

Separation & Divorce

By Dixie Fitzclarence

Where couples believe their relationship has fundamental and insoluble problems, they may wish, at first, to attempt counselling and/or mediation through family relationship providers.

However, where separation occurs, decisions need to be made on important issues, especially where there are children involved.

Some of the important issues that will need to be addressed include:

- Where the children will live;
- How much time the children will spend with each parent;
- How decisions regarding the children will be made;
- Arrangements for financial support of children;
- How the property of the relationship will be divided; and whether one partner will need to provide ongoing financial support for the other.

Divorce is not as complicated.

The Family Law Act does not take account of the causes of the marriage breakdown and only requires that the marriage has broken down irretrievably. The old days of having to prove whose fault the relationship breakdown was, or having to get the other party to agree to a divorce, are long gone.

Irretrievable breakdown is proven by a 12 month separation of the parties. If you are married and you have been separated for at least 12 months, you can apply to the Federal Circuit Court for a divorce either on your own or jointly with your former partner. If you have been married for a period of less than 2 years you will normally require a counselling certificate before applying to the Court for a divorce. If you have children the Court has to be satisfied that you have made proper arrangements for your children's welfare before granting a divorce.



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Many people think that they must be divorced before sorting out a financial settlement. In fact, this is incorrect, and most people sort out their financial issues before getting divorced.

Divorce is no more than getting "unmarried" – it has no direct bearing on property rights, save that usually if you have been divorced and then wish to ask the Court for Orders concerning a property settlement, you have to file your application with the Court within 12 months of your divorce becoming final (or within 2 years from separation for de facto couples). Extensions of time can be granted in some circumstances.

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