

# Divorce in Australia

A guide for Australian men

By Sean Sullivan

## Contents

1. Introduction .....	4
2. Separation & Divorce .....	5
The Basics.....	5
Chapter Summary: .....	6
3. Getting your story straight.....	7
Chapter Summary .....	9
4. Lawyers .....	10
Handling Correspondence .....	10
Representing yourself in court.....	11
Tips when using your solicitor .....	11
Chapter Summary .....	12
5. The separation and divorce process .....	13
Physical Separation Occurs .....	14
Negotiation – Formal and Informal .....	15
Court Filing.....	16
The Divorce Process.....	18
Chapter Summary .....	19
6. Going to Court.....	20
Your Barrister .....	20
Representing yourself .....	21
Directions Hearing or Case Assessment Conference .....	22
Conciliation Conference& Pre-Trial Conference.....	23
“Round Table” Conferences.....	24
Final Hearing .....	24
Chapter Summary .....	24
7. Splitting Assets.....	25
Contribution to the marriage.....	25
Children.....	25
Size of the pool .....	25
Dividing the Assets.....	28
Pre-Nuptial Agreements .....	29

Existing assets before marriage .....	29
Financial capacity after separation .....	29
Spousal Maintenance.....	30
The Final Percentage.....	30
Protecting Yourself.....	31
Chapter Summary .....	32
8. Child Access.....	33
No Agreement.....	33
Negotiating an Agreement.....	33
Chapter Summary .....	34
9. Child Support .....	35
10. Dirty Tactics.....	36
Intervention Order / AVO .....	36
Skipping the country with the kids .....	38
Allegations of Child Abuse or Sexual Abuse.....	39
11. Other Useful Resources .....	41
12. Final Words .....	41

## Disclaimer

I'm not a lawyer, nor do I play one on TV. This is not legal advice. Instead, I'm going to give you all of the tips, tricks, and techniques I learned during my separation and subsequent divorce. The experiences I had may also happen to you. After reading this guide you will know how to protect yourself. This guide is for information and entertainment purposes only!

## 1. Introduction

Firstly, I would like to thank you for purchasing this book. Your contribution will go towards my \$25,000 (and still climbing) legal bill resulting from separation and subsequent divorce proceedings. So far, in the course of a year, I have been in and out of court several times. I've spent countless hours preparing affidavits, financial statements, court documents, and responding to letters from the child support agency, my lawyer and my ex-partner's lawyer.

This cost is, of course, in addition to the mental and emotional anguish resulting from the separation itself. This book won't cover how to deal with that aspect of separation. There are many books on that topic, written by mental health professionals. If you feel you are becoming overwhelmed or you don't know which way to turn, I would recommend talking to a qualified professional. Talking to a trusted friend or relative about your separation will help but take their advice with a grain of salt as bad advice can sometimes make things worse. This book will tell you exactly what to do on the legal side, but unfortunately I can't help you with the rollercoaster ride of emotions you will be feeling. It's a cliché, that "time heals all wounds". But, it's so often repeated because it's actually true.

This book has been written specifically for a male audience—mainly because it's written from the perspective of myself and other men I have spoken to about their divorce. It could also be useful to women as most of the information would still apply. However, the tactics that men use during separation and divorce and the tactics women use are usually very different because both sexes usually have different goals during divorce. A woman will usually want to 'keep' the children, possibly needs to be 'protected' from a violent man, and will need financial support and a lump sum payment from the joint assets. She usually needs money because the man was more often the breadwinner during the marriage and earned more money while the woman often has stayed at home and cared for the children and didn't work outside the home, or worked only part-time or had a lower-paying job.

If this situation doesn't apply to you, then I apologise for generalising. You will still find this book useful. Even if you implement only one-tenth of the tactics and ideas presented here, you will save the purchase price on lawyers' fees alone.

This book is intentionally short. My goal is to get this information read and understood very quickly without your having to wade through irrelevant crap to get to the gold nuggets. I hope you find it useful. If you have any feedback or questions, please feel free to email [sean@australiandivorce.com.au](mailto:sean@australiandivorce.com.au). I promise to get back to you as soon as I can.

## 2. Separation & Divorce

I'm sorry that you're going through a separation with your ex-partner. From all the advice I've read, once the word 'divorce' has been mentioned, it's extremely difficult for the relationship to recover. There are some techniques you can use to 'win back' your ex and in some cases it may be worth trying them. But, in many cases, it won't be. I'm not going to pretend to understand your situation and, for the purposes of this book, I'm going to assume the relationship is over and you are proceeding, full-force towards a divorce.

The legal process itself is described in Chapter 5. But, before we get to that, I'd like to go through some of the things you need to do before you even start. The overriding principle throughout this whole ordeal is that the two of you need to make some sort of arrangement. Lawyers can assist you through the process, but they can't force you or your ex to actually *do* anything - only a court can do that. The faster the both of you come to some sort of arrangement, the cheaper it will be for you and the quicker you can move on with your own life.

### The Basics

The first thing you need to do is start writing a diary of each interaction with your ex and your children. If you do nothing else besides this one thing and stop reading from this point, you will already be way ahead of the game. Try to remember any incidents that occurred before the separation and note these as well. Be as specific as you can about the incident and include the dates, possibly the time and who else was present at the time.

Become the perfect gentleman during every encounter and don't respond to any provocation or goading. The benefit of this advice will depend on how volatile your relationship is, but if she is abusive and/or trying to provoke you into doing something violent, always keep your cool and stay calm. In fact be *unusually* calm. Ignore any cheap shots she wants to make and note them down in your diary as soon as possible so the details are fresh in your mind.

Again, depending on how volatile your relationship is with your ex, I would also recommend that you voice-record every interaction (for example, pick up and drop off of kids). You can buy cheap mp3 voice recorders now or most mobile phones (e.g., the iPhone) will do this as well. If you're ever accused of anything in court, you can produce the voice recordings and your diary of the event and it will really knock the wind out of your ex's sails, providing that you have acted appropriately.

My barrister advised me that voice recordings are legal to produce in your own defense and you don't need her permission to record the encounter if your intention is to use it for your future defense. Using a voice recording in any other manner would probably break wiretap laws - You should consult with your lawyer if you are contemplating doing this. There may be other ways around this, you just need to be creative - For example, if you're using a voice recording to prove that your ex takes drugs in front of the children, I'd find a way to video the situation. Pretend you're videoing the kids and capture her drug paraphernalia on the desk in open view.

In a similar vein, try to communicate via email or SMS as much as possible. It is slower, but it's also easier to make sure instructions are crystal clear as you can take the time to compose each message. Anything can be said on the phone. It's not written down or recorded and it then becomes your word against hers in court. Never delete any SMS messages. I'd even suggest downloading them to your PC and saving them all as in a text file if your phone supports it.

**Never** threaten – or if you slip up and do, **make sure** it's not written down anywhere for Christ sake. Letters, emails and SMS's can be produced as evidence in court and can possibly be taken out of context by the judge and it may look extremely bad for you. Even though they're not supposed to, Courts look at the woman as needing protection from the big, bad man, so you need to be extra careful here.

If you're the perfect gentleman and she has been sending you torrents of abuse, it will look extremely bad for her. If you're both playing in the mud, then you will both be tarred with the same brush. Just ignore any abusive texts or emails. Doing this will make her even *more* infuriated. Sending abuse back is just stooping to her level and *it's playing into her game*. Don't even send her a message saying, "I'm not even going to reply to that." **Simply don't reply.**

I know some or all of this may not apply to you (and if it never does, thank your lucky stars). The separation process is a very emotional time and as fighting via solicitors' letters drags on, people's fuses get shorter and they start trying to 'get one over' on the ex. The easiest and quickest way for a woman to do this is to drop a small bomb and accuse you of family violence. As discussed in later chapters, that accusation is very difficult to dismiss without her withdrawing it. These tips are designed to keep you out of the Magistrate's Court or Local Court as fighting a family violence order as well as a fighting to keep your assets and your children is very emotionally draining. You should do your utmost to avoid it.

### Chapter Summary:

- The overriding principle during your separation is that the two of you need to come to some sort of agreement. The quicker you do this, the better for everyone involved.
- Start an incident diary.
- Be a perfect gentleman during every encounter.
- Start recording conversations for your defense if you think it may be needed in the future.
- Communicate in a written form as often as possible.
- Don't get emotional or frustrated if you can help it.

### 3. Getting your story straight

Before you speak to your solicitor for the first time, before you get to court, in fact before you even speak to anybody, you need to get your story straight. By this, I mean you need to choose a story and stick to it like stink on shit. Everybody knows that there are three stories: yours, hers and somewhere in between. You want to make the story that everybody hears closer to your version of events than hers. She will, of course, be trying to do the same. You will understand your situation better than anyone else as none of the professionals who you hire to give you advice were present when incidents occurred or know the 'real story'. They will rely on the statements of you and any witnesses.

In an adversarial separation/divorce situation, I've heard more than one person make the statement: "He who lies first, wins". This is very unfortunate, but also very true in most of the cases I've heard about. How far you 'bend the truth' is up to: (1) how much can be proven; and (2) how highly you value your morals.

I took the moral high road and played strictly by the book. I still think it was the right path to take as I can sleep soundly at night and live with myself and the decisions I have made. I'll be happy to explain everything to my daughter when she's old enough to understand. I still stand by every decision I made.

My ex-wife, on the other hand, decided to play it as dirty as it comes, accusing me of anything and everything to get her own way. I paid for it. I received a terrible percentage split and didn't get as much time with my daughter as I would have liked and the emotional strain took its toll. But, at least, I can hold my head up high, knowing I did the right thing.

