pass away, the law may not acknowledge your separation.

### Redirecting mail

It may be helpful to have a PO Box or an alternate address for post so that your post is separate to your former partner’s – you can redirect mail through application to your local post office.

### Passwords and pin numbers

You should consider changing your passwords and pin numbers to something that only you know to secure your privacy. This can be for any bank accounts and cards, phones, or your computer.

### Notification of change in circumstances

You should consider notifying and updating your account information with the following:

- Your bank
- Your superannuation fund
- Medicare
- Your utilities service provider, such as Jacana Energy or Power and Water

If you receive a Centrelink payment, you must notify Centrelink of the change in circumstances to ensure you receive the correct entitlement. If you do not do this, there will be consequences, including owing a debt to Centrelink.

### Check ownership

You should consider checking ownership details of the following:

- Car and car insurance
- House and mortgage

You should seek legal advice if you are unsure about ownership or do not know how to find this information.

### Renting a house – tenancy agreements

If both you and your former partner have a tenancy agreement, you should seek legal advice about changing your agreement to remove one person’s name.

### Child support

If you and your former partner have children, it will be important to think about child support. You can contact the Child Support Agency to assist you to work out a child support agreement that is fair for your circumstances.

### Changing your name

When you separate, you can choose to use your old name. You may have to formally seek a change of name through the Births, Deaths and Marriages Registry (for identification documents), or you can use your former name by showing your birth certificate (for bank accounts).

Do you need legal advice or information? You can contact TEWLS for a free appointment

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