



FAQ

A BRYANT MCKINNON RESOURCE

Family Court

This document summarises some of the more commonly asked questions regarding family court. If your question is not answered on this page or you need further advice on any family law related matter please phone us on 02 6651 8440 or email info@bryantmckinnon.com.au.

If my divorce is amicable, do I have to get involved with the Court?

Not necessarily. You and your former partner may come to an agreement about the division of your property without involving the Court. However, even if you don't need the Court's involvement, it's a good idea to speak with a lawyer so you can 'compare' your agreement with the potential outcome at Court.

Do all family law disputes end up in Court?

Not necessarily. You and your former partner may be able to come to an agreement outside of Court. The Court may still have a role in approving your agreement and issuing Consent Orders to formalize that agreement. You should get the opinion of a family law accredited specialist as to whether a Court would likely approve your agreement.



Do I have to be represented by a lawyer at Family Court?

No. You may choose to represent yourself.

How does the Court determine a property settlement?

The Family Law Act specifies how to distribute property when a marriage or de facto relationship dissolves, although the Court also has wide discretion in determining what is fair and reasonable.

This is the typical process:

STEP 1: What is the value of you and your partner's assets, liabilities and

financial resources?

STEP 2: What were each of you and your partner's contributions to the property pool? This includes financial and non-financial, direct and indirect contributions, as well as contributions as home maker or parent.

STEP 3: Should you or your partner receive any adjustments in your favour? There is a long list of factors that may justify an adjustment, including health, capacity for work, dependents and new living arrangements.

STEP 4: Based on the results of steps 1, 2 and 3, who should receive what property?

See our downloadable resource [FAQs Property Settlement](#) for more information about property settlements.

How does the Court determine who a child will live with or spend time with?

The law requires the Court to consider primarily the benefit to a child of having a meaningful relationship with both parents, and the need to protect a child from physical or psychological harm, abuse, neglect or family violence. There are several other considerations the Court may also take into account.

Shared parental responsibility is presumed to be the starting point. This means that you and your former partner should both have input into important decisions about your child's life. It does not necessarily mean that your child will equally divide their time between you and your former partner. There are some important exceptions to this presumption that you should be aware of, including allegations of family violence or other risk factors.

See our downloadable resource [FAQs Children's Matters](#) for more information about parenting arrangements.

Do I have to tell the Court about family violence?

If there is an existing or pending family violence order involving you or your children, you must inform the Court. If you are worried about your personal safety or the safety of your children but have not made an application for a family violence order, you can still tell the Court. The Court will work with you to put appropriate measures in place.

If you don't need the Court's involvement, it's a good idea to speak with a lawyer so you can 'compare' your agreement with the potential outcome at Court.

What can I expect at my first Court event?

Your first Court event will be an assessment of whether you and your former partner are ready for a hearing. The specifics of what will happen depend on whether your dispute with your former partner relates to financial matters, parenting arrangements or both. A registrar, family consultant or judge will direct you and your former

partner on next steps, which may involve further negotiations, family reports or conferences, or a formal hearing.

What is a Court Order?

A Court Order is a document issued by the Court which states the decisions the Court has made and anything the Court requires you or your former partner to do. A Court Order creates obligations that you and your former partner must comply with.

With Parenting Orders, the Court will attach the fact sheet 'Parenting orders – obligations, consequences and who can help' that should be read by anyone subject to the Parenting Order.

How are Court Orders enforced?

If your former partner fails to do what a Court Order requires, and you cannot resolve the issue outside of Court, you



can apply to the Court for a further Court Order to enforce the original Order. This can be complicated and depends on the particular Order you are seeking to enforce. Remedies vary between the making of costs orders, make-up time, variation of original orders or even imprisonment.

What is an Independent Children's Lawyer?

The Court may appoint an Independent Children's Lawyer to represent the best interests of your child in Court proceedings. The lawyer can talk to your child and, with your permission, other adults in your child's life such as teachers or doctors. The lawyer will communicate with the Court on behalf of your child and tell the Court what they believe to be in your child's best interests. The lawyer will also protect your child's interests while the Court proceedings are underway.

What is a Family Consultant?

A family consultant is a qualified social worker or psychologist who the

Court may assign to your parenting dispute with your former partner. The consultant assists the Court by making recommendations to move the matter forward. Anything you or your former partner says to a family consultant may be disclosed to the Court.

What is a Family Report?

The Court may appoint a family consultant to prepare a Family Report documenting the consultant's independent view of the issues in your dispute with your former partner. The family consultant will interview you, your partner, your children, and possibly also other people who play a significant role in your family. You must not disclose a Family Report to anyone except the Court and your former partner.

What is a Child Dispute Conference?

If the Court orders a Child Dispute Conference, you and your former partner must meet with a family consultant (without your children or any lawyers) to discuss your

family's situation. The conference aims to provide the consultant with preliminary information to advise the Court on your family's situation. It also gives you and your former partner an opportunity to agree on parenting arrangements.

What is a Child Inclusive Conference?

A Child Inclusive Conference is similar to a Child Dispute Conference, however your children must also attend. The family consultant will interview your children separately from you, your former partner or any other adults.

What is a Conciliation Conference or Mediation?

A Conciliation Conference is an opportunity for you and your former partner to negotiate an agreement, usually focusing on finances. If the Court orders a conference, you and your former partner must attend. You must also exchange all relevant documents (such as tax returns and superannuation statements) with your former partner in advance.

If the conference or mediation is Ordered and facilitated by the Court, you will be appointed a Registrar or mediator and will have the opportunity to discuss financial matters over a short period (half a day) only.

If you and your former partner agree to participate in a mediation that is not ordered or facilitated by the Court, you may choose your mediator and may discuss both parenting and property matters over a longer period (full day if you wish).

This is general information only. We are here to advise you on your specific circumstances; please get in touch to set up an initial consultation.