How much is doing the right thing worth it to you? Only you can answer this, but keep in mind the following:

- Any story you concoct, real or false needs either proof backing it up or an absence of proof. You need either some sort of documentation/ witness or it needs to be a situation where it was only the two of you and it becomes 'your word against hers'.
- If you ever have to repeat a lie to her face-to-face, she *will* try to use emotions to get you to crack. She'll resort to crying while saying, "Why are you doing this?" Will you be able to stand up and face this (in court) without changing your story? Or will you back down? If you don't feel as if you could stand up to this level of scrutiny, don't lie.
- Potentially, your story needs to be able to stand up to some tough and very specific questions from your ex's barrister under cross examination or possibly from the judge. Think of the questions someone would ask if they wanted to learn about the motives behind your actions. For example, you took the kids and didn't return them one day because you thought your ex would hurt them. Why didn't you inform the police beforehand? Why didn't you speak to her about your concerns? If it was a spur-of-the-moment decision, why did you book a flight to Brisbane two weeks prior? You need to have answers ready for all these questions.
- In court, the judge already knows that your friends are going to back you up and hers will side with her. It's the same as family members backing each other up. Affidavits from friends and

relatives aren't really given that much weight. However, if she manages to get ten affidavits that all say the same thing while you have one from your best friend, it's going to look a bit suspicious.

- Don't fabricate or falsify evidence because you can, literally, be thrown in jail.
- Don't outright lie in any written statements to your ex without a reasonable excuse for doing so. Reasonable excuse is a bit wishy-washy but telling your ex that you will bring back the kids at 6p.m. when you have no intention of doing so because you sincerely believe she will harm them is an example of 'fairly reasonable'.
- Don't lie in an affidavit. If it's discovered that you have lied, you could potentially be charged with contempt of court and go to jail. In practice, this happens *very rarely* so you need to perform a risk assessment. Is it worth it? My recommendation is: no. But, hey, it's your life.
- If you absolutely need to lie to her for some reason, do so during an unrecorded conversation. Keep in mind that it may not actually be unrecorded. (She may be recording) It's a two-way street where she may be lying just as much as you are.
- An affidavit from a third party that supports your cause can be gold. Extra bonus points if it's some sort of professional. Were there any psychologist, marriage counselors, or any other mental health professionals involved prior to your separation? If so, would they be willing to write something supportive for you? Can their notes of the session(s) be subpoenaed by the court?
- Photos and voice recordings can go a long way toward your defense if you need them. You may even be able to use them as leverage if they paint you in a good light and her in a bad one. However, you may want to check with your solicitor before you go playing them in court as you don't want to break any wiretap laws accidentally.
- "I have received advice." These words in an email or SMS can be handy to use. You could have received advice from anyone: a friend, a relative or via paw signals from your dog. But when people see these words, they automatically think it's professional advice. If you're arguing over something (e.g., contact hours for your children) you would write: "As you know, family law courts are making decisions that favor equally-shared parental responsibility of the children and *I have received advice* that our child in this situation would spend time with me at least three times per week if we go to court". It may help your case. It may not. But, it can't hurt.

When building your story, keep the end game in mind. What is your ideal outcome? In most cases, the specifics of your separation don't matter. Unless there's a specific reason to know, judges aren't going to care that your ex didn't do the dishes, have your dinner ready when you got home, or cheated on you. Judges will want to focus on things that will move the separation closer to a resolution: Who will take care of the kids? Who needs money the most?

The only time that 'attacking' your partner in court makes any sense is if there are children involved, and you're requesting to be the 'resident parent'. You may then need to formulate a story that paints your ex as a drug-addicted prostitute who cheated on you at every opportunity while you were hard at work at the office, taking care of the family. Your story needs to reflect that you're the one being reasonable and trying to come to an agreement, whereas she is being vindictive and completely unreasonable.



The final thing you need to keep in mind is that if there are any children involved, the court will seek to make decisions that are in the children's best interest, above everything else, *even if their interest is above yours*. For example, it may be in the children's best interest that they stay with you because your ex is a drug-addicted 'ho'. It's in the children's best interest to spend half their time with you because they need a father figure in their life.

## Chapter Summary

- Decide how far you are willing to bend the truth up front.
- Get your story straight and stick to it
- Don't lie in any written documentation
- Keep the end-game in mind when formulating your story – What is your ultimate goal?
- The court will consider the interest of any children above and beyond either spouse.

## 4. Lawyers

Sadly, you will likely need a solicitor. Even if you agree on most things and simply want to have a parenting plan endorsed by the court, you will need a solicitor to do this for you. I recommend consulting a solicitor for advice once you get to the “Mediated Agreement” stage, discussed in chapter 5. If you can’t work things out between yourselves, you will need legal advice of some sort. Some solicitors don’t charge for the first one-hour session. This is to decide whether or not to take you on as a client and/or for you decide if this is the solicitor with whom you want to work.

Solicitor fees for family law will depend on where the firm is located and the position of the particular solicitor in the firm. Expect to pay between \$330 and \$550 an hour to talk to a solicitor about your situation. You will also be asked for money up front. It’s only after a few months of paying in advance that solicitors allow you to run your account in arrears.

Choose a firm that specialises in family law. Other law firms will be able to help, but they will charge a lot more. (You didn’t think that was possible? Think again!) Family law is thought of as the area of law to which you go when you can’t make it in another area. In some cases, this is true. But, there are still many good solicitors out there. Contact me at [sean@australiandivorce.com.au](mailto:sean@australiandivorce.com.au) and I can give you a recommendation if you’re stuck.

For those of you who have joined my mailing list, you will already know a very easy way to potentially save thousands on your legal bills. (For those who haven’t done so yet, I’d suggest joining. You will find some of the information useful. I don’t send out emails very often so you won’t be getting much ‘spam’ in your inbox.) The best way to use your solicitor is for specific advice about your situation. You can save a heap of money by handling all correspondence yourself and you can save even more money by representing yourself in court.

### Handling Correspondence

Handling correspondence yourself is relatively easy. When you first engage a solicitor, he/she will casually ask if you want him/her to handle all your correspondence. If you answer yes, you will be charged for every second of time that is spent on mundane tasks such as:

- Receiving and opening mail
- Scanning incoming mail
- Emailing you the scanned version
- Photocopying
- Mailing you a physical copy of incoming mail
- Transcribing notes into Microsoft Word and typing up a letter
- Emailing you the letter for your review
- Printing the final copy of the letter
- Faxing the letter to your ex’s solicitor
- Mailing the letter to your ex’s solicitor

Almost every piece of correspondence between solicitors occurs by way of letters. This protects them and you and is, admittedly, the best way to do it as the letters can easily be produced in court and referenced, if required. There's no reason you can't handle the correspondence yourself – that is, receive letters from her solicitor (or her) and reply after getting legal advice if needed.

You will be doing more of the legwork this way, but unless you're earning more than \$330 an hour (and if you are, congrats!) it's going to be easier and cheaper if you do it yourself. When doing so, re-read the section in chapter 1 on etiquette and keep it in mind. These rules also apply – even more so – in the written form.

## **Representing yourself in court**

Generally, your solicitor will be of no help before a judge. Solicitors aren't allowed to appear before a judge and represent you. They engage a barrister to do this (see Chapter 20 : Going to Court ). If you have a set of brass balls, feel comfortable getting up in front of a judge, your ex, and a small court room potentially full of people (usually, no more than ten) and arguing your case, then why not?

Your solicitor will probably want to go to court with you, but in my opinion, if you're going to have a barrister there anyway, there's no point paying for two lawyers. The only value a solicitor may bring to the table is mentioning a legal process or procedure that the barrister forgot. Otherwise, your solicitor is simply another person in the room to make suggestions about what you should offer or accept.

You are allowed one 'support person' (over the age of 18) when you're in court: for example a friend or family member. If you feel you will need emotional support, it's a good idea to ask your support person to come along if he/she can. Your support person cannot sit with you at the bar table and cannot speak on your behalf.

Children are generally not allowed in court and you will need to make arrangements for their care while you're in court.

## **Tips when using your solicitor**

- Batch your questions up. Most solicitors charge in fifteen-minute increments. This means that a one-minute telephone call will cost you fifteen minutes of billable time. Write everything down you want to ask, then rapid-fire the questions and get the answers you need, then hang up. Bonus points if you time the call and hang up just before the fifteen minutes is up!
- Another, similar method is to either find a firm that bills in seven-and-a-half-minute increments or negotiate to get billed in smaller increments. I tried this and failed, so I just used the first method.
- Depending on how pedantic you want to get, you can record the call durations to your solicitor and reconcile them against the monthly bill.
- If you need any advice on the legal process, ring the court. The court officials can't give you legal advice, but they can tell you which form to use or what you need to do. It's free to ask. You can sort of get around the legal advice restraint by asking questions like: "could I do ..." or "would you do ..." I've found if you're male and you get a man answering the phone, you can

build rapport by telling him how much of a cow your ex is being and he may start to give you options: “You could do this, or try this ...”

- Don’t use your solicitor as a counselor. A ‘real’ counselor is probably going to be cheaper and is going to offer you higher quality advice than your solicitor, who will probably just listen and agree with you while keeping one eye on the clock.

## Chapter Summary

- Get a solicitor, but only use them for advice.
- Handle your own correspondence.
- Either represent yourself in court if you’re confident or engage a barrister through your solicitor.
- Limit the use of your solicitor as much as possible and use alternate ways to find out the information you’re looking for.

## 5. The separation and divorce process

This section details the legal process required for separation and divorce. I've simplified it a little bit. If you're going through each phase, your solicitor will be able to explain it in more detail. If you want to save yourself some money, you can phone the court and they will be able to explain the legal process and will be happy to answer any questions you may have. They can't provide legal advice, though.

There are 3 processes that you need to know and understand. They are the divorce process, the property process and children's proceedings. Each process is treated separately so you can do things like agree on the asset split but 'battle it out in court' for access with the children. You may also address both somewhat simultaneously while you're at court to save time and money.

