



BRIESE LAWYERS FACTSHEET

Separation & Divorce



SEPARATION

Parties separate when at least one of the spouses forms the intention to end the relationship and then acts upon it, usually when one party moves out of the matrimonial home.

However, it is possible to be separated whilst both parties reside in the same accommodation. In some circumstances, Courts will recognise a couple as having separated even though they are still living in the same household. Usually you will need to provide evidence of separation, including confirmation of:

- Sleeping in separate bedrooms;
- Lack of a sexual relationship;
- No longer socialising as a couple; and
- No longer providing domestic assistance to each other.

If the parties have been married for less than two years, a mandatory counselling requirement exists and a Divorce Application cannot be filed within the two year period unless a prescribed counselling certificate accompanies the Application.

No documents or formal legal steps are required for separation to occur. If you are intending to later seek a Divorce however, you will need to remember the date of your separation to include in your Divorce Application.

From the time of separation, disputes over children, property, child support and maintenance can be dealt with. You do not have to wait for Divorce to deal with these issues.

One of the first steps that you should take, even prior to separation, is to seek legal advice. Even if there is agreement between you and your spouse, a Solicitor will be able to advise you of the best way to implement any agreement between you and remind you of things you may have forgotten about e.g. superannuation, gifts, insurance policies, benefits under Wills etc.

In every case where there is an agreement concerning either children or a division of property, you should have the agreement formalised, usually by way of a Court Order or Agreement. This is likely to overcome possible disputes in the future and protect your position.

Unless the agreement that you have reached with your spouse is formalised, the agreement will not be binding in the future and may result in your spouse making a further claim on your property up to 12 months after the date of your Divorce, or renegeing on parenting arrangements.

To read more on the importance of formalising negotiated agreements, and the grave risks of not doing so, refer to our Factsheet "**Formalising negotiated Agreements and Settlements**".



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DIVORCE

You can obtain a Divorce if your marriage has irretrievably broken down and you have been separated for at least 12 months. The date of filing of the Divorce application is crucial, and it must be at least 1 year and 1 day after separation commenced.

An Application for Divorce must be filed in the Federal Magistrates Court of Australia. Once the Application is filed, it will be given a Hearing date. The Applicant will be required to attend the Hearing, if there are children of the marriage under the age of 18.

At the Hearing, the Court will grant a *Decree Nisi* of the marriage (Divorce), if the Court is satisfied that:

- the marriage has broken down irretrievably; and
- if there are children of the marriage, that appropriate arrangements have been put in place for the welfare and development of the children.

Divorce marks the legal end of your marriage however, it will not settle issues in relation to the parenting of your children, child support, and the division of the property of your marriage. Where no agreement can be reached between you and your former spouse, separate Court proceedings may be required

Divorced couples cannot remarry until their Divorce becomes final, which is usually one month and one day after the Court date.

WARNING!

It is important to note that once you have been granted a *Decree Absolute* you and your former spouse only have a period of 12 months within which to apply for any outstanding property settlement or spousal maintenance proceedings to be determined by the Court (without special permission of the Court).

These are complex matters that require prompt attention to ensure your rights are protected. It is crucial that legal advice is sought to ensure that appropriate decisions are made, rights are preserved and matters are dealt with as quickly as is possible to allow the parties to move forward.

Further details with respect to separation and Divorce may be obtained by contacting one of our Solicitors who can offer practical legal advice and guidance, ensuring that your rights are protected.



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