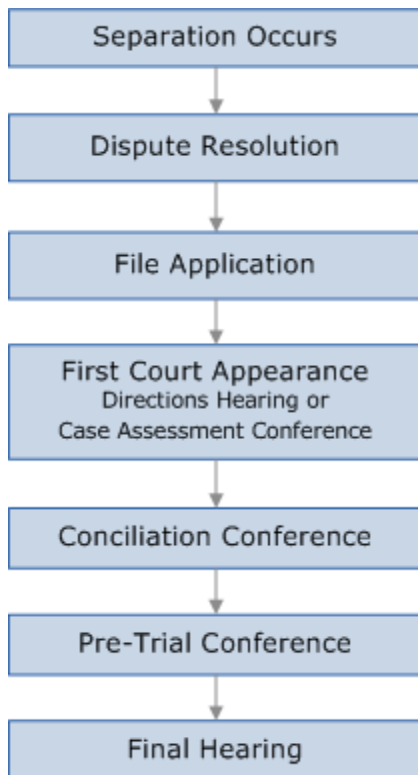


Figure 2 : Childrens proceedings

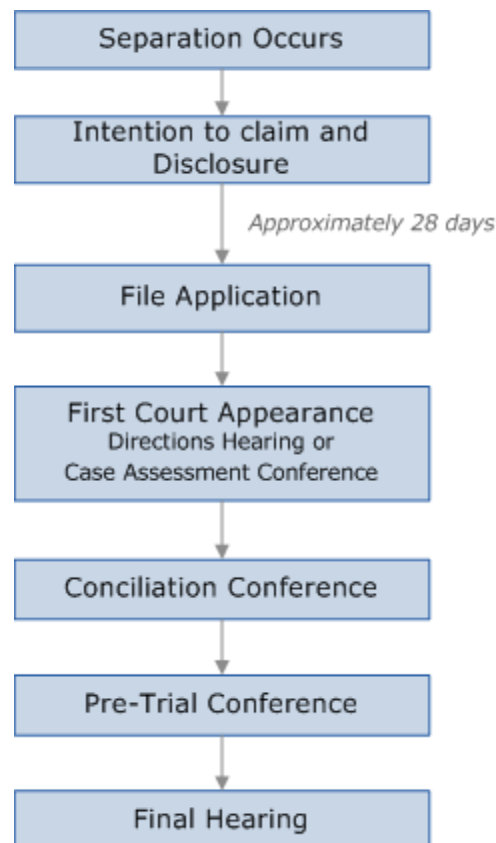


Figure 1: Property Settlement Process

As you can see from the figures above, the property settlement and childrens proceedings processes are very similar, but it's important to understand that they are treated separately by the court.

## Physical Separation Occurs

In Australia you must be separated for twelve months before you can apply for a divorce. But, you can start untangling your assets and having contact with your children immediately after separation. Some immediate decisions that you will need to make include:

- Where your children live and who will take care of them
- How you and your former partner will support yourselves and your children
- What, how, and when you will tell the children, other family members and friends about the divorce
- Who will pay outstanding bills or debts
- Who will stay in the house
- How will the rent or mortgage be paid
- What will happen to any joint bank, building society or credit union accounts
- What will happen to the house, car, furniture and other property?

When you separate, ideally you need to live in separate houses. You can 'separate under one roof'. This means, essentially, that you move from a shared bedroom to individual bedrooms and that you're no longer having sex or doing anything for each other. For example, you both cook your own meals, and clean up after yourselves. In my opinion, separating under one roof complicates things. If it's over, then you have to sack up and accept it rather than hanging around hoping to get back together.

It's recommended that you start untangling assets as soon as possible. This means getting things out of joint ownership, placing a value on items, agreeing about who gets what and agreeing to a percentage split of the assets. This process is discussed in more detail in later chapters.

I would strongly recommend keeping control of the family (marital) home if possible. The advantages of doing this are to maintain control of all the items within the house as well and to have the psychological advantage of not having to move (as well as the costs involved in a move and setting up 'shop' again). It may be extremely difficult to do this though. If you have two or more children and they are going to stay with their mother, in this instance, it makes a lot more sense for her to stay in the house and not disrupt the lives of your children. Also, if it's decided that she will keep the house, it's probably best that you move out.

Note that neither of you can 'kick' the other out of the house. If you are both unwilling to leave, you will need to stay separated under one roof. She can change the locks, but you can change them back again. You are also legally able to break into your own house or call a locksmith to break into it (but you need to provide a license with your current address).

My ex called the police after she had changed the locks and subsequently wouldn't let me into the house. The police that attended advised me that I could smash a window to get in and it would be perfectly legal. Note that this advice doesn't apply if there is an intervention order or AVO in place.

## Negotiation – Formal and Informal

After you have a declared 'separation date', you can start the process of gaining official asset separation and getting parenting arrangements in place. This involves discussion and negotiation around assets and children (which are treated separately by the courts). Each step in the process from this point gets more and more people involved and more and more expensive, as a result. It's very important to remember that each of these steps (except the last one) are essentially the same. That is, it's a process of negotiation between the two of you. This is so important, I'll repeat it:

**Every step in the process is fundamentally a negotiation between the two of you!**

After many steps of negotiation, the final step involves the judge. You only go before a judge and have a full trial if you cannot work out the details of the separation between the two of you. This happens in less than five percent of cases that go to court (and not all cases even get to court) and if you use a lawyer it will cost a minimum of \$25,000 to get there. If you go to a full trial, you will be told by the judge what the percentage split is and how often you will see your kids. There is no negotiating with the judge. You will have no further say in the matter. So, it's in your best interest—financially and for peace of mind—to get everything negotiated and agreed upon as quickly as possible.

## Agreement between the two of you

If everything is amicable and you both mostly agree about how to divide everything, you can simply write everything down, you both sign it and leave it at that. Unfortunately, it's never usually that easy. An agreement like this isn't legally binding or enforceable and if one of you changes his/her mind, then it's as if there were no agreement at all. You can't write up a contract between the two of you either as the Family Law Act overrides anything you agree upon between yourselves.

The next step to consider is a parenting plan (see the resource section at the end of the book for an example parenting plan and what it should contain) for contact arrangements with children. Note that parenting plans don't include property matters. The idea of a parenting plan is good in theory but unfortunately a parenting plan is not enforceable by either parent or by the police.

The next 'step up' from a parenting plan is to submit an application for consent orders to the court. There's a form that you both fill in and, providing the court finds that your arrangements are "just and equitable" (which simply means 'fair'), the orders will be stamped (sealed) by the court and become a court order, enforceable by law. Consent orders may include financial arrangements or contact arrangements with children.

You can also get a solicitor to draw up consent orders for you. He will (probably) re-write it in more formal language and submit it to the court for you. This normally costs somewhere around \$750, although I believe you may be able to get a substantial discount if one of you is on some sort of government benefit scheme.

I'd really recommend that you formalise your agreement through consent orders because if something happens in the future with child access or if you suddenly win the lottery or get a large inheritance, she

can come back and ask for more. (Actually, a windfall isn't protected until one year after your actual divorce. She can ask for more money or spousal maintenance at any point up until then).

## Dispute Resolution

The next step is dispute resolution. This can be done via any registered mediator, but Relationships Australia seems to be one a lot of people I've spoken to choose. There can be a six-week wait for an appointment, so you may want to start the process early if it looks like you can't agree between yourselves. Once you have had your ninety-minute mediation session, a certificate will be issued. You need this certificate (called a section 60L certificate) before you can proceed to filing an application for parenting orders with the court.

This is the final point you can reach before it starts to cost real money (providing you use a solicitor) or a solid investment in time (if you do it yourself).

If you can, reach an agreement here. Don't proceed past this point if you can help it. Following ONLY this one piece of advice in this whole book could, potentially, save you tens of thousands of dollars. Giving up a few percentage points on the assets or a few contact hours per week here is nothing in the grand scheme of things. Of course it's easy to calculate whether or not to proceed if you think in terms of assets split, but it's more difficult to perform that calculation for children as many people will often throw money at lawyers to 'save' their kids.

In the process of negotiation, one tip is that you may concede some contact hours to get to an agreement, try to add them back in later. For example, agree to twenty hours per week now, but stipulate that this goes up to thirty hours per week after twelve months. Also, always put in a clause that says that you can have further contact if both of you agree.

## Court Filing

Once you have your section 60L certificate, if you have not come to an agreement the next step in the process is to go to court. One person applies to the court via a form called the *initiating application* and, from then on, is known to the court as the applicant. The other person gets 'served' with that application (which simply means you receive a copy of it) and then files a response by filling in and sending to the court a *response to initiating application* form. This person then is known to the court as the respondent.

It doesn't matter who is what. It's just a way of labeling the two of you. But, there is one small advantage to filing first and that is: you get to pick which court will hear your case. In a small(ish) town or city, this won't matter but if you're in Melbourne or Sydney, there are a few courts that could potentially hear your case and if the court is an hour's drive from where you and your solicitor's offices are located, then you will be responsible for travel costs for your solicitor.

An affidavit will usually also be filed with the court with each application or response. An affidavit details any extra information that you feel the court should know. It's worth spending a bit of time writing your affidavit and working out what should be included. But, more importantly, it is vital to



consider what should be left out. Judges are more likely to read, absorb (and more importantly understand) a short affidavit.

Both the initiating application and response will have space where you write what orders you are seeking from the court. Almost any (reasonable) orders can be sought. So, don't take it too personally if she knows you want to go 50/50 with child contact and she is seeking orders to limit your contact time to two supervised hours per week.

If the applicant is seeking financial orders as part of the property settlement process, he/she is required to fill in a *Financial Statement* and submit that to the court.

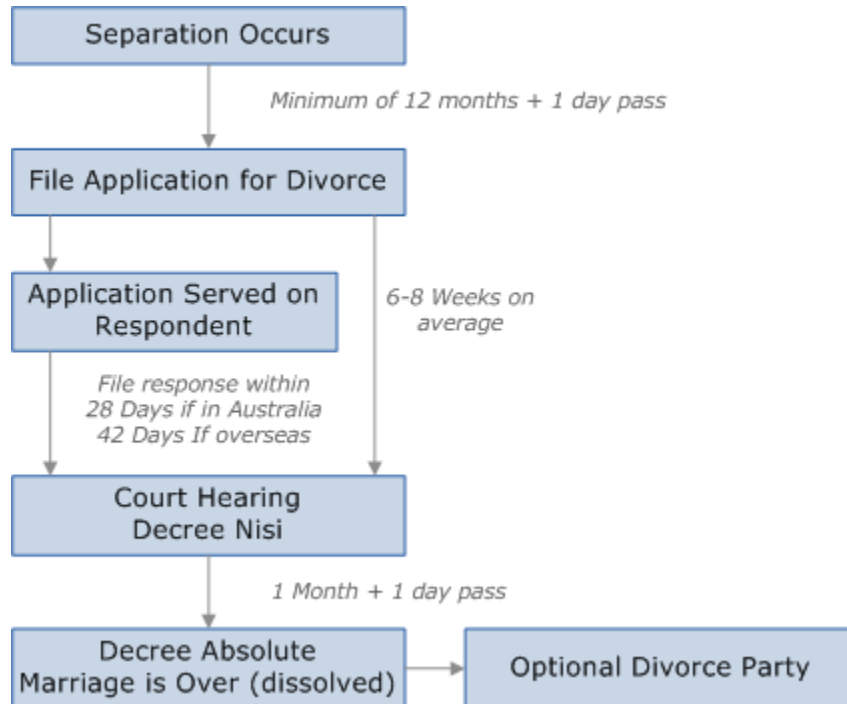
The financial statement is the document you're using to telling the court and each other your complete financial position. If your ex knows that you have \$50,000 tied up in an investment account somewhere, then she can report that you have it on her form. If your ex has no idea, then you could leave it off but the court can order institutions to provide financial records, if they're available. So you need to be completely certain that she doesn't know about the account if you omit it. The financial statement becomes the basis for determining the pool.(See chapter 7 for more details.)

If you lie on any of the forms and get found out, there are a range of penalties: looking suspicious to the court (what else are you hiding?);having existing interim or final order set aside; being forced to pay the other side's legal costs; or contempt of court which can include jail time. Is it worth it?

Your first and subsequent appearances in court are described in the next chapter - Going to Court.

## The Divorce Process

Running in parallel with settling property and children's arrangements is the dissolution of your existing marriage. This is a completely separate process and a divorce hearing will not determine property or children's arrangements. You can't start this process until you've been separated for at least 12 months.



After 12 months, you can make an application to the court to dissolve your marriage. After the Family Law Act of 1974 was passed, the law changed to include 'no fault' divorce. That means that the court doesn't take into consideration the reason for the divorce.

You can file an application for divorce as a joint application if both of you file together or as a sole applicant. At the time of writing, it costs \$550 to file for a divorce and you can prepare the papers yourself or get a lawyer to do it. If you get a lawyer to prepare the papers, they will charge you around \$750. If both people have concession cards or are experiencing financial hardship a reduced fee can be applied for. You can now also file electronically (eFiling) on the [comcourts.gov.au](http://comcourts.gov.au) website.

After filing an application for divorce you will be given a court date and if you are the sole applicant, will need to serve the application papers on the respondent. The respondent will then have chance to file a response but must do so within 28 days of the application being served (42 days if overseas). There are only two ways of having an application dismissed and that is proving that the 12 month separation prerequisite has not been met or to argue that the court has no jurisdiction.

### Attending the divorce hearing

If there is no child of the marriage under the age of 18, nobody needs to attend the hearing.

If you have made a joint application and there is a child aged under 18 years, neither of you need to attend the hearing.

If you have made a sole application and there is a child aged under 18 years, the applicant should attend the hearing as the court will need to be reassured that the child will be adequately cared for.

If the respondent has opposed the divorce, then they should of course attend.

### Chapter Summary

- Childrens Proceedings, property settlement and actually getting divorced are 3 separate legal processes and each require a separate set of paperwork filed with the court. Since each process is separate, one can finish before others – eg. you can be divorced but still have not agreed on property division or child contact.
- You need to be separated from your partner for at least 12 months before you can apply for a divorce.
- You must attend dispute resolution before you can file a request with the court for child contact or a determination on property.
- Negotiate often and settle early if possible. Weigh up the time and cost (both financial and emotional) of proceeding to the next stage of the legal process before rejecting a legitimate offer from the other side.
- Don't lie on any financial statements or documentation that is submitted to the court.

## 6. Going to Court

After the applicant has filed his/her form, a court date will be set. The respondent will be required to file a response no later than seven days before the court date. If the initiating application is made and a response isn't filed (or you don't attend court), then orders can be made in your absence. The first step in a fight is, of course, turning up. Once you have, it's on like Donkey Kong.

You will be assigned a date and will be required to arrive at the court before 9a.m. You will generally be required to attend for the whole day unless your case is simple and you may get heard in the morning. Sometimes, the judge is too busy to hear your case and then it's essentially a day wasted as you will have to return on a different day. You will still be required to pay your lawyer(s), of course.

I recommend dressing professionally (unless you're going for some sort of angle like: "Look judge, she's left me penniless!"). It shouldn't matter and in fact if you have a barrister, he will speak on your behalf so the judge won't even know who you are. But every little bit helps sometimes.

I didn't understand the real difference between a solicitor and a barrister until my first day in court. Solicitors are glorified letter writers. (Apologies to any solicitors reading this). Yes, they know the 'theory' of the law and what can be done, what should be done and can provide advice that applies to your situation based upon that. They can also help in negotiations outside of the court room (more on that later). But solicitors *can't* represent you before a judge. That requires a barrister.

### Your Barrister

Barristers are the guys (and they are generally men) who get up before the judge and argue your case. The ones I dealt with have a silver tongue and polished, public-speaking skills. They are the guys who were most likely the captain of the debating team at school and have an uncanny talent to size up a situation and cut through the bullshit quickly. They are mentally very quick. They have to argue on their feet and often from an inferior position. They have usually worked as solicitors for many years before taking the next step to become barristers.

Barristers are the guys you *really* want from day one. But, you can't engage them directly - you must do so through a solicitor. I have yet to find out the real reason why but, I suspect it's partly to keep solicitors in business and partly to free up the barristers so they can spend their time in court rather than writing letters for clients all day.

Solicitors seem to have a few barristers that they work with on an ongoing basis. Some larger firms have their own barristers, but barristers will generally form their own 'firm'. It's just that regular folk can't use their services. When your solicitor engages a barrister, he/she will 'brief' the barrister over the phone and will send him any correspondence, court forms and affidavits. This brings the barrister up to speed about the particulars of your case.

Barristers are generally paid by the day and will be available for as long as you're at the court. When you arrive, he will most probably ask you to explain the situation in your own words and he may ask further questions.

## Representing yourself

You are always allowed to represent yourself in court and if you have no problems getting up and talking to authority figures and in front of small crowds, I would encourage you to do so for the initial hearing at least. You can always get a barrister for the final hearing if you feel that you have stuffed things up the first time round.

The main advantage of representing yourself is, of course, cost. But also keep in mind that you will know everything there is to know about the case in intimate detail, where the other barrister will have only the highlight reel.

- Keep your pitch simple and to the point. Don't ramble. Have the few main points that you want to make written down in front of you. Practice your argument the night before a few times in front of the mirror.
- Bring all your documentation to court with you and be familiar with all of it. Have it readily accessible so that, if the judge asks for something, you can quickly pull it out.
- If you are going to reference text messages or emails, have them transcribed. Either type the SMS messages up in Word or use a text message downloading application to download them to your PC. If you want the judge to look at them, they will need to be attached to your affidavit or submitted as evidence under cross examination (if during a final hearing). Print everything and highlight messages for your own records that you may want to raise or discuss.
- Have a fall-back strategy. If your big ideas get immediately shot down in flames, come up with something else that gets you most of the way there. For example, if you're asking for every second weekend with your child (for instance, Saturday overnight) but your ex is arguing that your eighteen-month-old is too small to be separated from her for any length of time, then drop the overnight and go for two eight-hour consecutive days while asking for the overnight to be revisited in three months.
- You know more about the intimate details of the case. Use this to your advantage. Anything can be said before a judge and if no one challenges it, it becomes fact. The judge generally won't challenge anything! It will be up to the other side to object and if the barrister doesn't know enough to challenge... The only person who may challenge a statement is your ex and if she isn't quick enough up there, whispering in her barrister's ear, then the moment is lost as the conversation will move on.
- The Family Law court in recent years has strived to become more "user-friendly". Because of this, you will be given a lot more leeway if you get up and give it a go yourself. Remember that the judge is there to make decisions about subjects that he knows nothing about. It's your job to educate him in a very short amount of time so he can make the best decision possible (which is the one in your favour of course)
- Don't try to 'out-lawyer' the other side, make them look foolish, or quote law sections. You're not a lawyer. Don't try to act like one or you will lose the benefit of the previous point.
- Keep in mind that the other guy is just doing his job and he may not even agree with the argument he is presenting. You could very well have had him as your barrister. It's nothing personal. He is getting paid for a job and he is obligated to do it to the best of his ability and get

the best outcome for his client. There's no point making personal attacks against him and it won't win you any 'points' with the judge, either.

A key point above is that the judge does not really know anything about your case. This can really be exploited by both sides and when you have two barristers up there arguing, both will probably 'lie'. They aren't actually *lying*. They are just re-interpreting what you've said, to the best of their memory. And they can argue based only on what you've told them.

My barrister lied to the judge at my interim hearing, stating that I had more contact hours than I actually did. (My ex-wife wanted to reduce my contact hours from eight hours per week to four and a half hours and my barrister told the judge I currently had twelve contact hours). I didn't correct him. I'm not going to do so if it helps my case, after all! I was waiting for my ex to jump up and correct him but she never did. I was awarded my twelve hours per week (eight on Saturday, four on Sunday) and my ex later accused me of misleading my barrister. I did nothing of the sort! He just 'winged it', and it worked.

A good percentage of the posts on the internet about people's day in court are complaints about how the other person's barrister lied in court to get what his client wanted. Depending on the story you want to paint and how low you want to go, you can use this to your advantage. The penalties can be (in theory) severe. But, from what I have read and heard, most people seem to get away with it.

### Directions Hearing or Case Assessment Conference

And so the next round of negotiation begins. You and your ex will be in separate rooms and barristers from both sides (or one barrister talking to you, or if neither of you brought representation, one of you will be assigned legal aid) will meet up in a third room (or hallway as all the rooms fill up in the morning) and try to get closer to an agreement.

It starts with you putting forward a proposal to your barrister. These guys are in court almost every day and instinctively know what a judge is likely to award. If you put forth a proposal that the judge is likely to knock back, your barrister will let you know and will try to push you a bit in another direction. Listen to these guys. As I've written before, the quicker you can agree, the cheaper it is and the easier it is on your emotional stability and well-being. If your barrister is saying that "this is probably the best you'll get", then he's probably right.

Anything that you can agree on at this point will get written up and can be made into an interim court order on that day, which means that it's enforceable immediately. An interim order is good until a final order (made by agreement with your ex or made by a judge in a final decision) is made. Anything simple that you can't agree on will be put before the judge that day for a decision.

By 'simple' I mean something like: You're asking for twenty contact hours per week for your child and your ex wants to give you only four and neither of you is willing to budge. Something complicated like the percentage split of assets will require a full trial before the judge will make a decision. Also, the judge will be unwilling to make *a lot* of decisions about the case so you will need to limit this to one or two of the most critical items.

At this point, the barrister of either party will inform the court that you're both ready to appear before the judge. This is where the waiting starts. Get used to it, as there's not much you can do about it except hang around!

### **Before the Judge**

You will be called into court and will sit in the 'gallery' which is two or three rows of chairs where anybody can sit. When you enter, someone else's case will probably be in progress and you will get to hear their barristers debating. Sometimes, it can be an eye-opening experience, so it's worth listening in. Sometimes, listening to *someone else's* problems can also make yours seem a little more normal.

When your case is called, both barristers will sit behind a table, facing the judge. If you're representing yourself, you will sit behind the table. The judge will invite the applicant to make a statement about how the negotiations have gone that day and the main items which need a decision from him. The barrister (or you) will then respond.

If you are represented by a barrister, you probably won't have to answer any questions or address the judge. However, if you do, a judge should be addressed as "Your Honour" and a Registrar should be addressed as "Registrar". Be extremely respectful. This is a guy who very nearly has your balls in his hands.

The response of the judge at that point will depend (unfortunately) on how much time he has had that day. He will more than likely not have even read your affidavits. If he feels he has all the information he needs to make a decision, one will be made then and there. He may postpone his decision until another day, usually the next day so he can read the material overnight.

If children are involved, the judge can order that an assessment be performed by a court family consultant as soon as possible (i.e., the next day) before making his decision or he could make his decision and order an assessment be done by a child psychologist at your expense (and they aren't cheap at around \$4,000 for a single assessment).

Whatever happens, do not approach your ex afterwards and threaten her (if you lost), or wave it in front of her face (if you won). These are only interim orders and they're only good until the final hearing – or until you manage to come to an agreement.

### **Conciliation Conference& Pre-Trial Conference**

The next time you're asked to attend court it will be for a conciliation conference. You won't appear before a judge on this day so you won't need a barrister. This day is the next and pretty much last official round of negotiations. You can attend by yourself or bring your solicitor. The advantage of having a solicitor is that, if you come to an agreement on the day, you and your ex can both sign it and because you have received legal advice you can get it sealed by the court on the day. These, then, become court orders.

You are supposed to bring a long laundry list of financial documents, but they are really required only if the two of you are arguing about what is included in the pool or the valuations on large assets (e.g.,

property). It's a good idea to bring them just in case, though. Just make sure you have all statements, for the last twelve months from all your bank accounts.

You will both start off in the same room with a registrar who will explain that you both need to compromise. The registrar will also probably give an indication as to the percentage split you would probably receive if your case went to court.

You then spend the rest of the day in separate rooms, trying to negotiate a settlement. Beginning to see a pattern? If you can't agree, the registrar will ensure that everything is in order for the final hearing and confirm the date. This is called a *procedural hearing*.

### “Round Table” Conferences

At any point after you have filed an application for a court to hear your case, you can request a “round table” conference. This will include: you, your ex, and both solicitors. You both need solicitors for this because without legal representation, you can later claim you were pressured into signing an agreement.

This can be used as a ‘last-ditch’ attempt to come to an agreement before a final hearing and consent orders can be submitted to the court, if you both agree.

### Final Hearing

The final hearing will most likely take at least two days, longer depending on complexity. If you get to this point, I would recommend using a barrister. If you can concentrate for a whole day without making mistakes, well you're a better man than I am! This is where the rubber meets the road and if you stuff this up, that's it... Well, you can appeal, but it will probably cost serious money!

This is where you will call witnesses, examine and cross-examine them – just like on TV. You're literally starting from scratch again. Anything that's been discussed in the previous six to twelve months during all the hours of negotiations and hearings is thrown out the window. Any further decisions are taken out of your hands and you will be told what you will get and how often you will see your children.

### Chapter Summary

- Turn up to the court early and dress professionally
- Only a solicitor can engage a barrister. If you want someone to represent you in court you will need a solicitor.
- Representing yourself in court can save a considerable sum and is a wise strategy early on as none of the court appearances prior to the full hearing really matter in the long run. Most people spend all their money hiring lawyers at the beginning of the divorce – the smart move is to conserve your money and spend it at the end, where it will be the most effective.
- Negotiate early and often
- For your first time in court, you will be expected to work most things out between yourselves. If you can't decide, the judge will be asked to do so for you. He can make interim orders, which last until the final hearing.



## 7. Splitting Assets

The answer to the asset split question will, as always, depend on your situation. Everybody always asks about the “percentage”. Unfortunately, there is no set percentage or formula and the court will look at each case separately. There are a few things that the court will consider when dividing assets, but by far the main thing the court will look at is who needs the money the most. This is especially true if the amount of assets to divide is small.

The other factors affecting any asset split are:

### Contribution to the marriage

The court assumes that both people have contributed equally to the marriage. It doesn't matter that you earned \$150,000 a year and she worked at part-times jobs, making \$10,000 a year. It's still counted as equal. There's no point mentioning the phrase she used all the time: “My money is my money, your money is our money.” because it doesn't matter. The way it was presented to me is that the court **always** views it that you both contributed equally. End of argument.

This is because they assume that, while you're out sweating your balls off for fourteen-hour days, she is at home cleaning, and taking care of the kids even if she's just lying on the couch watching TV all day. The only possible exception to this is if your ex is disabled in some way or otherwise incapable of performing 'normal tasks' and you had to take care of her.

On the plus side, this reasoning also applies to any debt. So your ex must 'take the bad with the good' and can't claim a large percentage of the assets while, at the same time, claiming that all the debts are yours.

### Children

The number of children and who they will live with will significantly affect the split. If there are no children involved, then it's more likely that there will be a 50/50 split for most people, depending on the size of the pool.

### Size of the pool

The pool. Everybody will talk about the size of the pool. The pool is the amount of money, expressed in cash, that would be left if all your assets were sold and all debts repaid. What's included in the pool will generally be up to the two of you to decide. Excluded, are generally things like clothes and accessories (e.g., shoes, handbags, etc.) and kitchen items—unless they are especially expensive. If you sit down and really think about it, most of the stuff that people collect is actually next to worthless. Yes, I paid nearly \$8,000 for a bed and mattress but after looking on eBay, it was realistically valued at \$2,000 for both and that was one of the more expensive items that I owned.

The exact date that is used for calculating the pool is generally the date both of you come to an agreement regarding finances, although most couples usually agree that any debts that are incurred after separation are the sole responsibility of the one incurring the debt. You need to keep in mind that the credit card companies might not see it this way and if your ex runs up a massive bill on a joint credit

card, they may ask you to pay it. Cancelling joint credit cards immediately upon separation would seem to be a wise idea.

### Agreeing on an asset price

Both of you will have to agree on a value for each item or group of items. This value will be the realistic second-hand value for the item, based on condition and age. It's a good idea to go through the entire house together, while both of you are there so you don't miss anything. I found that the best way to discover an item's second-hand value was to do a search on eBay for that item and show only "completed listings". Look for all the items that have a green price. This means that the item actually sold for that amount.

Don't go for just a guess on this. Try to go for the best information available as to the price. I accepted what I thought was a reasonable value on a motorbike. When I went to sell the bike six months after the settlement, I realized that it was worth only \$7500 rather than the \$10,000 upon which we had agreed. I essentially "bought" the bike for \$10,000 then sold it for \$7500 in less than six months--without ever riding it, I might add!

If you can't agree on a price, then sell the item and let the market decide the price (if you can bear to part with it). When it really comes down to it, there are few things that can't be purchased again at a later stage if you need them back.

Both your superannuation amounts will be included in the pool and the court can order that superannuation money be moved between accounts to balance any discrepancies. If you both have a very small amount (e.g., less than \$10,000) of superannuation or both values are roughly the same, then super can be excluded. It may require the agreement of both parties however.

If you absolutely can't agree on a price and *must* keep the item for some reason, then you can pay for a professional valuation. You can actually pay for a valuation on all your assets at once if you want and the valuer will go through your house, make a list and write everything up. As you can imagine, it would get pretty expensive to value a whole house, but it may be the only way. I didn't get a valuation done as I was advised by my solicitor it wasn't worth it. I believe they charge hourly rates similar to solicitors – around \$300 an hour and they also need to write a report. If you have many hundreds of thousands of dollars' worth of valuable stuff, it might be worth it for you though.

I would also keep the pricing of the assets and the division (who gets what) as separate as possible. There will be a bit of crossover. For example, "If you think the TV is worth \$1000, then you can have it!", but I think the way that causes the least amount of argument and friction is to agree first on the price of each item, then move to who gets what later.

### Property

The family home and/or any investment properties need special mention. The easiest way to find out the price of a property is, of course, to sell it. If a property is sold, then the money that goes into the pool is literally the cash that's left in the bank account after the sale and all associated costs have been deducted. If, however, the property is not being sold, then you cannot "take out" any sale costs (e.g.,

agent's fees). The value that gets added to the pool is simply the market price minus any outstanding loans against the property. Property is one area where it would be prudent to get a declared valuation from a real estate agent on the current market price.

## Debts

Debts, including personal credit card debt, are almost always counted as the responsibility of both parties no matter whose name is on everything. The only exception would be if someone has gone out and made a large purchase or taken out a large loan after they thought the marriage was about to end or had ended. It doesn't need to be proven that the person thought this. It just needs to *look like* the purchase was made to deliberately reduce the pool or manipulate the amount of the settlement.

This also applies to stories you hear about the woman who was asked to sell the husband's Porsche, so she sold it for a dollar and gave him fifty cents. In that instance, the Porsche would be calculated at a post-sale at market value (say \$50,000) and she would be ordered by the court to pay the husband the additional \$24,999.50 (i.e., half of the \$50k value). If the husband had to go back to court to recover the money then he could also ask for, and would probably be awarded, all legal fees and court costs.

That little 'trick' could easily cost the woman \$40,000. \$25,000 for the money she would receive for selling the car properly and another \$15,000 in legal costs. I would strongly recommend that you don't do this, because you will eventually pay. This also applies to things like the destruction of property. If you set fire to or smash something so she can't have it, you may be ordered to replace or pay for it. So it's generally not worth that brief sense of satisfaction.

## Tax

If you're selling a property that isn't your principle place of residence (i.e., it's an investment property) then you will be liable for capital gains tax at your marginal tax rate and at your declared percentage ownership of the property. For example, if you made \$100,000 net profit on the sale of your house, owned the property 50/50 with your ex, you would have to pay tax on \$25,000 (fifty percent ownership of \$100,000, plus you get a 50% discount if owned for more than a year).

The amount of tax you would actually have to pay would depend on your marginal tax rate. But, if you earn \$100,000 a year, for example, your tax rate is 38%. In this case your tax obligation would be \$9,500 and the 'pool' would be reduced by that amount as it's a debt. It may be prudent to see an accountant to perform a proper estimate if you have a particularly complex tax situation.

Existing tax debt is also considered a debt and will reduce the pool by the outstanding amount.

## Companies as assets

If you own shares in a private company, then your ex is entitled to a percentage of these as well. The value of publicly-traded shares is easy to calculate. But, private companies – especially ones with few employees or that rely on your sole exertion—are more difficult to value.

If the company is a "one-man band", then you can probably argue that it's not worth anything because, if you left the company, it would cease to exist. The danger exists when it's a small company or you don't own all the shares. You also can't decide to wind the company up (or give her all your share) and

then go out and start a new company, making the first one worthless as she would be entitled to go to court to make you pay like in the Porsche example above.

If you were really nasty, you could slowly run the company into the ground while getting something else up and running. You could also give her all your shares and if it was someone else's fault that the company went bust (i.e., another business partner) and you can prove it had nothing to do with you, then this may be an option. It all depends on how dirty you want to play, but this sort of thinking is truly vindictive.

If you want to do things properly, you would need to get a valuation as if you were putting the business or company up for sale. This would then become the market value and she would be entitled to a percentage of that. I would recommend that you pay her the cash rather than actual shares of the company if you can afford it. If you pay her in shares, she may have enough to actually have a say in running the company or business and the point of a separation and divorce is to get away from her!

## Dividing the Assets

Note that, as usual, the process will be easier if you have a bit of give-and-take during the asset splitting. If you argue amongst yourselves with no lawyers, go for your life and take as long as you want. It won't cost you anything but time and the emotional investment.

Keep in mind that the court won't trouble itself with awarding assets to a particular party unless the asset is very expensive and unique. They wouldn't worry about something like a car because that can be sold at a market price. It's only things like family heirlooms or unique artwork that's demonstrably valuable that they will even consider. If you go to court trying to get a judge to award someone custody of a favorite couch, you will be told to work it out amongst yourselves and stop wasting the court's time – and that's before you even get before a judge.

You're really going to have to consider what's worth arguing about and what isn't before you start. If you argue over who gets the DVD player in the presence of both your solicitors, well then you just spent more than what the DVD player is worth arguing about who is going to keep it—which is stupid. Most stuff can be bought again and the new stuff will be a lot more 'oooh shiny' than the old. I fought and fought over stuff that I ended up giving away or selling six months later. I should have simply "let go" of that stuff and let her have it.

You will need to discuss and decide who will keep the house. Because it's usually one of the largest assets of any couple, the person staying in the house may need to pay the other person a cash adjustment. If you stay in the house, you need to make sure you can afford to pay your ex as well as continue to make mortgage payments on the house by yourself.

Unless you have a small mortgage, this can be difficult. In most cases, it's easier to simply sell the house and split the profits. I kept the house and ended up living (for a while anyway) in a six-bedroom house by myself. It was way too big for me alone and I should have simply sold it as part of the settlement. My pride and emotional connection to the house made me keep it and in retrospect this was a bad idea.

Multiple houses make things easier and you may decide to sell one and keep the other or just take one each. If you're thinking about selling a house within a year anyway, it might be better to sell it as part of the settlement. That way the selling costs are taken into account. If you do sell a house within a year and it's significantly different from the agreed-upon price, then your ex may have grounds for asking the court to award her more money. If it's a few thousand (or even a few tens-of-thousand) dollars, it probably won't be worth the hassle for her to re-open any case. But keep in mind that's it's a possibility.

Try to leave emotions out of the negotiations as much as possible. I know it's extremely difficult. My solicitor told me about a client in Melbourne who couldn't agree with his ex about who would keep a "display plate". It had been handed down from his side of the family, becoming somewhat of an heirloom. Both sides spent around \$25,000 arguing before the court about who would get the plate. When the wife eventually won, she promptly smashed the plate in front of him.

Don't be this guy. It's not worth it!

## Pre-Nuptial Agreements

Pre-nuptial agreements are actually called Binding Financial Agreements in Australia. You will already know if you have one, of course. Whether these agreements 'hold up' in court will depend on your ex's financial resources to challenge it, but also, the following requirements must have been met:

- Each party must have received independent legal and advice before signing the agreement.
- Each party's solicitor must provide a certificate that such advice was given.
- The agreement must clearly say that it is an agreement under the appropriate section of the Family Law Act.
- Each party must have signed the agreement.
- Each party must have received a copy of the signed agreement.

If your ex can get out of it on a technicality, you can bet she will.

## Existing assets before marriage

Any substantial assets that were purchased *in full* before you were married and the assets stayed in your name only are relatively protected from being included in the pool. By substantial I'm referring to assets over \$50,000. There's no set limit - It's just a guideline. Examples include: property, businesses, and shared portfolios.

The issue occurs where you didn't fully own the asset in full before you met. If you still had a mortgage or loan on the asset and were married (or became defacto by living together for more than six months) and then continued to pay the loan, then essentially your combined money has been used to pay off the loan. If this happens, everything has been mixed in together and it's now her asset as much as yours.

## Financial capacity after separation

The court will look at financial capacity after separation and, apart from the size of the pool, this is probably the next most important thing the court will consider. The capacity of each person to earn money and how much money each will actually need are major considerations.

If your ex is getting the kids and won't be able to work full time, she has a greater need. This is frustrating and is what I encountered, where I wanted equally shared time with our daughter (50/50) but she wanted 95/5 so she could demonstrate a higher need, and subsequently get a greater share of the asset pool and have the ability to sit at home on her ass all day.

The amount each of you earns is less important than the relative gap in earnings. If she has the earning capacity of \$40,000 working at Woolies, then if you earn only \$50,000 as a store manager you're more likely to get an even split. If you earn \$160,000 as an IT contractor however, you're probably going to get reamed on the percentage split—unless the pool is very large.

Quitting your job or getting fired and going on the dole will make no difference. The court will generally make an assessment based on your prior income as they will assume that you can get a similarly paying job elsewhere.

## Spousal Maintenance

Spousal maintenance is a payment that is made *in addition to* child maintenance and is paid so that your ex can 'continue to lead the life to which she has become accustomed'. I'm not making this up. If your ex sat on the couch all day watching TV and enjoyed having lunch with her friends while you slaved away bringing in the dough, well then you must continue to pay her to maintain her current lifestyle.

You want to avoid this at (almost) all cost. Spousal maintenance is highly variable and depends on the whim of the judge at the time as to how long it lasts and how much should be paid. A judge can award an interim payment fairly quickly if you do things such as cut off access to all the marital financial resources (e.g., credit cards and joint accounts). This interim payment can be made final and the length of time this can last is extremely variable. It may only be a year or it could be up to ten years. Thankfully, there is always a time limit. You won't have to keep paying for the rest of her life.

The amount you would have to pay will depend on your income and her income. It may also depend on your capacity to earn income so there's no point quitting your job simply so you don't have to pay spousal maintenance. It won't work. Luckily, there has to be a fairly hefty gap in earnings or potential earnings before the court will consider spousal maintenance. If she is earning—or could earn—an average wage (around \$50,000 a year), then, in my experience, you would have to be earning at least \$180,000 before the court would consider making an order. But take that advice with a grain of salt as it will depend on the judge and how good your ex's acting is when on the stand.

Something to look forward to is her remarriage. You no longer have to pay spousal maintenance.

## The Final Percentage

Assuming you're still in "negotiations mode" and haven't gone to court, the final percentage will be such that you will probably have to offer to pay her some money to settle. The husband of the relationship usually earns more and if there are children involved, a lot more of a percentage will be awarded to her.

In this situation, always consider: "How much will I have to pay to make this whole thing go away?"

There is an emotional impact to this whole process. I know I gave away more than what I considered

fair (and in retrospect got royally shafted in the process) because I simply wanted it all to end. I was sort of, kind of happy with the amount of time I got to spend with my daughter. I had my solicitor pissing in my ear, telling me that to go to a full trial will cost another \$25,000 on top of the first \$25,000 so I thought that even if I win, I lose.

If you're already in court, keep in mind that the court will award the highest percentage to *whoever needs it the most*. This means that the size of the pool and the financial capacity after separation are the two most important components.

If the pool is small (say \$200,000 or below), your financial capacity is high and hers is low (due to her having a much lower earning potential or not being able to work because of having the kids ) then a much higher percentage will be awarded – up to eighty percent in her favor. With a much larger pool—say, a million dollars or above in the same set of circumstances and income difference, she might be awarded only fifty-five percent. If no kids are involved, the percentages will be much closer to 50/50.

As always, it is worth offering a little more at the start to get everything shut down quickly. If she thinks she's entitled to sixty-five percent and you think it's more like fifty-five to sixty percent, it may be worth simply shutting your mouth and handing over the extra five percent, especially if it's only \$10,000. You may spend more than \$10,000 on lawyers to find out she's getting that sixty-five percent anyway.

If you have kids, consider that you may need to pay more up front to make your life a lot easier in the long run. If she feels that she has been royally shafted on the financial settlement, she will be bad mouthing you to the kids for the next 18+ years. Pay more now to make her happy, do it a bit hard financially for a couple of years and spend the next 10-15 in (relative) happiness. It may actually be worth it.

## Protecting Yourself

So what can you do to protect yourself against your ex's taking all your assets? Well, it will depend mostly on your ex. But there are not a lot of 'big things' you can do after the fact—especially if the separation was initiated by her and came to you out of the blue. Courts can, and will, make orders to have financial records retrieved and every single bank in Australia will comply with a court order. Some of the techniques you can try immediately are:

- Take advantage of cash. If you have cash and she doesn't know about it, it can't be counted towards the pool. It needs to be cash in the form of notes however, since a court can order a bank to turn over any account information associated with your name so keeping it in an account can be problematic.
- Shut down any joint credit cards, or remove her name and cancel the associate card. If you can't afford to shut it down because the balance is too high, then run the card up to near the maximum credit limit. (Don't go crazy and buy stuff you don't need. Simply put all your regular expenses on credit card.) You may need to buy new white goods, bed, or a TV. This is a legitimate use of the card because you do *need* that sort of stuff.

- Any cash in joint names needs to be treated carefully. If you transfer all the cash from a joint account and she then has access to no cash or credit (because you also cancelled her credit cards), then you force her into a corner – especially if she’s not working. She can go to the court and get awarded temporary spousal maintenance. You want to avoid paying this—temporarily, or otherwise—at all costs. You need to be careful here as removal of all the money from joint accounts can be considered ‘financial abuse’.
- If you have moved out of the house, then stop paying bills on her behalf. Essential services (power, water, gas) need to be treated carefully as you can’t just pull the rug out from under her feet. If she can pay for the expenses herself, either through a job or money from a joint account, then get your name off the bills. Things like Foxtel and internet access can be cancelled immediately as they aren’t considered essential. If she wants them, she can pay for them herself. Depending on your relationship with her, you can warn her ahead of time and/or transfer these into her name only.

The idea is not to cut off the flow of money completely, doing that may be considered financial abuse, but to reduce it to a trickle – just enough for her to survive (As one of my friends says “Stop feeding the beast”). As always, keep in mind that the ultimate way to save money is to have this whole process over and done with and agreed upon as quickly as possible. The longer it drags out, the more money it will cost.

## Chapter Summary

- The largest factor the court will consider in an asset split is which person needs the money the most
- The courts generally regard the input of both parties into the marriage to be equal
- Use eBay or other second hand sites to determine the value of items.
- Property sale costs are only included if a property is sold
- Existing or expected tax debts (eg. from the sale of a property) can be included as a debt in the pool
- Business are included in the asset pool and may require a formal valuation
- Be smart over the asset division. Be prepared to compromise on ‘commodity’ items.
- Financial capacity after separation is an important consideration for the court. The gap between your potential incomes are more important than the actual values.
- Spousal Maintenance should be avoided at (almost) all costs
- It may be worth paying more now to save yourself some pain later in life
- Reduce the flow of money by all means, but don’t cut it off completely as this can be considered financial abuse and expose you to interim spousal maintenance and intervention orders.
- And as always, try to come to an agreement quickly!



## 8. Child Access

If you have children, you will more than likely want to see them after the separation. The amount of time you will ultimately get to spend with them will depend on a few factors:

- How much time you spent with them before separating. This is the key factor the court will consider and it generally determines the resident parent. The court will be unwilling to make large changes to this.
- The age of the children, Younger children will have less time allocated away from the resident parent.
- How much time your ex is willing to “allow”. This factor has the most influence. If your ex doesn’t want you to see your kids, it will make your job ten times harder. If she’s happy for you to have half of their time, it will happen easily. This one factor can override the first two unless the children are old enough to speak for themselves.

### No Agreement

If no agreement exists between the two of you, then you have the same rights as your ex does in regard to spending time with your children (which, in the eyes of the family law court, you both have no rights at all – it’s the children that have all the rights). There’s no way you can ‘kidnap’ your children, just like there is no way she can ‘kidnap’ them from you. Keep in mind though that the court in the interim will seek to maintain the ‘status quo’.

If you were working all day and the kids spent the majority of their time with your ex and you saw them for an hour before bedtime then it’s going to be out of character if they suddenly start living with you full time. If you take them and refuse to give them back to her, she can apply to the court to have them returned. I’ve heard conflicting reports as to whether or not this works. My lawyer advised me not to do it as it would look bad and probably go against me at a later stage in court.

Even if you decide to do this, you need to think everything through and consider the details of what will happen if you become the resident parent and have full contact?. How will you work or earn money? What will happen to the kids during the day? You need to have a plan in place.

If everything is amicable between the two of you, you can put a temporary agreement in place until you either agree to consent orders at a later stage or go to court. I would recommend trying to get as close to the time you’re asking for so you can get a taste of what it will be like to have your kids by yourself for a while and then you can adjust the amount of contact you want when negotiating properly.

### Negotiating an Agreement

In negotiating an agreement, keep in mind that the court will consider the needs of the children above all others. Generally, it will be in the child’s best interests to spend the majority of their time with the person they spent the majority of their time with before the separation.

You want to ask for *shared parental responsibility*. This is separate from the amount of time that you actually spend with the children and it means that you have an equal say in how your children are raised, even when you don't spend all (or even half) your time with them.

Before asking for the amount of time you want to spend with your kids, you really need to figure out how the mechanics of living with your child will work. The court will ask for specifics. You can't just ask for 50/50 and say you will work out the details later. Which days *exactly* will you spend with your kids? What will you do with your job on the days you have them? If they go to school, how will you handle drop-off and pickup? If they go to daycare, you can't put them in daycare every day as the court probably won't see it as in their best interests.

I've found it easiest to work out a two-week cycle. You can ask for contact at least every second week-end. You will need the other week-end to yourself as you need to keep some 'me' time. Any increase in contact time above and beyond this will need to be during the week and will depend on children's ages (i.e., if they go to school) as to whether or not this is feasible.

For very young children, it may be "reasonable" from the court's point of view for you to have no overnight care. The general formula that most people seem to apply is that the child spend time with the non-resident parent (age-1) nights per week. So, if your child is still a baby you may get no overnight care. If your child is a lot older – say 10 or above--it may be easier if you go week by week: one week at your place, one week at mum's place.

There are many other things to consider when thinking about children. There are actually many good pamphlets and advice out there on how to get to an agreement and all the items you should consider. I have included one from Relationships Australia with this eBook.

## Chapter Summary

- Determine how often you want to see your children and work out a plan as to how this will happen in practice. What changes will you need to make in your life to accommodate your children?
- Courts will be unwilling to change the 'status quo' with regards to contact without agreement from both parties
- You always want to ask for shared parental responsibility

## 9. Child Support

Child maintenance is payable from the day of separation, or when she (or you!) registers the child with the Child Support Agency (CSA). This can be done up to two weeks in arrears. So the longer she waits the better for you. There are calculators online for how much you will be expected to pay.

<http://www.csa.gov.au/estimator/index.aspx>

If you had children with more than one partner, you have to ring up to get an estimate over the phone. There is a lot of information on the CSA website about child support and your obligations, but some advice that I can offer around child support is:

- If you're earning a regular income, there is an income cap of around \$130,000. If you earn more than this, you won't pay any more child support than the maximum amount which is handy if you're a high earner
- If you're an ultra-high earner, though (for example, \$250,000+), or if you are self-employed, or if your ex somehow thinks you're hiding income, she can request a review. In this instance, you both fill in a long form and put your case forward as to why you should be paying more or less child care. It's almost like a small court trial conducted over the phone by lawyers from the CSA. It's something you want to try to avoid if possible as the CSA can set any amount they want. If you're self-employed and between jobs (i.e., earning no money) they can make you pay anyway so there's no point quitting your job to go on the dole just to stop payments.
- You can pay money directly to her and this is actually what most people do. If she doesn't trust you to pay, then she will make you pay the government and then they will pay her. There is nothing you can do to change this once she's made up her mind. Well, apart from changing her mind.
- If you are paying anything towards any of her expenses or your child's expenses, you can use those payments to count towards your child care payment, even if your ex doesn't agree, but only to a maximum of thirty percent of the monthly payment.
- These payments count only if you have less than "regular care", which is less than one night per week or fourteen percent of your child's time.
- If you do have regular care or above, you will receive a minimum of a thirty-percent discount on your child care payments anyway which is why you should go for one night per week or two nights per fortnight at a minimum, if you want to reduce your child care fees and see your kids.

More general information can be found at the CSA website

<http://www.csa.gov.au>

## 10. Dirty Tactics

When your ex feels like she's losing the battle, or even if she just feels like get back at you, there are, unfortunately, many things she can do. The laws in Australia have been designed to protect the innocent and truly abused from their attacker. But more and more, women are finding that all they have to do is make an application, fake some tears, and lie to a judge to get back at their (ex) husbands. These women are misusing the system and are doing a disservice to the other women who have had their teeth punched through the back of their head and really need protection.

### Intervention Order / AVO

Intervention Orders or Apprehended Violence Orders are one of the easiest things for a woman to get. An application is made in person, the woman attends court, fakes a few tears, and tells a few little lies and suddenly *and without warning*, you have been served by a police officer and can no longer see your kids until the next court date (which thankfully is usually only a few weeks). You cannot defend yourself against this step. It's impossible. You're not even informed that she will *be* in court so you can turn up to defend yourself. It's designed that way because, if you even caught wind that she may be going to court, you could (in theory) stop her.

Fighting Intervention Orders is very tough. When I was defending against one, during the directions hearing I asked the court appointed lawyer about his batting average. "How many people have you successfully defended against an Intervention Order?" His answer? Two.

"What? Two today?" I asked him.

"No. Two altogether."

Wow, great batting average. The problem is that if the judge doesn't protect an 'innocent woman' and grant an intervention order and she exits the court only to get the snot beaten out of her the next day, the judge will have to answer some tough questions from his boss and (even worse) may come to the attention of the media. So judges err on the side of caution and give intervention orders out like candy.

That is why you need to voice-record every encounter, and keep a diary if there is even a *slight* chance she may do this. And, that is why you need to act like a perfect gentleman when around her.

### Defense

So what can you do to defend against it once you have an interim order against you? Firstly, follow the order. This will mean you cannot contact her or you cannot have anyone contact her on your behalf. Although you may *feel* like punching her teeth through the back of her head just so she feels justified in taking out an AVO, don't. You will only make it worse. Punch the wall, a door, your car—anything—but not her.

Anyone in a domestic relationship with the person in need of protection (including children) are included in an intervention order or AVO. If the alleged violence was witnessed by your kids, they will definitely be included on the order. Witnessed includes seeing or hearing, so if she says they heard you

yelling, they will be on the order and be a 'protected person' which means you cannot contact them either.

The papers you get served will contain her version of any events and you'll be able to respond to these when you get to court. Generally, you just turn up and defend yourself. But, I've found that if you file a statement, the judge will (probably) read it when your case is called. Just keep it short.

### **Options when you get to court**

Your best defense when you get to court will be to accept an undertaking. If she offers, accept it immediately. The problem will be that she may not be willing to offer you an undertaking. An undertaking is not enforceable by the police and is simply a 'promise to the court' that you won't be a bad boy in the future. If she files a second intervention order during the undertaking period, you may have some more explaining to do.

The next option is consent to the order 'without admissions'. This means that the order will be made and you will be legally bound by it for the period of the order (usually twelve months). If you break (contravene) it, the police can and will put you in jail. The police have no discretion about this - they have to under the law. 'Without admissions' means that you don't admit to any of the allegations in the application. If she accepts your consent without admissions, she cannot use the fact that you're a violent man in any family court proceedings because you haven't admitted to anything.

The final option is to say that you do not consent to the order which means you're defending the allegation. You can ask that the interim order be changed to allow contact as per another court order (e.g., if you're allowed contact via a consent order) so you can see your kids.

If you don't turn up, an order will be made in your absence which will probably be a full intervention order. It's in your best interest to turn up! If you don't really care about the outcome – for example, you don't own any firearms, you don't have any kids (or your kids aren't included on it) and you don't want to talk to her anyway, then you can save some money and just let it happen. Still, turn up to court, but don't defend and just accept an order without admissions. The judge and the other barrister (if she has one) will want this as it means they don't have to spend time on a half-day trial.

### **Implications of an Intervention Order**

An intervention order is a civil order which means that you it carries no criminal record – unless you breach the order. If you do this, you will get a criminal conviction for breaching the order and can subsequently be labeled as a 'violent person'. Don't contravene the order!

The Family Violence Act does give a magistrate or judge to power to suspend contact with children even if that contact has been granted by orders via the Family Law Act or through consent orders. This means that potentially you can lose contact with your kids for the length of the intervention order. If this happens you can appeal, but it may mean you won't get to see your kids until your appeal is successful.

If you do agree to an intervention order, you cannot own a firearm for five years. This may or may not be important to you.

## **Skiping the country with the kids**

In our increasingly multicultural world, it's common to marry someone from another country. Your ex can leave the country and return to her homeland and you will probably just think "good riddance", but if she tries to take the kids, that is another matter.

If you think there is a good chance that your ex may flee Australia and return to her home country, you can apply for your child/children to be placed upon the airport watch list (although it covers all forms of transport from Australia including boat). This is a 'no fly' list maintained by the federal police and your kids won't be able to exit the country as their passport will trigger an alert. This is the first line of defense against stopping your ex leaving the country with your kids.

You need a court order to get your kids on the watch list and you can put an application in when you first file your application to the court. In theory, no child that is the subject of a family court proceeding can leave Australia without permission of both parents, but there's no real way somebody from immigration is going to know that a child is the subject of a family court proceeding unless someone tells them.

If your kids already have passports, unfortunately you have given implicit permission for them to travel. Your ex can, in theory, leave the country at any time. If your ex does leave the country and you haven't yet put your kids on the no-fly list, then you still have a few options. If your ex flees to a country that is a signatory to The Hague Convention (which includes all of Europe, the US, most of South America, and South Africa) then you can apply for your children's return using government help. The government will pay most of the legal bills and will coordinate the return of your children. The police in the country in which your ex resides are supposed to enforce any return orders, but apparently the level of cooperation of the local police depends on the country.

If your ex stops in a country that isn't covered by The Hague Convention, then you may have a long, difficult, and expensive road ahead. I don't envy your position and if this is the case I would recommend getting professional legal help immediately.

Your ex may also apply to the court for permission to leave the country. If she wins this battle, she will be allowed to leave and you won't see your kids again (unless you also move). This should be fought vigorously if you want to stay in Australia. Fortunately, she has to have an extremely compelling reason to return, especially if your kids were born here and are Australian citizens.

Extremely compelling reasons may include:

- She has a very poor quality of life in Australia and can't find a job because her work qualification isn't recognized and by going back home she will have a significantly better quality of life
- She can't speak English or has trouble communicating (this alone probably isn't enough)
- She doesn't have any family or support network available to her in Australia. She is completely isolated.
- She has no financial capacity because there wasn't a lot of money to split up or your lawyer was too good at protecting your assets.

There would probably have to be a combination of the above for a judge to decide your ex could leave the country with the kids. My lawyer told me about a client who was German, who didn't speak English very well. She had no money, and had to take care of two young children, so she couldn't work. She applied to return to Germany and was knocked back. But the ultimate outcome is probably going to depend a lot on the judge and how good an actor your ex can be.

## **Allegations of Child Abuse or Sexual Abuse**

**Note:** I'm going to assume that these are simply allegations against you and that they are completely unfounded. If you are abusing your child in any way, you should be castrated and shot, in that order.

This is the nuclear bomb of separation proceedings and she cannot make a worse allegation against you. This is used only by the most vindictive and vicious woman and these allegations need to be addressed immediately as even an unfounded allegation against a man can easily destroy your career and even your life.

If your ex has made allegations of abuse, what you do will depend on whether or not she has just made an allegation or has actually reported you to the police. Hopefully, these allegations won't go any farther than between the two of you. But just in case they do, you need to build your body of evidence against these hurtful lies. When you get to court, you need to pull out enough evidence to dispute the worst of her claims.

If it's just an allegation and it's for sexual abuse or serious child abuse you need to go immediately to see a child psychologist, explain the situation, ask that the child/children be interviewed and that the interview be taped.

The questions as well as the answers need to be taped so that if the child changes his/her story at a later date due to pressure from your ex or the effect as described above, you will have proof that at the time of the allegation, your child told a professional that nothing bad was happening. Do not interview the child yourself as you can be accused of asking leading questions or coercing the child. You need to do this immediately!

The reason for this is that children are extremely impressionable. They can be very easily coached into thinking that something happened simply by asking them leading questions. If "Don't you remember when you dad hit you?" is asked enough times, it can confuse the child into thinking that *the event actually occurred*.

In fact, it's actually even much worse than this. If a child is asked many leading questions not only will the child think that the event occurred, but there is a very strong possibility that the child will also suffer the same psychological effects as if the event *did* occur. For serious child abuse or sexual abuse allegations this is extremely important because, as a parent, you need to protect your kids against this situation even if your ex won't.

This technique can be used to turn children against a parent and is called 'parental alienation'. You need to be able to recognize this and try to stop the poisoning of a child's mind immediately.

Even if your ex hasn't yet contacted the police, you may also want to consider being proactive and going to talk to them first to explain the situation. In effect, you are forewarning them that they may receive a visit from her. Doing this may earn you a visit to the Sexual Offences and Child Abuse (SOCA) unit in Victoria. (I'm sure there's a similar unit in other states.) and they may perform their own taped interviews of both you and your children. But, it's preferable to have everything out in the open now rather than in six months time when your ex has had a chance to build a case against you.

If your ex has skipped the allegations and/or has gone directly to the police, you can expect a visit or call from the SOCA unit (or equivalent) for an interview. There's nothing you can do at this point except go and explain the situation to them. They are experts in this sort of thing and should see through any false allegations because they understand the impact it can have on the lives of the accused.

To protect and defend yourself against these allegations, you can do the following:

- Don't speak with your ex directly. Communicate via some sort of written form and refuse to answer voice calls (or if you do answer them, have them recorded). Just tell her you don't want to speak with her and if she wants to communicate, she can do it via email or SMS.
- If possible, always spend time with your kids in the presence someone else: a new partner, a relative, or a friend. Minimise the amount of time you spend alone with them, or at the very least get a good friend who is willing to testify to defend you.
- Use your diary to document any cuts or bruises on your child. If an incident occurs and your child falls down and hurts him/herself, record his/her (and your) reaction immediately afterwards if you can so you can prove that any cuts or bruises occurred as part of normal play.
- Remember that kids are extremely impressionable and can be very easily coached into thinking that something happened simply by asking leading questions. Try to recognize if this is happening and don't try to use your children against your ex by doing the same thing back to her as it will just hurt your children in the long run.
- Speak with other professionals that may have contact with your child: child care workers, teachers, after school caregivers and tell them what is going on. Explain that you are going through a separation and there are unfounded allegations being made against you. You can take the 'high road', but you can't keep silent, hoping that the truth will somehow reveal itself to these people and if they are getting only one side of the story, they will quickly form their own opinions of you and can very easily be turned against you.
- If the allegations continue or are extremely serious and you truly haven't done anything wrong, visit a child psychologist for an interview as discussed above.

Frustratingly, there is no penalty for making a false accusation. (It's the same as a woman claiming she has been raped. There is no penalty for false accusation!) If you can prove that your earning capacity has been reduced due to her allegations, you can sue for defamation but you have to essentially be a public figure or perhaps someone working with children who is now tarred with a 'child abuse' or 'sexual offender' brush. If you're a normal guy with a normal job, unfortunately there's no legal recourse.



## 11. Other Useful Resources

Some of the following web sites may be of some use to you:

<http://www.relationships.com.au/>

Relationships Australia has many good articles and pamphlets on your relationship and how to manage it after a divorce. They are also a registered dispute resolution provider.

<http://www.familylawcourts.gov.au/wps/wcm/connect/FLC/Home/Separation+and+Divorce>

The separation and divorce page at the family law courts will teach you about the process of separation and divorce.

<http://www.beyondblue.org.au/>

Beyond Blue are a more general site that provides support around depression

[http://en.wikipedia.org/wiki/Family\\_Law\\_Act\\_1975](http://en.wikipedia.org/wiki/Family_Law_Act_1975)

The Wikipedia page on the family law act gives more information on the divorce and separation process

## 12. Final Words

I hope you have found this book useful and that it makes your life a whole lot easier when you are going through your separation and divorce. If you have any further questions, you can email me at [sean@australiandivorce.com.au](mailto:sean@australiandivorce.com.au). Remember that life goes on. Time heals all wounds. You will recover – both emotionally and financially.

*“You cannot change the hand you’re dealt, only how you play the hand”*